

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">Complainants,</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>DOCKET NO. FCU-06-49</p>
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**FINAL DECISION AND ORDER AND
ORDER ALLOCATING COSTS**

(Issued November 9, 2006)

PROCEDURAL HISTORY

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 arbitration agreement or, in the alternative, a complaint against Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom). Complainants allege, among other things, 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 (Arbitration Order) and has refused to

provide functional interconnection to Sprint, resulting in a refusal to permit the initiation of service to customers by MCC, in violation of Iowa Code § 476.100 (2005).

Sprint alleges that at the beginning of the relevant time period it was a certified local exchange carrier (CLEC); it now operates under an "Order in Lieu of Certificate" authorizing Sprint to provide telecommunications services to wholesale customers. MCC is a certificated CLEC.¹

Iowa Telecom is an incumbent local exchange carrier as defined in 47 U.S.C. § 251(c) and a local exchange carrier under Iowa Code § 476.96(5).

Complainants allege that Iowa Telecom has refused interconnection and violated various provisions of Iowa Code §§ 476.100 and 476.101 and the Arbitration Order. Complainants requested an expedited procedural schedule and an order immediately enjoining Iowa Telecom from any further delay of MCC's entry into the market or further delay in filling Sprint's orders for interconnection-related services.

On July 28, 2006, the Board issued an order docketing the complaint and establishing an expedited procedural schedule.

On August 3, 2006, Iowa Telecom filed an answer to the motion and complaint.

On August 21, 2006, the Board issued an order revising the procedural schedule in this matter by changing the date of the hearing to September 14 and 15, 2006.

¹ See In Re: Sprint Communications Company L.P., "Order Canceling Certificate and Issuing Order in Lieu of Certificate," Docket No. SPU-05-21, Certificate No. 0271, issued March 3, 2006.

On September 5, 2006, the Board issued an order denying Complainants' request for preliminary injunction, explaining that it could best provide support to all parties by deciding the merits of the dispute according to the expedited procedural schedule rather than granting the requested relief before hearing the evidence.

A hearing was held on September 14 and 15, 2006. Briefs were filed on September 22, 2006, by Complainants and Iowa Telecom.

On October 3, 2006, the parties filed a joint motion to suspend the procedural schedule for three weeks. The parties agreed to extend the Board's statutory deadline for resolution of this matter to allow the parties time to pursue discussions related to voluntary resolution of the issues in this proceeding.

On October 19, 2006, the Board issued an order granting the joint motion for suspension of procedural schedule and extending the decision deadline in this docket to November 10, 2006.

On October 31, 2006, Complainants filed a statement of supplemental authority that included a copy of a decision issued on October 30, 2006, by the United States District Court for the Western Division of New York, in *Berkshire Telephone Corporation, et al. v. Sprint Communications Company L.P., New York Public Service Commission, et al.*, No. 05-CV-6502.

ISSUES AND ANALYSIS

In its motion to enforce the Board's arbitration agreement, Complainants argue that Sprint, MCC, and Iowa consumers have been and continue to be severely

prejudiced by Iowa Telecom's actions. Complainants claim Iowa Telecom's actions are anti-competitive and are damaging competitors and competition in ways that are irreparable and include refusing to process Sprint's order for interconnection facilities necessary to implement the Sprint-MCC business model to enable MCC to enter the market; insisting that Sprint obtain additional interconnection agreements with other carriers before Iowa Telecom will process Sprint's orders; requiring a separate interconnection agreement with MCC before it will route MCC's traffic via Sprint under the agreement with Sprint; and intentionally delaying implementation of the interconnection agreement with Sprint. Complainants argue that Iowa Telecom is attempting to relitigate the Sprint-MCC business model by making an untimely collateral attack on the Board's Arbitration Order.

