

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

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| <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>DOCKET NO. FCU-06-43</p> |
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**ORDER DENYING MOTION TO DISMISS AND
DENYING REQUEST FOR HEARING**

(Issued July 11, 2006)

On May 24, 2006, Aventure Communications Technology, LLC (Aventure), a competitive local exchange carrier (CLEC), filed with the Utilities Board (Board) a petition for declaratory judgment, a complaint against Northwest Iowa Telephone, LLC (NWIT), and a request for termination of NWIT's rural exemption. Aventure states NWIT is an incumbent local exchange carrier (ILEC) and a subsidiary of Long Lines, a communications services company that provides through its various entities local, long distance, video, Internet, and various carrier-to-carrier services.

On May 31, 2006, the Board issued an order denying Aventure's request for declaratory order, docketing Aventure's complaint for a formal proceeding identified

as Docket No. FCU-06-43, 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 discovery. On June 19, NWIT filed a special appearance responding to Aventure's complaint, a motion to dismiss, and a resistance to Aventure's motion to compel. On June 22, 2006, the Board issued an order granting Aventure's motion to compel and deferring ruling on NWIT's motion to dismiss.

In its special appearance and motion to dismiss, 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 asserts that 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 and that there is no separate state statute granting jurisdiction. NWIT contends that § 251(f) does not grant jurisdiction to the Board but only provides procedures for a state to follow if the state chooses to implement the federal regulatory scheme.

NWIT argues that because it is not subject to rate regulation under Iowa Code § 476.1, to read Iowa Code §§ 476.100 and 476.101 (statutes Aventure alleges NWIT has violated) so as to regulate NWIT's interconnection rates would result in the implicit repeal of § 476.1. NWIT argues that when the Iowa Legislature chose not to grant the Board power to regulate NWIT's rates, it also precluded the Board from

terminating the federal rural exemption and arbitrating the prices NWIT charges other carriers.

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. NWIT argues that the federal district court should be allowed to determine the threshold issue of federal jurisdiction before any Board action.

On June 27, 2006, Aventure filed a resistance to NWIT's motion to dismiss and a response to NWIT's special appearance. Aventure argues that for NWIT, an ILEC and a provider of intrastate services, to assert the Board lacks jurisdiction is absurd. Aventure states that while NWIT may be exempt from rate regulation, nothing in § 476.1 precludes service or complaint jurisdiction. Aventure claims there is nothing in the context of the statute or any of the Board decisions cited by NWIT that applies the exemption from rate regulation to interconnection rates or agreements.

Aventure disputes NWIT's assertion that there is no state statute authorizing the Board to terminate a rural exemption. Aventure argues the Iowa Legislature has granted the Board broad authority in Iowa Code §§ 476.2 and 476.15 and that grant includes the authority delegated in 47 U.S.C. § 251(f).

Aventure argues the Board should not defer to the federal district court action brought by NWIT because NWIT has not provided a valid reason for such deferral.

Aventure argues that this case falls within the "compelling circumstances" exception to the "first filed" rule recognized in Meredith Corporation v. Riegel Consumer Products, 2005 U.S. Dist. LEXIS 1346 (S.D. Iowa, Jan. 31, 2005). Aventure states that the compelling circumstances in this case are that NWIT knew action before the Board was imminent and that NWIT is seeking declaratory relief from federal court in order to deprive Aventure of its choice of forum.

Aventure asks the Board to deny NWIT's motion to dismiss, require NWIT to promptly complete the case, and enter into a Board-approved arbitration agreement with Aventure.

On June 30, 2006, NWIT filed a reply in support of its motion to dismiss and an application for a hearing on the motion. In response to Aventure's assertion that the motion to dismiss was not timely filed, NWIT argues it can challenge the Board's subject matter jurisdiction at any time on or before July 19, 2006, the date the parties are to submit their analyses of the legal standards that apply to this case.

NWIT restates its arguments that the Board lacks jurisdiction to terminate NWIT's rural exemption and arbitrate its interconnection rates. NWIT argues that Iowa Code §§ 476.2 and 476.15 are general grants of jurisdiction that do not override the exemption from rate regulation in Iowa Code § 476.1. NWIT cites the Board's declaratory order issued in Docket No. DRU-02-4 on October 18, 2002, in In re: Interstate 35 Telephone Company, for the proposition that the general terms of Iowa Code chapter 476 cannot be read to abrogate a rural exemption.

NWIT asks the Board to set a date for a hearing to hear oral argument on the motion to dismiss and states it does not object to an extension of the statutory time period for the Board to hear Aventure's complaint in order to fully consider the issues presented in the motion to dismiss.

In response to NWIT's "special appearance," the Board observes that its rules do not provide for the filing of a special appearance. The Board will treat the special appearance as an answer to Aventure's complaint.

The Board has considered the parties' arguments and will deny NWIT's motion to dismiss. The Board agrees with Aventure that NWIT's motion to dismiss was not filed on a timely basis under either a regular or expedited schedule. However, even if the motion to dismiss had been filed on a timely basis, the Board would deny it. For purposes of ruling on the motion to dismiss, the Board views the allegations in Aventure's complaint in the light most favorable to Aventure and resolves doubts in Aventure's favor. The Board will deny a motion to dismiss if any reasonable grounds exist on which Aventure may be able to justify relief. Here, Aventure alleges that NWIT has refused to negotiate terms and conditions for interconnection in violation of various provisions of Iowa law and that such refusal interferes with Aventure's ability to enter the marketplace. The Board finds that those are reasonable grounds on which Aventure may be entitled to relief from this agency, if proven, and will therefore deny NWIT's motion to dismiss.

The Board has authority to hear and resolve Aventure's complaint and to conduct an inquiry into whether NWIT's rural exemption should be terminated. In particular, Iowa Code § 476.15 gives the Board jurisdiction over "the utility business of public utilities operating within this state to the full extent permitted by the Constitution and laws of the United States." Thus, when federal law authorizes state commissions to engage in certain regulatory activities, Iowa law authorizes the Board to exercise that federal authority. In this case, for example, 47 U.S.C. § 251(f)(1)(B) directs state commissions to conduct inquiries for the purpose of determining whether to terminate a rural telephone company's exemption under § 251(f)(1)(A) and Iowa Code § 476.15 authorizes the Board to do so.

With respect to the Board's decision in Interstate 35, that case involved only the Board's state law authority over intrastate rates. In this case, Aventure asks the Board to exercise federal law authority over interconnection issues. Thus, Interstate 35 is distinguishable from the present case.

Therefore, the Board will deny NWIT's motion to dismiss, both because it was untimely and on the merits. NWIT is a party to this proceeding and is obligated to comply with the expedited schedule established in the Board's May 31, 2006, order docketing Aventure's complaint.

The Board has considered NWIT's request for hearing for oral argument on the motion to dismiss and concludes that setting a hearing for purposes of oral argument on the motion is not necessary. The parties have had sufficient opportunity

to present and analyze the issues relating to the motion to dismiss in their filings to date.

IT IS THEREFORE ORDERED:

1. The motion to dismiss filed by Northwest Iowa Telephone, LLC, on June 19, 2006, is denied.
2. The request for a hearing on the motion to dismiss filed by Northwest Iowa Telephone, LLC, on June 30, 2006, is denied.

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 11th day of July, 2006.