

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

IN THE MATTER OF THE PETITION OF)	PROTECTIVE ORDER
BROOKINGS MUNICIPAL UTILITIES D/B/A)	
SWITTEL COMMUNICATIONS FOR)	TC07-007
SUSPENSION OR MODIFICATION OF DIALING)	
PARITY, NUMBER PORTABILITY AND)	
RECIPROCAL COMPENSATION)	
OBLIGATIONS)	

On January 30, 2007, Brookings Municipal Utilities d/b/a Swifitel Communications (Swifitel) filed with the Public Utilities Commission (Commission) a Petition for Suspension or Modification of Local Dialing Parity, Number Portability and Reciprocal Compensation Obligations. In its Petition, Swifitel states that it requests the Commission grant a suspension or modification of 47 U.S.C. Sections 251(b)(2), (3) and (5) of the Communications Act of 1934, as amended. "Swifitel requests modification of the local number portability requirement such that it is not required to implement wireline local number portability until 4 months after a competitive LEC is certificated to provide service in Swifitel's service territory. Swifitel also requests modification of the local number portability requirement such that Swifitel is not required to transport numbers beyond its service territory. Swifitel requests modification of the dialing parity requirement such that Swifitel is not required to provide local dialing and it is not required to transport traffic outside of its service territory. Swifitel also requests modification of the toll dialing parity requirement such that Swifitel is not required to perform the equal access function at the end office or establish access traffic transport facilities other than the common trunks to South Dakota Network (SDN). Swifitel also asks the Commission to modify any requirement that Swifitel would not be able to collect access charges for toll traffic. Swifitel requests a modification of the reciprocal compensation requirements such that it is not required to pay reciprocal compensation on traffic terminating to a wireless carrier within the MTA that is handed off to an IXC in accordance with Swifitel's wireline local calling areas. Swifitel also requests immediate temporary suspension of the 251(b)(2), (3) and (5) requirements as described [in its Petition] pending this Commission's consideration of this request."

On February 1, 2007, the Commission electronically transmitted notice of the filing and the intervention deadline of February 16, 2007, to interested individuals and entities. On February 12, 2007, the Commission received Petitions to Intervene from Alltel Communications, Inc. (Alltel) and Sprint Communications Company L.P. (Sprint). On February 14, 2007, the Commission received a Petition to Intervene from Midcontinent Communications (Midcontinent). On February 15, 2007, the Commission received a Petition to Intervene from South Dakota Network, LLC (SDN). On February 16, 2007, the Commission received Petitions to Intervene from MCC Telephony of the Midwest, Inc. d/b/a Mediacom (MCC) and South Dakota Telecommunications Association (SDTA). On March 5, 2007, the Commission received an Opposition of Brookings Municipal Utilities d/b/a Swifitel Communications to Petition to Intervene filed by Midcontinent Communications. On March 9, 2007, the Commission received Midcontinent's Reply to Swifitel's Opposition to Midcontinent's Intervention Petition. On March 13, 2007, the Commission received a Withdrawal of Opposition of Brookings Municipal Utilities d/b/a Swifitel Communications to Petition to Intervene filed by Midcontinent Communications. At its March 13, 2007 meeting, the Commission granted all of the Petitions to Intervene.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, and 47 U.S.C. sections 251 and 252. At a prehearing conference held on March 30, 2007, the parties agreed to the following protective order. Therefore, on good cause shown and without objection from any party to this docket, the Commission enters the following protective order:

1. "Designated Material" as used herein shall mean any document or other material in which the "Producing Party" has a good faith basis to assert the existence of confidential, proprietary or trade secret information, and which the producing party conspicuously designates and marks as including such information by marking the information as "Confidential." In recognition of the increased logistic difficulties to other parties and the Commission in handling Designated Material, the producing party will make reasonable efforts to narrow the scope of information so designated and will confer in good faith to further narrow the scope of information so designated upon request of the receiving party.

2. Information designated as confidential by the Producing Party shall not be disclosed to anyone other than the following individuals (the "Qualified Persons"):

- a. counsel of record for any Party in this proceeding;
- b. paralegal, stenographic, clerical, or other employees of counsel of record in this proceeding;
- c. court reporters and their employees engaged to record and transcribe testimony in this proceeding;
- d. independent experts and consultants employed by counsel of record in this proceeding to assist in the preparation or trial of this proceeding;
- e. directors, officers, and employees of any Party in this action to the extent that disclosure of Information is necessary with respect to the active participation in this proceeding by such director, officer or employee of such Party;
- f. any witness from whom testimony is being taken during the course of his or her testimony or during the preparation thereof provided that such witness may not retain any Information; and
- g. this Commission ("SDPUC" or "Commission") or a court of competent jurisdiction and employees of this Commission or such court.

