

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 & 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, L.L.C.,</p> <p style="text-align:center">Respondents;</p> <hr/> <p>REASNOR TELEPHONE COMPANY,</p> <p style="text-align:center">Counterclaimant,</p> <p style="text-align:center">vs.</p> <p>QWEST COMMUNICATIONS CORPORATION</p> <p style="text-align:center">Counterclaim Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-07-2</p>
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**ORDER AFFIRMING INTERVENTION, DENYING MOTION TO STRIKE,
GRANTING INTERVENTION, AND GRANTING ADMISSIONS PRO HAC VICE**

(Issued November 20, 2007)

**REQUEST FOR INTERVENTION FILED BY
AT&T COMMUNICATIONS OF THE MIDWEST, INC., AND TCG OMAHA**

Procedural History

On October 16, 2007, AT&T Communications of the Midwest, Inc., and TCG Omaha (collectively "AT&T") filed with Utilities Board (Board) an expedited request to intervene in this proceeding. In support of its request, AT&T stated that it has conducted its own investigation regarding the issues raised in this proceeding initiated by Qwest Communications Corporation (QCC) in preparation for a case currently pending before the U.S. District Court for the Southern District of Iowa, to which AT&T is a party. AT&T states that the Board's determination in this proceeding may have a direct effect on AT&T and that it is more efficient for AT&T, the parties, and the Board to allow AT&T to intervene rather than require AT&T to raise similar issues in a separate action before the Board.

On October 22, 2007, the Board issued an order which, among other things, granted AT&T's expedited request for intervention in this proceeding. In the October 22 order, the Board found that as an intrastate and interstate toll provider in Iowa, AT&T had demonstrated a sufficient interest in these proceedings that should be represented.

Also on October 22, 2007, a group of rural incumbent local exchange carriers (ILECs) filed a resistance to AT&T's expedited request for intervention. The ILECs resisting AT&T's request are Farmers Telephone Company of Riceville, Iowa (Farmers–Riceville); Farmers and Merchants Mutual Telephone Company of Wayland, Iowa (Farmers–Wayland); Interstate 35 Telephone Company, d/b/a Interstate Communications Company (Interstate 35); and Dixon Telephone Company (Dixon) (collectively "Rural ILECs"). In support of their resistance, the Rural ILECs

state that AT&T's request for intervention should have been filed on or before June 14, 2007, pursuant to 199 IAC 7.13. The Rural ILECs assert that the Board should deny AT&T's intervention request because AT&T cannot justify its four-month delay in seeking intervention and AT&T's untimely intervention would substantially complicate and delay these proceedings. The Rural ILECs claim that granting intervenor status to AT&T would expand the already numerous and complex issues to AT&T thereby doubling the complexity of the process, particularly, as it relates to discovery. The Rural ILECs ask that if the Board allows AT&T's participation as an intervenor, that such participation be limited to addressing the issues raised by QCC and not be expanded to take up additional issues or deal with potential claims by AT&T.

On October 23, 2007, Superior Telephone Cooperative (Superior) also filed an opposition to AT&T's expedited request for intervention. In support of its opposition, Superior states that AT&T's request for intervention was filed far beyond the 20 days permitted by 199 IAC 7.13 and that AT&T has not justified its delay. Superior also states that QCC and the respondents to this proceeding have exchanged a significant number of documents in discovery, have taken depositions, have scheduled many more depositions for the immediate future, and have filed numerous motions before the Board. Superior asserts that AT&T's intervention at this stage of the proceeding would prejudice Superior's and the other respondents' ability to focus on advocating their respective interests against QCC. Superior also asks that if the Board allows AT&T to participate as an intervenor in this proceeding that AT&T's participation be limited to the status of an *amicus curiae*.

On October 26, 2007, Aventure Communication Technology, L.L.C. (Aventure), filed a motion for reconsideration of the decision to grant AT&T's petition to intervene. In support of its motion, Aventure states it was not properly served by AT&T pursuant to 199 IAC 7.4(6). Aventure also states that the Board's order granting AT&T's request for intervention was issued before the deadline provided for responses or objections pursuant to 199 IAC 7.13, thereby effectively denying participants the opportunity to file objections to AT&T's request. Aventure also asserts that AT&T has not justified its late-filed petition and expresses concern that AT&T will initiate disruptive and burdensome discovery at this stage of the proceedings. Aventure requests the Board reconsider its October 22, 2007, decision granting AT&T status as an intervenor.

On October 30, 2007, AT&T filed a response to Aventure's motion for reconsideration. AT&T states that it took reasonable steps to ensure that all parties were properly served with its petition by contacting the Board's Records and Information Center to determine who appeared on behalf of the respondents. AT&T also states that its intervention does not violate Aventure's due process rights and that AT&T has demonstrated sufficient interest in these proceedings to merit intervention. AT&T also states that any discovery burden, to the extent it exists, would likely be quite small and it is not clear that AT&T's participation will require any additional document discovery. AT&T also objects to the proposal that AT&T be admitted only as *amicus curiae*, stating that such a restriction is not justified and would limit AT&T's ability to protect its interests in this proceeding.

