

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION  
OF BROOKINGS MUNICIPAL  
UTILITIES D/B/A SWIFTEL  
COMMUNICATIONS FOR  
SUSPENSION OR MODIFICATION OF  
DIALING PARITY, NUMBER  
PORTABILITY AND RECIPROCAL  
COMPENSATION OBLIGATION

Docket No. TC07-007

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SPRINT COMMUNICATIONS COMPANY, L.P.'S RESISTANCE TO  
SWIFTEL'S MOTION TO COMPEL

Sprint Communications Company, L.P. (hereinafter "Sprint"), by and through its undersigned attorneys, hereby files this Response to Brookings Municipal Utilities d/b/a Swiftel Communications (hereinafter "Swiftel") Motion to Compel. Denial of Swiftel's Motion is appropriate under SDCL § 15-6-26(b), because Swiftel seeks irrelevant information that is not likely to lead to admissible evidence. Denial is also proper because Swiftel's requests are onerous and unduly burdensome, and as a result, impermissible under SDCL § 15-6-26(b). Moreover, the discovery sought by Swiftel is imposed for purposes of harassment and oppression, thereby entitling Sprint to a protective order precluding Swiftel from demanding the information sought pursuant to SDCL § 15-6-26(c).

**I. FACTUAL BACKGROUND.**

On January 30, 2007, Swiftel filed the current Petition, pursuant 47 U.S.C. § 251(f)(2) and SDCL § 49-31-80, seeking suspension or modification of its obligations regarding:

1. number portability;
2. dialing parity; and
3. reciprocal compensation obligations.

Specifically, regarding the local number portability issue, Swiftel has only asked that it not be required to port to a wire line competitive LEC until four months after the CLEC is certified and not be required to transport ported numbers outside its service area. Petition at page 2. Regarding dialing parity, Swiftel requested that it not be required to pay for transport of local calls to a point beyond its service territory for wireline local dialing parity. Regarding wireless issues, Swiftel has requested a modification of dialing parity to the extent that dialing parity may require Swiftel to allow Swiftel customers to dial toll calls as local calls and to the extent Swiftel be required to transport calls beyond its wire line local calling area. Swiftel has also requested under dialing parity that it not be required to perform equal access function at its end office or establish an access traffic transport facilities other than a common trunk to SDN. Petition at pages 2-3. Under the reciprocal compensation requirement, Swiftel has only asked that a determination be made that it is not required to pay reciprocal compensation on traffic terminating to a wireless carrier within the MTA that Swiftel would hand off to an IXC. Petition at pages 3-4.

Sprint intervened as an interested party. Presently pending before the Commission is Swiftel's motion to compel discovery responses to requests to which Sprint has specifically objected. Statutorily, discovery is properly limited to matters that are relevant to the issues in the pending proceeding. S.D.C.L. § 15-6-26(b)(1).<sup>1</sup> As a result, an appropriate evaluation of Swiftel's motion requires a limitation of discovery to matters that are relevant to the pending issues before the Commission.

Notwithstanding the limited remedies sought, Swiftel now seeks extensive discovery from Sprint on numerous issues dealing with Sprint's network on a nationwide basis. These inquiries have no relation to the relief requested. Rather, Swiftel is attempting to improperly utilize its request

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<sup>1</sup> It should be noted that Sprint's position in this proceeding is identical to the position it has taken in the pending arbitration, TC06-176. To illustrate, Sprint has consistently maintained that it is only requesting that Swiftel deliver traffic to its point of presence in Sioux Falls.

for suspension as a forum to obtain extensive discovery from Sprint on issues unrelated to this case. Generally, the subject requests are overly broad, unduly burdensome, and not relevant or likely to lead to admissible evidence in this case.

## II. LEGAL ANALYSIS

### A. Discovery Standard.

Public Utilities Commission Administrative Rule 20:10:01:22.01, provides that, “The taking and use of discovery shall be in the same manner as in the circuit courts of this state.” “South Dakota Codified Law § 15-6-26(b)(1) establishes the general scope *and limits* of discovery.” Public Entity Pool for Liability v. Score, 2003 SD 17, ¶ 20, 658 N.W.2d 64 (*emphasis added*). The rule states,

- (1) In general. Parties may obtain discovery regarding any matter, not privileged, *which is relevant to the subject matter involved in the pending action.* . . . [.]

