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May 12, 2010

VIA OVERNIGHT COURIER

Patricia Van Gerpen, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Re: Wireline Interconnection Agreement between MCC Telephony of the Midwest, LLC and Brookings Municipal Utilities d/b/a Swiftel Communications for the State of South Dakota

Dear Ms. Van Gerpen:

Please find enclosed for filing for approval by the South Dakota Public Utilities Commission pursuant to 47 U.S.C. § 252 the Wireline Interconnection Agreement between MCC Telephony of the Midwest, LLC ("Mediacom") and Brookings Municipal Utilities d/b/a Swiftel Communications ("Swiftel") for the State of South Dakota. As indicated in the enclosed agreement, Mediacom is adopting in its entirety the Interconnection Agreement between Swiftel and Sprint Communications Company L.P. that was approved by the South Dakota Public Utilities Commission in Docket No. TC08-117 on November 25, 2008 (the "Underlying Agreement"). A copy of the Underlying Agreement is also enclosed for the Commission's convenience.

Contact information for Swiftel is as follows:

W. James Adkins
Brookings Municipal Utilities d/b/a Swiftel Communications
P.O. Box 588
Brookings, SD 57006
Phone: (605) 692-6211
E-mail: jadkins@swiftel-bmu.com

KELLEY DRYE & WARREN LLP

Patricia Van Gerpen, Executive Director
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Please contact me if you have any questions or concerns. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. P. Freson', with a long horizontal flourish extending to the right.

Raymond P. Freson

Enclosures

e-mail cc: W. James Adkins, Brookings Municipal Utilities d/b/a Swiftel Communications

INTERCONNECTION AGREEMENT

By and Between

**BROOKINGS MUNICIPAL UTILITIES
D/B/A SWIFTEL COMMUNICATIONS**

And

SPRINT COMMUNICATIONS COMPANY L.P.

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This Interconnection Agreement ("Agreement") is entered into the ___ day of October, 2008 by and between Brookings Municipal Utilities d/b/a Swiftel Communications with offices at 525 Western Avenue, Brookings, SD 57006 ("Swiftel," "ILEC" or "TELCO") and Sprint Communications Company L.P. a Delaware limited partnership with offices at 6160 Sprint Parkway, Overland Park, Kansas 66251 ("Sprint"). TELCO and Sprint may also be referred to herein singularly as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, TELCO is an incumbent local exchange carrier ("ILEC") and Sprint is a competitive local exchange carrier ("CLEC").

WHEREAS, Sprint requested an agreement encompassing the duties of Section 251(b)(5), (2) and (3) of the Act;

WHEREAS, Sections 251 and 252 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the "Act") have specific requirements for interconnection, and the Parties intend to comply with these requirements; and

WHEREAS, The Parties desire to interconnect their respective networks to allow either Party to deliver originating End User Telecommunications Traffic to the other Party for termination to the End Users of the other Party; and

WHEREAS the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will interconnect their networks and provide other services as required by Sections 251(b)(5), (2), and (3) of the Act and applicable law.

NOW THEREFORE, in consideration of the mutual obligations set forth below, the Parties agree to the following terms and conditions:

1. Scope of Agreement

- 1.1 This Agreement may be used by Sprint to provide retail services to residential or business subscribers or wholesale services to third-party last mile providers, Sprint's End Users. The third-party Telecommunications Traffic, Intra MTA CMRS Traffic, and Traffic subject to access Sprint delivers to ILEC, is treated under this Agreement as Sprint Traffic, and all billing associated with the Telecommunications Traffic and Traffic subject to access will be in the name of Sprint subject to the terms and conditions of this Agreement.
- 1.2 Sprint will be responsible for the payment of compensation to Swiftel for all of Sprint's originating wireless and wireline traffic which is exchanged pursuant to this agreement.

- 1.3. All Telecommunications Traffic exchanged between the Parties shall be subject to the compensation mechanism provided for in Section 7 below.
- 1.4. This Agreement does not address compensation for CMRS traffic.
- 1.5. Each Party agrees that it will not knowingly provision any of its services in a manner that permits the arbitrage and/or circumvention of the application of switched access charges by the other Party.
- 1.6. The Parties enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related specifically to this Agreement, or other types of arrangements prescribed in this Agreement.
- 1.7. Each Party shall comply with all Federal, State, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement. In addition, each Party is responsible for obtaining and maintaining in effect all State regulatory commission approvals and certifications.
- 1.8. The Parties agree that this Agreement excludes all Internet Service Provider (ISP) and ISP bound traffic..
- 1.9. The Parties agree to comply with the Communications Assistance for Law Enforcement Act ("CALEA").
- 1.10. For purposes of this interconnection agreement, for calls that originate from an ILEC landline customer and terminate to a Sprint wireless customer, the ILEC may continue to route the calls as they are routed prior to the contract taking effect. The ILEC is not required to route ILEC-originated calls over the interconnection facility to Sprint and through Sprint's local network.
- 1.11. Swiftel can continue to route calls from its subscribers to points outside of its service territory as toll calls, even if they terminate to a Sprint wireless customer in the MTA.
- 1.12. Sprint may send local wireline and intraMTA wireless traffic terminating to Swiftel over the interconnection facility established pursuant to this Agreement but shall not send any traffic subject to access over the same facility.

2. Definitions

Except as otherwise specified herein, the following definitions will apply to all sections contained in this Agreement. Additional definitions that are specific to the matters covered in a particular section may appear in that section. Any term used in this Agreement that is not defined specifically shall have the meaning ascribed to such term in the Act. If no specific meaning exists for a specific term used in this Agreement, then normal usage in the telecommunications industry shall apply.