Iowa Telecom asserts it has worked with Sprint in good faith to implement the parties' Board-approved interconnection agreement and that the issues on which the parties differ are matters of contractual interpretation relating directly to the agreement. Iowa Telecom states that wireless, toll, and Internet service provider-bound (ISP) calls were expressly excluded from connection under the parties' agreement. Iowa Telecom states that the complaint essentially asks the Board to preempt any operational or legal concerns raised by Iowa Telecom regarding implementation of the Board-approved interconnection agreement. Iowa Telecom emphasizes that the agreement governs the legal relationship between Iowa Telecom and Sprint and that the Board's role in this proceeding should be one of contract interpreter.

Iowa Telecom denies it is in violation of a Board order or any statutory requirement. According to Iowa Telecom, disputes over interpretation of contracts cannot constitute a violation of a Board order or statute and do not form the basis for the Board to issue notice regarding civil penalties under Iowa Code § 476.51. Iowa Telecom asks the Board to find that Sprint cannot demand facilities or act out of compliance with the terms of the interconnection agreement.

The primary issue in this proceeding is whether the Board should order Iowa Telecom to exchange traffic with Sprint for MCC's customers under the Board-approved interconnection agreement between Sprint and Iowa Telecom. Several related secondary issues can be described as Iowa Telecom's reasons for refusing to implement the interconnection agreement at this time. The Board's discussion will focus on the merits and sufficiency of those reasons. If the Board determines that the secondary issues can be resolved in such a way that the interconnection agreement can be effectively used to allow the exchange of traffic between Sprint and Iowa Telecom, it follows that Iowa Telecom should accept that traffic. Four other issues (notice of civil penalties; the validity of Iowa Telecom's bona fide request (BFR) for negotiations with MCC; extending the term of the interconnection agreement; and allocation of costs) will also be addressed in this decision.

1. **Should the Board order Iowa Telecom to exchange traffic with Sprint for MCC's customers under the Board-approved interconnection agreement between Sprint and Iowa Telecom?**
 - a. **Should the Board order Iowa Telecom to process Sprint's ASRs immediately in accordance with the LERG entries provided by Sprint?**

Sprint witness Mr. Lloyd Lantz testified that Iowa Telecom rejected Sprint's Access Service Request (ASR) because, according to Iowa Telecom, Sprint's Local Exchange Routing Guide (LERG) entries designating Iowa Telecom's tandem as the homing tandem were incorrect. (Tr. 102). Iowa Telecom states that it informed Sprint that the LERG entries in the ASR would require Iowa Telecom to perform certain tandem functions (transport, switching, termination) that Iowa Telecom is not obligated to perform. (Iowa Telecom post-hearing brief, p. 6).

Iowa Telecom argues that unless Sprint has direct connections to commercial mobile radio service (CMRS) providers and interexchange carriers (IXCs), the Sprint LERG entries will direct all CMRS providers and IXCs to route traffic bound for NPA/NXXs assigned to Sprint in exchanges in which Iowa Telecom is the incumbent local exchange carrier through Iowa Telecom's tandem switch. (Iowa Telecom post-hearing brief, p. 5). Iowa Telecom states that by the terms of section 19 of the agreement, it is only obligated to the interconnection of local traffic. According to Iowa Telecom, all traffic other than "local traffic" is outside the terms of the agreement and the agreement provides neither rights nor liabilities to either party except as it relates to local traffic. Iowa Telecom also points to section 20.3 of the agreement,

which states that "Sprint will not transport ISP bound, CMRS or toll traffic using the Interconnection Facilities established pursuant to this Agreement."

Iowa Telecom argues that even where Sprint proposes to direct connect to CMRS providers, there will be residual wireless traffic from carriers with whom Sprint has not direct connected. Iowa Telecom states that leaving the local field blank in Sprint's LERG entry will cause traffic that includes wireless that is not direct connected to default route to the Iowa Telecom tandems. (Tr. 329). Iowa Telecom states that arrangements between the parties will need to be made regarding compensation for this traffic. (Iowa Telecom post-hearing brief, p. 8).