S.D.C.L. § 15-6-26(b)(1)(*emphasis added*). “...[D]iscovery, like all matters of procedure, has ultimate and necessary boundaries.” Kaarup v. St. Paul Fire and Marine Insur. Co., 436 N.W.2d 17, 20 (S.D. 1989)(*citing Hickman v. Taylor*, 329 U.S. 495, 507 (1947)). “The proper standard for ruling on a discovery motion is whether the information sought is ‘relevant to the subject matter involved in the pending action....’” *Id.* (*citing* S.D.C.L. § 15-6-26(b)(1)); State v. Buchholz, 1999 SD 110, ¶ 27, 598 N.W.2d 899, 904. As a consequence, it is appropriate to deny motions to compel which seek subject matter that bears no relevance to the issues in the pending litigation. Kaarup, 436 N.W.2d at 20.

Further, “When discovery efforts go beyond those subjects not ‘reasonably calculated to lead to the discovery of admissible evidence,’ a court has authority to issue protective orders....” Score, 2003 SD 17, ¶ 20 (*citing* S.D.C.L. § 15-6-26(c)). Specifically, S.D.C.L. § 15-6-26(c), provides the Court discretion to protect a party from “...annoyance, embarrassment, oppression,

or undue burden or expense....” In effect, the statute provides the Court discretion to enter “any order which justice requires” to protect a party from annoyance, oppression, undue burden or expense. Score, 2003 SD 17, at ¶ 21.

Instructively, the United States Supreme Court has also noted, “...discovery rules should ‘be construed to secure the just, *speedy*, and *inexpensive* determination of every action’ ...judges should not hesitate to exercise appropriate control over the discovery process.” Id. (*emphasis added*)(*quoting Herbert*, 441 U.S. at 177 (*quoting Fed.R.Civ.P. 1*)). Furthermore, “pretrial discovery is time consuming and expensive . . . and judges are to be commended . . . for keeping tight reins on it.” Id. at 927 (*citing Oliviere v. Rodriguez*, 122 F.3d 406, 409 (7th Cir. 1997), *cert. denied*, 522 U.S. 1110 (1998)).

**B. Matters Presently Before The Commission In The Pending Proceeding.**

Swiftel seeks suspensions of its obligations for providing local number portability, dialing parity and reciprocal compensation under 47 U.S.C. § 251(b)(2), (3) and (5). Swiftel’s petition for suspension is properly denied if Swiftel is unable to satisfy the two-part test set forth in 47 U.S.C. § 251(f)(2). The first part requires that Swiftel, as the local exchange carrier (LEC), show a (1) “significant adverse economic impact on the users of telecommunication services generally”; or, (2) “that the suspension is necessary to avoid imposing a requirement that is unduly economically burdensome”; or, (3) to avoid a requirement that is “technically infeasible.” 47 U.S.C. § 251(f)(2). The second part of the test requires a finding that a suspension is “...consistent with the public interest, convenience, necessity.” Id. There is no dispute that the services required under 47 U.S.C. § 251(b) are technically feasible. Thus, Swiftel must make a showing of either significant adverse economic impact or an unduly economically burdensome result to prevail on its petition for suspension.

The Eighth Circuit Court of Appeals has had an opportunity to address what is properly considered in evaluating whether or not an unduly economically burdensome result is incurred by an ILEC. Iowa Utilities Board v. Federal Communications Commission, 219 F.3d 744, 761 (8th Cir. 2000), *reversed on other grounds in*, Verizon Communications, Inc. v. FCC, 535 U.S. 467 (2002), *judgment vacated on other grounds in*, Iowa Utilities Bd. v. FCC, 301 F.3d 957 (8th Cir. 2002).<sup>2</sup> It has stated, “It is the full economic burden on the ILEC of meeting the request that must be assessed by the State Commission.” Id. (*emphasis added*). As such, the focus of the economic aspects of a suspension test found under 47 U.S.C. § 251(f)(2), is on the ILEC seeking suspension of its affirmative, pro competition obligations under the Federal Telecommunications Act. Plainly, the focus is not on Intervenors such as Sprint.