- 2.1. Act, as used in this Agreement, means the Communications Act of 1934 (47 U.S.C. Section 151 et seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the Federal Communications Commission ("FCC") or the Commission.
- 2.2. Bill and Keep means that neither of the two Parties charges the other for the termination of Telecommunications Traffic.
- 2.3. CMRS Traffic means traffic originated by or terminated to a Commercial Mobile Radio Service provider, as defined in 47 C.F.R. 20.3.
- 2.4. Commission means the South Dakota Public Utilities Commission.
- 2.5. DS1 means a transport channel capable of transmitting a digital signal transmission rate of 1.544 Megabits per second ("Mbps").
- 2.6. DS3 means a transport channel capable of transmitting at a digital signal rate of 44.736 Mbps.
- 2.7. End User means the residential or business subscriber of telecommunications services provided by either of the Parties or, when Sprint has a business arrangement with a third party last mile provider for interconnection services, the ultimate user of voice services provided by the last mile provider.
- 2.8. Extended Area Service or EAS means a telecommunications service that expands a local calling area to include another local exchange area as defined in ARSD 20:10:24:01(7).
- 2.9. EAS traffic means two-way traffic that falls within the definition of "EAS" that is exchanged between the Parties.
- 2.10. Interconnection is as defined in 47 C.F.R. 51.5, and in accordance with Section 251(a).
- 2.11. Interconnection Facility is the dedicated transport facility used to connect two carriers' networks.
- 2.12. Local Access and Transport Area ("LATA") has the same meaning as that contained in the Act.
- 2.13. Local Number Portability (LNP) provides an End User of telecommunications service the ability to retain its existing telephone number when changing from one telecommunications carrier to another. The Parties recognize that some of the Traffic to be exchanged under this Agreement may be destined for telephone numbers that have been ported.
- 2.14. NPA-NXX means the first six digits of a ten-digit telephone number, which denote a consecutive 10,000 number block within the North American Numbering Plan.

As used in the Agreement, the term refers exclusively to geographic NPAs associated with Rate Center areas and excludes Service Access Codes (e.g., 8XX, 900, 555, etc.), unless otherwise specifically noted.

- 2.15. Physical Point of Interconnection ("POI") means the physical location(s) at which the Parties' networks meet for the purpose of exchanging Traffic.
- 2.16. Rate Center means a geographic area used as a metric in rating wireline calls. The geographic area (a.k.a. as an "Exchange") coincides with the wire center(s) boundaries of the TELCO as defined by the Commission. The size/number of rate centers are regulated by the Commission. Rate Centers are used by LECs in conjunction with rating local and intra-LATA calls.
- 2.17. Reciprocal Compensation means a compensation arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the Transport and Termination on each carrier's network facilities of Telecommunications Traffic that originates on the network facilities of the other carrier. 47 C.F.R. § 51.701(e) and 251(b)(5).
- 2.18. SS7 means Signaling System 7, the common channel out-of-band signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI).
- 2.19. Telecommunications Traffic is as defined in 47 C.F.R. 51.701(b), subject to 251(b)(5), and excludes CMRS Traffic.
- 2.20. Traffic includes both Telecommunication Traffic and traffic subject to access charges.

3. Interconnection

For Interconnection under 251(a) of the Act the following terms apply:

3.1. Points of Interconnection

- 3.1.1. For direct interconnection, the Parties mutually agree to establish a financial POI at Swiftel's service territory boundary. Each Party will be financially responsible for the interconnection facility on its own side of the financial POI. The Parties shall jointly provision the facility that connects the two. Neither Party will bill the other for facility costs on its side of the financial POI. The financial POI will not have any affect on the location of the Physical POI.

Each party will establish a direct physical interconnection (Physical POI) at ILEC's Brookings central office.

3.1.1.2. Regardless of how interconnection facilities are provisioned (e.g., owned, leased or obtained pursuant to tariff, etc.) each Party is individually responsible to provide facilities to the POI that are necessary for routing, transporting, measuring, and billing Traffic from the other Party's network and for delivering Traffic to the other Party's network in a mutually acceptable format and in a manner that neither destroys nor degrades the normal quality of service.

4. Technical Requirements for Interconnection

- 4.1. The Parties agree to utilize SS7 Common Channel Signaling ("CCS") between their respective networks. Both Parties will provide CCS connectivity in accordance with accepted industry practice and standard technical specifications. For all Traffic exchanged, the Parties agree to cooperate with one another on the exchange of all appropriate unaltered CCS messages for call set-up, including without limitation ISDN User Part ("ISUP") and Transaction Capability User Part ("TCAP") messages to facilitate interoperability of CCS-based features and functions between their respective networks, including CLASS features and functions. All CCS signaling parameters, including, but not limited to, the originating telephone number, will be provided by each Party in conjunction with all Traffic it exchanges to the extent required by industry standards.
- 4.2. The Parties will provide Calling Party Number ("CPN") and/or Automatic Number Identification ("ANI") on at least ninety-five percent (95%) of all Traffic delivered to the POI. Where CPN and/or ANI is not provided, the Parties agree that the Party receiving such Traffic shall assess, and the delivering Party shall pay to the receiving Party, the applicable intrastate terminating access charges.

5. Interconnection Facility

- 5.1 Sprint will be responsible for engineering and maintaining its network on its side of the Physical POI on ILEC's network and ILEC will be responsible for engineering and maintaining its network on its side of the Physical POI on ILEC's network.

6. Intentionally left blank

7. Intercarrier Compensation

7.1. Compensation for Telecommunications Traffic

- 7.1.1. The Parties assume and agree that the exchange of Telecommunications Traffic is either roughly balanced or *de minimus* unless traffic studies

indicate otherwise. Accordingly, an initial Bill and Keep arrangement will be in place between the Parties. In the event that either Party's originating/terminating ratio exceeds 60%/40% established through a minimum of three (3) consecutive months of traffic data, then a reciprocal compensation rate of \$0.007 will apply beginning on the first month following the 3 month threshold period. At such time when the parties have determined the traffic is out of balance and the rate applies, if the monthly bill for terminating such traffic results in a net payment between the Parties of less than \$500.00, within any individual month, neither Party will bill the other for Telecommunications Traffic for that month's traffic. If traffic volumes fall below the 60%/40% threshold established through a minimum of three (3) consecutive months of traffic data, Bill and Keep will be established in lieu of the rate, beginning on the first month following the 3 month threshold period.

7.1.2. Notwithstanding the above, and in order to address traffic stimulation activities by the terminating party, if through a minimum of three consecutive months, one party originates 80% or more of the Telecommunications Traffic or the volumes of traffic originated by one Party increases by 200% or more for the year-ago three-month period (Traffic Increase) either party may request renegotiation of the reciprocal compensation rate and the terms and conditions in connection with reciprocal compensation. The renegotiation period will be for 3 months from the day renegotiation was requested. During the renegotiation period, Telecommunications Traffic will be exchanged at Bill and Keep. If the Parties are unable to renegotiate the reciprocal compensation rate and the terms and conditions in connection with reciprocal compensation during the renegotiation period, the dispute will be submitted to the state commission for arbitration. The reciprocal compensation rate that results from negotiation or arbitration will be applied retroactively to the date the Traffic Increase began.

