

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 GRANTING IN PART AND DENYING IN PART
MOTION TO COMPEL**

(Issued September 28, 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,¹ hereinafter referred to as the RLECs.

On September 7, 2005, the RLECs filed "Responding Parties' Motion to Compel or, in the Alternative, Motion to Strike and Motion for Leave to Submit Supplemental Testimony." In their filing, the RLECs request that Sprint be required to respond to Data Request Nos. 1 and 9. Further, the RLECs informed the Board of a potential dispute regarding the provision of an unredacted version of the contract between Sprint and MCC Telephony of Iowa, Inc.

A response was filed by Sprint on September 12, 2005. On September 16, 2005, the RLECs filed a reply to the response of Sprint.

DISCUSSION

Data Request No. 1

This request, directed to Sprint witness Mr. Burt, asks for the following information:

¹ 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.

In which states have you provided testimony on this subject matter? Provide a copy of all such testimony.

According to the RLEC's filing, Sprint initially objected to the data request because it is vague and ambiguous in the use of the term "this subject matter." Additionally, Sprint objected on the grounds that the data request seeks information pertaining to matters outside the state of Iowa.

Sprint responded it has now provided copies of Mr. Burt's testimony from state proceedings in Nebraska and Illinois. Because the RLECs do not comment further regarding this data request in the reply filed on September 16, 2005, the Board assumes that no further action is required on this matter.

Data Request No. 9

Data Request No. 9 asks for the following information with respect to Mr. Burts prefiled testimony:

For the cable companies identified at Lines 478-479, provide a copy of each agreement.

Sprint objected to this request because it seeks information pertaining to matters outside the state of Iowa. According to the response provided by Sprint, none of the agreements with the cable companies identified cover any exchanges in Iowa.

The RLECs point out that Mr. Burt's testimony specifically refers to the agreements with cable companies, including Wide Open West, Time Warner Cable, Wave Broadband, and Blue Ridge Communications, as proof of successful implementation of its proposed business arrangement with cable operators outside Iowa.

In its response, Sprint again asserts that it should not be required to produce contracts with other cable companies that do not encompass the provision of any services within Iowa. Alternatively, Sprint suggests that should the Board be inclined to compel Sprint to produce the agreements with the other cable companies, Sprint would agree to strike the testimony at issue. As an alternative to the motion to compel, the RLECs suggest that if the contracts of Sprint in other states are irrelevant, then all references in all pleadings and testimony relating to matters outside Iowa should be stricken from the record.

As the RLECs point out, Sprint has made its relationships with other cable companies an issue in this proceeding by relying on those relationships in its prefiled testimony. There is a protective agreement currently in effect between the parties to this proceeding, attached as Exhibit 2 to the response filed by Sprint. The Board will order Sprint to produce copies of the agreements between Sprint and Wide Open West, Time Warner Cable, Wave Broadband, and Blue Ridge Communications pursuant to that protective agreement.

Redacted MCC Agreement

As part of Data Request No. 16, the RLECs seek a copy of the agreement between Sprint and MCC Telephony of Iowa, Inc. (MCC). According to Sprint, because the MCC agreement is confidential and contains highly sensitive competitive information and there was no protective agreement between the parties, it was not originally provided in response to the data request.

On or about September 6, 2005, the parties reached a mutually acceptable protective agreement. At that time, Sprint produced a redacted version of the MCC

agreement. According to Sprint, the material redacted from the MCC agreement consists solely of competitively sensitive information such as pricing and various aspects of the relationship between Sprint and MCC that, if disclosed, could be used to thwart competition by MCC. Sprint further claims that the redacted material constitutes "trade secret" information as that term is defined in Iowa Code § 550.2 and is therefore entitled to protection from disclosure. Sprint offers to provide an unredacted copy of the agreement to the Board for an *in camera* review and determination.

As the RLECs point out, the Iowa Supreme Court has recently discussed a similar circumstance in Mediacom Iowa L.L.C. v. Incorporated City of Spencer and the Board of Trustees of the Spencer Municipal Utilities, 682 N.W.2d 62 (Iowa 2004). In that case, the Court stated there is no right to refuse discovery on the ground that the matter is a trade secret. Instead, the Court found that information being a trade secret was a reason to obtain a confidentiality agreement or protective order. The Court further noted that relevancy to the subject matter of the lawsuit is broader than relevancy to the precise issues in the pleadings because the rule allows discovery of inadmissible information as long as it leads, or is likely to lead, to the discovery of admissible evidence. Id. at 66.

Sprint has alleged through Mr. Burt's testimony that it intends to offer its interconnection services to all entities that are in a similar situation as MCC. (Prefiled Testimony of James R. Burt, p. 22). The Board finds that the entire agreement between Sprint and MCC should be made available to determine the validity of this assertion. The Board notes that the RLECs have proposed that the document could

be produced in the offices of local counsel James L. Pray for review by counsel for RLECs. This appears to be a reasonable way to proceed. The Board will order that the entire, un-redacted agreement between Sprint and MCC be produced in the manner described.

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

The " Responding Parties' Motion to Compel or, in the Alternative, Motion to Strike and Motion for Leave to Submit Supplemental Testimony " filed by the RLECs on September 7, 2005, is granted in part and denied in part as discussed in this order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 28th day of September, 2005.