

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">vs.</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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ORDER DENYING REHEARING

(Issued December 22, 2006)

On November 9, 2006, the Utilities Board (Board) issued its "Final Decision and Order and Order Allocating Costs" (Final Decision and Order) in this docket concerning a complaint filed by Sprint Communications Company L.P. (Sprint) and MCC Telephony of Iowa, Inc. (MCC). The complaint alleged that Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), was in violation of an arbitration order issued by the Board on March 24, 2006, in Docket Nos. ARB-06-2, ARB-05-5, and ARB-05-6 (Arbitration Order) and has refused to provide functional interconnection with Sprint, thereby precluding MCC from initiating service to its customers in Iowa Telecom's service territory.

In the Final Decision and Order, the Board directed Iowa Telecom to exchange traffic with Sprint for customers of MCC pursuant to the interconnection agreement between Sprint and Iowa Telecom deemed approved by the Board on May 24, 2006. Further, the Board notified Iowa Telecom that failure to comply with the Final Decision and Order may result in civil penalties pursuant to Iowa Code § 476.51 and allocated all of the Board's costs associated with this proceeding to Iowa Telecom.

On November 29, 2006, Iowa Telecom filed an application for rehearing pursuant to 199 IAC 7.27. Iowa Telecom takes issue with the Board's finding in the Final Decision and Order that Iowa Telecom's reasons for not exchanging traffic were specious, the Board's characterization of Iowa Telecom's behavior as obstructionist, and the Board's conclusion that Iowa Telecom unilaterally made this proceeding necessary. Iowa Telecom asks the Board to reconsider placing Iowa Telecom on notice for purposes of civil penalties, to reapportion the costs of the proceeding, and to modify the Final Decision and Order to acknowledge that Iowa Telecom's positions were not unreasonable.

Iowa Telecom contends it acted reasonably throughout this proceeding in questioning whether the interconnection agreement allows Sprint to (1) designate a financial point of interconnection (POI) that is distinct from the physical POI and (2) unilaterally designate the Iowa Telecom tandem as its access tandem in the Local Exchange Routing Guide (LERG). Iowa Telecom identifies the POI and LERG entries as the principal points of dispute between the parties.

Iowa Telecom claims its refusal to process Sprint's Access Service Request (ASR) based on the POI issue was reasonable and argues that the Board should not have characterized Iowa Telecom's position on the issue as unreasonable. Iowa Telecom argues that the Board should not criticize Iowa Telecom's position in light of the fact that Sprint's position on the POI issue continued to evolve during the course of these proceedings.

Iowa Telecom also argues its refusal to process Sprint's ASR based on Sprint's LERG entries was reasonable. Iowa Telecom claims Sprint filed its complaint with the Board before Iowa Telecom had a meaningful opportunity to respond to Sprint's proposed resolution of the wireless traffic issue. Iowa Telecom argues that the Board's observation in the Final Decision and Order that Sprint corrected the errors brought to its attention at hearing is an acknowledgement of the illegitimacy of the previous LERG entries. Iowa Telecom asserts that the Board should not have characterized Iowa Telecom's position on the LERG issue as unreasonable when there is no legal right for Sprint to designate Iowa Telecom's tandems for termination of toll traffic.

Iowa Telecom claims that the Board's notice to Iowa Telecom of the potential for civil penalties pursuant to Iowa Code § 476.51 fails because the Board's Final Decision and Order does not cite a specific provision of the Arbitration Order that has been violated. Iowa Telecom asks the Board to remove the notice language from the Final Decision and Order.

On December 6, 2006, Sprint and MCC filed a resistance to Iowa Telecom's application for rehearing, arguing there is no valid basis for reconsideration. Sprint and MCC state this proceeding was not limited to the POI and LERG issues, and that even if Iowa Telecom had acted reasonably regarding those issues, the Board would still have been correct in characterizing Iowa Telecom's overall actions as obstructionist and its positions as specious. Sprint and MCC point to Iowa Telecom's refusal to port numbers to Sprint for MCC's customers and refusal to exchange traffic to numbers held by Sprint but used for jointly-provided Sprint-MCC services as examples of Iowa Telecom's delay tactics. Sprint and MCC argue that the core of the dispute is Iowa Telecom's attack on the Sprint-MCC business model, which has been approved by the Board but resisted by Iowa Telecom.

Sprint and MCC dispute Iowa Telecom's statement that the Final Decision and Order produced a novel result involving two POIs. Sprint and MCC state there is a single POI, as specified in the interconnection agreement, and that Iowa Telecom's arguments to the contrary elevate form over function. Sprint and MCC point out that Iowa Telecom's proposed solution, involving a new circuit running out from the Iowa Telecom switch to the exchange boundary and back, was wasteful and not reasonable.

Regarding the LERG issue, Sprint and MCC observe that Iowa Telecom attempts to turn Sprint's good-faith efforts at compromise into a concession that the dispute created by Iowa Telecom was valid. Sprint and MCC dispute Iowa Telecom's

position that it did not have a reasonable opportunity to consider Sprint's offer regarding wireless traffic, noting that Iowa Telecom had over three months to adapt to Sprint's proposal. Sprint and MCC state that the erroneous local field entries were simple errors that could be worked out by parties acting in good faith, not a reason for Iowa Telecom to refuse to exchange traffic.

Sprint and MCC argue that Iowa Telecom's argument regarding civil penalties is circular, without merit, and would prevent the Board from ever assessing civil penalties. Sprint and MCC state that the Board appropriately notified Iowa Telecom that further delay in allowing the market entry of MCC would be considered a violation of the Final Decision and Order and would subject Iowa Telecom to penalty and that removing the notice would allow Iowa Telecom to engage in one more act of obstruction before civil penalties could be considered.

Sprint and MCC support the Board's allocation of its costs to Iowa Telecom, arguing that Iowa Telecom left Sprint and MCC no choice but to bring their complaint. Sprint and MCC observe that Iowa Telecom, by its own admission, was not going to do certain things, such as port numbers or traffic to Sprint-held numbers, without a Board order directing Iowa Telecom to do so.

The Board will deny Iowa Telecom's application for rehearing. Iowa Telecom's application does not advance any new arguments or offer any additional facts for the Board to consider. Instead, Iowa Telecom is asking the Board to modify its Final Decision and Order based on information and arguments the Board has already

rejected. The Board will not reconsider its characterization of Iowa Telecom's behavior throughout these proceedings, nor will it reconsider the allocation of its costs to Iowa Telecom or remove the notice for purposes of Iowa Code § 476.51.

IT IS THEREFORE ORDERED:

The "Application for Rehearing" filed on November 29, 2006, by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, 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 22nd day of December, 2006.