7.1.3. Reciprocal Compensation shall be applicable to the exchange of Telecommunications Traffic as defined in Section 2.19 above that originates and terminates at points within TELCOs service territory, as on file with the Commission. For the purposes of billing compensation for Telecommunications Traffic, billed minutes will be based upon records/reports provided by one or more third parties, or actual usage recorded by the Parties, where available. Measured usage begins when the terminating recording switch receives answer supervision from the called end-user and ends when the terminating recording switch receives or sends disconnect (release message) supervision (conversation time). The measured usage is aggregated at the end of the measurement cycle and rounded to a whole minute. Billing for Telecommunications Traffic shall be on a monthly basis and shall be based on the aggregated measured usage less any traffic identified by the billing Party as non-Telecommunications Traffic.

8. Dialing Parity

- 8.1. Both Parties shall provide local and toll dialing parity in accordance with 47 U.S.C. Section 251(b)(3) and applicable rules of the Federal Communications Commission and any relevant state commission and FCC orders or court decisions interpreting those rules.

9. Local Number Portability

- 9.1. The Parties shall provide LNP query, routing, and transport services in accordance with rules and regulations as prescribed by the FCC and the guidelines set forth by the North American Numbering Council ("NANC"). However, if the provisions in this Agreement conflict with the industry guidelines regarding routing and transport, the Agreement shall govern. The applicable charges for LNP query, routing, and transport services shall be billed in accordance with each Party's applicable tariff or contract.
- 9.2. Both Parties will perform testing as specified in industry guidelines and cooperate in conducting any additional testing to ensure interoperability between networks and systems. Each Party shall inform the other Party of any system updates that may affect the other Party's network and each Party shall, at the other Party's reasonable request and, perform tests to validate the operation of the network.
- 9.3. The Parties agree that Traffic will be routed via a Location Routing Number ("LRN") assigned in the accordance with industry guidelines. However, if the provisions in this Agreement conflict with the industry guidelines regarding routing, the Agreement shall govern.
- 9.4. Coordinated LNP Activities During Non-Business Hours. There will be no premium charges between the Parties or compensation provided by one Party to the other Party for the coordinated routine LNP activities between the normal business hours of 8:00 a.m. and 3:00 p.m. CDT/CST. LNP requests received after 3:00 p.m. will be considered to have been received the following business day and will not be assessed a premium charge. If an "LNP Date Modifications/ End User Not Ready" request is made outside normal business hours (if available) or is made within normal business hours and requires additional internal or outside work force, the Requesting Party (i.e. the Porting Party or the New Service Provider) will be assessed an Expedited Order Charge.
- 9.5. Each Party is responsible for obtaining a authority from each End User initiating LNP from one Party to the other Party. The Parties agree to follow Federal, and where applicable State rules.
- 9.6. The Parties agree to coordinate the timing for disconnection from one Party and connection with the other Party when an End User ports his or her telephone number.
- 9.7. Combined LNP Requests. Each Party will accept LNP requests from the other Party for one End User that includes multiple requests for LNP only where the End User will retain each of the telephone numbers identified in the LNP request.

- 9.8. The Parties agree that LNP will be implemented and provided pursuant to the Agreement 4 months after the Commission grants Sprint's Certificate of Authority.
- 9.9 The Parties agree to comply with the porting interval established by applicable FCC rules or orders.
10. Traffic Identifiers and Inspection
- 10.1 On all traffic exchanged pursuant to this Agreement, neither Party shall intentionally substitute nor implement any arrangement within its switch(es) that generates an incorrect ANI, CPN, or other SS7 parameters then those associated with the originating End User. Where a Party becomes aware of an arrangement (or through reasonable diligence should have become aware of such an arrangement) being used by one of its End User that generates an incorrect ANI, CPN, or other SS7 parameters then those associated with the originating End User, that Party shall inform the other Party of the arrangement and shall take all necessary steps (including, but not limited to, regulatory or judicial action) required to terminate the use of such arrangement. Upon determination that a Party has intentionally substituted or generated such incorrect parameters on traffic exchanged pursuant to this Agreement or did not disclose the existence of such an arrangement associated with one of its End Users, the offending Party shall pay the other Party the difference between compensation paid (if any) and applicable access charges, plus interest due under the terms of the applicable access tariff from the date the traffic would have been billed if such parameters had been passed unaltered. The intentional substitution or generation of incorrect parameters shall constitute a default of this Agreement.
- 10.2. Either Party may inspect the other Party's books and records pertaining to the Services provided under this Agreement, no more frequently than once per twelve (12) month period, to evaluate the other Party's accuracy of billing, data and invoicing in accordance with this Agreement. Any inspection will be performed as follows: (i) following at least thirty (30) Business Days' prior written notice to the requesting Party; (ii) subject to the reasonable scheduling requirements and limitations of the requesting Party; (iii) at the inspecting Party's sole cost and expense; (iv) of a reasonable scope and duration; (v) in a manner so as not to interfere with the other Party's business operations; and (vi) in compliance with the other Party's security rules. Adjustments, credits or payments shall be made and any corrective action shall commence within thirty (30) Days from the requesting Party's receipt of the final inspection report to compensate for any errors or omissions which are disclosed by such inspection and are agreed to by the Parties.
- 10.3. The Parties agree that any inspection performed pursuant to this Section 10 shall be conducted using only the relevant data/documents as may contain information bearing upon the services being provided under the terms and conditions of this Agreement.

- 10.4. To assist such inspection, each Party shall keep six (6) months of usage records for the Telecommunications Traffic delivered by it to the other Party POI, if such records are kept in the ordinary course of business by the Parties.
- 10.5. Inspections may be performed by a qualified independent auditor or consultant paid for by the Party requesting the inspection.
- 10.6. Prior to commencing the review, the Party being reviewed may request the execution of a confidentiality agreement to protect confidential information disclosed through the course of the review at its sole discretion.

