

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE ARBITRATION OF:

SPRINT COMMUNICATIONS COMPANY L.P.,

Petitioning Party,

vs.

ACE COMMUNICATIONS GROUP, CLEAR LAKE INDEPENDENT TELEPHONE COMPANY, FARMERS MUTUAL COOPERATIVE TELEPHONE CO. OF SHELBY, FARMERS TELEPHONE COMPANY, FARMERS MUTUAL TELEPHONE COMPANY, GRAND RIVER MUTUAL TELEPHONE CORPORATION, HEART OF IOWA COMMUNICATIONS COOPERATIVE, HEARTLAND TELECOMMUNICATIONS COMPANY OF IOWA d/b/a HICKORYTECH, HUXLEY COMMUNICATIONS, IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM f/k/a GTE MIDWEST, KALONA COOPERATIVE TELEPHONE, LA PORTE CITY TELEPHONE COMPANY, LEHIGH VALLEY COOPERATIVE TELEPHONE ASSOCIATION, LOST NATION-ELWOOD TELEPHONE COMPANY, MINBURN TELECOMMUNICATIONS, INC., ROCKWELL COOPERATIVE TELEPHONE ASSOCIATION, SHARON TELEPHONE, SHELL ROCK TELEPHONE COMPANY d/b/a BEVCOMM c/o BLUE EARTH VALLEY TELEPHONE COMPANY, SOUTH CENTRAL COMMUNICATIONS, INC., SOUTH SLOPE COOPERATIVE TELEPHONE COMPANY, SWISHER TELEPHONE COMPANY, VAN BUREN TELEPHONE COMPANY, INC., VENTURA TELEPHONE COMPANY, INC., VILLISCA FARMERS TELEPHONE COMPANY, WEBSTER CALHOUN COOPERATIVE TELEPHONE ASSOCIATION, WELLMAN COOPERATIVE TELEPHONE ASSOCIATION, and WEST LIBERTY TELEPHONE COMPANY d/b/a LIBERTY COMMUNICATIONS,

Responding Parties.

DOCKET NO. ARB-05-2

**ORDER REOPENING DOCKET FOR RECONSIDERATION AND  
SETTING PROCEDURAL SCHEDULE**

(Issued August 19, 2005)

On March 31, 2005, Sprint Communications Company L.P. (Sprint) filed a petition with the Utilities Board (Board) requesting arbitration of certain terms and conditions of a proposed interconnection agreement between Sprint and several rural incumbent local exchange carriers,<sup>1</sup> hereinafter referred to as the RLECs. The petition was filed pursuant to § 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 101-104, 110 Stat. 56 (1996) (hereinafter referred to as the "Act").

On April 15, 2005, the RLEC Group<sup>2</sup> filed a motion to dismiss and a response to the petition. Also on April 15, 2005, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), filed a substantially similar motion to dismiss and response to the petition for arbitration.

On May 26, 2005, the Board issued an order granting the motions to dismiss based on Sprint's status, finding that Sprint does not intend to offer its proposed service in the RLEC exchanges to any party other than its private business partners, pursuant to individually-negotiated contracts. As a result, the Board found that Sprint

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<sup>1</sup> Ace Communications Group, Clear Lake Independent Telephone Company, Farmers Mutual Cooperative Telephone Co. of Shelby, Farmers Telephone Company, Farmers Mutual Telephone Company, Grand River Mutual Telephone Corporation, Heart of Iowa Communications Cooperative, Heartland Telecommunications Company of Iowa d/b/a HickoryTech, Huxley Communications, Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom f/k/a GTE Midwest, Kalona Cooperative Telephone, La Porte City Telephone Company, Lehigh Valley Cooperative Telephone Association, Lost Nation-Elwood Telephone Company, Minburn Telecommunications, Inc., Rockwell Cooperative Telephone Association, Sharon Telephone, Shell Rock Telephone Company d/b/a BEVCOMM c/o Blue Earth Valley Telephone Company, South Central Communications, Inc., South Slope Cooperative Communications Company, Swisher Telephone Company, Van Buren Telephone Company, Inc., Ventura Telephone Company, Inc., Villisca Farmers Telephone Company, Webster Calhoun Cooperative Telephone Association, Wellman Cooperative Telephone Association, and West Liberty Telephone Company d/b/a Liberty Communications.