Furthermore, this Commission has dealt with a previous suspension request made by Swiftel. Therein, Swiftel requested the Commission suspend its obligation to provide wireless number portability, an obligation under 47 U.S.C. § 251(b)(2). In that filing, the Commission concluded, that the undue economic burden focus is on “Swiftel and its/their customers.” *See* Statement of Fact 47 to Amended Final Decision and Order, January 5, 2005, filing docket TC04-047, copy of the Amended Final Decision and Order attached; *See Also* Conclusion of Law 6 (finding “The Commission concludes that this standard should be applied to assess the burdensomeness of the requirement on both the consumer and the company.”) A review of that docket demonstrates only Swiftel’s costs of providing the service were admitted into evidence.

Swiftel’s position that it must now receive massive information on network costs or margins that might exist for any other telecommunications company carrier to prove it suffers an undue economic burden in this proceeding is wholly without merit. Swiftel has failed to cite any

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<sup>2</sup> For discussion of the FCC’s ability to require LECs to perform a forward-looking cost analysis, *see* Verizon Communications, Inc. et al., 122 S.Ct. 1646, 535 U.S. 467(2002).

authority, statutory or otherwise, to support its position. Nor has it provided any reasonable rationale to support its claim that the information sought is relevant or could lead to relevant information. Therefore, Swiftel is not entitled to discovery of the same pursuant to S. D.C.L. § 15-6-26(b).

### **III. ARGUMENT**

In the Motion to Compel, Swiftel has grouped interrogatories by topic. Sprint has followed the same grouping below. To the extent that Sprint has supplemented some of the interrogatories, the supplementation is noted. Additionally, attached as Exhibit A, are the Supplemental Responses.

#### **Interrogatories 3, 8, & 10:**

**Interrogatory 3: Identify each Telecommunications Carrier you have exchanged Telecommunications Traffic with, either directly or indirectly, during the past 12 months in South Dakota.**

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 2 [vague, overbroad], 3[relevance], 4 [already in public record] and 5 [unduly burdensome].<sup>3</sup>

**Interrogatory 8: Identify all interconnection arrangements Sprint has entered into 1) in South Dakota and 2) with any ILEC in which Sprint alleges to jointly provide service with a cable company and detail in every way how they differ from Sprint's proposed interconnection arrangement with Swiftel.**

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 2 [vague, overbroad], 3[relevance], 4 [already in public record] and 5 [unduly burdensome]. Subject to and without waiving these objections Sprint's response is: Qwest.

**Interrogatory 10: Identify any switch not owned by the Company that is directly or indirectly interconnected with any of your switches. Include the owner, status (affiliate or specified third parties, including local exchange Carriers, interexchange Carriers, and CMRS carriers), model, physical location, and date of interconnection for each such switch.**

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<sup>3</sup> A supplemental response to Interrogatory No. 3 has been provided.

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 2 [vague, overbroad], 3[relevance], and 5 [unduly burdensome].<sup>4</sup>

**ARGUMENTS ON INTERROGATORIES 3, 8 and 10:**

In its argument regarding why Swiftel believes more complete responses need to be given to these interrogatories, it does not provide any legal analysis as to whether the material can be used or applied in Swiftel's Request for Suspension. Swiftel does claim that information from Sprint on all these relationships is necessary to determine "the number of carriers to whom Swiftel may be required to transport traffic and the location to which Swiftel may be required to transport traffic...." Sprint is at a loss to understand how Sprint's relationship with other carriers and Sprint's network somehow provides to Swiftel the location to which other carriers may require it to carry traffic.

Regardless, Sprint has made clear that it desires Swiftel to carry traffic that is subject to the desired local interconnection agreement to its point of presence in Sioux Falls, South Dakota. Sprint is not asking Swiftel to re-route any other Swiftel-originated traffic, e.g., 1+ toll traffic. Given Sprint's position, the discovery sought is inappropriate as it has nothing to do with the request Sprint has made on Swiftel and will not provide any additional information that can assist Swiftel in its requested relief as the relief turns on transport costs. In regard to Sprint, these costs are capped to carrying calls to Sioux Falls.

