

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

<p>IN RE:</p> <p>QWEST COMMUNICATIONS CORPORATION,</p> <p style="text-align:center">Complainant,</p> <p style="text-align:center">vs.</p> <p>SUPERIOR TELEPHONE COOPERATIVE; THE FARMERS TELEPHONE COMPANY OF RICEVILLE, IOWA; THE FARMERS &amp; MERCHANTS MUTUAL TELEPHONE COMPANY OF WAYLAND, IOWA; INTERSTATE 35 TELEPHONE COMPANY, d/b/a INTERSTATE COMMUNICATIONS COMPANY; DIXON TELEPHONE COMPANY; REASNOR TELEPHONE COMPANY, LLC; GREAT LAKES COMMUNICATION CORP.; AND AVENTURE COMMUNICATION TECHNOLOGY, LLC,</p> <p style="text-align:center">Respondents.</p>	<p style="text-align:center">DOCKET NO. FCU-07-2</p>
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**ORDER DENYING EMERGENCY MOTION TO SUSPEND SUBPOENAS,  
DENYING MOTION TO MODIFY AND QUASH SUBPOENAS,  
DENYING MOTION TO COMPEL, AND  
DENYING REQUEST FOR SANCTIONS**

(Issued September 6, 2007)

**PROCEDURAL HISTORY**

On August 24, 2007, Free Conferencing Corporation (Free Conferencing) filed with the Utilities Board (Board) a request to modify and quash subpoenas served upon Free Conferencing by Qwest Communications Corporation (QCC) in connection

with this matter. In support of its request, Free Conferencing submitted a memorandum to the Board wherein Free Conferencing states it is not a party to this action and is a corporation organized under the laws of in the state of Nevada with its principal place of business being in Southern California. Free Conferencing states that it provides businesses and other customers with a free conference calling service, in addition to fee-based conferencing services.

Free Conferencing states that QCC served it with subpoenas on or about June 5, 2007. Free Conferencing also states that on June 15, 2007, it notified QCC of various objections that it had with the subpoenas; namely, that they were unduly burdensome and that they sought the production of confidential and proprietary information. Free Conferencing states that on July 17, 2007, QCC filed a motion to compel compliance with the subpoenas in California state court and Free Conferencing opposed the motion.

Free Conferencing argues that the subpoenas should be quashed or modified to narrow the scope of the requests and to protect Free Conferencing from being required to produce confidential and proprietary information. Free Conferencing cites 199 IAC 7.16(2), which authorizes the Board to quash or modify a subpoena for any lawful reason. In addition, Free Conferencing cites Iowa Rules of Civil Procedure 1.1701(2)(c) and 1.504(1). Free Conferencing also cites to the Board's recent order in this proceeding issued August 16, 2007, wherein the Board addressed discovery issues with respect to other non-parties. Free Conferencing also states that on August 24, 2007, after a hearing on the matter, the California court granted QCC's motion to compel Free Conferencing's compliance with the subpoenas and directed

the production of documents on or before September 7, 2007, and compliance with the deposition subpoena on or before October 1, 2007. Therefore, Free Conferencing requests expedited treatment of its request.

On August 28, 2007, the Board issued an order shortening QCC's time to respond to Free Conferencing's motion. Pursuant to that order, the Board directed QCC to file a response to the motion on or before September 4, 2007.

On August 30, 2007, Free Conferencing filed an emergency motion to suspend QCC's subpoenas pending the resolution of its August 24 motion. In support of its emergency motion, Free Conferencing states that the California court ordered Free Conferencing to produce documents by September 7, 2007, and that compliance with that ruling, while its motion is pending before the Board, would result in a significant burden on Free Conferencing and may render moot any Board decision in favor of Free Conferencing. Therefore, Free Conferencing requests that the Board suspend the force and effect of the subpoenas pending the resolution of its motion to quash.

