

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE FILING BY)	ORDER GRANTING
BROOKINGS MUNICIPAL UTILITIES D/B/A)	ELIGIBLE
SWIFTEL COMMUNICATIONS FOR)	TELECOMMUNICATIONS
DESIGNATION AS AN ELIGIBLE)	DESIGNATION
TELECOMMUNICATIONS CARRIER)	TC04-213

On October 28, 2004, Brookings Municipal Utilities d/b/a Swiftel Communications (Swiftel) filed a Petition for Designation as an Eligible Telecommunications Carrier (ETC) for wireless personal communications service (PCS) operations in South Dakota. Swiftel is authorized by the Federal Communications Commission (FCC) as a wireless PCS carrier in the partitioned area of the Minneapolis-St. Paul Metropolitan Trading Area (MTA), MTA012, which encompasses Brookings, Lake, Lincoln, McCook, Minnehaha, Moody, Turner, Clark, Codington, Deuel, Grant, Hamlin, and Roberts counties; in the Sioux Falls Basic Trading Area (BTA), BTA422; in the Watertown BTA 464; in the partitioned area of the Des Moines-Quad Cities, Iowa MTA032 which encompasses Bon Homme, Clay, Union, and Yankton counties; and in the Sioux City, Iowa BTA421. Swiftel requested that it be designated as an ETC in portions of its FCC authorized service area.

Interstate Telecommunications Cooperative, Inc. and Sioux Valley Telephone Company filed Petitions to Intervene on November 18, 2004. The South Dakota Telecommunications Association filed a Petition to Intervene on November 19, 2004. Intervention was granted to all parties at the November 30, 2004, Commission meeting. No hearing was requested by any of the parties.

At its January 17, 2006, meeting, the Commission considered this matter. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31, including 49-31-3, 49-31-7, 49-31-7.1, 49-31-11, 49-31-78, 49-31-81; ARSD 20:10:32:42 through 20:10:32:46, inclusive; and 47 U.S.C. § 214(e)(1) through (5).

In response to Staff's data requests and to Commission questions during Commission meetings, Swiftel made numerous modifications to its original filing. Swiftel's final modifications to its original filing were filed on December 15, 2005. In its final amended filing, Swiftel requested designation in the following Qwest nonrural wire centers: Colman, Canton, Elk Point, Flandreau, Harrisburg/Tea, Madison, Ortonville, Milbank, North Sioux City, Sioux Falls, Tea, Volga, Vermillion, Watertown, and Yankton. (Exhibit B). Swiftel requested immediate designation for these wire centers.

For service areas served by rural telephone companies, Swiftel requested immediate designation in the service areas Swiftel intends to serve in their entireties. For service areas served by rural telephone companies where Swiftel would not serve the entire services areas, Swiftel requested redefinition along with designation.

Swiftel requested immediate designation in the following service areas served by rural telephone companies:

- a. Alliance Communications Cooperative, Inc. (Splitrock): Brandon and Garretson;
- b. Alliance Communications Cooperative, Inc. (Baltic): Alcester, Baltic, Crooks and Hudson;

- c. Beresford Municipal Telephone Company: Beresford;
- d. City of Brookings Municipal Telephone Company: Brookings;
- e. Jefferson Telephone Company: Jefferson;
- f. Stockholm-Strandburg Telephone Company: Revillo, South Shore and Stockholm;
- g. Union Telephone Company: Hartford and Wall Lake;
- h. PrairieWave Community Telephone, Inc.: Irene, Worthing, Parker, Hurley/Alsen/Flyger, Wakonda, Flyger and rural Beresford; and
- i. Sioux Valley Telephone Company: Colton, Dell Rapids and Humboldt.

Swiftel requested designation and redefinition of the following service areas served by rural telephone companies:

- a. Citizens Telecommunications of Minnesota, Inc.: W. Jasper
- b. Farmers Mutual Telephone Company: West Marietta
- c. Fort Randall Telephone Company: Centerville, Tabor, Tyndall and Viborg;
- d. Heartland Telecommunications Company of Iowa d/b/a HickoryTech Corporation: West Akron and West Hawarden;
- e. Interstate Telecommunications Cooperative, Inc. (MN): W. Hendricks;
- f. Interstate Telecommunications Cooperative, Inc. (SD): Astoria, Brookings-Rural, Bradley, Brandt, Bryant, Chester, Clear Lake, Clark, Castlewood, Elkton, Estelline, Florence, Gary, Goodwin, Hayti, Lake Norden, Nunda, Sinai, Toronto, White, Willow Lake and Wentworth;
- g. Hills Telephone Company: N. Larchwood and Valley Springs.