**Interrogatories 4, 5, 55, 56 and 57:**

**Interrogatory 4: Identify all Sprint switches, interoffice transport routes, intercompany transmission facilities, points of interconnection with other carriers, and call record data collection points in the South Dakota LATA #640 and in MTA 12. Identify capacity and in-service plant associated with each switch, transport transmission equipment, route, and/or facility.**

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<sup>4</sup> A supplemental response to Interrogatory No. 10 has been provided.

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 3, 5 and 7.<sup>5</sup>

**Interrogatory 5:** Identify any current or planned shared transport and/or transmission routes and interface points between Sprint's network and MCC Telephony of the Midwest, Inc. (MCC or Mediacom) network in South Dakota. To the extent that Sprint utilizes or will utilize any of the Mediacom network or Mediacom utilizes or will utilize any of the Sprint network, identify the facilities associated with such usage and the purpose of any such utilization.

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 3 and 5.

**Interrogatory 55:** Provide a list of all equipment and facilities in South Dakota which are 1) owned, 2) leased or 3) controlled by Sprint, including but not limited to switching equipment (Stored Program Control Class 5 and Class 4 switches including remote switches for these switches, Next Generation / Soft Switches including all servers or ancillary gateways, IP PBXs, analog PBXs), data routers / switches, and transport equipment (ATM, SONET, MPLS, Frame Relay, IP, and wave division multiplexing) which are available for use to provide facilities-based competitive local and long distance voice service with MCC.

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 3 and 5.<sup>6</sup>

**Interrogatory 56:** Provide a list of all equipment and facilities in South Dakota which Sprint intends to use to provide facilities-based competitive local and long distance voice service with MCC, including but not limited to switching equipment (Stored Program Control Class 5 and Class 4 switches including remote switches for these switches, Next Generation / Soft Switches including all servers or ancillary gateways, IP PBXs, analog PBXs), data routers / switches, and transport equipment (ATM, SONET, MPLS, Frame Relay, IP, and wave division multiplexing).

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 2, 3 and 5.<sup>7</sup>

**Interrogatory 57:** Provide a list of the locations by street address of all equipment and facilities identified in Discovery Requests 55 and 56. These locations shall include but not be limited to locations of buildings, huts, collocation sites, and electronic equipment cabinets both pad and pole mounted.

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<sup>5</sup> A supplemental response to Interrogatory No. 4 has been provided. Therein, Sprint has explicitly stated it is not requesting SwifTel to carry traffic beyond Sprint's POP in Sioux Falls.

<sup>6</sup> A supplemental response to Interrogatory No. 55 has been provided.

<sup>7</sup> A supplemental response to Interrogatory No. 56 has been provided.



**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 2, 3 and 5.<sup>8</sup>

**ARGUMENTS ON INTERROGATORIES 4, 5, 55, 56 and 57:**

These interrogatories essentially request extensive information on Sprint's networks and Sprint's interrelations with other carriers. Swiftel contends it needs this information because it would be "relevant to determining the economic burden placed upon Swiftel by the requirements of LNP, dialing parity, and reciprocal compensation." Swiftel fails to explain how this information would be used to show said burden. Given that Swiftel's LNP request is only for a four-month extension from a CLEC certification and not to carry traffic outside of its service area, the only relevance to local number portability would be the costs to carry the call to Sprint's point of presence in Sioux Falls and only for those Swiftel customers that have ported their telephone number to Sprint. That is it. Because of that, what Sprint does with the traffic after it picks it up is not relevant nor likely to lead to admissible evidence regarding the costs incurred by Swiftel. The same is true for relief requested concerning dialing parity and reciprocal compensation. Again, because Sprint only requests that Swiftel, under the proposed arbitration, carry traffic to Sioux Falls, Swiftel knows exactly the costs it will incur in its relationship in delivering calls to Sprint in Sioux Falls.

These questions are either Swiftel's attempt to expand discovery in the pending arbitration or are simply being posed for the purposes of harassment in this action. As such, the Motion to Compel should be denied.