11. Physical Interconnection

- 11.1. The Parties will mutually agree on the appropriate sizing for two-way facilities. The capacity of Interconnection facilities provided by each Party will be based on mutual forecasts and sound engineering practice, as mutually agreed to by the Parties. The Interconnection facilities provided by each Party shall, where technically available, be formatted using Bipolar 8 Zero Substitution ("B8ZS"). The Grade of Service for all facilities between the Parties will be engineered and provisioned to achieve P.01 Grade of Service. Each Party shall make available to the other Party trunks over which the originating Party can terminate Telecommunications Traffic of the End Users of the originating Party to the End Users of the terminating Party, provided, however, that each Party retains the right to modify the trunk facilities it provides to its side of the POI.
- 11.2. The electrical interface at the POI will be for a DS1 level. If any other electrical interface is mutually agreed to by the Parties, then each Party shall provide any required multiplexing to a DS1 level.
- 11.3. Prior to the establishment of a direct connection of the parties' networks, each Party will provide the other with a point of contact for escalation for ordering and provisioning related matters and, if a two-way interconnection facility is used, the reconciliation of trunk forecasts.

12. Trunk Forecasting

- 12.1. The Parties will work towards the development of joint forecasting responsibilities if a two-way Interconnection Facility is used. Parties will make all reasonable efforts and cooperate in good faith to develop alternative solutions to accommodate orders when facilities are not available. Inter-company forecast information must be provided by the Parties to each other upon reasonable request, per Section 11 above.

13. Network Management

- 13.1. Either Party may use protective network traffic management controls as available in their networks such as, but not limited to, 7-digit and 10-digit code gaps, on traffic toward each other's network, when required to protect the public switched

network from congestion due to facility failures, switch congestion or failure or focused overload. Sprint and TELCO will immediately notify each other of any protective control action planned or executed.

- 13.2. Sprint and TELCO will cooperate and share pre-planning information regarding cross-network mass call-ins expected to generate large or focused temporary increases in call volumes. Both Parties will work cooperatively to reduce network congestion caused by such cross-network mass call-ins.
- 13.3. Neither Party will use any service related to or using any of the services provided in this Agreement in any manner that impairs the quality of service to either Party's End Users, causes electrical hazards to either Party's personnel, damage to either Party's equipment or malfunction of either Party's billing equipment (individually and collectively, "Network Harm"). If a Network Harm occurs or if a Party reasonably determines that a Network Harm is imminent, then such Party will, where practicable, notify the other Party that temporary discontinuance or refusal of service may be required; provided, however, wherever prior notice is not practicable, such Party may temporarily discontinue or refuse service forthwith, if such action is reasonable under the circumstances. In case of such temporary discontinuance or refusal, such Party shall:

- 13.3.1. Promptly notify the other Party of such temporary discontinuance or refusal;

The Parties network operations contacts are as follows:

For Swiftel
Swiftel Communications
Network Maintenance/Central Office
8 AM – 5 PM M-F 605-692-8100
After Hours 605-692-6375

For Sprint
866-400-6040

- 13.3.2. Afford the other Party the opportunity to correct the situation which gave rise to such temporary discontinuance or refusal.

- 13.4. The Parties agree to:

- 13.4.1. cooperatively plan and implement coordinated repair procedures for the meet point and local interconnection trunks and facilities to ensure trouble reports are resolved in a timely and appropriate manner;
 - 13.4.2. provide trained personnel with adequate and compatible test equipment to work with each other's technicians;
 - 13.4.3. promptly notify each other when there is any change affecting the service requested, including the date service is to be started;

- 13.4.4. coordinate and schedule testing activities of their own personnel, and others as applicable, to ensure its interconnection trunks/trunk groups are installed per the interconnection order, meet agreed upon acceptance test requirements, and are placed in service by the due date;
- 13.4.5. perform sectionalization to determine if a trouble condition is located in its facility or its portion of the interconnection trunks prior to referring any trouble to each other;
- 13.4.6. provide each other with a trouble reporting number to a work center;
- 13.4.7. where reasonably practical, immediately report to each other any equipment failure which may affect the interconnection trunks;
- 13.4.8. provide, based on the trunking architecture, for mutual tests for system assurance for the proper recording of AMA records in each Party's switch. (where such tests are repeatable on demand by either Party upon reasonable notice).

13.5. A maintenance service charge applies per the TELCO's applicable tariff.

13.6. If a maintenance service charge has been applied and trouble is subsequently found in the facilities of the Party whose personnel were dispatched, then the charge will be canceled. Billing for maintenance service by either Party is based on each half-hour or fraction thereof expended to perform the work requested. The time worked is categorized and billed at one of the following three rates: (1) basic time; (2) overtime; or (3) premium time as defined in the billing Party's approved intrastate access tariff. The maintenance service charge shall be those contained in a Party's interstate exchange access tariff applicable to engineering technicians.

14. Office Code Translations

- 14.1. It shall be the responsibility of each Party to program and update its own switches and network systems in accordance with the Local Exchange Routing Guide ("LERG")
- 14.2. When more than one carrier is involved in completing that Traffic, the N-1 carrier has the responsibility to determine if a query is required, to launch the query, and to route the call to the appropriate switch or network in which the telephone number resides. For Traffic exchanged under this Agreement the N-1 is the originating carrier (i.e. ILEC or Sprint).

- 14.3. If a Party does not fulfill its N-1 carrier responsibility the other party shall perform queries on calls to telephone numbers with portable NXXs received from the N-1 carrier and route the call to the appropriate switch or network in which the telephone number resides. The N-1 carrier shall be responsible for payment of charges to the other Party for any queries, routing, and transport functions made on its behalf, including any reciprocal compensation assessed by the terminating carrier or transit charges assessed by a tandem provider.

15. Directory Listings and Distribution Services

- 15.1. Sprint agrees to provide to TELCO or its publisher, as specified by TELCO, all subscriber list information (including additions, changes and deletions) for its End Users, physically located within TELCO's service territory as on file with the Commission. It is the responsibility of Sprint to submit directory listings in the prescribed manner to TELCO or its publisher, as specified by TELCO, prior to the directory listing publication cut-off date, which will be provided by TELCO to Sprint upon Sprint's request.
- 15.2. TELCO will include Sprint's End Users' primary listings (residence and business) in its White Pages Directory, and if applicable in its Yellow Pages Directory under the appropriate heading classification as determined by publisher as well as in any electronic directories in which TELCO's own Customers are ordinarily included. Listings of End Users served by Sprint will be interfiled with listings of TELCO's End Users and the End Users of other LECs, in the local section of TELCO's directories.
- 15.3. Sprint shall not be required to provide TELCO with any information regarding Sprint's End User where that End User has selected "non-published" or like status with Sprint.
- 15.4. Sprint will provide TELCO with the directory information for all its End Users in the format specified by the TELCO or its publisher. Subscriber list information will include customer name, address, telephone number, appropriate classified heading and all other pertinent data elements as requested by TELCO, as appropriate with each order, to provide TELCO the ability to identify listing ownership. Sprint will provide all End User listings at no charge to TELCO or its publisher.
- 15.5. Sprint's End Users' standard primary listing information in the telephone directories will be provided at no charge. Sprint will pay TELCO's charges as contained in TELCO's general subscriber service tariff, for additional and foreign telephone directory listings that may be assessed to its End Users. No other charges will apply to directory listings.
- 15.6. Both Parties will use their best efforts to ensure the accurate listing of Sprint's End User listings. Sprint is responsible for all listing questions and contacts with its End Users including but not limited to queries, complaints, account maintenance, privacy requirements and services. Sprint will provide TELCO with appropriate internal contact information to fulfill these requirements.