In order to be designated an ETC, a carrier must offer the supported services throughout the service area for which the designation is received and advertise the availability of, and the charges for, those services throughout the service area. 47 U.S.C. § 214(e). The Federal Communications Commission (FCC) has designated the following services or functionalities as those supported by federal universal service support mechanisms: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equal; (4) single party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. 47 C.F.R. § 54.101(a). In its filing, Swiftel has shown that it will offer all of the supported services. The carrier must also advertise the availability of such services and the rates for the services using media of general distribution. 47 U.S.C. § 214(e)(1)(B). Swiftel has shown that it will meet this requirement through various advertising methods, including newspapers, magazines, direct mailings, public exhibits and displays, bill inserts, and telephone directory advertising.

A carrier must offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services. . . ." 47 U.S.C. § 214(e)(1)(A). Swiftel has stated that it will provide the supported services using its existing network infrastructure, or, if necessary, through a combination of its own facilities and resale of other carriers' networks. Thus, the Commission finds Swiftel meets this requirement.

Pursuant to section 214(e)(2), the Commission is required to designate a common carrier that meets the requirements of section 214(e)(1) as an ETC for a service area designated by the Commission. 47 U.S.C. § 214(e)(2). The designation of an additional ETC must be consistent with the public interest, convenience, and necessity. *Id.* The Commission may designate more than one ETC if the additional requesting carrier meets the requirements of section 214(e)(1). *Id.* Before designating an additional ETC for an area served by a rural telephone company, the Commission must find that the designation is in the public interest. *Id.*

The Commission finds that it will rely on its definition of the public interest it has used in prior cases and the FCC's public interest analysis contained in its *Virginia Cellular* order. See *In the Matter of the Filing by RCC Minnesota Inc. and Wireless Alliance, L.L.C. d/b/a Unicel for Designation as an Eligible Telecommunications Carrier*, Order Designating RCC Minnesota, Inc. and Wireless Alliance, LLC. d/b/a Unicel as Eligible Telecommunications Carriers; Findings of Fact and Conclusions of Law; and Notice of Entry of Order, Docket TC03-193 (*RCC/WALLC ETC Decision*); *In the Matter of Federal-State Joint Board on Universal Service Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum and Order, FCC 03-338 (rel. January 22, 2004) (*Virginia Cellular*). Consistent with these decisions, the Commission will first consider whether consumers will realize increased benefits from competition. In its filing, Swiftel stated that it will use high-cost support to construct new facilities and improve existing facilities. Swiftel further stated that customers will have increased choices along with service quality and reliability improvements. Swiftel also committed to reach out to the low income community through active participation in the Lifeline and Link-Up programs. The Commission finds that Swiftel's service offerings will bring benefits, including increased choices, expanded local calling areas, and mobility. In addition, the Commission notes that it is imposing conditions that will ensure that Swiftel uses its high-cost support to improve and expand coverage in the designated areas. For example, conditions five and six require the following:

In conjunction with, but separate from and in addition to its annual certification filings under 47 C.F.R. §§ 54.313 and 54.314, Swiftel shall submit records and documentation on an annual basis detailing its progress towards meeting the statutory objective of offering service throughout the service areas for which the designation is received. At a minimum, such information shall detail the location and cost of material capital expenditures made by Swiftel within the State of South Dakota during the preceding annual period and shall include its proposed capital budgets for the State of South Dakota for the ensuing year. Swiftel shall work with Commission Staff to determine what constitutes material expenditures. If Swiftel and Staff are unable to agree, either party shall bring the issue before the Commission for a decision.

Swiftel shall annually submit proposed plans for the upcoming calendar year which set forth Swiftel's proposed plans for the construction of new facilities and service enhancements to existing facilities. The plans shall be submitted on or before March 1st of each year. Following the first filing, Swiftel's subsequent annual filings shall

also include a report stating whether the proposed plans were implemented, any deviations from the previous year's proposed plans, and the reasons for any deviations. Following this annual filing, Swiftel shall meet with Commission Staff to discuss the proposed plans and any deviations from a previous year's proposed plans.