Sprint lists the Iowa Telecom tandem in the "toll" field in the LERG entries for the Sprint NPA-NNXs in each exchange area. According to Sprint, this practice is consistent with an industry practice in which the ILEC tandem is used in routing to the specific exchange area; there are no viable alternative tandem providers for Iowa Telecom's territory; and it is not possible to leave the toll field blank, as doing so would cause toll calls destined for MCC customers to be dropped. (Complainants' post-hearing brief, pp. 20-21; Tr. 103).

Sprint intends to leave the "local" field of the LERG blank and not populate it with Iowa Telecom's tandem designation. Because Iowa Telecom insists that it is not required to transit local traffic to other carriers subtending Iowa Telecom's tandems, Sprint has attempted to resolve this issue by agreeing to connect directly with each wireless carrier subtending an Iowa Telecom tandem. (Complainants' post-hearing brief, pp. 21-22; Tr. 173-74).

Sprint also testified it has made corrections to erroneous local LERG entries brought to its attention at hearing. (Tr. 243). Sprint shows the corrections in Attachment 2 to its brief, which is a copy of the LERG entry screens in the Business Integrated Routing/Rating Database System (BIRRDs) for each of Iowa Telecom's four tandems. They show no local tandem entry. (Complainants' post-hearing brief, p. 22).

The Board finds that Sprint's proposals are reasonable steps to address Iowa Telecom's concerns about CMRS and toll traffic. Sprint indicates it will obtain trunking for both toll and local traffic to each tandem switch. Sprint has also proposed to direct connect to all CMRS providers operating in each tandem's switch exchange area. Sprint's offer to direct connect and incur these added expenses appears to the Board to be an effective proposal to resolve the LERG dispute. Further, the Board finds that, based on the record in this proceeding, it does not appear that Sprint has a viable alternative to using the Iowa Telecom tandems.

The Board notes Iowa Telecom's concern about compensation for residual CMRS traffic, but concludes this issue can be resolved if and when such residual traffic actually occurs, can be measured, and becomes a problem. The concern about potential residual traffic does not invalidate the LERG entries and must not delay acceptance of Sprint's ASR.

The Board will order Iowa Telecom to process Sprint's ASRs immediately in accordance with the LERG entries provided by Sprint showing the Iowa Telecom tandems in the toll entry field and leaving the local field blank.

b. Should the Board order Iowa Telecom to process Sprint's order for an interconnection facility?

Complainants state that Iowa Telecom refuses to process Sprint's order for an interconnection facility based on a claim that the location of the physical point of interconnection (POI) is in dispute. Complainants argue there is no dispute over the POI, but Iowa Telecom confuses the manner in which the physical interconnection between the parties' networks is established (the "physical POI") and the manner in which costs associated with that interconnection facility are apportioned under the agreed meet point arrangement (the "financial POI"). (Complainants' post-hearing brief, p. 22).

The dispute between parties on the POI concerns whether section 18 of the agreement allows for a physical POI distinct from a financial POI. Sprint did not request a POI at the Iowa Telecom switch location but seeks an agreement where the parties will establish a meet point interconnection arrangement at the exchange boundary for each exchange where Iowa Telecom has a tandem switch located. (Complainants' post-hearing brief, p. 24). The parties agree that section 18.1 allows Sprint to choose the exchange boundary as a meet point. (Tr. 217-19).