3. Information designated as confidential shall not be disclosed to persons specified in 2(d), (e), and (f) until such persons have signed a confidentiality agreement in the form that is attached hereto and incorporated herein as Exhibit A, agreeing to be bound by the terms and conditions of this Protective Order. The agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. The completed Exhibit A then must be distributed to the parties in this proceeding. Each Qualified Person shall not reveal any Designated Material to anyone other than another person who meets any criteria established pursuant to paragraph two (2) and who shall also have read this Order and completes and signs Exhibit A. Qualified persons are required to utilize and designate material solely for purposes of preparation for and conduct of this proceeding and not for any other purpose, and to keep all Designated Material secure at all times in accordance with the purpose and intent of this Order. Where any qualified person currently has or may in the future have responsibilities for marketing, product development, market analysis, market entry, or strategic planning for a competitor of any of the parties to this proceeding now or in the future, that person shall take reasonable steps to limit his/her exposure to designated materials to those materials relevant to that person's testimony or involvement in this matter and it shall be made a violation of this Order for such person to rely on designated materials obtained through discovery in this case to carry out

marketing, product development, market analysis, market entry or strategic planning responsibility duties for any party or any other entity employing the person now or in the future.

4. The provisions of Section 1 will not apply to any information that (i) is or becomes publicly available without breach of this Protective Order; (ii) can be shown by documentation to have been known by the Receiving Party at the time of its receipt from the Producing Party; (iii) is rightfully received from a third party who did not acquire or disclose such information by a wrongful or tortious act; or (iv) can be shown by documentation to have been independently developed by the Receiving Party without reference to any Confidential Information.

5. All Designated Material shall be treated as confidential (unless such status is specifically waived by the producing party or the State of South Dakota Public Utilities Commission specifically finds that such material need not be so treated), shall be marked as "Confidential", shall be held in confidence and used only in connection with this Docket, and shall be treated in accordance with any restrictions on the person or classes of persons to whom such material may be disclosed which are reasonably established by any party producing Designated Material. All parties shall exercise reasonable steps to safeguard the confidentiality of the Designated Material.

6. Neither the Designated Material nor any summaries or compilations of the whole or any part thereof disclosed by a producing party to another party's attorneys in this proceeding shall be revealed or distributed to anyone other than Qualified Persons to this Order.

7. No more than five (5) copies shall be made of the Designated Materials. Copies shall prominently bear the statement "Confidential" or that disclosure of the contents is prohibited. All copies shall be returned, without further notice, to counsel for the producing party or, at the option of the parties receiving the copies, destroyed at the conclusion of this proceeding, including any rehearing or appeals. Notes, memoranda, or other written or recorded materials of any kind containing confidential and proprietary data or summaries or compilations of the whole or any part of any of the Designated Material shall be destroyed when no longer needed in the conduct of this proceeding.

8. Any reference to Designated Material filed with the SDPUC in testimony, exhibits or Briefs shall be marked to readily identify the contents as Designated Material and marked "Confidential", shall be separately filed with the SDPUC in accordance with its rules on confidentiality, shall be distributed only to individuals who are Qualified Persons to this Order and members of the Commission staff participating in this proceeding and shall be retained by the Commission under seal and not as part of the public record.

9. This Order establishes a procedure for permitting access to Designated Material that the producing parties hereto claim contains information which is confidential or proprietary or a trade secret and shall not be construed as an agreement or concession by the parties that any document or data provided under the terms of this Order in fact contains confidential or proprietary or trade secret information. This Order does not waive any party's rights to contest the designation of any particular document or data as containing confidential, proprietary or trade secret information or to redact competitively sensitive material from any Designated Material.

10. It is further agreed that the parties hereto shall not be deemed to have waived any objections to the relevancy, materiality, or admissibility in the record of this proceeding of any of the Designated Material furnished or received pursuant to this Order.

11. This Order is binding with respect to each party and Qualified Person in accordance with its terms and each reproduction of an executed copy of this Order shall be deemed the original by the person executing a confidentiality agreement, Exhibit A.

Dated at Pierre, South Dakota, this 2nd day of April, 2007.

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>Delaine Kalbo</u>
Date: <u>4/2/07</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Dustin M. Johnson
DUSTIN M. JOHNSON, Chairman

Gary Hanson
GARY HANSON, Commissioner

Steve Kolbeck
STEVE KOLBECK, Commissioner

EXHIBIT A

NONDISCLOSURE AGREEMENT

I hereby certify that I am familiar with the terms and conditions of the Protective Order entered by the Commission in the above-captioned docket and agree to be bound by the terms and conditions thereof.

I further agree that the information requested shall be used only for the valid purposes of these proceedings as provided in said Order.

DATED this _____ day of _____, 2007.

Signature: _____

Name (type or print): _____

Address and Telephone: _____

Representing: _____

Position: _____