**Interrogatory 11: Quantify the volume of traffic (by MOU) sent to Swiftel for termination for the last 12 months and for year end 2000-2007, inclusive, by the following traffic types:**

**a) IntraMTA Wireless**

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<sup>8</sup> A supplemental response to Interrogatory No. 56 has been provided.

- b) **Local Wireline or EAS**
- c) **Wireline Toll**
- d) **InterMTA Wireless**
- e) **Through the Qwest tandem**

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objection 5. In addition this data request [is] for information that should be in the possession of Swiftel.

**ARGUMENT ON INTERROGATORY 11:**

Swiftel has not identified how any of this information is relevant or will lead to admissible evidence in this proceeding. As noted above, essentially all the relief is centered around transport issues and given that the requested information is not related to any transport issues of Swiftel, it is not relevant nor likely to lead to admissible evidence. Further, traffic breakouts requested by Swiftel are not kept in the regular course of business for the last 12-months by Sprint. For example, the InterMTA wireless numbers are not kept by wireless carriers. The IntraMTA wireless is delivered over IXCs. Sprint has no local wire line or wireless service in the Swiftel area or Swiftel's EAS areas. Wire line toll would be delivered over an IXC or via SDN.

**Interrogatory 12: For each of the South Dakota local exchanges in which you offer service, provide 1) the number of CLEC access lines, stated separately as to business and residential and stated separately as to local or toll, served by you in each exchange for each of the last 12 months, and for year end 2000 through 2007 inclusive and 2) the number of wireless subscribers served by you in each exchange for each of the last 12 months, and for year end 2000 through 2007 inclusive.**

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 2, 3 and 5. Subject to and without waiving these objections Sprint's response provides the available data: \*\*\*BEGIN PROPRIETARY\*\*\*

**ARGUMENT TO INTERROGATORY 12:**

In the proprietary information provided, Sprint provided the CLEC access lines in the state of South Dakota. These access lines are in Qwest territory. This information was provided for the year end 2006 and the year end 2007.

What wireless subscribers Sprint might have in the territory is not relevant to these proceedings nor will likely lead to admissible evidence. Moreover, wireless carriers are not kept by ILEC exchange areas and, therefore, no way exists to readily obtain that information. While Swiftel is correct that Sprint's witness Farrar has stated the Swiftel costs are over exaggerated because it incorrectly assumed the amount of market it would lose to Sprint, the information provided shows the actual lines in South Dakota and in response to Interrogatory 74, Sprint provided the industry average for market share for cable companies in the first three years. This information is sufficient to allow Swiftel to estimate its market share loss, especially when combining with the actual data for the Qwest areas.

**Interrogatory 14: Identify all financial arrangements made with Mediacom and provide a copy of all documents associated with those financial arrangements.**

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 1, 2, 3, 5, 6, and 7.

**ARGUMENT ON INTERROGATORY 14:**

The financial arrangement Sprint has to other companies has no bearing on the suspension requested by Swiftel. Swiftel claims it needs this information to see if Sprint has been inconsistent with its arrangements with Mediacom. Mediacom's relationship with Sprint is not the same relationship Sprint has with Swiftel. Thus, any kind of comparison is inappropriate and not likely to lead to any admissible evidence. Swiftel has adequate information on costs associated with its suspensions when it knows it need only to carry traffic to Sprint's POP in Sioux Falls.

**Interrogatory 17:** For each type of local service offered by Sprint CLEC (residential access line, business access line, trunks, etc.), please provide the percentage of local service customers that pre-subscribe to or utilize Sprint's:

- a) InterLATA long distance service.
- b) IntraLATA long distance service.

**Response:** Sprint Response: Sprint objects to this Interrogatory for reasons more specifically set forth in *General Objections 2, 3 and 5*.

**ARGUMENT ON INTERROGATORY 17:**

The information requested here would be nationwide. Sprint has in excess of 3.5 million customers through its CLEC business. Swiftel contends that somehow this applies to its economic burden but provide no explanation. This information has no connection to this proceeding and discovery would be inappropriate.

