

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>COON CREEK TELECOMMUNICATIONS CORP.,</p> <p style="text-align:center">Petitioner,</p> <p style="text-align:center">vs.</p> <p>IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM,</p> <p style="text-align:center">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-06-42</p>
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**ORDER GRANTING, IN PART, AND DENYING, IN PART, MOTION TO COMPEL
AND GRANTING LIMITED EXTENSION OF TIME**

(Issued August 4, 2006)

On August 1, 2006, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), filed with the Utilities Board (Board) a motion to compel discovery and motion to extend the procedural schedule. Iowa Telecom asked the Board to compel Coon Creek Telecommunications Corp. (Coon Creek) to respond fully and completely to certain data requests served upon it by Iowa Telecom and to extend the procedural schedule. Iowa Telecom's testimony is currently due August 4, 2006. Coon Creek filed a resistance to the motion to compel and extend procedural schedule on August 3, 2006. Iowa Telecom replied to the resistance on the same date.

Subrule 199 IAC 7.15(4) provides that "[p]rior to filing any motion related to discovery, parties shall make a good-faith effort to resolve discovery disputes without the involvement of the board or presiding officer." While it appears from e-mails attached to the pleadings that there was some attempt to resolve the dispute, part of Iowa Telecom's motion to compel was based on the anticipated incompleteness of discovery that had not been received. Iowa Telecom asked the Board, in part, to compel "Coon Creek to fully and completely supplement all Data Request responses that it has said it intends to supplement . . ." (Iowa Telecom's motion to compel, p. 6). In fact, Iowa Telecom indicated in its reply that the supplemental responses were sufficient and the only discovery issues remaining related to data requests 8, 17, and 20. (Iowa Telecom's reply, p. 4).

The parties' arguments with respect to the three data requests remaining in dispute are fully set forth in the motions, resistance, and reply. Because an expedited ruling on the motion is necessary, the Board will not repeat the parties' arguments in its order.

Data request number 8 requests documents supporting witness Naig's statement to the effect that Iowa Telecom's pricing practices have resulted in substantial damages to Coon Creek. The response was that the information would be provided when completed, which the pleadings indicate will be August 15, 2006.

In response to other data requests, Coon Creek provided its available audited financial statements. The documents referred to in the response to data request 8

are Coon Creek's most recent audited financial statements, which will not be completed until August 15 and are being prepared independently of this docket. Coon Creek said it cannot provide documents that it does not yet have and that have not been completed; all other financial statements requested appear to have been provided to Iowa Telecom.

In its reply, Iowa Telecom said it was willing to file its initial testimony without the response, but would like the opportunity to file surrebuttal testimony if necessary on the issue of damages once the information is available. The Board will deny the request to file surrebuttal testimony and ask the parties to attempt to resolve this issue once the audited financial statements become available; it may be that no additional testimony is necessary. If no agreement is reached, Iowa Telecom may renew its request to file surrebuttal testimony.

Data request 17 requests that Coon Creek provide historic line counts. The parties have negotiated and the original request has been narrowed, and Coon Creek has provided some information it had to manually review, since the records are in storage. Coon Creek believes Iowa Telecom in fact has the information it requested, but won't accept it because the original records were not saved or transferred to Iowa Telecom from GTE Midwest Incorporated. (Coon Creek's response, pp. 6-8).

Apparently the dispute relates primarily to line counts subsequent to June 2004. While estimates are available from Iowa Telecom UNEs for this period, Iowa

Telecom said that the estimates do not distinguish between business and residential customers; Iowa Telecom wants the actual information. Iowa Telecom said the date is particularly relevant as it covers the period immediately after Coon Creek's loop overbuild.

It appears from the pleadings that there is substantial data regarding line counts, including the Board's competition surveys, even if some of it involves estimates. However, the Board's surveys do not provide data on a monthly basis and the Board believes that actual monthly data may be important to demonstrate any trends regarding line counts and is information the Board would expect to be in the record. The Board will compel Coon Creek to produce the data.

The Board will not, however, extend the time for Iowa Telecom's testimony until this data is produced. Substantial information is currently available and the actual data may not be much different from the estimates currently available. If Iowa Telecom believes it necessary to file supplemental testimony once the information is produced, it may make a request at that time.

Data request 20 relates to financing information concerning Coon Creek's \$6.5 million investment. In reading the pleadings, it appears the parties are talking past each other and have not made a serious attempt to resolve the dispute. Coon Creek has responded to the data request, and it is unclear to the Board, after reviewing the pleadings, what additional information Iowa Telecom is seeking. The

motion to compel will be denied. This dispute should be able to be clarified with a follow-up data request.

Iowa Telecom's testimony is due today. The Board will extend the time to Monday, August 7, 2006. Coon Creek may have the same length of extension to file its subsequent testimony, if it desires.

IT IS THEREFORE ORDERED:

1. The motion to compel filed by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, on August 1, 2006, is granted with respect to data request 17, and denied in all other respects.

2. Iowa Telecom is granted an extension of time to August 7, 2006, to file testimony.

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 4th day of August, 2006.