

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

**IN THE MATTER OF THE PETITION OF )  
SPRINT COMMUNICATIONS COMPANY L.P. )  
FOR ARBITRATION PURSUANT TO THE )  
TELECOMMUNICATIONS ACT OF 1996 TO )  
RESOLVE ISSUES RELATING TO AN )  
INTERCONNECTION AGREEMENT WITH )  
BROOKINGS MUNICIPAL UTILITIES D/B/A )  
SWIFTEL COMMUNICATIONS )**

**THIRD ORDER FOR AND  
NOTICE OF HEARING**

**TC06-176**

On October 16, 2006, Sprint Communications Company L.P. (Sprint) filed a petition to arbitrate, pursuant to SDCL 49-31-81 and ARSD 20:10:32:29-32, and Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), certain terms and conditions of a proposed Interconnection Agreement between Sprint and Brookings Municipal Utilities d/b/a Swiftel Communications (Swiftel). Sprint filed a list of unresolved issues consisting of: (1) Should the definition of End User in this Agreement include end users of a service provider for which Sprint provides interconnection, telecommunications services or other telephone exchange services? (2) Does the Telecommunications Act authorize the Commission to arbitrate terms and conditions for interconnection obtained under Section 251(a) of the Telecommunications Act? If yes, what terms and conditions should the Commission impose on the parties in this proceeding? (3) Should the Interconnection Agreement permit the parties to combine wireless and wireline traffic on interconnection trunks? (4) Should the Interconnection Agreement permit the parties to combine all traffic subject to reciprocal compensation charges and traffic subject to access charges onto the interconnection trunks? (5) What is the appropriate reciprocal compensation rate for the termination of telecommunications traffic? (6) Should Sprint's proposed language regarding Local Number Portability be adopted and incorporated into the Interconnection Agreement? (7) Should the ILEC-proposed Directory Listing provisions, as modified by Sprint, be adopted and incorporated into the Interconnection Agreement? (8) Termination: A) Should the termination provision of the Interconnection Agreement permit the existing Interconnection Agreement to remain in effect while the parties are in the process of negotiating and/or arbitrating a replacement Interconnection Agreement? B) Should the Interconnection Agreement contain provisions that allow the parties to terminate the Agreement for: 1) a material breach; 2) if either party's authority to provide service is revoked or terminated; or, 3) if either party becomes insolvent or files for bankruptcy? (9) What 911 liability terms should be included in the Interconnection Agreement? (10) What Force Majeure terms should be included in the Interconnection Agreement? Sprint respectfully requests the Commission to arbitrate each of the remaining disputes between Sprint and Swiftel, to find in Sprint's favor and to adopt Sprint's proposed contract language. In accordance with ARSD 20:10:32:30, a non-petitioning party may respond to the petition for arbitration and provide additional information within 25 days after the Commission receives the petition.

On October 19, 2006, the Commission electronically transmitted notice of the filing and the intervention deadline of November 10, 2006, to interested individuals and entities. On October 30, 2006, the Commission received a Joint Motion of Interstate Telecommunications Cooperative, Inc. and Brookings Municipal Utilities d/b/a Swiftel Communications for Deferral of Hearing on Sprint Communications Company's Request for Consolidation. On November 3, 2006, the Commission received a Petition to Intervene from South Dakota Telecommunications Association (SDTA). On November 13, 2006, the Commission received Sprint's Opposition to SDTA's Petition to Intervene,

Response of Interstate Telecommunications Cooperative, Inc. to the Petition for Arbitration and Request for Consolidation of Sprint Communications Company L.P., and Response of Brookings Municipal Utilities d/b/a Swiftel Communications and Motion to Dismiss and Opposition to Motion to Consolidate. At its November 14, 2006, meeting, the Commission deferred SDTA's request for intervention and the request to consolidate Dockets TC06-175 and TC06-176.

At its November 28, 2006, meeting, the Commission considered the setting of a procedural schedule. An Order Setting Procedural Schedule was issued December 1, 2006, which included these hearing dates.

At its December 6, 2006, meeting, the Commission voted to deny intervention to SDTA (Commissioner Kolbeck dissented).

