

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

<p>IN RE:</p> <p>IOWA TELECOMMUNICATIONS ASSOCIATION, DUMONT TELEPHONE COMPANY, FOREST CITY TELECOM, INC., GRAND RIVER MUTUAL TELEPHONE CORPORATION, MUTUAL TELEPHONE COMPANY, NORTHERN IOWA TELEPHONE COMPANY, SOUTH CENTRAL COMMUNICATIONS, INC., UNIVERSAL COMMUNICATIONS OF ALLISON, WEBB-DICKENS TELEPHONE CORPORATION, AND WINNEBAGO COOPERATIVE TELEPHONE ASSOCIATION,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">vs.</p> <p>VERIZON WIRELESS, SPRINT PCS, and U.S. CELLULAR CORPORATION,</p> <p style="text-align: center;">Respondents.</p>	<p>DOCKET NO. ARB-04-3 (SPU-00-7)</p>
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**ORDER WAIVING 199 IAC 38.7(3)  
AND REQUIRING RESPONSES AND REPLIES**

(Issued September 3, 2004)

On September 1, 2004, the Iowa Telecommunications Association, Dumont Telephone Company, Forest City Telecom, Inc., Grand River Mutual Telephone Corporation, Mutual Telephone Company, Northern Iowa Telephone Company, South Central Communications, Inc., Universal Communications of Allison, Webb-Dickens Telephone Corporation, and Winnebago Cooperative Telephone Association

(collectively, Petitioners) filed a "Petition for Enforcement of Board Order, For Arbitration, and For Complaint" (the Petition) with the Utilities Board (Board). The Petition was amended on September 2, 2004.

One or more of the Petitioners were parties to an earlier Board docket, Re: Exchange Of Transit Traffic, Docket No. SPU-00-7 (the Transit Traffic docket), which generally involved issues relating to the exchange of telecommunications traffic between wireless and wireline carriers in Iowa. In that docket, Petitioners state, the Board (among other things) directed the parties to negotiate one or more interconnection agreements for the exchange of the traffic at issue. Petitioners state that they have negotiated interconnection agreements with Verizon Wireless, Sprint PCS, and U.S. Cellular Corporation (the Respondents).

The Transit Traffic docket involved issues relating to both the past and future exchange of the telecommunications traffic at issue. When the Board directed the parties to negotiate, it further specified that the terms and conditions of any new negotiated (or arbitrated) interconnection agreement should also "apply to traffic delivered between April, 1999, and the effective date of the new arrangement." "Proposed Decision And Order" issued November 26, 2001, at page 38, affirmed by the Board on March 18, 2002. However, the Petitioners state that in their negotiations the parties "agreed to reserve the issue of past compensation until after an agreement on interconnection and transfer of traffic had been reached." (Petition, paragraph 7.) The parties have now negotiated all interconnection issues except the

compensation for the termination of wireless traffic from April 1999 to May 1, 2004.  
(Petition, paragraph 8.)

Petitioners assert a variety of possible jurisdictional bases for their claim, including arbitration pursuant to 47 U.S.C. § 252 and 199 IAC 38.7(3), a standard complaint proceeding (presumably pursuant to Iowa Code § 476.3 (2003), although that statute is not specified), and a petition for enforcement of the Board's prior orders in the Transit Traffic docket, along with theories of quantum meruit and implied contract. One of these options could have significant consequences with regard to the procedural schedule; if the petition is truly a request for arbitration, then the Board must resolve each unresolved issue no later than nine months after the date on which the initial request for negotiations was made. 47 U.S.C. § 252(b)(4)(C) (2003).

This is potentially problematic, as the Petition does not indicate when the initial request was deemed to have been made, so a deadline cannot be calculated. However, the Board notes that the Petition had to be filed "during the period from the 135<sup>th</sup> to the 160<sup>th</sup> day (inclusive) after the date" of the request; from this, it can be calculated that the parties have deemed the request to have been made between March 20, 2004, and April 19, 2004, inclusive. This would give the Board a decision deadline of sometime between December 20, 2004, and January 19, 2005. Either way, time is tight.

Moreover, if this is an arbitration proceeding, the Board's arbitration rules at 199 IAC 38.7(3) would normally apply. Among other things, those rules provide 25 days for a nonpetitioning party to respond to the Petition and require that the hearing

commence no later than 60 days following receipt of the petition, that is, by October 29, 2004. However, these rules contemplate a different type of arbitration proceeding than this one; specifically, the rules assume that the parties have been unable to negotiate an interconnection agreement, which is not the case here. Therefore, the Board will, on its own motion, waive the procedural deadlines of 199 IAC 38.7(3)<sup>1</sup> and require that the Respondents file their answers to the Petition on or before 14 days from the date of filing, that is, by September 15, 2004. In their answers, in addition to any other response they may believe to be appropriate, Respondents should indicate whether they believe this proceeding is an arbitration proceeding pursuant to § 252 and, if so, when they believe the request for negotiations was made, starting the running of the nine-month clock. The Respondents should also indicate why they believe the issue presented by the Petitioners was not already resolved by the Board in the Transit Traffic docket, if they so believe.

The Petitioners will then have seven days (to September 22, 2004) to file a reply to the answers. The Board will then decide the jurisdictional basis or bases of this docket and establish an appropriate procedural schedule. In that connection, the parties are advised that if this is an arbitration proceeding subject to the nine-month deadline of the federal statute, the procedural schedule will necessarily be very

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<sup>1</sup> The Board finds that the four-factor test of 199 IAC 1.3 is satisfied with regard to this waiver. Application of the rule would pose an undue hardship on the parties by requiring a premature hearing; the waiver will not prejudice the substantial legal rights of any person, as the hearing will still be held (if necessary); the provisions of the rule are not required by any other law (other than the nine-month decision deadline, which the Board will still observe); and substantially equal protection of the public health, safety, and welfare will be afforded by providing notice and an opportunity for hearing.

compressed in order to allow the Board to issue a written decision resolving all unresolved issues in a timely manner. Further, because the arbitration period includes part or all of a major holiday season, the Board will probably be unable to modify the schedule in any significant respect.

**IT IS THEREFORE ORDERED:**

1. The procedural deadlines of 199 IAC 38.7(3) are hereby waived.
2. On or before September 15, 2004, Respondents shall file an answer or answers to the Petition. The answer or answers shall, at a minimum, address the issues identified in the body of this order.
3. On or before September 22, 2004, Petitioners shall file a reply to any answers.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Sharon Mayer  
Executive Secretary, Assistant to

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 3<sup>rd</sup> day of September, 2004.