

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE:

QWEST COMMUNICATIONS
CORPORATION,

Complainant,

vs.

SUPERIOR TELEPHONE COOPERATIVE;
THE FARMERS TELEPHONE COMPANY OF
RICEVILLE, IOWA; THE FARMERS &
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,

Respondents;

REASNOR TELEPHONE COMPANY,

Counterclaimant,

vs.

QWEST COMMUNICATIONS
CORPORATION,

Counterclaim Respondent.

DOCKET NO. FCU-07-2

**ORDER GRANTING MOTION TO DISMISS COUNTERCLAIMS AND
DENYING REQUEST FOR MORE SPECIFIC STATEMENT**

(Issued November 15, 2007)

BACKGROUND AND PROCEDURAL HISTORY

On February 20, 2007, Qwest Communications Corporation (QCC) filed with the Utilities Board (Board) a complaint against several telecommunications carriers, including Reasnor Telephone Company (Reasnor), alleging violations of the terms, conditions, and application of certain intrastate tariffs. QCC claims that Reasnor and the other carriers are engaging in a fraudulent practice by creating a scheme that involves free conference calls, chat rooms, adult content calling, podcasts, voice mail, and international calling services. QCC asserts that Reasnor and the other carriers are charging QCC excessive rates for their routing of calls to companies that advertise these free services and then providing kickbacks of a portion of the terminating access revenues to these free calling service companies.

On July 17, 2007, Reasnor filed an answer to QCC's complaint. As part of its answer, Reasnor identified the following four counterclaims: 1) unlawful self-help, 2) unlawful discrimination by revenue sharing, 3) unlawful discrimination through service discounts, and 4) unreasonable practice.

In support of its counterclaim regarding unlawful self-help, Reasnor asserts that QCC has withheld payment of the tariff rate to Reasnor for intrastate access service and that such withholding constitutes unlawful self-help. Reasnor asks the Board to direct QCC to pay Reasnor the full tariffed rates for intrastate access.

In support of its counterclaim regarding unlawful discrimination by revenue sharing, Reasnor asserts that QCC shares revenue with third parties to market its

services or stimulate the usage of QCC's facilities and that some of those third parties are customers of QCC's local telephone service. Reasnor claims that by making payments to some of its local service subscribers but not others, QCC has engaged in unlawful discrimination. Reasnor asks that if the Board finds that QCC has standing to raise similar discrimination claims against Reasnor, that the Board also considers this counterclaim against QCC.

In support of its counterclaim regarding unlawful discrimination through service discounts, Reasnor asserts that QCC offers discounted or free local exchange service in the form of VISA gift cards, free reservationless conferencing service, and local loop credits to some QCC customers but not to others and that such practice results in unlawful discrimination. Reasnor asks that if the Board finds that QCC has standing to raise similar discrimination claims against Reasnor, that the Board also considers this counterclaim against QCC.

In support of its counterclaim regarding unreasonable practice, Reasnor asserts that QCC exploits its dominant market share in the local exchange service market in Iowa by using revenue from local service to increase its market share in competitive services, constituting an unfair and unreasonable practice in violation of Iowa Code § 476.3.

On August 7, 2007, QCC filed an answer to Reasnor's counterclaims. QCC asserts that the Board should not accept jurisdiction over Reasnor's counterclaims because they do not relate to the same set of operative facts that form the basis of

QCC's complaint. In addition, QCC asserts that Reasnor's counterclaims concern practices conducted by Qwest Corporation, which is a separate company from QCC.

On August 21, 2007, Reasnor amended one of its unlawful discrimination counterclaims and its unreasonable practice counterclaim to specifically identify Qwest Corporation and its affiliates as a party.

