

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE ARBITRATION OF:</p> <p>SPRINT COMMUNICATIONS COMPANY L.P.,</p> <p style="padding-left: 100px;">Petitioning Party,</p> <p style="text-align:center">v.</p> <p>IOWA NETWORK SERVICES, INC.,</p> <p style="padding-left: 100px;">Responding Party.</p>	<p>DOCKET NO. ARB-06-2</p>
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**ORDER DOCKETING PETITION FOR ARBITRATION AND  
SCHEDULING TELEPHONE CONFERENCE**

(Issued May 31, 2006)

On May 17, 2006, Sprint Communications Company L.P. (Sprint) filed a petition with the Utilities Board (Board) requesting the Board arbitrate certain terms and conditions of a proposed Interconnection Agreement between Sprint and Iowa Network Services, Inc. (INS). The petition was filed pursuant to the provisions of Board rules 199 IAC 38.4(3) and 38.7(3) and § 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"). The petition has been identified as Docket No. ARB-06-2.

Paragraph 38.7(3)"f" of the Board's rules requires that the Board docket a petition for arbitration. Paragraph 38.7(3)"c" normally provides 25 days for a non-

petitioning party to the negotiation to file a response to the petition and paragraph 38.7(3)"g" requires the Board to schedule a conference within 15 days of receipt of the petition, to be held within 40 days of the filing of the petition. The purpose of the conference is to plan an arbitration hearing date, clarify the issues to be resolved, identify additional information needed to reach a decision on the issues, schedule production of documents and other information, discuss or rule on any other procedural matters, and consider any other matters that will expedite the arbitration process.

In compliance with the procedures established in the Board's rules, the Board is docketing the petition for arbitration, setting an accelerated date for answering of the petition, and scheduling a telephone conference. The purpose of the conference will be to discuss the matters detailed above. Board staff will contact the parties with the information necessary to participate in the telephone conference.

The Board understands that litigation has been initiated in the United States District Court for the District of Kansas that involves issues that are likely to be raised in this proceeding.<sup>1</sup> The Board recognizes that as a result of this order, there is a chance that these issues will be considered simultaneously by the Board and by the Court. However, the statutory deadline applicable to Board action in this docket requires that the Board proceed, even at the risk of creating parallel proceedings.

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<sup>1</sup> Iowa Network Services, Inc. v. Sprint Communications Company L.P., Civil Action No. 06-2182-CM, U.S. District Court for the District of Kansas.

However, it appears it is possible to avoid this potential waste of resources. In at least one recent situation where related cases were pending before a United States District Court and this agency, the Board filed a motion with the Court asking the Court to abstain from deciding the issues in the case pursuant to the doctrine articulated by the Supreme Court in Younger v. Harris, 401 U.S. 37 (1971), and the Court granted that motion and dismissed the case before it.<sup>2</sup> The Board (or, more accurately, the Board members individually in their official capacities) was a party to that case, so it was appropriate for the Board to file pleadings with the Court.

The Board is not a party to Iowa Network Services, Inc. v. Sprint Communications Company L.P. Accordingly, the Board will set out its understanding of the Younger abstention doctrine in this case and will direct its General Counsel to forward a copy of this order to the United States District Court in Kansas, with copies to counsel for the parties.

In Younger, the Supreme Court held that a federal court may not interfere with a pending state criminal proceeding. Younger, 401 U.S. at 41. The Court stated two reasons for this policy. First, the doctrine that courts should not act in equity when the moving party has an adequate remedy at law and will not suffer irreparable injury if the court choose not to act, and second, the principle of comity, that is, "a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments." Id. at 43-44. Since then, the Court has

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<sup>2</sup> OCCMC, Inc., v. Norris, et al., U.S. District Court for the Southern District of Iowa, No. 4:06-cv-00069, "Order," issued April 24, 2006.

extended the Younger doctrine to civil cases in which the state is a party, to civil cases implicating important state interests, and to state administrative proceedings where an important state interest is at stake. See, e.g., Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 437 (1982) (holding that Younger required the court to abstain from interfering with a disciplinary proceeding brought by the state bar ethics committee).

Younger requires a federal court to abstain from issuing injunctive relief when a three-part test is satisfied. First, there must be an ongoing state proceeding; second, the state proceeding implicates important state interests; and third, the state proceeding affords an adequate opportunity to raise the federal questions presented. Fuller v. Ulland, 76 F.3d 957, 959 (8<sup>th</sup> Cir. 1996). Here, the first factor is satisfied; there is an ongoing state proceeding that will be handled as a contested case, that is, an adjudicatory proceeding with an opportunity for a full-blown evidentiary hearing and, in the end, a written order that will explain the Board's decision and identify the record evidence that supports that decision.

The second factor, implication of important state interests, is also satisfied. Iowa has an express policy, adopted as a statute, in favor of encouraging competition in the telecommunications marketplace, with the goal that communications services should be available throughout the state at just, reasonable, and affordable rates from a variety of providers. Iowa Code § 476.95. The State has charged the Board with the duty to resolve disputes between competitors in that marketplace in a timely manner, see Iowa Code § 476.101(8). That statute establishes a 90-day "rocket

docket" for issuing a Board decision regarding any complaint that is filed with the Board and that asks the Board to determine whether a local exchange carrier is fulfilling its obligations under specified Iowa statutes. The State would not impose that duty and require that it be handled in an expedited manner if there were no important state interests at issue.

This leaves only the third factor, a proceeding that affords an adequate opportunity to raise the federal questions presented. Following the conference scheduled by this order, the Board will establish a procedural schedule that will allow the parties to conduct discovery and submit pre-filed testimony in support of their respective positions. The Board will also schedule a hearing at which that sworn, pre-filed testimony will be admitted into the record and the witnesses will be made available for cross-examination. The parties will have the opportunity to submit legal argument in the form of written briefs and they will receive a written order that explains the basis for the Board's decision, whatever that decision may be. That order will be subject to judicial review in the appropriate Federal district court pursuant to 47 U.S.C. § 252(e)(6). The Board believes these procedures present an adequate opportunity for the parties to raise their issues.

Because this is an ongoing proceeding in front of this agency that implicates an important state interest and affords the parties the opportunity to raise any and all issues they may have, the Board believes that Younger abstention is appropriate and asks that the Court consider this in deciding what it is going to do.

**IT IS THEREFORE ORDERED:**

1. The petition for arbitration filed by Sprint Communications Company L.P. on May 17, 2006, is docketed for consideration by the Board.
2. A telephone conference call is scheduled for 2 p.m. on June 7, 2006. Board staff will contact the parties with the information necessary to participate in the conference call.
3. Responses to the petition for arbitration shall be filed on or before June 5, 2006.
4. The Board's General Counsel is directed to forward a copy of this order to the United States District Court for the District of Kansas in Iowa Network Services, Inc. v. Sprint Communications Company L.P.

**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 31<sup>st</sup> day of May, 2006.