Discussion

Pursuant to 199 IAC 7.13, a party may file a response to a petition for intervention with seven days of service of the petition, unless the time period is extended or shortened by the Board or a presiding officer. AT&T filed its petition for intervention on October 16, 2007, seeking expedited treatment of its request. The Board issued its order granting AT&T's request on October 22, 2007; the seventh day as allowed by Board rule. As is evidenced by the objections to AT&T's petition that were received the day the Board's order was issued and the day following that issuance, the parties to this proceeding believed that they had additional time to object to AT&T's petition. The Board has carefully reviewed the objections filed by the Rural ILECs and Superior and has considered its determination to grant AT&T status as an intervenor in light of those objections, as requested by Aventure on October 26, 2007.

After reviewing the objections filed by the Rural ILECs and Superior, the Board affirms its previous determination that AT&T's request for intervention should be granted. Requests for intervention are to be liberally granted to any person with a cognizable interest in the proceeding. 199 IAC 7.13(5). The Board agrees with AT&T that the Board's determination in this proceeding may affect AT&T and that it is more efficient for AT&T, the parties, and the Board to allow AT&T to intervene at this stage of the proceeding, rather than require AT&T to raise the same or similar issues in a separate action before the Board. The Board also finds that AT&T made a good faith attempt to properly serve Aventure and that the oversight of not serving Aventure in accordance with 199 IAC 7.4(6) did not prejudice Aventure.

Pursuant to 199 IAC 7.13(5), the Board may limit a person's intervention to a particular stage in the proceeding. The Board finds that it is not necessary to limit AT&T's intervention. However, the procedural schedule and deadlines already established will not be amended to allow AT&T any additional time for discovery. AT&T may enter this proceeding as an intervenor at this juncture and accept the current procedural schedule as it is established. The Board will not limit AT&T's participation in the proceeding to *amicus curiae* as requested by the Rural ILECs, Superior, and Aventure.

**REQUEST FOR INTERVENTION FILED BY
SPRINT COMMUNICATIONS COMPANY L.P.**

Procedural History

On October 19, 2007, Sprint Communications Company L.P. (Sprint) filed with the Board an expedited request to intervene in this proceeding. In support of its petition, Sprint states that as an interexchange carrier (IXC), it is a victim of similar practices by the respondents in this proceeding as those described in QCC's initial complaint. Sprint states that while QCC and Sprint may be similarly situated and have similar claims, QCC cannot adequately represent Sprint's interests. Sprint asserts that its damages are separate from QCC's and that Sprint has a unique view of the scope and nature of access schemes, such as those raised in QCC's initial complaint, due to Sprint's separate participation in a similar case involving interstate access charges in the Southern District of Iowa. Sprint states that there are no other means for its interests to be protected, that no party will be prejudiced by its intervention, and that it will commit to working in collaboration with QCC and any

other intervenors aligned with QCC to avoid duplication in discovery, testimony, and briefing.

On October 25, 2007, the Rural ILECs filed with the Board a motion to strike Sprint's petition to intervene and a resistance to Sprint's late-filed petition. In support of their motion and resistance, the Rural ILECs state that Sprint failed to seek an order from the Board allowing Sprint to file a petition for intervention beyond the 20 days provided by 199 IAC 7.13(1). The Rural ILECs also assert that Sprint has not justified its four-month delay in seeking to intervene and that Sprint's intervention would cause substantial confusion and delay to this proceeding. The Rural ILECs claim that granting intervenor status to Sprint would expand the already numerous and complex issues to Sprint, thereby doubling the process in effort and complexity, specifically as it relates to discovery. The Rural ILECs ask that if the Board allows Sprint's participation as an intervenor, that such participation be limited to addressing the issues raised by QCC and not be expanded to take up additional issues or deal with potential claims by Sprint.

On October 26, 2007, Superior and Great Lakes Communication (Great Lakes) filed an opposition to Sprint's petition to intervene. Superior and Great Lakes assert that Sprint has not justified its four-month delay to seek intervention and that QCC and the respondents to this proceeding have exchanged a significant number of documents in discovery, have taken depositions, have scheduled many more depositions for the immediate future, and have filed numerous motions before the Board. Superior and Great Lakes argue that Sprint's intervention at this late stage of the proceeding would prejudice the respondents' ability to focus on advocating their

respective interests against QCC. Superior and Great Lakes also state that they are currently represented in this proceeding by Kelley Drye & Warren LLP (Kelley Drye). Superior and Great Lakes state that Kelley Drye also represents Sprint in unrelated matters, for which Superior and Great Lakes obtained different counsel in Sprint's pending case in federal court. Superior and Great Lakes assert that Sprint's intervention at this stage of the proceedings has the potential to create a conflict of interest for Kelley Drye and could prejudice their defense in this proceeding. Superior and Great Lakes also ask that if Sprint is allowed to intervene, that Sprint be required to pay Superior's and Great Lakes' attorneys fees from the beginning of the proceeding through the date of intervention.

