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**AUG 13 2008**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION  
OF SPRINT COMMUNICATIONS COMPANY L.P. TC06-178  
FOR AUTHORITY TO PROVIDE LOCAL EXCHANGE  
SERVICES IN CERTAIN RURAL AREAS SERVED BY  
BROOKINGS MUNICIPAL UTILITIES D/B/A  
SWIFTEL COMMUNICATIONS

IN THE MATTER OF THE APPLICATION OF MCC TC06-188  
TELEPHONY OF THE MIDWEST, INC. D/B/A  
MEDIACOM FOR A CERTIFICATE OF AUTHORITY TO  
PROVIDE INTEREXCHANGE AND LOCAL EXCHANGE  
SERVICES IN THE BROOKINGS EXCHANGE

**ORIGINAL**

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Transcript of Proceedings (Continuation)  
August 6, 2008

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BEFORE THE PUBLIC UTILITIES COMMISSION,  
GARY HANSON, CHAIRMAN  
STEVE KOLBECK, VICE CHAIRMAN  
DUSTY JOHNSON, COMMISSIONER

COMMISSION STAFF  
Rolayne Ailts Wiest  
Karen Cremer  
Kara Semmler  
Greg Rislov  
Harlan Best  
Terri LaBrie Baker

APPEARANCES  
Talbot Wieczorek (by telephone)  
Mary Sisak (by telephone)  
Brett Koenecke

**PRECISION REPORTING**

**Cheri Wittler, RPR, CRR**



1                   TRANSCRIPT OF PROCEEDINGS, held in the above-entitled  
2 matter, at the State Capitol Building, 500 East Capitol Avenue,  
3 Pierre, South Dakota, on the 6th day of August 2008, commencing  
4 at 9:30 a.m.

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1           CHAIRMAN HANSON: Ladies and gentlemen, this is  
2 Gary Hanson. With me are my fellow Commissioners, Dusty Johnson  
3 and Steve Kolbeck. We are resuming the meeting that we started  
4 this morning. And we are going to begin with the two items that  
5 were consolidated toward the beginning of the agenda which were  
6 moved to the end of the agenda.

7           Those are Dockets TC06-178, In the Matter of the  
8 Application of Sprint Communications Company, LP For Authority  
9 to Provide Local Exchange Services in Certain Rural Areas Served  
10 by Brookings Municipal Utilities Doing Business as Swiftel  
11 Communications.

12           The question is shall the Commission grant the Motion  
13 to Compel?

14           And TC06-188, In the Matter of the Application by MCC  
15 Telephone of the Midwest, Incorporated Doing Business as  
16 Mediacom for a COA to Provide Interexchange and Local Exchange  
17 Services in the Brookings Exchange.

18           And, again, the question for the Commission is shall  
19 the Commission grant the Motion to Compel?

20           Mr. Koenecke, are you the first to chat on this, or  
21 is --

22           MR. KOENECKE: It's Ms. Sisak's motion, Commissioner.

23           CHAIRMAN HANSON: That's what I was trying to find  
24 out. By Mediacom.

25           Ms. Sisak, are you with us?

1 MS. SISAK: Yes, I am.

2 CHAIRMAN HANSON: Who else is on the phone with us  
3 right now?

4 MR. WIECZOREK: Talbot Wieczorek, Mr. Chairman.

5 CHAIRMAN HANSON: Mr. Wieczorek. Anyone else?

6 Ms. Sisak, we'll start with you then.

7 MS. SISAK: Thank you. The issue really being  
8 presented here is whether or not Sprint and Mediacom need to  
9 provide additional provisions of the agreement that governs the  
10 relationship between Sprint and Mediacom. Sprint and Mediacom  
11 have provided an agreement, but they've redacted a number of  
12 provisions in that agreement.

13 I believe it was last week immediately before our last  
14 motion hearing that Sprint and Mediacom provided a new version  
15 of the agreement where they provided some of the previously  
16 redacted information but not all of it.

17 Last -- I believe it was -- I could get this wrong.  
18 It was either last week or Monday I provided additional  
19 information -- actually it might even have been tomorrow, I'm  
20 sorry. Time is kind of running together. But in any event, I  
21 was asked whether Swiftel still was seeking some of the  
22 information that was redacted. I responded that we were but I  
23 further limited the redacted information that we are seeking.

24 And so I just give you that history to show that we  
25 did try to make some efforts to reduce the issues, and I think

1 we've done that. However, some issues still remain.

2 CHAIRMAN HANSON: We appreciate that very much.

3 MS. SISAK: Currently the items that have been  
4 redacted that Swiftel is seeking concern the term and the  
5 termination of the agreement, transport for commercial business,  
6 and service quality. And also we seek not all of the  
7 information in the agreement identifying new markets or initial  
8 markets, but we do seek information as to whether the Brookings  
9 market is a new market or initial market.

10 These proceedings are a Certificate of Authority  
11 proceeding where Mediacom and Sprint have subjected themselves  
12 to the Commission's rules and South Dakota Law, seek the benefit  
13 of being designated as a carrier entitled to all of the rights  
14 of a carrier but also all of the duties of a carrier. And in  
15 South Dakota Law and the Commission's rules, the burden is on  
16 Mediacom and Sprint to demonstrate by a preponderance of the  
17 evidence that they, in fact, meet all of the requirements in  
18 South Dakota Law and in the Commission's rules.

19 The law and rules also have some guidance to the  
20 Commission as to what it should do in terms of looking at an  
21 application for Certificate of Authority. And the law and rules  
22 specify that the Commission should examine all aspects of the  
23 nature, quality, timing of service to determine whether a  
24 Certificate of Authority should be granted or whether conditions  
25 should be imposed.