Section 18.1 of the agreement provides that the parties will establish a meet point interconnection arrangement at the exchange boundary for each exchange where Iowa Telecom has a tandem switch located. Section 18.3 recognizes that the facilities may be provisioned in a number of different ways; "(e.g. owned, leased, or obtained pursuant to tariff, etc.)." Section 18.4 provides that each party is financially

responsible for the costs of the facilities on its side of the POI. (Complainants' post-hearing brief, p. 23)

Iowa Telecom argues that Sprint's ASR is defective because Sprint has made contradictory requests regarding the POI location. (Iowa Telecom post-hearing brief, p. 16). Iowa Telecom's interpretation of the agreement is that the physical and financial POI are the same location. Iowa Telecom states that pursuant to section 18.1, Sprint may unilaterally establish a POI at the relevant exchange boundary or Iowa Telecom and Sprint may voluntarily agree to an alternate location at the serving central office. Iowa Telecom states that either location is acceptable to it. (Iowa Telecom post-hearing brief, p. 16).

Iowa Telecom states that section 18.2 provides that each party is responsible for engineering and maintaining its network on its side of the POI. Pursuant to section 18.3, regardless of how such facilities are provisioned, each party is responsible to provide facilities to the POI and, according to section 18.4, each party shall pay the entire cost of any transport, switching, billing, testing or other facilities required on its side of any POI. (Iowa Telecom post-hearing brief, p. 17).

Complainants characterize Iowa Telecom's position as requiring that either (1) Sprint must build out a physical facility located at the Iowa Telecom exchange boundary, or (2) if Sprint establishes a physical interconnection located at an Iowa Telecom switch, then Sprint must bear 100 percent of the cost of that facility, rather than paying only for the portion on Sprint's side of the Iowa Telecom exchange boundary. (Complainants' post-hearing brief, p. 23). Sprint claims the first option is

erroneous because it ignores section 18.1 of the agreement, which provides that "Sprint may establish a POI at an Iowa Telecom switch location subject to negotiation of the terms and conditions applicable to the interconnection facility." (Complainants' post-hearing brief, p. 24).

Iowa Telecom witness Mr. Porter stated at hearing that the existing meet point facility between Iowa Telecom and Qwest Corporation (Qwest) controls the location of the meet point under the interconnection agreement. (Tr. 324-26). Under this logic, the Iowa Telecom-Qwest meet point cannot be used for the meet point interconnection between Iowa Telecom and Sprint. Complainants counter that section 18.3 of the agreement contemplates multiple ways that the facilities can be provisioned. Under section 18.1, the interconnection is treated as a meet point interconnection arrangement and the financial responsibility is shared between Iowa Telecom and Sprint. Complainants argue that when sections 18.1, 18.3, and 18.4 of the agreement are read together, it is clear that the agreement allows Sprint to provision a facility through a number of options, including leasing from another carrier, and each party will be financially responsible for the cost of the facility on its own side of the meet point arrangement. (Complainants' post-hearing brief, p. 22).

Iowa Telecom asserts Sprint cannot request the POI option most advantageous to it from a network perspective without bearing the associated cost. (Iowa Telecom post-hearing brief, p. 19). Iowa Telecom witness Mr. Porter provided three diagrams (Exhibits 501 - 503) supporting his interpretation of the meet point language. Exhibit 502 concerned the Sprint POI being located at the Rockwell City

exchange boundary. Mr. Porter's diagram shows Sprint coming into the Rockwell City exchange on an existing Qwest interconnection facility, hitting the Iowa Telecom cross-connect facility in the Rockwell City central office, and then coming back out of the central office on local network facilities to the Sprint-designated POI at the exchange boundary. The traffic then would be carried back from the exchange boundary POI to the central office and the tandem switch. (Tr. 325).

Sprint witness Ms. Luehring stated that during negotiations about the Rockwell City tandem, the existing Qwest-Iowa Telecom facility was discussed as a way for Sprint to reach the tandem. Ms. Luehring states that the fact the Qwest-Iowa Telecom meet point does not match up with the meet point in the agreement is not relevant. Ms. Luehring argues there is a facility which can be financially divided based on the language of section 18.1. (Tr. 219-21).

As illustrated in Exhibit 502, Iowa Telecom's interpretation would require the existence of facilities from the central office cross-connect out to an exchange boundary and back to the tandem switch, with this last segment requiring construction. That interpretation would add delay, expense, inefficiency in the network layout, and further disputes to the implementation. The Board finds that this is not a reasonable interpretation of the parties' agreement.

