

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>SPRINT COMMUNICATIONS COMPANY L.P. AND MCC TELEPHONY OF IOWA, INC.,</p> <p style="text-align:center">Complainant,</p> <p style="text-align:center">v.</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-06-49</p>
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ORDER DENYING PRELIMINARY INJUNCTION

(Issued September 5, 2006)

On July 24, 2006, Sprint Communications Company L.P. (Sprint) and MCC Telephony of Iowa, Inc. (MCC), collectively "Complainants," filed with the Utilities Board (Board) a motion to enforce an arbitration agreement or, in the alternative, a complaint against Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom). Complainants allege that Iowa Telecom is in violation of an arbitration order issued by the Board on March 24, 2006, in Docket Nos. ARB-05-2, ARB-05-5, and ARB-05-6 and has refused to provide functional interconnection to Sprint (resulting in the refusal to permit the initiation of customer service by MCC) in violation of Iowa Code § 476.100 (2005). Among other things, Complainants request

a preliminary injunction "immediately enjoining Iowa Telecom from any further delay of MCC's entry into the market, or further delay in filling Sprint orders for interconnection-related services...." (Complaint at p. 20, emphasis in original.)

On August 3, 2006, Iowa Telecom filed an answer to the complaint. Section I of the answer responds to the Complainants' request for a preliminary injunction. Iowa Telecom argues that the Board's authority to grant emergency adjudicative relief is pursuant to Iowa Code § 17A.18A, which is limited to "situations involving an immediate danger to the public health, safety, or welfare requiring immediate agency action." Iowa Telecom characterizes this matter as a dispute over the application of an interconnection agreement and says it does not rise to the level required for relief pursuant to § 17A.18A. Iowa Telecom also argues that temporary injunctions are intended to maintain the status quo, not to order affirmative action that amounts to granting a party the final relief it seeks without trying the case.

On August 7, 2006, the Complainants filed a brief in reply to Iowa Telecom's answer. They say that Iowa Telecom is now asserting that the issues in this docket have nothing to do with MCC's traffic, so the Board should direct Iowa Telecom to start exchanging MCC's traffic. The Complainants also argue that there is no need to resolve certain issues associated with the Local Exchange Routing Guide (LERG) before granting a preliminary injunction because Iowa Telecom has admitted that Sprint's proposal is an acceptable one. Finally, the Complainants argue that the Board has the inherent "authority to force Iowa Telecom to do what is right," apart

from any authority pursuant to § 17A.18A (p. 8, footnote omitted). Even if the standards of § 17A.18A are applied, they are satisfied because MCC's "welfare" is endangered by Iowa Telecom's actions. The Complainants define "welfare" in terms of MCC's opportunity to earn economic benefit by entering the local exchange market in some of Iowa Telecom's exchanges.

On August 14, 2006, Iowa Telecom filed a rebuttal brief, in which it disagrees with the Complainants' characterizations of Iowa Telecom's arguments and asserts that MCC's traffic and the proper approach to the LERG are, in fact, issues in this case. Iowa Telecom also expands on the arguments it made in its answer.

On August 21, 2006, the Complainants filed a supplemental reply brief. They accuse Iowa Telecom of shifting its position on issues like the MCC traffic and the LERG, saying that Iowa Telecom is constantly moving the target in an attempt to delay MCC's market entry. They also say that if a preliminary injunction is granted, the Complainants "could" waive their statutory right to a Board decision within 90 days of the date their complaint was filed. (Supplemental reply brief, p. 7, n. 1.)

The Board will deny the motion for preliminary injunction. The Board does not agree with Iowa Telecom's argument that emergency relief pursuant to § 17A.18A is limited to maintaining the status quo; that statute gives the Board authority to take any action that is necessary to prevent or avoid an immediate danger to the public health, safety, or welfare that justifies the use of emergency adjudication. That action may include granting affirmative relief, in appropriate cases.

However, the Board believes that when the Complainants request an order granting affirmative relief, rather than one that merely maintains the status quo, they assume a somewhat heavier burden. This is particularly true when the emergency relief they request is substantially the same as the final relief they seek. As Iowa Telecom says, in some respects the Complainants are seeking a preliminary injunction that would grant them the final relief they seek without the necessity of trying the case. It would require a severe and immediate threat to the public health, safety, or welfare to justify that level of relief on an emergency basis.

Here, the only threat the Complainants have identified is potential harm to the economic interests of MCC, alleged to be the result of delaying tactics on the part of Iowa Telecom that are based on technicalities and objections that are without merit. The Board recognizes and supports the State's policy in favor of encouraging competition in the telecommunications marketplace (see Iowa Code § 476.95). Based on that policy, the Board generally supports MCC's efforts to enter the marketplace, but the Board also supports the efforts of other providers of telecommunications services, including Iowa Telecom. In this case the Board believes that it can best provide that support to both parties by reaching and resolving the merits of this dispute as quickly as possible, rather than by granting the requested relief before hearing the evidence. Pursuant to § 476.101(8), the Board will render its decision on the merits within 90 days of the date the complaint was filed, that is, on or before October 20, 2006. In light of this fast-approaching decision

deadline, the Board finds it is appropriate to deny the Complainant's request for a preliminary injunction and proceed to the merits in an expeditious manner.

IT IS THEREFORE ORDERED:

The request for preliminary injunction filed on July 24, 2006, by Sprint Communications Company L.P. and MCC Telephony of Iowa, Inc., 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 5th day of September, 2006.