- 15.7. TELCO will accord Sprint directory listing information the same level of confidentiality which TELCO accords its own directory listing information. Sprint grants TELCO full authority to provide Sprint subscriber listings, excluding non-published telephone numbers, to its publisher and, in addition to all other releases and indemnities in this Agreement, Sprint fully releases and agrees to indemnify TELCO and its publisher from any alleged or proven liability resulting from the provisioning of such listings.
- 15.8. Sprint is responsible for sending to TELCO by the date specified by TELCO an approximate directory count for Sprint's End Users for the purpose of ensuring an adequate quantity of TELCO's directories is printed. Sprint shall not alter or otherwise change any aspect of the directory that TELCO provides. TELCO shall provide to Sprint the quantity of directories that Sprint previously specified.
- 15.9. TELCO will distribute its telephone directories to Sprint's End Users in the same manner it provides those functions for its own End Users. Sprint will provide any necessary delivery information. TELCO will place the same restrictions on Sprint's End Users as it does for itself when assigning book quantities. Sprint shall pay TELCO's list price per directory for any additional directories requested.
- 15.10. Sprint agrees to release, defend, hold harmless and indemnify TELCO and/or TELCO's directory publisher from and against any and all claims, losses, damages, suits, or other actions, or any liability whatsoever (except as may be provided for in Section 16 following) or, suffered, made, instituted, or asserted by any person arising out of TELCO's listing of the information provided by Sprint.
- 15.11. Nothing in this Section 15 shall require or obligate TELCO to provide a greater degree of service to a Sprint End User with respect to directory listings and publishing than those that TELCO provides to its End Users.
- 15.12. To the extent ILEC maintains its own directory listings database, ILEC will provide to Sprint at Sprint's request, one auditable copy of listings of End Users served through Sprint.
- 15.13. In the case of rate centers and markets where ILEC does not maintain its own directory listings database, ILEC and Sprint will work cooperatively to establish a mechanism for Sprint to secure from the publisher or directory listings provider, copies of the directory listings of End Users served through Sprint. This mechanism may include a letter of authorization, planning meetings, and other collaborative efforts, but will be at no cost to ILEC. To the extent ILEC uses a third-party to provide directory listing database, ILEC will cooperate with Sprint to obtain the necessary documentation to conduct an inspection related to those services.
- 15.14. Directory Assistance or Operator Assistance
- 15.14.1. To the extent ILEC maintains its own Directory Assistance Database, ILEC will include and maintain Sprint subscriber listings in ILEC's directory assistance databases at no charge.

- 15.14.2. In the case of rate centers and markets where ILEC does not maintain its own Directory Assistance Database Sprint will obtain its own agreement with the Directory Assistance Provider. ILEC will not interfere with Sprint to obtain the necessary documentation to conduct an audit related to this service.

16. Master Street Address Guide (MSAG) and 911

- 16.1. Each Party is solely responsible for the receipt and transmission of 911/E911 Traffic originated by users of its Telephone Exchange Services. Each Party shall route 911/E911 calls over a direct trunk to the selective router for the TELCO's service territory. To the extent that a Party incorrectly routes such traffic, that Party shall fully indemnify and hold harmless the other Party for any claims, including claims of third parties, related to such calls.
- 16.2. To the extent ILEC maintains a MSAG, ILEC shall provide Sprint with a file containing the MSAG for Sprint's respective exchanges.
- 16.3. Sprint or its agent shall provide initial and ongoing updates of Sprint's End Users 911 Records that are MSAG-valid in electronic format based upon established NENA standards.

17. Term of Agreement, Regulatory Approvals and Filing

- 17.1. This Agreement, and any amendment or modification hereof, will be submitted to the Commission for approval within fifteen (15) calendar days after obtaining the last required Agreement signature unless otherwise provided by the Commission. The Parties shall use their best efforts to obtain approval of this Agreement by any regulatory body having jurisdiction over this Agreement. In the event any governmental authority or agency rejects any provision hereof, the Parties shall negotiate promptly and in good faith such revisions as may reasonably be required to achieve approval. Where this Agreement (or any provision therefore) is subject to arbitration, the Parties will undertake reasonable, good faith efforts to agree to such language requires to conform this Agreement with the Commission's arbitration decision; provided, however, that both Parties agree and recognize that such actions are without waiver of their rights with respect to and positions taken in such arbitration and without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related specifically to this Agreement, or other types of arrangements prescribed in this Agreement.
- 17.2. This Agreement shall commence when fully executed and approved by the Commission and have an initial term of one (1) year from the date of that Commission approval. The Parties agree that they can begin the implementation activity upon signature of both Parties. This Agreement shall automatically renew for successive one (1) year periods, unless either Party gives written notice at least sixty (60) days prior to the expiration of the initial, or any renewal term, of its desire not to renew. If such notice is given, this Agreement shall not renew.

- 17.3. Either party may seek to terminate this Agreement by providing written notice to the other Party at least sixty (60) days prior to expiration of the initial term or any succeeding term. If either party sends a timely notice to terminate and the other party replies with a timely notice for re-negotiation under section 17.2, this Agreement will continue in full force and effect until a new Agreement is effective through either negotiation, mediation or arbitration under 47 U.S.C. 252.
- 17.4. The filing of this Agreement does not create obligations for either Party under the Act that do not otherwise apply.
- 17.5. Either Party may terminate this Agreement for cause upon thirty (30) days written notice if (a) the other Party's authority to provide the services provided herein is revoked or terminated or (b) the other Party is insolvent, or files for bankruptcy. Termination of this Agreement for any cause shall not release either Party from any liability which at the time of the termination had already accrued to the other Party or which thereafter accrues in any respect for any act or omission occurring prior to the termination relating to an obligation which is expressly stated in this Agreement.