The Board finds that Complainants offer a reasonable reading of the agreement that (1) pursuant to section 18.1, Sprint may choose the location of the physical POI; (2) pursuant to section 18.3, the facilities may be provisioned in a number of different ways (e.g., owned, leased, or obtained pursuant to tariff, etc.),

such as leased Qwest interconnection facilities; and (3) pursuant to section 18.4, each party is financially responsible for its side of the POI. The Board will order Iowa Telecom to process Sprint's order for an interconnection facility according to Sprint's interpretation of section 18 of the agreement allowing for a separate physical and financial POI.

c. Should the Board order Iowa Telecom to port numbers to Sprint for MCC customers at Sprint's request ?

Complainants state that Local Number Portability (LNP) has become an issue, as Iowa Telecom witness Mr. Porter stated that Iowa Telecom would not port numbers for MCC customers at Sprint's request. (Complainants' post-hearing brief, pp. 13-14; Tr. 365). Complainants ask the Board to order Iowa Telecom to port numbers to Sprint for MCC customers at Sprint's request, under the terms of the Sprint-Iowa Telecom interconnection agreement. (Complainants' post-hearing brief, p. 38).

Complainants state that the Board directly ruled on this issue in the Arbitration Order, in which the Board rejected Iowa Telecom's position that Sprint could not request LNP from Iowa Telecom. The Board's decision to approve Sprint's language regarding LNP was based on 47 C.F.R. 52.23(c), which states:

Beginning January 1, 1999, all LECs must make a long-term database method for number portability available within six months after a specific request by another telecommunications carrier in areas in which that telecommunications carrier is operating or planning to operate.

The Board noted that Sprint would be a telecommunications carrier and, as such, would be able to request LNP.

Iowa Telecom witness Porter stated that the real LNP issue is authority to transfer the number to the carrier who is providing the service and that would be MCC. Mr. Porter further stated that LNP would be a "day one" issue with MCC but not with Sprint. (Tr. 426-27). The Board understands this to mean that Iowa Telecom believes this issue must be resolved before MCC can commence providing local exchange service in Iowa Telecom exchanges.

The Board does not find anything regarding the LNP issue in the present case to be different from the issue resolved by the Board in the Arbitration Order. Sprint will control the numbers, own the switch, and have the role that includes intercarrier relationships. Sprint is a telecommunications carrier as defined by FCC rules. The validity of the Sprint-MCC business plan was litigated during the arbitration proceeding. The Board ruled that Sprint's language regarding LNP be adopted. Complainants ask the Board to order Iowa Telecom to port numbers to Sprint for MCC customers at Sprint's request, under the terms of the Sprint-Iowa Telecom interconnection agreement. This action appears to be necessary for the interconnection agreement to be implemented.

Sprint witness Luehring also expressed concern with Iowa Telecom's statement that Iowa Telecom may not be able to port numbers from some Iowa Telecom exchanges based on the Board's order extending the period to implement

LNP. Ms. Luehring stated that the order Iowa Telecom relied on for this statement² also required Iowa Telecom to prioritize exchanges for LNP deployment if the exchanges have been the subject of multiple bona fide requests or where foreseeable competitive entry by wireline carriers using their own last-mile networks is seen. Ms. Luehring requests that Iowa Telecom prioritize the exchanges that Sprint has identified in its LNP bona fide request (as shown in Exhibit 101) and provide a revised implementation timeline. (Tr. 187-88). The revision to the LNP deployment timeline is a condition of the Network Improvement Plan that was approved for Iowa Telecom. Sprint has requested certain exchanges in its bona fide request and Iowa Telecom should provide a revised and accelerated implementation timeline to Sprint, as required by the Board's order in Docket No. SPU-04-8.

d. Should the Board enjoin Iowa Telecom from refusing to exchange traffic with Sprint on the grounds that the telephone numbers used by MCC customers were obtained by Sprint?