1           So, for example, South Dakota Law 49-31-71 states that  
2 the Commission may impose terms and conditions consistent with  
3 preserving and advancing universal service, protecting public  
4 safety and welfare, ensuring continued quality of service, and  
5 safeguarding the rights of consumers.

6           MR. KOENECKE: She's entitled to write a brief on this  
7 stuff.

8           MS. SISAK: If you look at each one of those  
9 categories it becomes clear that the information that the  
10 Petitioners need to present and which the Commission needs to  
11 consider is extremely broad and goes to all of these various  
12 aspects of what service ultimately might be provided by the  
13 Petitioners.

14           I would also point out that Sprint and Mediacom have  
15 both acknowledged on many occasions that neither one of them is  
16 able to provide service independent of the other. And, in fact,  
17 they are dependent upon each other for various services and  
18 facilities to meet the requirements of the Commission's rules to  
19 demonstrate that they are, in fact, qualified to receive a  
20 Certificate of Authority.

21           They also have admitted that the agreement, which is  
22 the subject of this motion, is the document that governs their  
23 relationship. And, in fact, Mediacom argued that the terms of  
24 the agreement are central to the business arrangement between  
25 Sprint and Mediacom.

1 I would like to now specifically address the  
2 information that Swiftel seeks.

3 MS. AILTS WIEST: This is Rolayne Wiest. Is this  
4 confidential, and was any of the preceding remarks confidential?

5 MS. SISAK: I don't think any of the preceding remarks  
6 were confidential, but I do believe that any discussion of the  
7 agreement -- the entire agreement has been marked as  
8 confidential by Sprint and Mediacom, so I believe any discussion  
9 of the specific provisions of the agreement would be  
10 confidential.

11 MS. AILTS WIEST: And is that what you're going to go  
12 into right now?

13 MS. SISAK: Yes.

14 CHAIRMAN HANSON: We will turn off the web.  
15 The web's turned off.

16 (The following portion of the transcript is  
17 confidential)

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1           CHAIRMAN HANSON: We are back on the web and we are  
2 out of the confidential meeting. We have -- at this time I  
3 will, as Chairman, defer the two items that are before us.  
4 Those dockets being TC06-178 and TC06-188, and we will request  
5 staff to have an in-camera session to discuss some of the issues  
6 and make certain that all of the relevant issues that are  
7 necessary to come before the Commission for making a decision  
8 are available to us and to set a future date for a hearing on  
9 those two dockets.

10           Commissioner Kolbeck.

11           COMMISSIONER KOLBECK: I just have a question. In  
12 that in-camera is Mr. Koenecke and then the four of us or -- is  
13 that how that is going to -- is that how that would work?

14           CHAIRMAN HANSON: The Commissioners would not be a  
15 part of that.

16           COMMISSIONER KOLBECK: Oh, we won't be a part of the  
17 in-camera. I was thinking --

18           CHAIRMAN HANSON: Excuse me. I was misunderstanding.  
19 What is your --

20           MS. AILTS WIEST: I believe it would be the  
21 Commissioners and myself would be part of the in-camera  
22 proceeding.

23           COMMISSIONER KOLBECK: Okay. So it would just be a  
24 scheduling between the four of us and that's all we need to  
25 include to get a date to get this done?



1 MS. AILTS WIEST: Right. We can set the in-camera  
2 proceeding, and then the Commission can decide if they want to  
3 go into the public meeting directly after that. I mean, I don't  
4 think there's any real time -- I don't know if it matters if  
5 they're back to back is my point.

6 COMMISSIONER KOLBECK: Okay. I was just wondering to  
7 help us schedule when we can get this done. If we're going to  
8 have an in-camera and five days later is when the hearing's  
9 going to be. We could do the in-camera and then head right into  
10 this matter again, another hearing? Is that what you're saying?

11 MS. AILTS WIEST: Yeah. Either way I think you could  
12 do. Whatever your preference is.

13 CHAIRMAN HANSON: Mr. Koenecke, did you have  
14 something?

15 MR. KOENECKE: No.

16 CHAIRMAN HANSON: Okay. Thank you. Questions  
17 answered? Is there a motion to adjourn?

18 COMMISSIONER KOLBECK: Motion.

19 CHAIRMAN HANSON: All those in favor please signify by  
20 saying yes.

21 COMMISSIONER JOHNSON: Yes.

22 COMMISSIONER KOLBECK: Yes.

23 CHAIRMAN HANSON: Those opposed? Motion carries. We  
24 are adjourned.

25 (The proceedings are concluded at 2:30 p.m.)

1 STATE OF SOUTH DAKOTA)

2 :SS

CERTIFICATE

3 COUNTY OF HUGHES )

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5 I, CHERI MCCOMSEY WITTLER, a Registered  
6 Professional Reporter, Certified Realtime Reporter and Notary  
7 Public in and for the State of South Dakota:

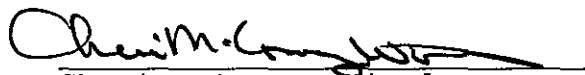
8 DO HEREBY CERTIFY that as the duly-appointed  
9 shorthand reporter, I took in shorthand the proceedings had in  
10 the above-entitled matter on the 6th day of August, 2008, and  
11 that the attached is a true and correct transcription of the  
12 proceedings so taken.

13 Dated at Pierre, South Dakota this 13th day of  
14 August, 2008.

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Cheri McComsey Wittler,  
Notary Public and  
Registered Professional Reporter  
Certified Realtime Reporter

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