

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 100px;">vs.</p> <p>MCI, INC.,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:right">DOCKET NOS. FCU-05-53 FCU-05-56</p>
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**ORDER GRANTING MOTION TO COMPEL DISCOVERY
FILED JANUARY 27, 2006**

(Issued February 8, 2006)

On January 27, 2006, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a motion to compel discovery. In the motion, the Consumer Advocate stated it had sent an email requesting a response to MCI, Inc. (MCI) on December 27, 2005, regarding MCI's objections to certain data requests. The Consumer Advocate further stated it had sent two new data requests, data requests 43 and 44, and a request that MCI produce certain documents requested in data request 19(c), on the same date. The Consumer Advocate stated that the documents requested in data request 19(c) were initially withheld based on MCI's request for a protective agreement, but that the protective agreement had since been executed. In the motion, the Consumer Advocate provided details of an email exchange between it and MCI regarding when MCI would provide its responses. The

Consumer Advocate stated it had not received the responses and requested an order directing MCI, by a date certain in the immediate future, to respond to the December 27, 2005, email, to provide the documents requested in data request 19(c), and to provide responses to data requests 43 and 44.

Subrule 199 IAC 7.15(5) states that opposing parties shall be given the opportunity to respond to motions related to discovery within ten days of the filing of the motion unless the time is shortened by the Board or presiding officer. As of the date of this order, MCI has not filed a response to the Consumer Advocate's motion with the Board.

Discovery procedures applicable in civil actions are available to the parties in contested cases before the Board. Iowa Code § 17A.13 (2005). "The rules providing for discovery and inspection shall be liberally construed and shall be enforced to provide the parties with access to all relevant facts. Discovery shall be conducted in good faith, and responses to discovery requests, however made, shall fairly address and meet the substance of the request." Iowa R. Civ. P. 1.501(2). "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party." Iowa R. Civ. P. 1.503(1). "As this rule makes clear, a party is entitled to discover any information that is not privileged and that is relevant to the subject matter of the lawsuit. [citation omitted.] 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 to the discovery of admissible evidence." Mediacom Iowa, LLC, v. City of Spencer, 682 N.W.2d 62, 66 (Iowa 2004).

The December 27, 2005, email asks MCI to advise the Consumer Advocate whether it would reconsider previous objections to certain data requests and provide the requested information without the need for intervention of the Board. MCI should respond to the email. Data requests 19(c), 43, and 44 appear to meet the requirements of the relevant rules of civil procedure and seek information either relevant to the subject matter of this proceeding or that could result in the discovery of admissible evidence. Therefore, the Consumer Advocate's motion should be granted.

IT IS THEREFORE ORDERED:

The "Motion to Compel Discovery" filed by the Consumer Advocate on January 27, 2006, is granted. If it has not already done so, MCI must respond to the Consumer Advocate's December 27, 2005, email and provide the information requested in data requests 19(c), 43, and 44 to the Consumer Advocate on or before February 15, 2006.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 8th day of February, 2006.