18. Limitation of Liability

- 18.1. Except in the instance of harm resulting from an intentional or grossly negligent action or willful misconduct of one Party, the liability of either Party to the other Party for damages arising out of (1) failure to comply with a direction to install, restore or terminate facilities, or (2) out of failures, mistakes, omissions, interruptions, delays, errors, or defects occurring in the course of furnishing any services, arrangements, or facilities hereunder shall be determined in accordance with the terms of the applicable tariff(s) of the providing Party. In the event no tariff(s) apply, the providing Party's liability shall not exceed an amount equal to the pro rata monthly charge for the period in which such failures, mistakes, omissions, interruptions, delays, errors or defects occur. Recovery of said amount shall be the injured Party's sole and exclusive remedy against the providing Party for such failures, mistakes, omissions, interruptions, delays, errors or defects. Because of the mutual nature of the exchange of traffic arrangement between the Parties pursuant to this Agreement, the Parties acknowledge that the amount of liability incurred under this Section 18.1 may be zero.
- 18.2. In no event shall either Party be liable to the other in connection with the provision or use of services offered under this Agreement for indirect, incidental, consequential, reliance or special damages, including (without limitation) damages for lost profits (collectively, "Consequential Damages"), regardless of the form of action, whether in contract, warranty, strict liability, or tort, including, without limitation, negligence of any kind, even if the other Party has been advised of the possibility of such damages; provided, that the foregoing shall not limit a Party's obligation under Section 19.
- 18.3. Except in the instance of harm resulting from an intentional or grossly negligent action or willful misconduct, the Parties agree that neither Party shall be liable to the customers of the other Party in connection with its provision of services to the other Party under this Agreement. Nothing in this Agreement shall be deemed to

create a third party beneficiary relationship between the Party providing the service and the Customers of the Party purchasing the service. In the event of a dispute involving both Parties with a Customer of one Party, both Parties shall assert the applicability of any limitations on liability to customers that may be contained in either Party's applicable tariff(s).

19. Indemnification

19.1 Each Party agrees to release, indemnify, defend and hold harmless the other Party from and against all losses, claims, demands, damages, expenses, suits or other actions, or any liability whatsoever related to the subject matter of this Agreement, including, but not limited to, reasonable costs and attorneys' fees (collectively, a "Loss"), (a) whether suffered, made, instituted, or asserted by any other party or person, relating to personal injury to or death of any person, or for loss, damage to, or destruction of real and/or personal property, whether or not owned by others, incurred during the term of this Agreement and to the extent proximately caused by the acts or omissions of the indemnifying Party, regardless of the form of action, or (b) suffered, made, instituted, or asserted by its own customer(s) against the other Party arising out of the other Party's provision of services to the indemnifying Party under this Agreement, except to the extent caused by the indemnified Party's intentional or gross negligent acts or willful misconduct. Notwithstanding the foregoing indemnification, nothing in this Section 19.0 shall affect or limit any claims, remedies, or other actions the indemnifying Party may have against the indemnified Party under this Agreement, any other contract, or any applicable tariff(s), regulations or laws for the indemnified Party's provision of said services.

19.2 The indemnification provided herein shall be conditioned upon:

19.2.1 The indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party relating to the indemnification.

19.2.2 The indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnified Party may engage separate legal counsel only at its sole cost and expense. Prior to retaining legal counsel pursuant to this Section 19.2.2, the indemnifying Party shall seek written assurances from the legal counsel chosen that such counsel does not have any conflict of interest with the indemnified Party.

19.2.3 In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party, which consent shall not be unreasonably withheld.

19.2.4 The indemnified Party shall, in all cases, assert any and all provisions in its Tariffs that limit liability to third parties as a bar to any recovery by the third party claimant in excess of such limitation of liability.

19.2.5. The indemnified Party shall offer the indemnifying Party all reasonable cooperation and assistance in the defense of any such action.

19.3. To the extent permitted by law, and in addition to its indemnity obligations under Sections 19.1 and 19.2, each Party shall provide, in its Tariffs that relate to any telecommunications service provided or contemplated under this Agreement, that in no case shall such Party or any of its agents, contractors or others retained by such parties be liable to any Customer or third party for (a) any Loss relating to or arising out of this Agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable Customer for the service(s) or function(s) that gave rise to such Loss, or (b) any Consequential Damages (as defined in subsection 18.2 above).

20. Force Majeure

- 20.1. Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation, acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power failure or blackouts, or adverse weather conditions, labor unrest, including without limitation, strikes, slowdowns, picketing, or boycotts.
- 20.2. If a Force Majeure event occurs, the non-performing Party shall give prompt notification of its inability to perform to the other Party. During the period that the non-performing Party is unable to perform, the other Party shall also be excused from performance of its obligations to the extent such obligations are reciprocal to, or depend upon, the performance of the non-performing Party that has been prevented by the Force Majeure event. The non-performing Party shall use commercially reasonable efforts to avoid or remove the cause(s) of its non-performance and both Parties shall proceed to perform once the cause(s) are removed or cease. In the event of any such excused delay in the performance of a Party's obligation(s) under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay. In the event of such delay, the delaying Party shall perform its obligations at a performance level no less than that which it uses for its own operations.
- 20.3. Notwithstanding the provisions of Sections 20.1 and 20.2, although a Force Majeure event could result in delay of a payment obligation, in no case shall a Force Majeure event excuse either Party from an obligation to pay money as required by this Agreement.
- 20.4. In the event of such delay, each Party shall perform its obligations at a performance level no less than that which it uses for its own operations. In the event of such performance delay or failure by either Party, that Party agrees to resume performance in a nondiscriminatory manner and not favor its own provision of Telecommunications Services above that of the other Party.

