

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>MCC TELEPHONY OF IOWA, INC., AND SPRINT COMMUNICATIONS COMPANY L.P.,</p> <p style="text-align:center">Petitioners,</p> <p style="text-align:center">v.</p> <p>IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM,</p> <p style="text-align:center">Respondent.</p>	<p>DOCKET NO. FCU-05-69</p>
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ORDER DISMISSING COMPLAINT

(Issued December 14, 2005)

On November 17, 2005, MCC Telephony of Iowa, Inc. (MCC), and Sprint Communications Company L.P. (Sprint) filed with the Utilities Board (Board) a "Complaint and Request for Injunctive Relief and Expedited Schedule" (the Complaint). MCC and Sprint allege that Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), is engaging in prohibited and anticompetitive acts.

MCC and Sprint allege that MCC is a competitive local exchange carrier (CLEC) providing service in the Des Moines exchange, among others, relying in part on wholesale services from Sprint to provide MCC's retail service. Iowa Telecom is

an incumbent local exchange carrier (ILEC) in the De Soto exchange. Iowa Telecom's Web site (and, presumably, its tariff on file with the Board) indicates that Iowa Telecom's customers in De Soto enjoy Extended Area Service (EAS) to the Des Moines exchange. Traditionally, this means Iowa Telecom's customers in De Soto are able to call all telephone customers in Des Moines without incurring toll charges for the interexchange call.

MCC and Sprint allege that Iowa Telecom is refusing to route traffic from its customers in De Soto to MCC's customers in Des Moines on a locally-dialed, locally-rated basis. MCC and Sprint allege this is a violation of Iowa Code §§ 476.100 and 476.101 and 47 U.S.C. §§ 202, 251(a)(1) and 251(b)(3).

MCC and Sprint filed the Complaint pursuant to Iowa Code § 476.101(8), which requires that if the Board grants formal complaint proceedings, it must render a decision in the proceeding within 90 days after the complaint was filed. Thus, in order to preserve the opportunity to meet this deadline, on November 22, 2005, the Board issued an order shortening Iowa Telecom's time to file its answer to the complaint to November 28, 2005.

On that date, Iowa Telecom filed its response and answer to the complaint. Iowa Telecom alleges that the complaint rests on incorrect assumptions based on incomplete facts and ignores binding Board precedent regarding an ILEC's obligations to a CLEC with regard to EAS arrangements.

Iowa Telecom states that it verified that most calls from its De Soto customers to the MCC's customers in Des Moines could be placed as local calls, but in the case of the particular number identified in the Complaint the call was routed to a fast busy signal, indicating a network problem. In the course of its investigations, Iowa Telecom confirmed that it is routing all of these EAS calls over its EAS trunk to Des Moines. Iowa Telecom concludes from this that it cannot be engaging in discriminatory treatment.

Iowa Telecom also asserts that it would be fully entitled to refuse to route traffic originating in the De Soto exchange bound for MCC customers over the EAS trunks Iowa Telecom uses to send traffic to Qwest. Iowa Telecom argues that the Board's order in Goldfield Access Network, L.C., Docket No. DRU-99-1 (issued March 4, 1999) established that CLECs desiring to originate or receive EAS calls are required to negotiate their own agreements with the ILECs in question.

On December 6, 2005, MCC and Sprint filed a reply to Iowa Telecom's answer. They argue that MCC is authorized to provide service in Des Moines and is doing so through the services of Sprint, which has an interconnection agreement with Qwest. Thus, MCC and Sprint argue, Iowa Telecom has an obligation pursuant to 47 U.S.C. § 251(a) to interconnect, directly or indirectly, with MCC and Sprint. They also argue that the Board's Goldfield order is not relevant to this dispute. In Goldfield, a CLEC was asking Qwest's predecessor to transit EAS calls to other CLECs without compensation. Here, however, the call is being originated by an Iowa

Telecom customer who is paying Iowa Telecom for the ability to make local calls from De Soto to Des Moines. Because Iowa Telecom is being compensated for the service it is providing, the Goldfield order is not relevant to this dispute.

MCC and Sprint also argue that separate bilateral agreements should not be required for every EAS arrangement, every carrier, and every community.

On December 7, 2005, Iowa Telecom filed a supplemental response and answer. The supplement is intended to provide new information for the Board's consideration, but is not a response to the reply filed by MCC and Sprint.

