

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

<b>IN THE MATTER OF THE APPLICATION OF</b>	)	<b>PROTECTIVE ORDER</b>
<b>MCC TELEPHONY OF THE MIDWEST, INC.</b>	)	
<b>D/B/A MEDIACOM FOR A CERTIFICATE OF</b>	)	<b>TC06-188</b>
<b>AUTHORITY TO PROVIDE LOCAL EXCHANGE</b>	)	
<b>SERVICES IN THE BROOKINGS EXCHANGE</b>	)	

On November 6, 2006, the Public Utilities Commission (Commission) received an Application for Certificate of Authority from MCC Telephony of the Midwest, Inc. d/b/a Mediacom (MCC) to provide facilities-based and resold basic local exchange services. The services proposed will include non-switched, switched local services and special access services in the Brookings rural exchange area.

On November 9, 2006, the Commission electronically transmitted notice of the filing and the intervention deadline of November 27, 2006, to interested individuals and entities. Brookings Municipal Utilities d/b/a Swiftel Communications (Swiftel) filed to intervene on November 21, 2006. South Dakota Telecommunications Association (SDTA) filed to intervene on November 22, 2006. Swiftel and SDTA were granted intervention. On March 30, 2007, the Commission issued an Order Setting Procedural Schedule; Order for and Notice of Hearing scheduling the hearing to be held on June 29, 2007. On May 21, 2007, the Commission received a Joint Motion for Delay of Hearing.

At its May 22, 2007, meeting, the Commission considered the Joint Motion for Delay of Hearing. Commission Staff recommended approval. The Commission unanimously voted to grant the Joint Motion for Delay of Hearing. On August 3, 2007, the Commission received a Joint Motion for Delay of Hearing.

At its August 7, 2007, meeting, the Commission considered the Joint Motion for Delay of Hearing. Commission Staff recommended approval. The Commission unanimously voted to grant the 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 considered the Joint Motion for Delay of Hearing. Commission Staff recommended approval. The Commission unanimously voted to grant the Joint Motion for Delay of Hearing. On May 13, 2008, the Commission received a Motion to Request the Commission Enter a Protective Order.

At its May 20, 2008, meeting, the Commission considered the Motion to Request the Commission Enter a Protective Order. All parties agreed to entry of the Order. Commission Staff recommended approval. The Commission unanimously voted to grant the Motion to Request the Commission Enter a Protective Order.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, specifically SDCL 49-31-69 through 49-31-75, inclusive. Therefore, 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 action;
- b. paralegal, stenographic, clerical, or other employees of counsel of record in this action;
- c. court reporters and their employees engaged to record and transcribe testimony in this action;
- d. independent experts and consultants employed by counsel of record in this action to assist in the preparation or trial of this action;
- 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. a court of competent jurisdiction and employees of 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 (2) and who shall also have read this Order and completes and signs Exhibit A; 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 action 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 ("SDPUC" or "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 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 case 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, 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 executed copy of this Order shall be deemed the original by the party executing the same.

Dated at Pierre, South Dakota, this 28<sup>th</sup> day of May, 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>Alaine Koelbo</u>
Date:	<u>5/30/08</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

**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 \_\_\_\_\_, 2008.

Signature: \_\_\_\_\_

Name (type or print): \_\_\_\_\_

Address and Telephone: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Representing: \_\_\_\_\_

Position: \_\_\_\_\_