On January 9, 2007, Sprint filed a Motion to Compel requesting the Commission to issue an order compelling Swiftel to produce responses to Sprint's first set of discovery requests. On January 9, 2007, Swiftel filed a Motion to Compel Responses and Production of Documents Addressed to Sprint Communications, L.P. On January 12, 2007, Sprint filed a Response to Swiftel's Motion to Compel. On January 12, 2007, Swiftel filed a Response to Motion to Compel. At its January 16, 2007, meeting, the Commission considered the Motions to Compel. On January 18, 2007, the Commission issued its decision on the Motions to Compel. On January 26, 2007, the Commission received a Petition for Reconsideration from SDTA. On February 9, 2007, the Commission received a Response to SDTA's Petition for Reconsideration and Clarification from Sprint.

On February 12, 2007, the Commission issued an Order for and Notice of Hearing setting this matter for hearing on March 1 and 2, 2007. On February 21, 2007, the Commission issued an order clarifying SDTA's participation in this docket. On February 22, 2007, the Commission received a Joint Motion of Interstate Telecommunications Cooperative, Inc., Brookings Municipal Utilities d/b/a Swiftel Communications and Sprint Communications, L.P. for Delay of Hearings on Sprint Communications Company's Petitions for Arbitration. The parties agreed that the hearing should be postponed. The hearing was continued.

On March 30, 2007, the Commission issued a Second Order for and Notice of Hearing; Amended Procedural Schedule setting this matter for hearing on April 24 and 25, 2007. On April 13, 2007, the Commission issued an Amended Second Order for and Notice of Hearing; Amended Procedural Schedule with the hearing still set for April 24 and 25, 2007. On April 17, 2007, the Commission received a Joint Motion of Brookings Municipal Utilities d/b/a Swiftel Communications and Sprint Communications L.P. for Delay of Hearing on Sprint's Petition for Arbitration. The parties agreed that the hearing should be postponed. The hearing was continued. On July 3, 2007, the Commission received a Second Joint Motion of Brookings Municipal Utilities d/b/a Swiftel Communications and Sprint Communications, L.P. for Delay of Hearing on Sprint's Petition for Arbitration. At its meeting on July 11, 2007, the Commission granted the Second Joint Motion for Delay of Hearing. On January 11, 2008, the Commission received a Joint Motion for Delay of Hearing. At its January 29, 2008 meeting, the Commission unanimously voted to grant the Joint Motion for Delay of Hearing.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, including 49-31-3 and 49-31-81, and 47 U.S.C. sections 251 and 252. The Commission may rely upon any or all of these or other laws of this state in making its determination.

A hearing will be held on this matter beginning on December 3, 2008, with marking of exhibits to begin at 8:00 a.m., and the hearing to begin at 9:00 a.m., and continuing on December 4, 2008, at 9:00 a.m., in the Floyd Matthew Training Center, Foss Building, 523 East Capitol, Pierre, South Dakota.

The issues to be determined by the Commission are the issues set forth by Sprint in its Petition for Arbitration and the issues as set forth by Swiftel in its Response to the Petition for Arbitration. These issues are hereby incorporated by reference.

The hearing will be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All persons testifying will be subject to cross-examination by the parties. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights may be forfeited if not exercised at the hearing. If a party or its representative fails to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of the hearing, the Commission will resolve issues listed in Sprint's Petition for Arbitration and Swiftel's Response to the Petition for Arbitration and order any appropriate relief. The Commission's Final Decision may be appealed by the parties as provided by law. It is therefore

ORDERED, that a hearing shall be held at the time and place specified above on the issues set forth above.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 16<sup>th</sup> day of July, 2008.

<b>CERTIFICATE OF SERVICE</b>
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, electronically.
By: <u><i>Aldine Kalbo</i></u>
Date: <u>7/16/08</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

*Gary Hanson*  
GARY HANSON, Chairman

*Steve Kolbeck*  
STEVE KOLBECK, Commissioner

*Dustin M. Johnson*  
DUSTIN M. JOHNSON, Commissioner