- 20.5. Nothing in this Agreement shall require the non-performing Party to settle any labor dispute except as the non-performing Party, in its sole discretion, determines appropriate.
- 20.6. No Third-Party Beneficiaries. This Agreement shall not be deemed to provide any third party with any benefit, remedy, claim, right of action or other right.
- 20.6.1 Sprint has indicated that it has or intends to use the services provided herein for its wholesale customers. The Parties specifically agree that ILEC's responsibilities hereunder are only to Sprint and not any such "wholesale customer" and, correspondingly, Sprint is obligated to comply with all provisions of this Agreement for traffic it originates from and terminates to such wholesale customers served by Sprint. Notwithstanding any limitation of liability in Section 18 or indemnification in Section 19, Sprint shall indemnify ILEC if any such wholesale customer bills and ILEC pays for the same services that are covered by this Agreement. The preceding sentence does not apply to any tort action or claim that any "wholesale customer" or ILEC may have against each other outside the obligations of this Agreement. The parties agree to cooperate with each other in conducting any investigation to determine whether a Sprint wholesale customer is billing for the same services covered by this Agreement.
- 20.6.2 If it is shown that a Sprint wholesale customer is billing for the same services covered by this Agreement, Sprint shall reimburse Swiftel for its fees and costs to conduct the investigation.
- 20.6.3 If any wholesale customer of Sprint implements an interconnection agreement with Swiftel pursuant to Section 251 of the Act, and exchanges traffic pursuant to that agreement, Swiftel's obligation to Sprint under the Agreement with respect to the traffic of said wholesale customer is terminated.
- 20.6.4 Sprint agrees that at the time of this agreement, third party traffic is currently limited to cable companies such as Mediacom. Sprint will provide notice to Swiftel if another company becomes an active third party during the term of the agreement.
21. Agency
- 21.1. Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other.
22. Nondisclosure of Proprietary Information
- 22.1. The Parties agree that it may be necessary to exchange with each other certain confidential information during the term of this Agreement including, without limitation, technical and business plans, technical information, proposals,

specifications, drawings, procedures, orders for services, usage information in any form, customer account data, call detail records, and Customer Proprietary Network Information ("CPNI") and Carrier Proprietary Information pursuant to Section 222(a), as amended, and the rules and regulations of the FCC and similar information (collectively, "Confidential Information"). Confidential Information shall include (a) all information delivered in written form and marked "confidential" or "proprietary" or bearing mark of similar import; (b) oral information, if identified as confidential or proprietary at the time of disclosure and confirmed by written notification within ten (10) days of disclosure; and (c) information derived by the Recipient (as hereinafter defined) from a Disclosing Party's (as hereinafter defined) usage of the Recipient's network. The Confidential Information shall remain the property of the Disclosing Party and is deemed proprietary to the Disclosing Party. Confidential Information shall be protected by the Recipient as the Recipient would protect its own proprietary information, including but not limited to protecting the Confidential Information from distribution, disclosure, or dissemination to anyone except employees or duly authorized agents of the Parties with a need to know such information and which the affected employees and agents agree to be bound by the terms of this Section. Confidential Information shall not be disclosed or used for any purpose other than to provide service as specified in this Agreement, or upon such other terms as may be agreed to by the Parties in writing. For purposes of this Section, the Disclosing Party shall mean the owner of the Confidential Information, and the Recipient shall mean the party to whom Confidential Information is disclosed.

22.2. Recipient shall have no obligation to safeguard Confidential Information (a) which was in the Recipient's possession free of restriction prior to its receipt from the Disclosing Party, (b) after it becomes publicly known or available through no breach of this Agreement by Recipient, (c) after it is rightfully acquired by Recipient free of restrictions on the Disclosing Party, or (d) after it is independently developed by personnel of Recipient to whom the Disclosing Party's Confidential Information had not been previously disclosed. Recipient may disclose Confidential Information if required by law, a court, or governmental agency or to enforce or defend its actions under this Agreement, provided that the Disclosing Party has been notified of the requirement promptly after Recipient becomes aware of the requirement, and provided that Recipient undertakes all reasonable lawful measures to avoid disclosing such information until the Disclosing Party has had reasonable time to obtain a protective order. Recipient agrees to comply with any protective order that covers the Confidential Information to be disclosed.

22.3. Each Party agrees that the Disclosing Party would be irreparably injured by a breach of this Section 22 by Recipient or its representatives and that the Disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of this paragraph. Such remedies shall not be exclusive, but shall be in addition to all other remedies available at law or in equity.

23. Notices

Notices given by one Party to the other under this Agreement shall be in writing and delivered by hand, overnight courier or pre-paid first class mail certified U.S mail, return receipt requested, to the following addresses of the Parties:

For Sprint:

Sprint Communications Company L.P.
Manager, ICA Solutions
P.O. Box 7954
6330 Sprint Parkway
Overland Park, KS 66207-0966
(913) 762-4847

Or (overnight courier or Express mail only)
Sprint Communications Company L.P.
Manager, ICA Solutions
Mailstop: KSOPHA0310-3B268
6330 Sprint Parkway
Overland Park, KS 66251

With a copy to:

Sprint Communications Company L.P.
Legal / Telecom Management Privacy Group
Mailstop: KSOPHN0312-3A318
6450 Sprint Parkway
Overland Park, KS 66251
913-315-9348

For Brookings Municipal Utilities d/b/a Swiftel Communications:

W. James Adkins:
Brookings Municipal Utilities d/b/a Swiftel Communications:
P.O. Box 588:
Brookings, SD 57006

With a copy to:

Executive Vice President and General Manager
Brookings Municipal Utilities d/b/a Swiftel Communications
525 Western Avenue P.O. Box 588
Brookings, SD 57006-0588

or to such other location as the receiving Party may direct in writing. Notices will be deemed given as of (a) the next business day when notice is sent via express delivery

service or personal delivery, or (b) three (3) days after mailing in the case of first class or certified U.S. mail.

24. Payments and Due Dates

- 24.1. All compensation payable pursuant to this Agreement shall be payable within thirty (30) days of the bill date. Payments are to be received within (30) day period from the effective date of the billing statement. All payments are subject to a late charge if not paid within the thirty (30) day period. The rate of the late charge shall be the lesser of one and one-half percent (1.5 %) per month or the maximum amount allowed by law. The Party obligated to make payment under this Agreement shall also pay the Party seeking payment (the "Payee") the reasonable amount of the Payee's expenses related to the collection of overdue bills, including court costs and reasonable attorney fees.
- 24.2. Billed amounts for which written, itemized disputes or claims have been filed are not due for payment until such disputes or claims have been resolved in accordance with the dispute resolution provisions of this Agreement.

25. Severability

If any part of this Agreement is held to be unenforceable or invalid in any respect under law or regulation, such unenforceability or invalidity shall affect only the portion of the Agreement which is unenforceable or invalid. In all other respects this Agreement shall stand as if such invalid provision had not been a part thereof, and the remainder of the Agreement shall remain in full force and effect, unless removal of that provision results in a material change to this Agreement. In such a case, the Parties shall negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either Party may request dispute resolution pursuant to Section 29.

