

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>FIBERCOMM, L.C., FOREST CITY TELECOM, INC., HEART OF IOWA COMMUNICATIONS, INC., INDEPENDENT NETWORKS, L.C., AND LOST NATION-ELWOOD TELEPHONE COMPANY,</p> <p style="text-align:center">Complainants,</p> <p style="text-align:center">vs.</p> <p>AT&T COMMUNICATIONS OF THE MIDWEST, INC.,</p> <p style="text-align:center">Respondent.</p>	<p>DOCKET NO. FCU-00-3</p>
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**ORDER DENYING REQUEST TO STAY PROCEEDING, DENYING MOTIONS TO
STRIKE TESTIMONY, GRANTING MOTION TO FILE SURREBUTTAL
TESTIMONY, AND GRANTING REQUEST REGARDING WITNESS HONOLD**

(Issued February 16, 2001)

On August 16, 2000, FiberComm, L.C. (FiberComm), Forest City Telecom, Inc. (FCTI), Heart of Iowa Communications, Inc. (Heart of Iowa), Independent Networks, L.C. (IN), and Lost Nation-Elwood Telephone Company (Lost Nation) jointly filed a complaint against AT&T Communications of the Midwest, Inc. (AT&T). The Complainants request the Utilities Board (Board) take action "prohibiting AT&T from withdrawing its interexchange services from the customers of complainants and other similarly situated competitive local exchange carriers (CLECs) serving various

portions of rural Iowa." The Board determined that formal complaint proceedings should be initiated and identified as Docket No. FCU-00-3 to consider that request.

MOTION TO STAY PROCEEDING

On January 30, 2001, AT&T filed a motion and memorandum in support of the motion requesting that the Board stay these proceedings. In support of its request, AT&T asserts that the "same issues are raised by the primary jurisdiction referral to the FCC" in a case decided by the U.S. District Court for the Eastern District of Virginia.¹

AT&T suggests that the Federal Communication Commission's (FCC's) decision regarding the issues (which is expected by July 19, 2001) will provide "significant meaningful guidance" to the parties and the Board. Further, AT&T raises concerns that a Board decision prior to the FCC's determination may create inconsistent or irreconcilable treatment. In response to the resistance to the motion to stay, AT&T filed a reply memorandum further arguing the prudence of the Board awaiting the direction of the FCC.

Complainants, in a resistance to AT&T's motion to stay filed on February 5, 2001, point out that their complaint, which was filed August 16, 2000, involves intrastate billings and tariffed rates within the jurisdiction of the Board. No part of the complaint involves any interstate billings or tariffed rates within the FCC's jurisdiction. Additionally, this complaint was filed based upon the interconnection requirements of Iowa Code § 477.11 (2001).

The Complainants have filed a complaint asking that the Board interpret the obligation of Complainants and AT&T pursuant to Iowa law. They have also asked the Board order AT&T to pay complainants, based upon their tariffed rate, for access service that has previously been provided to AT&T. The interpretation of Iowa law and Iowa tariffed services and rates for intrastate traffic is within the sole jurisdiction of the Board. The motion to stay proceeding will be denied.

MOTION TO STRIKE TESTIMONY

A motion to strike the economic testimony of AT&T witnesses Douglas Denney, William J. Taggart, III, and Frederick R. Warren-Boulton was filed by Laurens Municipal Broadband Communications Utility and Coon Rapids Municipal Communications Utility on January 23, 2001. Goldfield Access Network, L.C., filed in support of the motion to strike on February 12, 2001. Complainants filed a similar motion to strike on January 24, 2001.

AT&T filed an opposition to the motion to strike on January 31, 2001. AT&T contends that Complainants, in direct testimony, made allegations that the rationale for AT&T's withdrawal from rural Iowa markets is an attempt to position itself to enter those markets as a local carrier at a later time. AT&T states the economic testimony of the identified witnesses is filed in response to Complainants' direct testimony.

AT&T's economic testimony appears to be a response to those allegations and an attempt to provide economic rationale for its actions. The Board will deny the

¹ *Advantel, LLC v. Sprint Communications Co.*, No. 00-1074-A, mem. op. at 13 (E.D. Va. Jan. 5, 2001).

motion to strike and allow the testimony of AT&T witnesses Douglas Denney, William J. Taggart, III, and Frederick R. Warren-Boulton to be presented.

MOTION TO FILE SURREBUTTAL TESTIMONY

On February 8, 2001, AT&T filed a motion to allow the filing of surrebuttal testimony, with the proposed testimony of William J. Taggart, III. attached to the motion. AT&T asserts that the surrebuttal testimony is intended to respond to several new issues raised in the rebuttal testimony filed January 24, 2001.

Complainants filed a statement on February 14, 2001, indicating they had no objection to the filing of AT&T's surrebuttal testimony. The Board finds it to be reasonable to allow the surrebuttal testimony of AT&T, which was delivered to parties well in advance of the commencement of the hearing on February 21, 2001. The motion to file surrebuttal testimony will be granted.

REQUEST TO PRESENT WITNESS OUT-OF-ORDER

A request to present the witness Bradley A. Honold for cross-examination on either February 22 or 23, 2001, was filed with the Board on February 12, 2001, by Coon Rapids Municipal Communications Utility. After noting that there are 19 witnesses who have filed testimony in preparation for this hearing, it appears that it is reasonable to accommodate this request. Assuming that each of the complainant's six witnesses, at a minimum, will be presented before Mr. Honold, it is doubtful that this witness will be called to testify before February 22, 2001, in any instance. The Board finds this to be a reasonable request and it will be granted.

ORDER CLAUSES

IT IS THEREFORE ORDERED:

1. The motion to stay these proceedings pending a decision of the FCC on issues involving interstate terminating access service filed by AT&T on January 30, 201, is denied.

2. The motions to strike the economic testimony of AT&T witnesses Douglas Denney, William J. Taggart, III, and Frederick R. Warren-Boulton filed on January 23, January 24, and February 12, 2001, are denied.

3. The motion to allow the filing of surrebuttal testimony of William J. Taggart, III, filed by AT&T on February 8, 2001, is granted.

4. The request to present witness Bradley A. Honold for cross-examination on February 22 or 23, 2001, filed by Coon Rapids Municipal Communications Utility on February 12, 2001, is granted.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper
Acting Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 16th day of February, 2001.