

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: IOWA NETWORK SERVICES, INC., AND SPRINT COMMUNICATIONS COMPANY L.P.	DOCKET NO. SPU-06-12
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**ORDER GRANTING REQUEST FOR CONFIDENTIAL TREATMENT AND
ACCEPTING SETTLEMENT AGREEMENT**

(Issued October 5, 2006)

PROCEDURAL HISTORY

On August 26, 2006, the Utilities Board (Board) issued an order docketing this matter as Docket No. SPU-06-12. On September 12, 2006, Sprint Communications Company L.P. (Sprint) and Iowa Network Services, Inc. (INS), filed a settlement agreement and a joint motion for approval of the agreement. On the same date, INS filed a request that the settlement agreement be treated as confidential and withheld from public inspection pursuant to Iowa Code §§ 22.7(3) and (6). In the joint motion for approval of the settlement agreement, Sprint and INS state that they are authorized by the Consumer Advocate Division of the Department of Justice (Consumer Advocate) to state that Consumer Advocate does not contest or object to the settlement agreement but reserves its right to contest the request for confidential treatment.

On September 15, 2006, Consumer Advocate filed a resistance to the request for confidential treatment, and on September 29, 2006, INS filed a reply to Consumer Advocate's resistance.

REQUEST FOR CONFIDENTIAL TREATMENT

INS requests confidential treatment of the "Agreement for Switching and Transport" (Agreement) it has entered into with Sprint. The information for which confidentiality is sought includes the rates, terms, and conditions pursuant to which INS will provide switching and transport services to Sprint. INS supported the request for confidential treatment with an affidavit from Dennis M. Creveling, Vice President, Finance, for INS. The material for which confidentiality was requested was sealed in a separate envelope and marked confidential. INS cited Iowa Code §§ 22.7(3) and 22.7(6) as authority for confidential treatment of the data.

INS claims the information in the Agreement consists of trade secrets recognized and protected as such by law which should be held confidential pursuant to section 22.7(6). INS states release of this information to the public would give advantage to its competitors, would not benefit the public, and could cause financial harm to INS. Accordingly, INS asserts, the Agreement is entitled to confidential treatment.

Consumer Advocate resists the request for confidential treatment. First, Consumer Advocate argues that even if the information in the Agreement is a trade secret, the Board has the legal authority pursuant to § 22.7 and to 199 IAC 1.9(5) to

make the information public anyway. Consumer Advocate argues that public policy considerations dictate that the Agreement should be available for public inspection because it is an "interconnection agreement" voluntarily negotiated between two telecommunications carriers and the broad public purpose of 47 U.S.C. § 252 requires that such agreements should be available to the public, even if these carriers are not properly classified as carriers subject to the provisions of § 252. Consumer Advocate argues that disclosure of the Agreement will further the development of competition because competitors and potential competitors will be able to assess whether particular services or configurations are technically feasible, whether certain business arrangements are available, and can assure themselves that there are no anticompetitive provisions in the Agreement.

In its reply, INS argues that the Agreement is not subject to the filing requirements of § 252 because the filing requirement of that statute only applies to agreements that include an incumbent local exchange carrier (ILEC), and neither Sprint nor INS is operating as an ILEC with respect to this Agreement. INS also argues that while the Agreement does address the technical aspects of interconnection, it also contains additional terms and conditions of the business arrangement between Sprint and INS that are proprietary. INS says it offers the same technical services to others in the industry.

The Board will grant the request for confidential treatment. It appears that 47 U.S.C. § 252 does not require that this agreement be filed with the Board. Section 252(h) requires that interconnection agreements approved under subsection (e) be

filed with the relevant State commission, that being the Board in Iowa. Subsection (e) provides in relevant part that "[a]ny interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission." The subsection then divides all interconnection agreements into two classes, those adopted by negotiation under subsection (a) and those adopted by arbitration under subsection (b). This Agreement was not adopted by arbitration, so it is only required to be filed with the Board if it was adopted by negotiation under subsection (a). However, subsection (a) refers only to interconnection agreements between an ILEC and a telecommunications carrier. Here, it is undisputed that neither party is operating as an ILEC, so this Agreement was not negotiated under subsection (a) and, therefore, is not required to be filed with the Board pursuant to § 252. In fact, the Board has not been cited to, and has not found through its own research, any provision of law that requires that the Agreement be filed with the Board. If public release of this type of agreement were believed to be in the public interest, one would expect that there would be a legal requirement that this type of agreement be filed with the Board. The absence of such a requirement tends to support the conclusion that no significant public interest will be served by public release of the Agreement.

The information in question qualifies as a report to a government agency. Based on the affidavit supplied by INS, release of such information serves no public purpose. Therefore, the Board will hold the information confidential pursuant to Iowa Code § 22.7(6).

The Board notes the filed information may also be confidential as a trade secret pursuant to Iowa Code § 22.7(3). However, because the Board finds the information should be held confidential under section 22.7(6), the Board does not reach the question of whether the information is a trade secret.

JOINT MOTION FOR APPROVAL

INS and Sprint filed a joint motion for approval of the Agreement. Consumer Advocate has not objected to or resisted that motion.

As discussed in the preceding section, the Board is not aware of any statute or rule requiring that the Agreement be filed with the Board in the first instance. As such, it is not clear that the Board's approval is required or that the Board even has jurisdiction to approve the Agreement. However, in order to accommodate the request of the parties, the Board will accept the Agreement for filing, without condition or modification.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The request for confidentiality filed by Iowa Network Services, Inc., on September 12, 2006, is granted.
2. The information shall be held confidential by the Board subject to the provisions of 199 IAC 1.9(8)"b"(3).

3. The settlement agreement filed by Sprint Communications Company, L.P., and Iowa Network Services, Inc., on September 12, 2006, is accepted without condition or modification.

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 October, 2006.