26. Assignment

This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns. Any assignment or transfer (whether by operation of law or otherwise) by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party shall be void ab initio, provided however that such consent shall not be unreasonably withheld, conditioned or delayed and shall not be required if such assignment is to a corporate affiliate or an entity under common control or an entity acquiring all or substantially all of its assets or equity, whether by sale, merger, consolidation or otherwise or in connection with a financing transaction.

27. Entire Agreement

This Agreement, including all attachments and subordinate documents attached hereto or referenced herein, all of which are hereby incorporated by reference herein, constitute the

entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof.

28. Multiple Counterparts

This Agreement may be executed in counterparts and each of which shall be an original and all of which shall constitute one and the same instrument and such counterparts shall together constitute one and the same instrument.

29. Dispute Resolution

- 29.1. No claims will be brought for disputes arising from this Agreement more than twenty-four (24) months from the date of occurrence that gives rise to the dispute.
- 29.2. The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the dispute resolution procedure set forth in this Section with respect to any controversy or claim arising out of or relating to this Agreement or its breach, except to the extent the dispute is service affecting. Either party may seek immediate resolution of a service affecting dispute.
- 29.3. At the written request of a Party, each Party will appoint a good faith representative having the authority to resolve such dispute arising under this Agreement. The location, form, frequency, duration and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of settlement are exempt from discovery and production and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted as evidence in the arbitration or lawsuit.
- 29.4. If the negotiations do not resolve the dispute within sixty (60) days of the initial written request, either Party may submit the dispute to either the Commission, judicial forum of competent jurisdiction, or upon mutual agreement to the American Arbitration Association ("AAA") for binding arbitration pursuant to their respective rules and practices of the entity to which the dispute is submitted for handling such.
- 29.5. Each Party shall bear its own costs associated with its activities taken pursuant to this Section 29.

30. Governing Law

To the extent not governed by, and construed in accordance with, the laws and regulations of the United States, this Agreement shall be governed by, and construed in accordance with, the laws and regulations of (a) the laws of the United States of America, including but not limited to the Act, the rules, regulations and orders of the FCC and (b) the laws of the State of South Dakota, without regard to its conflicts of laws principles, and (c) any orders and decisions of a court of competent jurisdiction. All disputes relating to this Agreement shall be resolved through the application of such laws.

31. Joint Work Product

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

32. Taxes

Each Party shall be responsible for any and all taxes and surcharges arising from its conduct under this Agreement (the "Taxed Party") and, consistent with Section 16, the Taxed Party shall indemnify and hold harmless the other Party for the Taxed Party's failure to pay and/or report any applicable taxes and surcharges. Sprint is not required to pay any tax or surcharge for which it provides an exemption certificate or other proof of exemption to ILEC.

33. Survival

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

34. Publicity

Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos, company name or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.

35. Miscellaneous

35.1. TELCO does not waive, nor shall it be estopped from asserting, any rights it may have pursuant to 47 U.S.C. Section 251(f).

35.2. Amendments. This Agreement may not be amended, modified, or supplemented, except by written instrument signed by both Parties.

- 35.3 No License. Nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trademark, trade name, trade secret or any other proprietary or intellectual property now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual property right of the other Party except in accordance with the terms of a separate license agreement between the Parties granting such rights.
- 35.4. Independent Contractors. The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party will have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement will not be interpreted or construed to create an association, agency, joint venture or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.
- 35.5. No Warranties.
- 35.5.1. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES, AND EACH PARTY HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER SUBJECT TO THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.
- 35.5.2. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY THE PARTIES OF THE OTHER'S FACILITIES, ARRANGEMENTS, OR SERVICES PROVIDED UNDER THIS AGREEMENT SHALL NOT GIVE RISE TO A CLAIM BY ANY THIRD PARTY OF INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT OF SUCH THIRD PARTY.
- 35.6. Default. If either Party believes the other is in breach of this Agreement or otherwise in violation of law, it will first give thirty (30) days notice of such breach or violation and an opportunity for the allegedly defaulting Party to cure. Thereafter, the Parties will employ the dispute resolution procedures set forth in this Agreement.
- 35.7. Waiver. Any failure on the part of a Party hereto to comply with any of its obligations, agreements or conditions hereunder may be waived by written documentation by the other Party to whom such compliance is owed. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, nor shall any waiver constitute a continuing waiver.

- 35.8. Regulatory Changes. If a Federal or State regulatory agency or a court of competent jurisdiction issues a rule, regulation, law or order (collectively, "Regulatory Requirement") which has the effect of canceling, changing, or superseding any material term or provision of this Agreement then the Parties shall negotiate in good faith to modify this Agreement in a manner consistent with the form, intent and purpose of this Agreement and as necessary to comply with such Regulatory Requirement. If a Federal or State regulatory agency or a court of competent jurisdiction issues a rule, regulation, law or order which has the effect of limiting or modifying Sprint's authority to provide local exchange service in Swiftel's service area, then the Parties shall negotiate in good faith to modify this Agreement in a manner consistent with the form, intent, and purpose of this Agreement as necessary to reflect such rule, regulation, law or order. Should the Parties be unable to reach agreement with respect to the applicability of such order or the resulting appropriate modifications to this Agreement, either party may invoke the Dispute Resolution provisions of this Agreement, it being the intent of the parties that this Agreement shall be brought into conformity with the then current obligations under the Act as determined by the change in law.
- 35.9. No Third Party Beneficiaries. This Agreement shall not be deemed to provide any third party with any benefit, remedy, claim, right of action or other right.
- 35.10. Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 35.11. Authorization. TELCO is a corporation duly organized, validly existing and in good standing under the laws of the State of South Dakota and has full power and authority to execute and deliver this Agreement and to perform the obligations hereunder. Sprint Communications Company, L.P. is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to execute and deliver this Agreement and to perform the obligations hereunder.

IN WITNESS WHEREOF, the Parties agree that the effective date of this Agreement is the date first written above, and each Party warrants that it has caused this Agreement to be signed and delivered by its duly authorized representative.

Sprint Communications Company L.P.

By: Michael W. Logan

MICHAEL W. LOGAN

Type or Print Name

DIRECTOR, ACCESS Planning

Title

10/2/2008

Date

Brookings Municipal Utilities d/b/a
Swiftel Communications

By: Steve Meyer

Steve Meyer

Type or Print Name

Executive VP / General Manager

Title

10/2/2008

Date