**Interrogatories 18, 19, 44, 45, 63, 66:**

**Interrogatory 18:** For each of the three most recent years for which the data is available, please provide a breakdown of total revenue by service group including, but not limited to, residential local service, business local service, DSL service, special access, switched access, custom calling features, CLASS services, residential inside wire or cabling services, business cabling services, long distance service, wireless service, Internet service, and voice mail.

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in *General Objections 3, 5 and 6*.

**Interrogatory 19:** For all areas where Sprint is a CLEC, provide the average revenue per month (per residential access line and business access line), including all services sold to those customers.

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in *General Objections 2, 3, 5 and 6*.

**Interrogatory 44:** For each service identified in response to Interrogatory 18 above, provide the net income generated on an annual basis for the years 2000 through 2007, inclusive.

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in *General Objections 3, 5 and 6*.

**Interrogatory 45: Provide Sprint's return on investment for the years 2005 through 2007.**

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 3, 4 and 6.

**Interrogatory 63: Provide projected revenues from your CLEC operation in Swiftel's service area for 5 years and provide any projected revenue report prepared for your CLEC operation in Swiftel's service area.**

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 3, 5 and 6.

**Interrogatory 66: Provide projected net income from your CLEC operation in the Swiftel service for 5 years.**

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 3, 5, and 6.

**ARGUMENTS ON INTERROGATORIES 18, 19, 44, 45, 63, 66:**

This interrogatory seeks expansive income information from Sprint. This includes net income and rates of return nationwide. Swiftel contends that the information in some way becomes relevant to show that Sprint's revenues, income and return on investment are adequate during the periods in question. The periods in question range from 2000 to 2013. The question that faces this Commission on the suspension is whether it is an economic burden so great for Swiftel that it cannot live up to its obligations under the Act. Sprint's size in comparison to Swiftel has no bearing on this analysis.

Further, the requested suspension not only applies to Sprint, it applies to any other carrier, no matter how big or small, that would later want to have an interconnection agreement with Swiftel. That is why the suspension analysis focuses on Swiftel and not other possible carriers and their relationship with Swiftel or a possible interconnection agreement with Swiftel. Thus, the information is overly broad and unduly burdensome and not relevant nor likely to lead

to admissible evidence in this proceeding. The burden is appropriately judged by the lack of relevance to this proceeding. Sprint should not be forced to review thousands of financial documents in an attempt to come up with these numbers when the numbers have no bearing on this proceeding.

**Interrogatories 33 and 34:**

**Interrogatory 33: Describe how Sprint Wireless assigns telephone numbers to subscribers. Does Sprint only assign telephone numbers to subscribers in the rate center in which they reside? In the rate center that corresponds to the subscriber's billing address?**

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 3 and 5.

**Interrogatory 34: Does Sprint Wireless intend to assign telephone numbers rated to the Brookings rate center and populate the LERG directing Swiftel's originating calls to the numbers to be routed to Minneapolis? If so, describe how originating calls would be transported to Minneapolis and the role of each carrier that would be involved in the process.**

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 2, 3 and 5.

**ARGUMENTS ON INTERROGATORIES 33 and 34:**

These interrogatories deal with Sprint Wireless. Sprint Wireless does not operate in the Swiftel area. Actually, Swiftel operates its wireless arm under the name of Sprint Wireless, hence Sprint itself has no operations in Swiftel's area. How Sprint Wireless might assign numbers in other areas or how it operates in other areas is not pertinent to this proceeding in any way.

**Interrogatory 35: At page 16 of his testimony, Mr. Burt states that factors can be applied effectively without disturbing appropriate compensation methods. Identify all interconnection agreements with rural ILECs where traffic factors are used or have been used. For each agreement identified, state the traffic factor for access traffic that applied**

**for the years 2004 through 2007. For each month from January 2004 through December 2007, provide the actual minutes of use that correspond to the traffic factor.**

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 2, 4 and 6.

**ARGUMENT ON INTERROGATORY 35:**

This interrogatory requests Sprint review every interconnection it has nationwide. This is literally hundreds of interconnections agreements, if not thousands of interconnection agreements. Each interconnection agreement then must be looked at for 2004, 2005, 2006 and 2007 to identify traffic factors in every one of these interconnection agreements. The request is the definition of overbroad and undue burden. Moreover, the information has no bearing on the suspension.

