

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>AVENTURE COMMUNICATIONS TECHNOLOGY, LLC,</p> <p style="text-align:center">Complainant,</p> <p style="text-align:center">v.</p> <p>NORTHWEST IOWA TELEPHONE, LLC,</p> <p style="text-align:center">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-06-43</p>
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ORDER GRANTING MOTION TO COMPEL DISCOVERY

(Issued June 22, 2006)

On May 24, 2006, Aventure Communications Technology, LLC (Aventure), filed with the Utilities Board (Board) a petition for declaratory judgment, a complaint against Northwest Iowa Telephone, LLC (NWIT), pursuant to Iowa Code §§ 476.100 and 476.101, and a request for termination of NWIT's rural exemption. Aventure claims NWIT has refused to negotiate terms and conditions for interconnection and exchange of traffic with Aventure and that such refusal interferes with its ability to enter the marketplace.

On May 31, 2006, the Board issued an order declining to issue declaratory relief, docketing Aventure's complaint, establishing an expedited procedural

schedule, and opening an inquiry into whether NWIT's rural exemption should be terminated.

On June 16, 2006, Aventure filed a motion to compel responses from NWIT to certain data requests. Aventure states that on June 6, 2006, it delivered 13 data requests to counsel for NWIT. Aventure attached the requests to its motion. Aventure explains that NWIT's responses to the data requests were due on June 12, 2006, pursuant to 199 IAC 7.15. Aventure states it contacted NWIT's counsel by e-mail on June 12, 2006, to request an electronic copy of the responses. According to Aventure, NWIT responded by saying it would not be responding to the data requests but instead would be filing a special appearance. Aventure states it filed its direct testimony on June 14, 2006, as required by the expedited procedural schedule, but was prejudiced in its ability to present its claims because of NWIT's failure to respond to the data requests.

Aventure asks the Board either to exclude NWIT's testimony as a discovery sanction or to compel NWIT to fully comply with discovery in good faith.

On June 19, 2006, NWIT filed with the Board a special appearance, motion to dismiss, and resistance to Aventure's motion to compel. NWIT asserts the Board does not have jurisdiction to arbitrate an interconnection agreement between the parties or to terminate NWIT's federal rural exemption. NWIT states it appears before the Board by special appearance only and has no obligation to respond to Aventure's data requests.

In support of its motion to dismiss, NWIT asserts 47 U.S.C §§ 251 and 252 do not confer jurisdiction on the Board to arbitrate interconnection rates or to terminate NWIT's federal rural exemption, nor is there a separate state statute granting jurisdiction. NWIT claims it is exempt from state rate regulation under Iowa Code § 476.1. NWIT suggests Aventure submitted its complaint to the Board in order to circumvent a federal court action filed by NWIT seeking declaratory and injunctive relief barring Aventure from seeking arbitration of interconnection rates.

The Board is concerned that parties to proceedings before the Board seem to be making a unilateral decision not to respond to discovery requests because they plan to argue (before the Board or some other forum) that the Board lacks jurisdiction over a particular complaint. The Board reminds the parties that if they have a reason that may justify not responding to a discovery request, they must submit and explain that reason to the Board by means of an appropriate motion filed according to the controlling timeframe. In this case, the Board is following an expedited procedural schedule pursuant to Iowa Code § 476.101(8). NWIT's answers to Aventure's discovery requests were to be provided, or an objection to be made, within five days of receipt, or June 12, 2006, as required by rule 7.15(2). NWIT did not respond to the data requests by that date, nor did it file with the Board a timely objection to the requests. NWIT's special appearance and motion to dismiss filed after the answers to the data requests were required do not provide justification for failing to respond to the requests in a timely manner.

There appears to be no material issue of fact relating to Aventure's assertion that NWIT failed to respond to the discovery requests. NWIT is not disputing that the data requests were delivered, received, and disregarded. On those facts, the Board finds that NWIT violated Board rule 7.15(2) and the May 31, 2006, order establishing an expedited procedural schedule.

The Board will grant Aventure's motion to compel discovery. NWIT is directed to provide good-faith answers to Aventure's 13 data requests no later than 4:30 p.m. on Friday, June 23, 2006.

Iowa Code § 476.51(1) provides that a public utility, which, after written notice by the Board of a specific violation, violates the same provision of an order lawfully issued by the Board, is subject to a civil penalty of not less than \$100 nor more than \$2,500 per violation. Iowa Code § 476.51(2) provides that if the violation is willful, the utility is subject to a penalty of not less than one thousand dollars nor more than ten thousand dollars per violation. Iowa Code § 476.51(3) provides that in the case of a continuing violation, each day a violation continues after the time specified for compliance in the written notice is a separate and distinct offense.

Failure to provide the required answers to Aventure on or before 4:30 p.m. on June 23, 2006, may subject NWIT to penalties pursuant to Iowa Code § 476.51.

The Board will rule on the other parts of NWIT's special appearance and motion to dismiss at the appropriate time.

IT IS THEREFORE ORDERED:

1. The motion to compel discovery filed by Aventure Communications Technology, LLC, on June 16, 2006, is granted.
2. No later than 4:30 p.m., June 23, 2006, Northwest Iowa Telephone, LLC, shall provide answers to data requests numbers 1 – 13 to Aventure. The answers may be provided in electronic form.
3. No later than 4:30 p.m. on June 23, 2006, NWIT shall file notice with the Board that it has provided the answers to data request numbers 1 – 13 to Aventure. NWIT should not file the answers themselves with the Board.
4. Failure to provide the required answers to Aventure on or before 4:30 p.m. on June 23, 2006, may subject NWIT to penalties pursuant to Iowa Code § 476.51.

UTILITIES BOARD

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 22nd day of June, 2006.