

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>IOWA COUNTY E-9-1-1 BOARD,</p> <p style="padding-left: 40px;">Complainant,</p> <p style="padding-left: 40px;">vs.</p> <p>SOUTH SLOPE COOPERATIVE TELEPHONE COMPANY,</p> <p style="padding-left: 40px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-02-12</p>
---	---

**ORDER DENYING MOTIONS TO RECONSIDER, DENYING MOTION TO DISMISS,
AND DISMISSING FORMAL COMPLAINT PROCEEDING IN LIEU OF
INFORMAL RESOLUTION PROCEEDING**

(Issued June 5, 2003)

PROCEDURAL HISTORY

On June 11, 2002, Iowa County E-9-1-1 Board (Iowa County) filed a complaint with the Utilities Board (Board) against South Slope Cooperative Telephone Company (South Slope). The filing has been identified as Docket No. FCU-02-12. In its complaint, Iowa County contends that the monthly surcharge of \$.20 per access line assessed to Iowa County by South Slope for maintenance of its E-9-1-1 database is unreasonable.

On June 28, 2002, the Board issued an "Order Docketing Formal Complaint Proceeding and Requesting Response" in this docket. In that order, the Board cited

Iowa Code § 476.3(1) and indicated that the nature of this complaint led the Board to initiate this formal complaint proceeding.

On July 17, 2002, South Slope filed a response in compliance with the Board's June 28, 2002, order, as well as a motion to dismiss the complaint. On August 30, 2002, the Board issued an order denying South Slope's motion to dismiss.

In its August 30, 2002, order, Board staff was directed to meet with both parties in an attempt to facilitate an informal resolution in this matter. On September 17, 2002, Board staff met with representatives from Iowa County and South Slope. On September 30, 2002, the Board issued an order temporarily suspending these proceedings to allow time for the parties to determine the appropriateness of settlement options posed by Board staff and discussed at the September 17, 2002, meeting and setting a date by which the parties were to indicate to the Board whether an appropriate settlement had been reached.

On October 15, 2002, South Slope filed a letter with the Board asserting that the costs being assessed to Iowa County for the maintenance of the E-9-1-1 database are just and reasonable. After further telephone discussions with Iowa County, Board staff learned that Iowa County was considering its options regarding proceeding with this formal proceeding in light of South Slope's position.

On November 6, 2002, Iowa County filed with the Board an amendment to its initial complaint. Based on material factual disputes between the parties regarding South Slope's E-9-1-1 database maintenance costs, the Board resumed these formal proceedings by order issued November 26, 2002, and established a procedural schedule.

On January 23, 2003, Iowa County filed with the Board a motion for summary judgment. On February 7, 2003, South Slope filed a resistance to Iowa County's summary judgment motion and submitted its own motion for summary judgment. On February 13, 2003, South Slope filed a motion to suspend the procedural schedule to allow the Board sufficient time to review and rule on the parties' summary judgment motions. South Slope also requested that the Board order Iowa County to re-file its direct testimony in standard testimony format and provide a more specific statement as to the legal basis for its complaint.

On February 14, 2003, the Board issued an order suspending the procedural schedule in this docket so as to have sufficient time to rule on the parties' respective summary judgment motions. On March 26, 2003, the Board issued an order denying the parties' motions for summary judgment. In that order, the Board also ordered the proceedings in this docket to resume and amended the existing procedural schedule. The Board also directed Iowa County to re-file its direct testimony and exhibits in the standard question-and-answer format.

On April 16, 2003, Iowa County filed a motion requesting the Board reconsider its ruling on Iowa County's summary judgment motion and, in the alternative, dismiss this formal complaint proceeding and proceed to an informal resolution of the complaint. In support of this motion, Iowa County asserts that it never sought formal complaint proceedings in this matter and that the procedures imposed on Iowa County during the course of this proceeding have effectively deprived Iowa County of its complaint rights under Iowa law and the Board's rules. Iowa County also asserts that the plain language of the provisions of South Slope's tariff regarding rates and

charges for E-9-1-1 services fails to satisfy the requirements of Iowa Code § 34A.8(1), specifically that the database charge be set forth in filed and approved tariffs.

On April 25, 2003, South Slope filed a response to Iowa County's motion to dismiss this formal complaint proceeding in lieu of an informal resolution, as well as a motion requesting the Board reconsider its ruling denying South Slope's summary judgment motion and, in the alternative, dismiss Iowa County's complaint. In its response, South Slope notes that in the year that this complaint has been pending, Iowa County never indicated a concern regarding the formal proceeding. South Slope also asserts that the rates and charges of South Slope cannot be affected in the absence of notice and opportunity for a hearing pursuant to Iowa Code § 476.3(1), and since Iowa County has indicated that it wishes this formal proceeding be dismissed in lieu of an informal resolution, its complaint should be dismissed altogether.

The Board will not reconsider its findings regarding the parties' summary judgment motions. The material dispute before the Board in this proceeding is the compliance of South Slope's tariff. The Board determined in its March 26, 2003, order that the resolution of this dispute may require the resolution of factual and policy issues which should be determined by the Board. Neither party submitted compelling new reasons for reconsideration of the Board's March 26, 2003, ruling. Therefore, the Board will deny the parties' motions to reconsider the summary judgment rulings.

Upon review of the proceedings in this matter, the Board does not agree with Iowa County's claim that it has been deprived of any rights and finds that every effort has been made throughout these proceedings to ensure that the parties' rights have been protected. At the onset of this complaint, the Board attempted to facilitate an informal resolution of this proceeding by directing Board staff to meet with the parties in an attempt to reach a settlement. A settlement was not reached. Board staff conversed with Iowa County regarding the process of a formal complaint proceeding and there is no doubt that Iowa County had information about Board procedures available to it before determining whether the formal complaint proceedings should be continued following the unsuccessful settlement discussions. The record demonstrates that Iowa County knowingly and voluntarily participated in this formal proceeding and that the rights of Iowa County and South Slope have been preserved at every juncture of this proceeding.

Nevertheless, the Board will grant Iowa County's request to dismiss this formal proceeding in lieu of an informal proceeding and deny South Slope's request to dismiss this proceeding altogether. As part of the informal proceeding, Board staff will submit a proposed resolution to the parties based on the record assembled to date in the formal proceeding and any supplemental information the parties may submit within two weeks of the date of this order. A new formal complaint proceeding may then be initiated pursuant to 199 IAC 6.5(1). Any proposed changes to rates that may result will not be imposed until reasonable notice and opportunity for hearing, pursuant to Iowa Code § 476.3(1) (2003).

IT IS THEREFORE ORDERED:

1. The April 16, 2003, request for reconsideration to grant the motion for summary judgment filed by Iowa County E-9-1-1 Board on January 23, 2003, is denied.

2. The April 25, 2003, request for reconsideration to grant the motion for summary judgment filed by South Slope Cooperative Telephone Company on February 7, 2003, is denied.

3. The request to dismiss this formal proceeding and proceed to an informal complaint proceeding and proposed resolution filed by the Iowa County E-9-1-1 Board on April 16, 2003, is granted as described in the body of this order.

4. The request to dismiss this complaint filed by South Slope Cooperative Telephone Company on April 25, 2003, is denied.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 5th day of June, 2003.