The Commission will next look at the impact of multiple designations on the universal service fund. The Commission notes that Swiftel anticipates receiving around \$100,000.00 per year which is a very small percentage of the amount of projected support for other ETCs in South Dakota. The Commission finds that designation of Swiftel as an ETC will not dramatically burden the universal service fund.

With respect to the issue of any unique advantages or disadvantages of Swiftel's service offerings, Swiftel stated that it employs CDMA technologies which allows the provisioning of high quality voice service plus high-speed data. Swiftel also cited mobility, large local calling areas, service quality, and increased health and safety benefits for consumers. The Commission finds that Swiftel has shown it will bring unique advantages to its customers.

The Commission also considers whether Swiftel has made any commitments regarding quality of telephone service. Swiftel stated that it provides its customers with a high quality service and has an experienced engineering and technical support team that provides emergency support 24 hours a day, seven days a week. Swiftel stated that its system is reinforced by battery backups and generators at more remote and key communications sites. Swiftel stated that it has a call completion rate, during the busy hour, of around 97% and that customer service representatives can be reached through a number of methods, including dialing a toll free number. Swiftel stated that its response time to an outage report is usually less than one hour. The Commission finds that Swiftel has made commitments regarding its quality of telephone service.

Another requirement regards Swiftel's ability to provide the supported services throughout the designated service areas within a reasonable time frame. Swiftel stated that it will use its high-cost support to construct new facilities as well as improve existing facilities. Petition at 12.¹ Moreover, Swiftel committed to serving every customer within its proposed ETC service area upon reasonable request. Swiftel stated it will pursue a number of steps to assist customers who reside in areas where Swiftel does not currently provide service. These steps are:

First, it will determine whether the customer's equipment can be modified or replaced to provide acceptable service.

Second, it will determine whether a roof-mounted antenna or other network equipment can be deployed at the premises to provide service.

Third, it will determine whether adjustments at the nearest cell site can be made to provide service.

¹ Although Swiftel submitted a five year buildout plan, the Commission is not approving the plan it submitted in this proceeding. The five year plan appears to be more of a plan on how it might spend anticipated USF funds as opposed to a plan on how Swiftel intends to provide service throughout the service areas.

Fourth, it will determine whether there are any other adjustments to network or customer facilities which can be made to provide service.

Fifth, it will explore the possibility of offering the resold service of carriers that have facilities available to that location.

Sixth, Swiftel will determine whether an additional cell site, a cell-extender, or repeater can be employed or can be constructed to provide service, and evaluate the costs and benefits of using scarce high-cost support to serve the number of customers requesting service. If there is no possibility of providing service short of these measures, Swiftel will notify the customer and provide the Commission with an annual report of how many requests could not be filled. The Commission will retain authority to resolve any customer complaints that Swiftel has refused to respond to a reasonable request for service.

Response to Staff's Data Request, dated August 25, 2005.

The Commission finds that Swiftel has shown that it will provide the supported services throughout the designated service areas within a reasonable time frame. Further, in addition to these commitments, the Commission notes that it has imposed conditions that will allow the Commission to evaluate Swiftel's progress in providing the supported services throughout the service areas within a reasonable time frame. See Conditions 5, 6, 8, and 9. If the Commission finds that Swiftel is not complying with this requirement, it can revoke Swiftel's designation as an ETC.

The Commission's next consideration under the public interest analysis is whether the designation of Swiftel as an ETC will have detrimental effects on the provisioning of universal service by the incumbent carriers. The Commission notes that under the current system an incumbent LEC gets support for its total cost of serving its service area. A competitive ETC's support is "per-line" support. So if Swiftel signs up an existing ILEC customer and the customer discontinues his wireline service, the ILEC does not lose its high-cost funding. The Commission finds that there has been no showing in this proceeding that designation of Swiftel as an ETC will have a detrimental effect on the provisioning of universal service by incumbent carriers.

As noted above, in order to be designated as an ETC in the proposed service areas of seven rural companies, the rural companies' service areas must be redefined. Pursuant to section 214(e)(5) a service area is defined as follows:

The term "service area" means a geographic area established by a State commission (or the [FCC] under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the [FCC] and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410 (c) of this title, establish a different definition of service area for such company.