<sup>2</sup> Being all of the RLECs except Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom.

would not make its proposed services available on a common carrier basis, therefore, would not be a common carrier for purposes of this docket and, therefore, was not entitled to invoke the negotiations and arbitration process as a "telecommunications carrier."

On June 23, 2005, Sprint filed a "Complaint for Declaratory and Injunctive Relief" in the United States District Court for the Southern District of Iowa, naming the Board and the Board members as defendants and seeking to overturn the Board's May 26, 2005, order.<sup>3</sup> During the course of those judicial proceedings, the parties to those proceedings (i.e., Sprint and the Board) concluded that Sprint may have evidence and argument that was not previously presented to the Board that could be relevant to the Board's May 26, 2005, decision. Accordingly, on August 12, 2005, Sprint and the Board, acting through counsel, filed an agreement stipulating to the entry by the Court of an order staying the judicial proceedings for 60 days and remanding the matter to the Board for the duration of the stay to give the Board an opportunity to hear evidence and argument and reconsider its May 26, 2005, order.

On August 18, 2005, the Court approved the stipulation and stayed its proceedings.

Pursuant to the stipulation, the Board is to enter a procedural order establishing a schedule for reconsideration. If the Board ultimately vacates its May 26, 2005, order, Sprint will request dismissal of the action in Court. In the absence of such an order, the stay shall automatically expire on the 61<sup>st</sup> day after

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<sup>3</sup> "Sprint Communications Company L.P. vs. Iowa Utilities Board, et al." Case No. 4:05-CV-354.

entry of the Court's order approving the stipulation, returning the matter to the judicial forum.

The parties to the case in court further stipulated and agreed that all statutory time deadlines set forth in the federal statutes relating to interconnection arbitration proceedings (47 U.S.C. §§ 251 and 252) for determination of Sprint's request for interconnection and arbitration have been tolled from May 26, 2005, until the date, if any, that the Board enters an order vacating its May 26, 2005, order of dismissal and directing that further proceedings take place on Sprint's request for arbitration.

Accordingly, the Board is issuing this order granting reconsideration of its May 26, 2005, dismissal order in this docket and setting a procedural schedule for that reconsideration. The Board notes that the available time is very limited, so it will shorten the time for responding to discovery requests to five days and will encourage the parties to work together to complete discovery as quickly and efficiently as possible, including the use of depositions and other discovery methods that are not typically a part of Board proceedings.

**IT IS THEREFORE ORDERED:**

1. The Board will reopen this docket for purposes of reconsideration, on its own motion, of the May 26, 2005, dismissal order in this docket.
2. The following procedural schedule is established:
  - a. On or before August 25, 2005, Sprint shall file testimony and exhibits in support of its position regarding the Board's reconsideration of its May 26, 2005, dismissal order.

b. On or before September 8, 2005, the RLECs may file testimony and exhibits in support of their position.

c. On or before September 15, 2005, Sprint may file testimony and exhibits in reply to the RLECs.

d. A hearing shall be held beginning at 9 a.m. on September 30, 2005, for the purpose of receiving testimony and the cross-examination of all testimony. The hearing shall be held in the Iowa Utilities Board's Hearing Room, 350 Maple Street, Des Moines, Iowa. The parties shall appear one-half hour prior to the time of the hearing for the purpose of marking exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

e. Oral argument in lieu of written briefs may be held at the end of the hearing on September 30, 2005.

f. The Board shall issue a final order on reconsideration on or before October 17, 2005.

3. In the absence of objection, all underlying workpapers shall become a part of the evidentiary record of these proceedings at the time the related testimony and exhibits are entered into the record.

4. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination that have not been previously filed shall become a part of the evidentiary record of these proceedings. The party making

reference to the data request shall file an original and six copies of the data request and response with the Board at the earliest possible time.

5. The time for responding to data requests is shortened to five days.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Margaret Munson  
Executive Secretary, Deputy

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 19<sup>th</sup> day of August, 2005.