(Supplement at page 2.) In fact, Iowa Telecom reserves the opportunity to respond to that pleading if this matter should continue. (Id.)

In the supplemental affidavit attached to the response, Iowa Telecom states that when it determined there was a problem completing EAS calls to a specific number, it contacted Qwest to investigate the routing of the call. Within two hours of that contact, Qwest responded that it had investigated the routing and discovered and resolved the problem. Iowa Telecom was then able to confirm that MCC's customer was able to receive EAS calls from Iowa Telecom's De Soto customers. Iowa Telecom further states that it is willing to negotiate and execute an interconnection agreement with MCC, but has not yet received a request from MCC for such negotiations. Iowa Telecom further states that it "believes current Board

rules place the obligation to request interconnection on MCC...," although Iowa Telecom does not cite any specific rule in support of this contention.¹

Based on this new information indicating that EAS calls from De Soto to MCC's customer in Des Moines are now being completed as local calls, the Board will dismiss the Complaint. However, the Board will also take this opportunity to offer some additional comment on the proper handling of intercarrier disputes.

First, it is beyond dispute that every carrier has a duty, pursuant to both Federal law and state law, to interconnect with other carriers in order to complete calls. 47 U.S.C. § 251(a)(1); Iowa Code § 476.100(5). This is not a trivial task; the network is large and complex and occasional problems are to be expected. The Board expects all carriers to work together to solve these problems when they occur.

This expectation applies to every carrier involved in carrying calls. No carrier should expect to be able to ignore a problem of which it is aware and later claim that some other carrier was responsible for initiating the process to address the situation. Here, for example, it appears that MCC had an obligation to take reasonable steps to ensure that all proper calls would be completed after MCC turned up its local exchange service in Des Moines. Iowa Telecom, in contrast, had an obligation to

¹ It is possible that Iowa Telecom is referring to 199 IAC 38.7(1)"a," which provides that a telecommunications carrier may initiate negotiations by requesting interconnection "from an incumbent local utility." If so, then the Board notes that this language does not expressly limit the obligation to request negotiations to the CLEC and it is possible that statutes and other rules may impose similar obligations on ILECs.

make sure its customers in De Soto receive the service they are paying for, including (in this case) local calling to all telephone customers in the Des Moines exchange, regardless of which LEC they have chosen, through EAS. The Board is not finding that either of these parties has failed in fulfilling these duties, because this record is not sufficiently developed to make such findings² and the Board is not going to waste resources developing a record only to assign blame for a relatively minor problem that has already been addressed. The point here is that carriers cannot sit back and passively wait for someone else to invite them to negotiate while the telecommunications network is degraded. Again, without assigning blame in this case, it seems reasonable to expect that a carrier that identifies a problem should take it upon itself to seek a long-term solution to the problem and to work with the other carriers involved to achieve that solution, while the other carrier should expect to work with the first carrier toward the same end.

Finally, the Board notes that while this particular problem between the parties to this case appears to have been solved, there is a continuing problem with the fact that Qwest is apparently providing a transit service between Iowa Telecom and

² Sprint says it contacted Iowa Telecom about the problem on an unspecified date, but Iowa Telecom refused to maintain a trouble ticket due to lack of an interconnection agreement (Complaint at ¶ 7). Iowa Telecom admits these allegations, but says Sprint failed to escalate the dispute until the day on which the Complaint was filed, apparently arguing Sprint failed to take reasonable and available steps to try to resolve the matter. (Answer at ¶ 7.) Sprint replies that it is disingenuous for Iowa Telecom to complain about lack of an interconnection agreement when Sprint sent a bona fide request to Iowa Telecom over a year ago. (Reply at page 2.) Iowa Telecom reiterates that it is willing to negotiate and execute an agreement with MCC, but has not received a request from MCC. (Supplemental Answer, Affidavit at ¶ 5.)

Sprint/MCC without compensation. The parties to this docket need to resolve this matter in a timely manner, as well.

IT IS THEREFORE ORDERED:

The "Complaint and Request for Injunctive Relief and Expedited Scheduling" filed on November 17, 2005, by MCC Telephony of Iowa, Inc., and Sprint Communications Company L.P. is dismissed.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 14th day of December, 2005.