Thus, any proposed redefinitions made by the Commission must be concurred in by the FCC. As recognized by the FCC, the Federal-State Joint Board on Universal Service expressed the following concerns regarding the redefining of rural telephone company service areas: "(1) minimizing creamskimming; (2) recognizing that the 1996 Act places rural telephone companies on a different

competitive footing from other LECs; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level." *Virginia Cellular* at para. 41. The Commission will first review any creamskimming concerns.

Some of the rural companies at issue have disaggregated support in their study areas. Disaggregation is when a company disaggregates its high cost support in order to more closely reflect geographic cost differences. 47 C.F.R. § 54.315. The Commission finds that when a company disaggregates its support, creamskimming concerns are minimized since any competitor which serves the low cost customers will receive much less in high-cost support for those customers. In addition, Swiftel also submitted a Population Density Analysis. Attached as Exhibit F to Petition. This analysis supports Swiftel's position that it is not engaging in creamskimming by attempting to serve only the low-cost, high revenue customers in the rural companies' service areas. Thus, the Commission finds that the record in this proceeding does not show that Swiftel is engaging in creamskimming.

With respect to the Joint Board's concern about recognizing that rural telephone companies are on a different competitive footing from other LECs, the Commission finds that there has been no showing that redefinition will reduce the rural carriers' high-cost support since, as previously mentioned, the receipt of high-cost support by Swiftel will not lessen the support that the rural carriers receive. See *Virginia Cellular* at 43. And, regarding the concern about any added administrative burdens of requiring rural telephone companies to calculate costs at something other than a study area level, the Commission notes that redefinition does not change how the rural carriers will calculate their costs. *Id.* at 44.

Thus, the Commission finds it will propose that certain rural telephone areas be redefined. Consistent with its decision in the RCC/WALLC docket, the Commission will again redefine service areas into groups of wire centers instead of designating each wire center separately. The Commission finds this will make it more difficult for a competitive ETC to stop providing the supported services in the most high-cost, low density wire centers while retaining its designation in the lower cost, higher density wire centers. Thus the Commission will recommend to the FCC that the study areas be redefined as follows:

- a. For Citizens Telecom Co. (MN), the service area should be redefined by creating a service area comprised of W. Jasper;
- b. For Farmers Mutual Telephone Company, the service area should be redefined by creating a service area comprised of West Marietta;
- c. For Fort Randall Telephone Company, the service area should be redefined by creating a service area comprised of Centerville and Viborg. A separate service area will be comprised of Tabor and Tyndall;
- d. For Heartland Telecom Company of Iowa, the service area should be redefined by creating a service area comprised of West Akron and West Hawarden;
- e. For Interstate Telecom. Cooperative, Inc. (MN), the service area should be redefined by creating a service area comprised of W. Hendricks;
- f. For Interstate Telecom Cooperative, Inc. (SD), the service area should be redefined by creating a service area comprised of Astoria, Bradley, Brandt, Bryant, Castlewood, Clark, Clear

Lake, Estelline, Florence, Gary, Goodwin, Hayti, Lake Norden, Toronto, and Willow Lake. A separate service area will be comprised of Brookings-Rural, Chester, Elkton, Nunda, Sinai, Wentworth, and White.²

g. For Hills Telephone Company, the service area should be redefined by creating a service area comprised of N. Larchwood and Valley Springs.

In addition to designation, the FCC also requires that a state commission certify to the FCC and the Universal Service Administrative Company (USAC) that federal high cost support provided to the carrier will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. 47 C.F.R. §§ 54.313 and 54.314. The Commission finds that Swiftel has made a sufficient showing for certification at this time given that it will not receive certification for its entire requested area until the FCC concurs in the Commission's redefinitions and Swiftel will need to apply for certification again in August. Thus, the Commission will send certification letters to USAC and the FCC for the service areas that are subject to immediate designation and will send certification letters for the other designated service areas if the FCC concurs in the Commission's redefinition of those service areas.