On August 31, 2007, QCC filed a response to Free Conferencing's motion to suspend the subpoenas. QCC states that Free Conferencing could have sought to challenge the subpoenas before the Board more than two months ago, but instead the matter was pursued in the California courts. QCC asserts that now that the California court has ruled in QCC's favor, Free Conferencing is seeking the Board's involvement in the dispute. QCC states that oral argument on its motion to compel was heard by the California court on August 24, 2007, and that during that hearing, Free Conferencing attempted to move the discovery dispute to the Board. QCC

states that the California court rejected Free Conferencing's request to move the discovery dispute, stating that the matter was ready for decision in California.

QCC also states that Free Conferencing has not shown any circumstances justifying a stay. QCC asserts that Free Conferencing has not sought a stay from the California court, it has not appealed the California order, and it has not shown any grounds on which the Board should stay the California order. QCC also asserts that the subpoenas Free Conferencing is attempting to quash or stay are subpoenas issued in the California state court matter that QCC opened for the purpose of domesticating the Board's subpoenas. QCC claims that the Board has no authority to modify or quash the subpoenas issued by the California court.

On September 4, 2007, QCC filed its response to Free Conferencing's motion to modify and quash the subpoenas. QCC largely restated its previous arguments raised in its response to Free Conferencing's motion to suspend the subpoenas. In addition, QCC argues that the Board's August 16, 2007, order does not support Free Conferencing's position as the documents requested from Free Conferencing are not available from the respondents in this matter and Free Conferencing's concern for confidentiality is not applicable to the information requested. QCC also requests the Board compel Free Conferencing's compliance with the subpoenas and sanction Free Conferencing and its counsel for forcing QCC to respond to its motion and emergency motion on this issue.

On September 5, 2007, Free Conferencing filed a reply to QCC's responses filed August 31 and September 4, 2007. Free Conferencing generally restates its previous arguments.

## **DISCUSSION**

The Board will deny Free Conferencing's motions to suspend, modify, or quash the subpoenas served on Free Conferencing by QCC on June 5, 2007. The issues raised before the Board supporting Free Conferencing's motions have been thoroughly presented to, and decided by, the California court. It appears the subpoenas issued by the Board were properly domesticated in California and properly served on Free Conferencing. Both Free Conferencing and QCC submitted hundreds of pages of supporting documents on the issues and participated in oral argument before the California court. After reviewing all supporting documents and hearing arguments on the issues, the California court entered a final disposition of the matter requiring Free Conferencing to comply with the subpoenas. The Board cannot, and will not, attempt to interfere with that decision.

The Board believes that it still has jurisdiction of the subpoenas it issued, but that jurisdiction does not reach the California proceedings. Conceivably, in a different procedural setting, the Board could review the Board subpoenas, and any action the Board might take in that respect could then be taken to California for the court's consideration, but that process makes no sense in this case. The California court has already heard the issues surrounding the California subpoenas and has made its decision, and the Board cannot review or alter that result.

QCC's motion to compel compliance with the subpoenas is also denied, for the same reason. If enforcement of the California subpoenas is necessary, it should be sought in California.

**ORDERING CLAUSES**

**IT IS THEREFORE ORDERED:**

1. The motion to modify and quash the subpoenas served upon Free Conferencing Corporation by Qwest Communications Corporation filed by Free Conferencing Corporation on August 24, 2007, is denied.

2. The emergency motion to suspend the subpoenas served upon Free Conferencing Corporation by Qwest Communications Corporation filed by Free Conferencing Corporation on August 30, 2007, is denied.

3. The motion to compel compliance with the subpoenas served upon Free Conferencing Corporation by Qwest Communications Corporation filed by Qwest Communications Corporation on September 4, 2007, is denied.

4. The request for sanctions filed by Qwest Communications Corporation on September 4, 2007, is denied.

**UTILITIES BOARD**

/s/ John R. Norris

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ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Krista K. Tanner

Dated at Des Moines, Iowa, this 6<sup>th</sup> day of September, 2007.