According to Complainants, Iowa Telecom's position is that Sprint is not entitled to obtain numbering resources for use by MCC customers. (Complainants' post-hearing brief, p. 15). Complainants state that because MCC does not need its own numbering resources, there is no reason for Iowa Telecom to block traffic directed to or from a Sprint-assigned number. Complainants argue that the "Order in Lieu of Certificate" issued to Sprint confers authority on Sprint to obtain numbers to serve Sprint's wholesale business. (Complainants' post-hearing brief, p. 30).

² In Re: Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, Docket No. SPU-04-8, Final Decision and Order, issued September 17, 2004.

In support of its argument that numbers used by Sprint to provide service for MCC customers are unlawful, Iowa Telecom cites the Central Office Code Assignment Guide (COCAG) developed by the Alliance for Telecommunications Industry Solutions (ATIS). Iowa Telecom states that according to the COCAG, Sprint may use the numbers it has acquired in Iowa Telecom exchanges only for its own retail operations or for resellers and that, because Sprint does not have a certificate, there may not be a need to route any traffic to Sprint's NPA/NXXs. Iowa Telecom argues that MCC must obtain its own Operating Company Number (OCN) and number resources as a facility-based CLEC, according to the requirements in the COCAG.

Complainants argue that the COCAG offers guidelines, not law; that the "Order In Lieu of Certificate" is a governmental principle that supersedes the COCAG; and that various provisions of the COCAG actually support Sprint's use of numbers to provide services to MCC.

The Board was aware of the proposed Sprint-MCC business arrangement when it issued the "Order in Lieu of Certificate" and canceled Sprint's retail intrastate service tariff. In its order issued March 3, 2006, the Board acknowledged that Sprint needed numbering resources for its wholesale business and that Sprint is a telecommunications provider as defined in federal law. Support for the Board's order is found in 47 CFR § 52.15(f)(1)(v), which states:

Intermediate numbers. Intermediate numbers are numbers that are made available for use by another telecommunications carrier or non-carrier entity for the

purpose of providing telecommunications service to an end user or customer. Numbers ported for the purpose of transferring an established customer's service to another service provider shall not be classified as intermediate numbers.

Sprint argues that its numbers are not sold, brokered, bartered, or leased, but are associated with services it is providing to customers such as MCC. Sprint argues that its use of numbers is similar to carriers that purchase a primary rate interface (PRI) that includes a number used by the purchaser but assigned to the LEC providing the PRI. Sprint also points out that Voice Over Internet Protocol (VoIP) providers commonly use numbers assigned to other carriers by purchasing appropriate services from those carriers. (Tr. 375).

The Board finds that, taken together, the COCAG guidelines cited by the parties appear to provide sufficient flexibility to allow for the Sprint-MCC business arrangement. The Board finds COCAG Paragraph 1.0 to be particularly relevant in this respect. That paragraph states:

While these guidelines were developed at the direction of the FCC, they do not supersede controlling appropriate NANP Area governmental or regulatory principles, guidelines, and requirements.

Thus, the COCAG contemplates that a state may do as the Board did with its order in lieu of certificate, which was to allow a telecommunications carrier that is not a certificated local exchange carrier access to numbering resources in order to enhance competitive alternatives for end users.

Complainants ask the Board to enjoin Iowa Telecom from refusing to exchange traffic with Sprint on the grounds that the telephone numbers used by MCC customers were obtained by Sprint. As it appears that Iowa Telecom will not exchange traffic without such an order, the Board will direct Iowa Telecom to exchange traffic with Sprint, regardless of the origin of the telephone numbers used by MCC customers.

2. Should the Board give notice to Iowa Telecom that failure to comply with a Board order directing it to exchange traffic pursuant to the interconnection agreement between Sprint and Iowa Telecom may result in civil penalties pursuant to Iowa Code § 476.51?