The Commission finds it is in the public interest to designate Swiftel as an ETC in the areas as listed above, for both rural and nonrural service areas. The Commission further finds that it is in the public interest to place conditions on Swiftel's ETC designation. The conditions are as follows:

1. On or before February 1, 2006, Swiftel shall file its advertising plans and materials for South Dakota that it plans to use to inform consumers of its universal service offerings. Included in these advertising plans and materials shall be the advertising plans and materials regarding the Lifeline and Link-up programs and the forms for applying for Lifeline and Link-Up in South Dakota.
2. On or before February 1, 2006, Swiftel shall file its service agreements pursuant to which it intends to offer its universal service offerings in South Dakota. The agreements shall be consistent with the Commission's service quality rules and shall also advise customers that they may qualify for financial assistance under the federal Link-Up and Lifeline programs and provide basic information on how to apply.
3. The service agreement shall state that any disputes or claims arising under the service agreement may be subject to the Commission's complaint jurisdiction, at the consumer's option. Thus, Swiftel's service agreements shall not compel submission of disputes to arbitration which would deprive customers of access to the complaint procedures of SDCL chapter 49-13 and ARSD Chapter 20:10:01.
4. Consistent with its obligations pursuant to section 214(e)(1), Swiftel shall continue to build out facilities and extend service to meet the statutory objective of offering service "throughout the service area for which the designation is received. . . ."
5. In conjunction with, but separate from and in addition to its annual certification filings under 47 C.F.R. §§ 54.313 and 54.314, Swiftel shall submit records and documentation on an annual basis detailing its progress towards meeting the statutory objective of offering service throughout the service areas for which the

² This will leave another service area comprised of Waubay and Webster where Swiftel is not being designated as an ETC.

designation is received. At a minimum, such information shall detail the location and cost of material capital expenditures made by Swiftel within the State of South Dakota during the preceding annual period and shall include its proposed capital budgets for the State of South Dakota for the ensuing year. Swiftel shall work with Commission Staff to determine what constitutes material expenditures. If Swiftel and Staff are unable to agree, either party shall bring the issue before the Commission for a decision.

6. Swiftel shall annually submit proposed plans for the upcoming calendar year which set forth Swiftel's proposed plans for the construction of new facilities and service enhancements to existing facilities. The plans shall be submitted on or before March 1st of each year. Following the first filing, Swiftel's subsequent annual filings shall also include a report stating whether the proposed plans were implemented, any deviations from the previous year's proposed plans, and the reasons for any deviations. Following this annual filing, Swiftel shall meet with Commission Staff to discuss the proposed plans and any deviations from a previous year's proposed plans.

7. Swiftel shall commit to and abide by the terms of the Cellular Telecommunications Industry Association Consumer Code for Wireless Service as it is amended from time to time.

8. By March 1st of each year, Swiftel shall provide annual reports detailing the consumer complaints it has received during the previous one year period. This report shall include the nature and location of the complaints.

9. By March 1st of each year, Swiftel shall provide a report itemizing the number of unfulfilled requests Swiftel received to provide service to a current customer's residence during the previous year and requests for service from potential customers within Swiftel's service areas that went unfulfilled during the previous year, including the steps Swiftel took to provide service and the reasons why such requests went unfulfilled. Following the submission of this report, Swiftel shall meet with Commission Staff to discuss the report.

10. In the event that Commission Staff believes that information beyond what Swiftel has provided is necessary for Staff and the Commission to perform their responsibilities relating to Swiftel's meeting its obligations under the law and this Order, Staff shall first make a request for such information to Swiftel. If Swiftel objects to such request, Staff and Swiftel shall first confer in an effort to resolve the issue. If after such conference, Staff and Swiftel are unable to reach agreement concerning the need for such information or the reasonableness of such request, Staff may petition the Commission for an order modifying the Conditions herein upon a showing of good cause therefor.

It is therefore

ORDERED, that Swiftel is designated as an ETC in the above listed areas, subject, in some service areas, to the FCC's concurrence with the proposed redefinitions; and it is

FURTHER ORDERED, that designation of Swiftel in any service areas that require redefinition will not be effective until, and unless, the FCC concurs in such redefinitions; and it is

FURTHER ORDERED, that Swiftel shall comply with the conditions as listed above.

Dated at Pierre, South Dakota, this 10th day of February, 2006.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u> Melaine Kalbo </u>
Date: <u> 2/10/06 </u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

 Robert K. Sahr
ROBERT K. SAHR, Chairman

 Dustin M. Johnson
DUSTIN M. JOHNSON, Commissioner

