

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>QWEST COMMUNICATIONS CORPORATION, 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, LLC, Counterclaimant,</p> <p style="text-align: center;">vs.</p> <p>QWEST COMMUNICATIONS CORPORATION, Counterclaim Respondent</p>	<p>DOCKET NO. FCU-07-2</p>
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ORDER GRANTING WITHDRAWAL OF MOTION, RECOGNIZING WITHDRAWAL OF COUNSEL, GRANTING REQUEST FOR LIMITED EXTENSION OF TIME, DENYING MOTION TO STRIKE, AND GRANTING REQUEST FOR CONFIDENTIALITY

(Issued December 17, 2007)

On November 21, 2007, Superior Telephone Cooperative (Superior) and Great Lakes Communication Corp. (Great Lakes) filed with the Utilities Board (Board) a motion for an immediate emergency stay of all proceedings in this docket. In support of their motion, Superior and Great Lakes stated that a conflict of interest has arisen involving counsel for Superior and Great Lakes. Specifically, Superior and Great Lakes stated that their attorneys of record in this matter, Kelley Drye & Warren, LLP (Kelley Drye), also represent affiliated Sprint Communications Company L.P. (Sprint), in unrelated matters and that Sprint's recent intervention in this proceeding creates a conflict of interest for Kelley Drye. Superior and Great Lakes stated that Kelley Drye was in the process of seeking waivers of the conflict, but that until those waivers were obtained, Kelley Drye could not continue its legal representation of Superior and Great Lakes in this proceeding.

Superior and Great Lakes asserted that while local counsel has been acting in a traditional capacity on behalf of Superior and Great Lakes, local counsel does not have the staff available with the necessary experience or resources to represent Superior and Great Lakes in this matter. Superior and Great Lakes claimed that they were not aware of the potential conflict until the Board's order, issued November 20, 2007, granted Sprint intervenor status in this proceeding and therefore they did not retain different counsel earlier in the process.

Superior and Great Lakes requested the Board immediately stay this proceeding until waivers were obtained or other appropriate steps were taken.

On December 3, 2007, Robert F. Holz, Jr., and Steven L. Nelson from the law firm of Davis, Brown, Koehn, Shors, & Roberts, P.C. (Davis Brown), filed an appearance in this proceeding on behalf of Superior and Great Lakes.

Also on December 3, 2007, Sprint and Qwest Communications Corporation (QCC) filed responses to Superior's and Great Lakes' motion to stay the proceedings. In its response, Sprint states that Kelley Drye's simultaneous representation of Superior and Great Lakes poses a direct conflict with its representation of Sprint and as such, Sprint cannot grant a waiver for Kelley Drye to represent Superior and Great Lakes in this proceeding. Sprint also states that this conflict should not be the basis for the Board to reconsider Sprint's intervention in this proceeding.

In its response, QCC states that a stay of these proceedings would prejudice QCC's ability to prosecute its case at a critical juncture in the action and negatively affect QCC's ability to continue to procure discovery from various third parties, also represented by Kelley Drye, in preparation of its direct testimony. QCC asks the Board to require Kelley Drye to complete all document productions for its clients and to allow QCC a three-week extension to prepare its direct case.

On December 4, 2007, a withdrawal of counsel was filed by Thomas G. Fisher, Jr., of the law firm of Parrish, Kruidenier, Dunn, Boles, Gribble, Cook, Parrish, Gentry, & Fisher, L.L.C., and by Ira T. Kasdan, Joseph D. Wilson, and Kelley Drye. The withdrawal indicates that Superior and Great Lakes has obtained new counsel (Davis Brown), who has filed an appearance in this docket. The withdrawal also indicates that Aventure Communication Technology, L.L.C. (Aventure), which was

also represented by Kelley Drye, has elected to represent itself or will obtain independent counsel.

Also on December 4, 2007, Superior and Great Lakes, through their new counsel, filed a withdrawal of their November 21, 2007, motion to stay the proceedings. Superior and Great Lakes state that since the Davis Brown law firm has been representing other parties in this docket, the previously requested stay is no longer needed.

On December 10, 2007, QCC filed a reply to Superior's and Great Lakes' motion to withdraw and renewed its request for a three-week extension of QCC's established deadline for filing its direct testimony in this proceeding. QCC states that Kelley Drye represents 12 third parties in this action and that the perceived conflict between Kelley Drye and Sprint resulted in those third parties failing to produce a significant number of discoverable documents. Specifically, QCC states that Kelley Drye's client, Free Conferencing Corporation, has delayed the production of approximately 40,000 pages of material required for production by court order. QCC asks the Board to grant QCC a three-week extension for filing its direct testimony and to keep the rest of the established procedural schedule intact.

On December 11, 2007, Reasnor Telephone Company, LLC (Reasnor), filed an opposition to QCC's request for extension of time to file its direct testimony. Reasnor states that it will need the entire period of time allowed by the current procedural schedule to prepare its defense to QCC's claim. Reasnor asks that the

Board deny QCC's request or, in the alternative, extend all of the established deadlines in the current procedural schedule by three weeks.