Mr. Burt's testimony that factors are applied effectively without disturbing compensation methods is a statement of the status quo on almost every interconnection agreement. As a general statement, it simply reflects the status of the industry and does not open up an obligation to Sprint to audit every one of its interconnection agreements for the last four-years. Clearly, the request is overly broad.

**Interrogatory 42: Identify any Sprint 1) CLEC traffic and 2) wireless traffic on trunk groups between the Qwest tandem and a rural ILEC end office by month and for each year from 2004 through 2008.**

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 2, 3 and 5.

**ARGUMENT ON INTERROGATORY 42:**

This interrogatory seeks all Sprint's CLEC traffic nationwide and an analysis of wireless traffic on trunk groups from Qwest and rural ILECs. The traffic needs to be identified beginning in 2004 for each month. To justify the question, SwifTel cites to testimony submitted by Alltel's

expert that Swiftel has been able to enter into successful interconnection agreements with carriers. Such a broad request has no bearing on this case. The analysis for this entire proceeding and for the relief requested is focused on Swiftel, not other carriers.

**Interrogatory 43: Detail all efforts undertaken by Sprint Wireless to get IXCs to enter into access agreements.**

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 2, 3 and 5.

**ARGUMENT ON INTERROGATORY 43:**

This interrogatory seeks information regarding Sprint's wireless arm negotiations with IXCs in attempt to try to receive access for toll calls. The extent of that success or lack thereof, has nothing to do with the relief sought here pursuant to Petition. It is not relevant nor likely to lead to admissible evidence. Further, it is inappropriate to require Sprint to try to view all its records of any contact with any IXC that dealt with access issues. Such a request is clearly overly broad and burdensome.

**Interrogatory 46: At page 14-15 of his testimony, Mr. Farrar cites a number of state commission decisions concerning the delivery of traffic. Identify any of the cited state commission decisions that were suspension petition cases pursuant to Section 251(f)(2) of the Act.**

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 3 and 4.

**ARGUMENT ON INTERROGATORY 46:**

Sprint provided this information in supplemental response.

**Interrogatory 49: Identify the contract Sprint and MCC have entered to provide service within the area served by Swiftel.**

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 3 and 5.<sup>9</sup>

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<sup>9</sup> A supplemental response to Interrogatory No. 49 has been provided.



**ARGUMENT ON INTERROGATORY 49:**

This interrogatory seeks the contract terms between Sprint and MCC. The contract terms between Sprint and MCC to jointly provide local competitive service in Swiftel's territory is not relevant nor likely to lead to admissible evidence on any request for relief by Swiftel. Again, Swiftel's request for relief deals primarily with its obligation to carry traffic out of its service area. If Sprint has already said that Swiftel only needs to carry traffic to its POP in Sioux Falls, Swiftel can easily calculate that cost.

**Interrogatory 64: Provide your projected local service rates for any CLEC customers by customer class in the Swiftel service area.**

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 3, 5 and 6.

**ARGUMENT ON INTERROGATORY 64:**

While this interrogatory is irrelevant nor likely to lead to admissible evidence, Swiftel knows that Sprint has responded in two other proceedings, namely the arbitration and pending CLEC, that Sprint is not establishing a local service rate and that MCC would be establishing these rates.

**Interrogatory 68: Identify Sprint CLEC's connection to the Mediacom network in Attachment 4 - Sprint proposal.**

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 2 and 3.

**ARGUMENT ON INTERROGATORY 68:**

This interrogatory again seeks information regarding the interconnection between Sprint and other companies. It is not relevant nor likely to lead to any admissible evidence in this case.

**Interrogatory 69: Provide the basis for Attachment 4 - Sprint proposal.**

**Response:** Sprint objects to this Interrogatory for reasons more specifically set

forth in General Objections 2 and 3.

**ARGUMENT ON INTERROGATORY 69:**

This interrogatory asks for the “basis” of an attachment. Sprint is unfamiliar with “basis” as a technical term in the telecommunications industry. If Sprint is asking how the diagram was developed; it is an illustration on how Sprint and MCC connect.