Also on October 26, 2007, Aventure filed an opposition to Sprint's petition to intervene. Aventure states that it was not properly served by Sprint pursuant to 199 IAC 7.4(6). Aventure also asserts that Sprint has not justified its late-filed petition and expresses concern that Sprint will initiate disruptive and burdensome discovery at this stage of the proceedings. Aventure also asks that if the Board allows Sprint to participate as an intervenor in this proceeding, that Sprint's participation be limited to the status of an *amicus curiae*.

On October 30, 2007, Sprint filed a reply to the objections filed by the Rural ILECs and Aventure. Sprint states that the Board has previously granted petitions to intervene well beyond the 20 days permitted by 199 IAC 7.13 and that Board precedent demonstrates a policy of liberally permitting intervention when the substantive requirements to intervene have been met. Sprint also states that there is no procedural impediment to its intervention at this time. Sprint asserts that it is not

seeking to move deadlines, will not seek massive new discovery, if any, and may not offer a witness or testimony. Sprint claims that there is no procedural reason to deny its request to intervene.

Discussion

The Board has reviewed Sprint's petition, the objections filed by the Rural ILECs, Superior, Great Lakes, and Aventure, as well as Sprint's response to those objections and finds that Sprint's request for intervention should be granted.

Requests for intervention are to be liberally granted to any person with a cognizable interest in the proceeding. 199 IAC 7.13(5). The Board agrees with Sprint that the Board's determination in this proceeding may impact Sprint and that Sprint has demonstrated a sufficient interest in these proceedings that should be represented.

Pursuant to 199 IAC 7.13(5), the Board may limit a person's intervention to a particular stage in the proceeding. The Board finds that it is not necessary to limit Sprint's intervention. However, the procedural schedule and deadlines already established will not be amended to allow Sprint any additional time for discovery. Sprint may enter this proceeding as an intervenor at this juncture and accept the current procedural schedule as it is established. The Board will not limit Sprint's participation in the proceeding to *amicus curiae* as requested by the Rural ILECs, Superior, Great Lakes, and Aventure. In addition, the Board finds that Sprint made a good faith attempt to properly serve Aventure and that the oversight of not serving Aventure pursuant to 199 IAC 7.4(6) did not prejudice Aventure.

The Board will deny the request of Superior and Great Lakes for an order requiring Sprint to pay attorney fees for Superior and Great Lakes from the beginning

of these proceedings thought the date of intervention. The Board expresses no opinion regarding the potential for any conflict of interests, but the Board notes that Superior, Great Lakes, and their attorneys recognize and addressed the potential issue in connection with the similar federal court proceedings and could have taken similar steps in connection with this case.

APPLICATIONS FOR ADMISSION PRO HAC VICE

On November 2, 2007, Richard W. Lozier, Jr., an Iowa attorney representing AT&T in this proceeding, filed with the Board requests to allow out-of-state attorneys James F. Bendernagel, Jr., Michael Joseph Hunseder, David L. Lawson, and Christopher Thomas Shenk to appear as attorneys on behalf of AT&T in this proceeding. In support of his requests, Mr. Lozier states that Mr. Bendernagel is licensed to practice law in New York and the District of Columbia; Mr. Hunseder is licensed to practice law in Maryland and the District of Columbia; Mr. Lawson is licensed to practice law in the District of Columbia; and Mr. Shenk is licensed to practice law in Maryland and the District of Columbia, and that all are members in good standing of the bars of those jurisdictions.

The requests appear to be in full compliance with 199 IAC 7.2(7)"e" and include the written appearance of an Iowa-resident attorney upon whom service may be made in all matters connected with this case pursuant to Iowa Supreme Court rule 31.14. The motions for admission pro hac vice will be granted.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The Board's decision to grant intervenor status to AT&T Communications of the Midwest, Inc., and TCG Omaha, issued October 22, 2007, in this docket is affirmed as described in this order.
2. The motion to strike filed by 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; and Dixon Telephone Company on October 25, 2007, is denied.
3. The petition for intervention filed by Sprint Communications Company L.P. on October 19, 2007, is granted as described in this order.
4. The petitions for admission pro hac vice filed by AT&T Communications of the Midwest, Inc., and TCG Omaha on November 2, 2007, are granted.

UTILITIES BOARD

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 20th day of November, 2007.