

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE:</p> <p>QWEST CORPORATION,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 100px;">v.</p> <p>EAST BUCHANAN TELEPHONE COOPERATIVE,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>DOCKET NO. FCU-04-42</p>
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**TEMPORARY INJUNCTION**

(Issued August 13, 2004)

**Background**

On August 13, 2004, Qwest Corporation (Qwest) filed with the Utilities Board (Board) a "Complaint For Emergency Injunctive Relief" (the Complaint) naming East Buchanan Telephone Cooperative (EBTC) as respondent. Qwest alleges that EBTC has "threatened to 'begin blocking any traffic received from Qwest that is not properly identified as Qwest toll traffic' on August 16, 2004." (Complaint, ¶ 5.) The affected traffic would include calls that Qwest describes as "wireless transit traffic," that is, calls that originate with a wireless service provider and are delivered to Qwest for transport to other carriers and their end users. (Complaint, ¶ 1.) Qwest alleges that EBTC's threat to block the disputed traffic, if completed, would violate Iowa Code

§§ 476.20, 476.100(1), 476.100(3), 476.100(5), 476.101(9)(c), 477.5, 477.6, and 477.13 (2003), along with 199 IAC 22.5(13).

Qwest attaches three letters to its Complaint. Exhibit A is a letter from EBTC to Qwest dated July 12, 2004, demanding that Qwest cease and desist sending telephone traffic to EBTC unless the traffic is Qwest toll traffic or Qwest agrees to pay EBTC's tariffed access charges for the traffic regardless of its nature. If Qwest does not accede to EBTC's demands, EBTC will "begin blocking any traffic from Qwest that is not properly identified as Qwest toll traffic" on August 16, 2004. (Complaint, Exhibit A, p. 2.)

Exhibit B is Qwest's response to Exhibit A, dated July 27, 2004. In this letter, Qwest states (among other things) that if EBTC takes action to block traffic on August 16, 2004, Qwest will file with the Board a complaint and request for expedited hearing to stop EBTC from blocking terminating traffic.

Exhibit C is a letter to Qwest from counsel for EBTC dated August 4, 2004, responding to Qwest's letter of July 27, 2004.

Qwest argues that EBTC's demand and threat to block traffic contravenes the Board's ruling in the "Proposed Decision And Order" issued in Re: Transit Traffic, Docket No. SPU-00-7, on November 26, 2001. Qwest also argues that the threat to block calls threatens the public interest. Qwest asserts that wireless service customers whose carrier uses Qwest's transit service to complete calls would be unable to call family, friends, police, or a doctor in EBTC's exchange in an emergency. (Complaint, ¶ 9.) (Calls to 911 emergency services would be unaffected

because they are routed differently, but calls directly to emergency services like police, fire departments, or medical professionals in the EBTC service area would be blocked. Complaint, n. 1, p. 4.)

### **Authority to Issue Temporary Injunction**

Iowa Code § 17.18A provides that, notwithstanding any other provision of chapter 17A and to the extent consistent with the Constitution, an agency may use emergency adjudicative proceedings in a situation involving an immediate danger to the public health, safety, or welfare and requiring immediate agency action. However, the agency may take only such action as is necessary to prevent or avoid the immediate danger that justifies use of emergency adjudication.

The agency order must include a brief statement of findings of fact and conclusions of law to justify the determination of an immediate danger and the agency must give such notice as is practicable to persons who are required to comply with the order. However, unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in emergency adjudicative proceedings or for judicial review thereof.

Finally, the agency order is effective when issued.

### **Conclusions of Law**

1. The Board has jurisdiction to prevent discontinuance of service to all or part of a community pursuant to Iowa Code § 476.20, which provides, in relevant part, as follows:

1. A utility shall not, except in cases of emergency, discontinue, reduce, or impair service to a community, or a part of a community, except for nonpayment of account or violation of rules and regulations, unless and until permission to do so is obtained from the board.

2. The Board has authority to grant emergency adjudicative relief pursuant to Iowa Code § 17A.18A.

### **Findings of Fact**

1. Based on the Complaint filed by Qwest, the Board finds that EBTC intends to block certain telephone calls, commencing on Monday, August 16, 2004.

2. The Board further finds that such action by EBTC would create a danger to the public safety because "a wireless service subscriber whose carrier uses Qwest's transit service to complete calls would be unable to call family, friends, police, or a doctor in EBTC's exchange in an emergency." (Complaint, ¶ 9, footnote omitted.)

3. Finally, because the Complaint was filed on Friday, August 13, 2004, and the blocking is scheduled to commence on Monday, August 16, 2004, the Board finds that the danger described in Finding of Fact No. 2, above, is an immediate danger requiring immediate agency action, even though EBTC has not yet had an opportunity to respond to the Complaint.

4. Based on the Complaint filed by Qwest, the proposed blocking of calls by EBTC would be a discontinuance, reduction, or impairment of service to a part of a community (specifically, wireless subscribers attempting to complete calls to customers served by EBTC).

5. Based on the Complaint filed by Qwest, EBTC's proposed blocking of calls is not justified by nonpayment of account or violation of rules and regulations.

6. EBTC has neither sought nor received permission from the Board to block calls in the manner it proposes.

7. Based on Findings of Fact Nos. 1 through 6, the Board finds that an injunction should issue directing EBTC to cease and desist from all plans to block the disputed traffic.

8. Findings of Fact Nos. 1 through 5 are based upon the Complaint filed this day by Qwest, to which EBTC has had no opportunity to respond. Accordingly, the Board finds that this emergency adjudication should be temporary in nature and that each of these findings, and the injunction itself, should be reconsidered by the Board after EBTC has had an opportunity to respond to the Complaint and Qwest and any other interested persons have had an opportunity to reply.

#### **ORDERING CLAUSES**

##### **IT IS THEREFORE ORDERED:**

1. EBTC is hereby enjoined from blocking communications traffic received from Qwest, as described in EBTC's letter to Qwest dated July 12, 2004 (Complaint, Exhibit A), or in any other manner. This injunction is temporary in nature and shall continue in force only until further Board order in this docket.

2. On or before August 20, 2004, EBTC shall file its response to Qwest's Complaint.

3. All replies to EBTC's response shall be filed within four business days of the date EBTC's response is filed.

4. All replies and responses shall be served by electronic mail or facsimile transmission, or as the parties may otherwise agree, in addition to standard service.

5. This order shall be transmitted to the parties by facsimile transmission to the following numbers: for Qwest, 515-243-6128; for EBTC, 515-246-1474. If facsimile transmission is unsuccessful, the Board's General Counsel shall contact counsel for the parties by the best means available to inform them of this order.

**UTILITIES BOARD**

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/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 13<sup>th</sup> day of August, 2004.