Complainants argue that the Board should give notice to Iowa Telecom pursuant to Iowa Code § 476.51 that any further delays in effectuating the Board's order will result in civil penalties. Iowa Code § 476.51 provides:

1. A public utility which, after written notice by the board of a specific violation, violates the same provision of this chapter, the same rule adopted by the board, or the same provision of order lawfully issued by the board, is subject to a civil penalty, which may be levied by the board, of not less than one hundred dollars nor more than two thousand five hundred dollars per violation.

2. A public utility which willfully, after written notice by the board of a specific violation, violates the same provision of this chapter, the same rule adopted by the board, or the same provision of an order lawfully issued by the board, is subject to a civil penalty, which may be levied by the board, of not less than one thousand dollars nor more than ten thousand dollars per violation. For the purposes of this section, "*willful*" means knowing and deliberate, with a specific intent to violate.

Complainants assert that Iowa Telecom's behavior in this matter has been egregious and far beyond what has in the past resulted in civil penalties from the Board.

The record before the Board in this case establishes that Iowa Telecom has delayed the implementation of the Board-approved interconnection agreement by refusing to process Sprint's ASRs and exchange traffic for reasons that the Board finds to be specious, and therefore is in violation of the Board's Arbitration Order. The interconnection agreement between Sprint and Iowa Telecom was approved pursuant to Board rules on May 24, 2006. Iowa Telecom's obstructionist behavior has caused significant expense for Complainants and has impaired their ability to provide consumers with competitive local exchange service offerings. Any further delays in exchanging traffic are prohibited by this order and may form the basis for civil penalties pursuant to Iowa Code § 476.51. The Board will give notice that any further delay by Iowa Telecom in processing Sprint's ASRs and in exchanging traffic may be considered a violation of this order and may subject Iowa Telecom to civil penalties pursuant to Iowa Code § 476.51.

3. Should the Board determine whether the bona fide request from Iowa Telecom to MCC is valid?

Complainants ask the Board to order that Iowa Telecom's bona fide request (BFR) to MCC is invalid and clarify that the Sprint-Iowa Telecom agreement is in no way dependent on a separate Iowa Telecom-MCC agreement. The validity of an Iowa Telecom BFR to MCC is not an issue properly before the Board in this

proceeding. Any determination of the validity of a BFR from Iowa Telecom to MCC must be made in a proceeding to consider an arbitration petition brought before the Board pursuant to appropriate federal statutes and regulations. The Board will deny Complainants' request to rule on the validity of the BFR from Iowa Telecom to MCC.

Iowa Telecom witness Porter testified at hearing that Iowa Telecom considers its letter dated May 24, 2006, to MCC to be a valid BFR and that the Board could expect to receive an arbitration petition during the 135- to 160-day window provided by 47 U.S.C. § 252(b)(1). The Board will await that filing to determine whether Iowa Telecom's May 24, 2006, letter is a valid BFR under 47 U.S.C. § 252, if such a determination is necessary. Meanwhile, the parties should implement the existing Sprint-Iowa Telecom agreement without delay.

On a related issue, Iowa Telecom also argues that a letter of authorization is necessary from MCC as MCC will be the carrier that communicates with the customer and will be the party with whom Iowa Telecom will do number porting. Iowa Telecom witness Porter testified that Iowa Telecom must have a letter of agency with the service provider who provides the end user service. (Tr. 381). This letter would address potential issues of customer authorization and slamming under Iowa Code § 476.103 and the associated rules. The Board rejects this interpretation of the statute and the Board's rules. In this context, MCC will bear any risk of failing to comply with Board rules prohibiting unauthorized changes in telecommunications service, not Iowa Telecom. The Board concludes that Iowa Telecom's position that MCC must obtain letters of agency from consumers is without merit.