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

**Request for Production 1. Provide all documents that you relied on or that support your answers to the Interrogatories or that were identified in your response.**

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 2, 3, 4 and 5.

**ARGUMENT ON REQUEST FOR PRODUCTION 1:**

This requests all documents that might have been relied upon. Sprint stands by its objections to specific interrogatories as set forth above.

**Request for Production 2. Produce a copy of any agreement Sprint (as a CLEC and/or Wireless carrier) has with a Telecommunications Carrier or cable provider in South Dakota that includes terms dealing with any one or more of the following: interconnection, the exchange of Telecommunications Traffic, reciprocal compensation, local number portability, or dialing parity.**

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 2, 3, 4 and 5.

**ARGUMENT ON REQUEST FOR PRODUCTION 2:**

This request seeks the agreement between MCC and Sprint. Sprint stands by its objections as set forth in Response to Request for Production and as relies on its discussion in reply to Interrogatory number 49 above.

**Request for Production 8. Please provide copies of all your annual ETC certification filings for both wireline and wireless ETC made with the South Dakota Public Utilities Commission (SDPUC) since January 1, 2003 including any responses to or**

correspondence with SDPUC staff regarding the filings or information included in such filings.

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 2, 3, 4, 5 and 6.<sup>10</sup>

**ARGUMENT ON REQUEST FOR PRODUCTION 8:**

This request for production was responded to in the supplemental discovery. Sprint is not an ETC in South Dakota so there are no filings.

**Request for Production 11** Provide a copy of a trunk diagram for traffic routed between Sprint and Swiftel showing how all traffic types are routed between Sprint and Swiftel.

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 2, 3 and 5.<sup>11</sup>

**ARGUMENT ON REQUEST FOR PRODUCTION 11:**

This is the same as request for production that Swiftel sought to move to compel an answer to in the arbitration and CLEC proceedings. In both proceedings, Sprint has told Swiftel that no diagram exists. Thus, there is no diagram to be compelled.

**Request for Production 13:** Provide a copy of the contract and other documents, including addendums and amendments, which establish and govern the operations and business relationship between Sprint and MCC.

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 2, 3 and 5.

**ARGUMENT ON REQUEST FOR PRODUCTION 13:**

This request is the same as Interrogatory 49. Sprint stands by its objections.

**Request for Production 15:** Provide all agreements between Sprint including its affiliates or MCC including its affiliates with other third parties that are required to implement the delivery of services as outlined in its Petition requesting arbitration.

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<sup>10</sup> A supplemental response to Request for Production No. 8 has been provided.

<sup>11</sup> A supplemental response to Request for Production No. 11 has been provided.

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 2, 3 and 5.

**ARGUMENT ON REQUEST FOR PRODUCTION 15:**

Sprint stands by its prior objections.

**Request for Production 17:** Provide a copy of all annual filings made with the SD PUC for the past 5 years.

**Response:** Sprint objects to this Interrogatory for reasons more specifically set forth in General Objections 2, 3, 4 and 5.<sup>12</sup>

**ARGUMENT ON REQUEST FOR PRODUCTION 17:**

This request requires Sprint to provide a copy of every annual filing made for any purpose with the Commission. Swiftel does not provide any argument regarding how this is relevant. In fact, it claims only that these documents “may” provide some information. This is a pure fishing expedition by Swiftel’s own explanation and, therefore, is overly broad and unduly burdensome. Even so, Sprint has provided a list of filings Sprint has been a petitioner or initial party to the original filing. This was provided with supplemental discovery.


**CONCLUSION**

Based upon the aforementioned arguments and authorities, Swiftel’s Motion to Compel should be denied in full. Denial is appropriate because Swiftel seeks irrelevant information that is not likely to lead to admissible evidence. Denial is also proper because Swiftel’s requests are onerous and unduly burdensome, and as a result, impermissible under SDCL § 15-6-26(b).

Dated this 24 day of July, 2008.

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<sup>12</sup> A supplemental responses to Request for Production No. 17 has been provided.



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**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 24 day of July, 2008, a copy of **Sprint's Resistance to Swiftel's Motion to Compel** was served electronically to

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