On December 13, 2007, QCC filed a reply to Reasnor's opposition to QCC's request, essentially restating its earlier arguments supporting a three-week extension for filing direct testimony.

Also on December 13, 2007, certain respondents identified as 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; Superior Telephone Cooperative; and Great Lakes Communication Corp. (collectively referred to as "Respondents"), filed a motion to strike QCC's reply and renewed request for a three-week extension of time to file its direct testimony. The Respondents state that QCC's request should be stricken because there is no pending motion to which it relates. In the alternative, the Respondents request that the Board deny QCC's request for an extension of time because the Board should not punish the Respondents for delays allegedly caused by the conduct of counsel for third parties.

The Board acknowledges the withdrawal of Kelley Drye as counsel for Superior, Great Lakes, and Aventure, and recognizes the Davis Brown law firm as the counsel of record for Superior and Great Lakes in this proceeding. The Board will allow the withdrawal of Superior's and Great Lakes' motion to stay the proceedings as requested on December 4, 2007.

The Board has reviewed and considered QCC's request for a three-week extension of time for submitting direct testimony. The Board finds that a three-week extension is reasonable for QCC to file direct testimony, but only as it relates to the documents that have been withheld for production due to the apparent conflict between Kelley Drye and Sprint. Therefore, the Board will require QCC to file the majority of its direct testimony in this matter on January 22, 2008, pursuant to the schedule established by Board order issued September 25, 2007. However, the Board will allow QCC until February 12, 2008, to file supplemental direct testimony specifically limited to addressing the documents the production of which was delayed due to the conflict between Kelley Drye and Sprint. When filing its supplemental direct testimony, QCC should show the testimony relates specifically to those documents and any follow-up discovery associated with those documents.

The Respondents and any intervenors aligned with them shall file their rebuttal testimony, with supporting exhibits and workpapers, on or before April 21, 2008. If, after QCC files any supplemental direct testimony, any party believes it needs an additional three weeks to file responsive testimony, that party may file an appropriate motion for the Board's consideration. The remaining deadlines of the current procedural schedule will remain unchanged.

Also on December 3, 2007, QCC filed a request for confidential treatment of certain documents submitted in support of QCC's response to Superior's and Great Lakes' motion to stay the proceeding filed November 21, 2007. The material for

which confidentiality was requested was filed in a separate envelope and marked confidential.

Iowa Code § 22.7(3) provides confidential treatment for trade secrets that are recognized and protected as such by law. The request and supporting affidavit by QCC attorney Charles W. Steese indicates that the material submitted by QCC includes information provided to QCC by non-parties to this action, specifically Global Conference Partners (Global Conference). QCC states that Global Conference designated the information as confidential pursuant to a protective agreement that applies to Global Conference's documents provided in response to a subpoena in this action.

Board rule 199 IAC 1.9(6)"b" provides that in a request for confidential treatment, the facts underlying the legal basis for the request shall be supported by an affidavit executed by a corporate officer with personal knowledge of the specific facts. Therefore, the Board generally requires an affidavit from an officer of the company where the documents originated attesting to the confidential nature of the information.

The Board recognizes the unusual circumstances in this case, whereby QCC and the other parties in this matter have obtained access to confidential documents from several non-parties pursuant to an executed protective agreement. Therefore, the Board will accept the affidavit from QCC attorney Charles W. Steese as an affidavit attesting to the confidential nature of the information as substantial compliance with 199 IAC 1.9(6) in this matter.

The Board finds that the application and affidavit filed by QCC on December 3, 2007, support a finding that the information submitted constitutes a trade secret under Iowa Code § 550.2(4) as it derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by a person able to obtain economic value from its disclosure, and it is the subject of reasonable efforts to maintain its secrecy. The Board finds that this information, if released, would provide an advantage to Global Conference's competitors. Therefore, the Board will hold the requested information as confidential under the provisions of Iowa Code § 22.7(3) as requested by QCC on December 3, 2007.

IT IS THEREFORE ORDERED:

1. The "Motion for Immediate Emergency Stay of All Proceedings" filed by Superior Telephone Cooperative and Great Lakes Communication Corp. on November 21, 2007, is withdrawn as requested on December 4, 2007.

2. The request for extension of time submitted by Qwest Communications Corporation on December 3, 2007, is granted in part as follows:

a. QCC and any intervenors aligned with QCC may file supplemental direct testimony, with supporting exhibits and workpapers, on or before February 12, 2008, as described in this order. Any such supplemental direct testimony shall be limited to matters arising from the discovery that is the subject of QCC's December 3, 2007, motion.

3. 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; Dixon Telephone Company; Superior Telephone Cooperative; and Great Lakes Communication Corp., on December 13, 2007, is denied.

4. The request for confidentiality filed by Qwest Communications Corporation on December 3, 2007, is granted pursuant to Iowa Code § 22.7(3).

5. The information shall be held confidential by the Board subject to the provisions of 199 IAC 1.9(8)"b"(3).

UTILITIES BOARD

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 17th day of December, 2007.