Also on August 21, 2007, Reasnor filed a resistance to what it believed was a motion by QCC to dismiss Reasnor's counterclaims and a motion for a more specific statement. Reasnor states that QCC's answer to the counterclaims did not comply with the Board rules regarding answers and, as a result, Reasnor requests a more specific statement from QCC in response to Reasnor's counterclaims. Reasnor also asserts that its counterclaims are proper in that the claim for unlawful self-help is a compulsory counterclaim and the remaining counts of unlawful discrimination and unreasonable practice are permissive counterclaims. Reasnor asserts that Qwest Corporation is an indispensable party to the counterclaims, so joinder of Qwest Corporation is appropriate.

On September 4, 2007, QCC filed an answer to Reasnor's amended counterclaims. Also on September 4, 2007, QCC and Qwest Corporation filed a motion for a more definitive statement from Reasnor as well as a motion to dismiss Reasnor's unlawful discrimination and unreasonable practice counterclaims. QCC and Qwest Corporation state that Reasnor's unlawful discrimination and unreasonable practice counterclaims are inappropriate under the rules as they are

brought against Qwest Corporation specifically and not QCC. QCC and Qwest Corporation assert that permissive counterclaims can only be brought against an opposing party because they expand the facts and circumstances of the initial complaint.

On September 13, 2007, Reasnor filed a resistance to the motion to dismiss the counterclaims. Reasnor asserts that its amended counterclaims expressly added Qwest Corporation and its affiliates as parties to this proceeding and that joinder of Qwest Corporation is proper.

On September 21, 2007, QCC and Qwest Corporation filed a joint reply to Reasnor's resistance. QCC and Qwest Corporation state that the Board should dismiss the unlawful discrimination and unreasonable practice counterclaims because adding Qwest Corporation as a counterclaim defendant on counterclaims that do not involve any common issues of fact with the original action will unduly complicate and expand this action.

DISCUSSION

QCC and Qwest Corporation argue that the Board should dismiss Reasnor's counterclaims against Qwest Corporation because they do not arise out of the same operative facts as QCC's complaint and that the allegations improperly name Qwest Corporation as a respondent, and the Board agrees.

The first counterclaim asserts unlawful self-help by QCC. This counterclaim arises out of the same facts as the original complaint and is directed at QCC, so it is properly a part of this proceeding.

The second and third counterclaims assert that QCC, Qwest Corporation, and its affiliates engaged in unlawful discrimination by making payments, such as marketing fees, or providing discounts to some of their customers but not others. The fourth counterclaim asserts that Qwest Corporation engaged in unreasonable practice by making payments or providing credits to local service customers for the purpose of stimulating telephone usage.

QCC and Qwest Corporation raise persuasive arguments regarding the improper inclusion of Qwest Corporation in a permissive counterclaim, such as the ones Reasnor has raised here. Reasnor should not be allowed to use a permissive counterclaim to add a new counterdefendant to the action. Therefore, the Board will dismiss Reasnor's unlawful discrimination and unreasonable practice counterclaims against Qwest Corporation.

The counterclaims against QCC, however, are properly a part of this action. QCC is a party to this action and as such, Reasnor can join any number of permissive counterclaims against QCC as authorized by Iowa R. Civ. P. 1.231. Therefore, the Board will allow the self-help counterclaim and the unlawful discrimination counterclaims to proceed against QCC.

The Board notes that on August 21, 2007, Reasnor requested QCC provide a more specific statement in the form of a detailed answer to its counterclaims filed on July 17, 2007. Reasnor specifically asked that QCC respond to the counterclaims in a manner that complies with the Board's rules regarding answers. QCC filed a response to Reasnor's amended counterclaims on September 4, 2007, in a manner that was in full compliance with the Board's rules regarding answers. Therefore, Reasnor's request for a more specific statement is denied because it is moot.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The motion to dismiss counterclaims against Qwest Corporation filed by Qwest Communications Corporation and Qwest Corporation on September 4, 2007, is granted as described in this order.
2. The request for a more specific statement filed by Reasnor Telephone Company, LLC, on August 21, 2007, is denied because it is moot.

UTILITIES BOARD

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 15th day of November, 2007.