4. Should the Board extend the term of the approved interconnection agreement between Sprint and Iowa Telecom by declaring the first day of the term to be the date of the Board's order in this contested case?

Complainants argue that in order to avoid rewarding Iowa Telecom for its improper delay, the Board should extend the term of the approved interconnection agreement between Sprint and Iowa Telecom by declaring the first day of the term to be the date of the Board's order in this docket. The Board cannot give this type of relief in the context of interpreting an interconnection agreement. Generally, a state commission's only authority under 47 U.S.C. § 252 is its authority "to approve new arbitrated interconnection agreements and to interpret existing ones according to their own terms." *Pac. Bell v. Pac-West Telecomm, Inc.*, 325 F.3d 1114 (9th Cir. 2003). Changing the first day of the term of the negotiated interconnection agreement would be changing a term of an agreement that has been previously approved, and the Board is precluded from doing so in these circumstances. The Board will deny Complainants' request to change the first day of the term of the parties' agreement.

5. Allocation of costs.

Finally, the Board will consider the matter of allocating the Board's costs associated with this proceeding. Iowa Code § 476.10 gives the Board authority to allocate and charge its expenses attributable to a specific proceeding to (a) the person bringing the proceeding before the Board or (b) to persons participating in matters before the Board. When deciding to assess expenses to the parties in a

docket, the Board may consider the following factors in determining the appropriate assessment levels for each party:

1. The financial resources of the party;
2. The effect that assessment may have on participation by intervenors;
3. The nature of the proceeding; and
4. The contribution of the party's participation to the public interest.

These factors give the Board substantial discretion in assessing costs among the parties. The Board reads these factors, particularly the third factor, to allow the Board to consider the type of proceeding involved and whether the proceeding was (or should have been) necessary or in the public interest, among other factors. The Board observes that, in bringing this action, Sprint sought to avail itself of rights under a Board-approved interconnection agreement and that any delay in implementing that agreement has accrued entirely to Iowa Telecom's benefit. The Board concludes Iowa Telecom unilaterally made this proceeding necessary and consequently will allocate 100 percent of the Board's costs to Iowa Telecom.

Under Iowa Code § 476.10, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) decides the appropriate allocation of its costs. The Board encourages Consumer Advocate to consider the Board's allocation when it decides its own allocation.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, shall exchange traffic with Sprint Communications Company L.P. for customers of MCC

Telephony of Iowa, Inc., according to the interconnection agreement between Sprint and Iowa Telecom deemed approved on May 24, 2006, and according to the following requirements:

a. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, shall process the Access Service Requests made by Sprint Communications Company L.P. immediately in accordance with the Local Exchange Routing Guide entries provided by Sprint as described in this order.

b. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, shall process the orders for interconnection facilities according to Sprint Communications Company L.P.'s interpretation of the parties' agreement, as described in the body of this order.

c. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, shall port numbers to Sprint Communications Company L.P. for customers of MCC Telephony of Iowa, Inc., at Sprint's request, as described in this order.

d. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, shall exchange traffic with Sprint Communications Company L.P. regardless of the origin of the telephone numbers used by customers of MCC Telephony of Iowa, Inc.

2. The Board notifies Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, that failure to comply with this Board order directing it to exchange traffic pursuant to the interconnection agreement between Sprint Communications

Company L.P. and Iowa Telecom may result in civil penalties pursuant to Iowa Code § 476.51.

3. The request by Sprint Communications Company L.P. and MCC Telephony of Iowa, Inc., that the Board determine the validity of a bona fide request for negotiation made by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, to MCC Telephony of Iowa, Inc., is denied.

4. The request by Sprint Communications Company L.P. and MCC Telephony of Iowa, Inc., that the Board extend the term of the approved interconnection agreement between Sprint and Iowa Telecom is denied.

5. All costs of the Iowa Utilities Board associated with this proceeding are allocated to Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom.

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 9th day of November, 2006.