

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE:</p> <p>SPRINT COMMUNICATIONS COMPANY L.P.,</p> <p style="text-align:center">Complainant,</p> <p style="text-align:center">vs.</p> <p>DANVILLE MUTUAL TELEPHONE COMPANY; DIXON TELEPHONE COMPANY; READLYN TELEPHONE COMPANY; VAN HORNE COOPERATIVE TELEPHONE COMPANY; WELLMAN COOPERATIVE TELEPHONE ASSOCIATION; MTC TECHNOLOGIES; NORTHERN IOWA TELEPHONE COMPANY; WEBB- DICKENS TELEPHONE CORPORATION; MUTUAL TELEPHONE COMPANY; CENTRAL UTAH COMMUNICATIONS, d/b/a WRLD ALLIANCE; AND ZONE TELECOM, INC.,</p> <p style="text-align:center">Respondents.</p>	<p>DOCKET NO. FCU-07-11</p>
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**ORDER DOCKETING COMPLAINT, DENYING MOTIONS TO DISMISS,  
AND SETTING PROCEDURAL SCHEDULE**

(Issued February 1, 2008)

**PROCEDURAL HISTORY**

On September 14, 2007, Sprint Communications Company L.P. (Sprint) filed with the Utilities Board a complaint pursuant to Iowa Code §§ 476.3, 476.11, and

476.100, alleging charges or practices that are unjust, unreasonable, and discriminatory against the following rural local exchange carriers (RLECs) and their internet service providers (ISPs): Danville Mutual Telephone Company (Danville); Dixon Telephone Company (Dixon); Readlyn Telephone Company (Readlyn); Van Horne Cooperative Telephone Company (Van Horne); Wellman Cooperative Telephone Association (Wellman); MTC Technologies (MTC); Northern Iowa Telephone Company (Northern Iowa); Webb-Dickens Telephone Corporation (Webb-Dickens); Mutual Telephone Company (Mutual); Central Utah Communications, d/b/a WRLD Alliance (Central Utah); and Zone Telecom, Inc. (Zone Telecom) (collectively referred to as the Respondents).

In support of its complaint, Sprint alleges that the Respondents devised and maintained a scheme whereby an intracompany communication from a specific RLEC to a modem bank was divided across exchange boundaries in order to stimulate traffic between the exchanges in an effort to profit from the high access charges on interexchange traffic. Sprint asserts that the Respondents engaged in unjust, unreasonable, and discriminatory behavior by establishing high access rates predicated on lower traffic volumes and then deliberately elevating the traffic volumes, and by taking locally-dialed calls and translating them into long distance numbers to send over the Sprint long distance network.

Sprint also alleges that the Respondents are engaging in an unlawful cross-subsidization of services in violation of Iowa Code § 476.100(6). Sprint claims that

the RLECs involved in sending dial-up Internet traffic to modem banks in a foreign exchange are using switched access revenue from Sprint to subsidize the cost of providing dial-up Internet service to their customers.

On October 4, 2007, Danville, Dixon, Readlyn, Van Horne, Wellman, MTC, Northern Iowa, Webb-Dickens, and Mutual (collectively referred to as the "RLEC Group") filed a resistance and answer to Sprint's complaint. The RLEC Group asserts that Sprint has unlawfully refused to pay the RLEC Group companies the tariffed originating or terminating access charges on toll traffic. The RLEC Group asserts that they provide their local exchange customers with dial-up Internet access service through arrangements for a shared modem pool and that there is nothing unlawful about any of these companies buying toll service to connect their ISP service to a remote modem bank. The RLEC Group claims that they pursued a legitimate business interest to provide local dial-up Internet access to their customers and the traffic at issue in Sprint's complaint was legitimate Internet traffic carried over the toll network on purchased toll services. The RLEC Group asks that the Board dismiss Sprint's complaint against the RLEC Group and direct Sprint to pay the access charges due to the companies of the RLEC Group.

On October 19, 2007, Central Utah filed a motion to dismiss Sprint's complaint against Central Utah on the grounds that the Board does not have any regulatory authority over Central Utah. Central Utah states that it is a reseller of wholesale long distance telecommunications services and neither owns nor leases any

telecommunications facilities in Iowa. Central Utah asserts that it is not a public utility because it neither owns nor operates a facility for the provision of telecommunications services to the public as defined in Iowa Code § 476.1, and since the Board has regulatory authority only over public utilities as defined by that statute, the Board has no authority over Central Utah and Sprint's claim against Central Utah should be dismissed. Central Utah also asserts that it does not have the requisite minimum contacts with Iowa for the Board to be able to exert personal jurisdiction over Central Utah.

On November 8, 2007, Sprint filed a resistance to Central Utah's motion to dismiss. Sprint identifies the five factors to be considered in determining whether sufficient minimum contacts are present to subject a party to personal jurisdiction and asserts that Central Utah's actions in Iowa satisfy all five factors.<sup>1</sup> Specifically, Sprint states that Central Utah's contacts with Iowa are not rare or isolated, that the nature and quality of Central Utah's contacts with Iowa were not accidental or unforeseeable, that the connection between Central Utah's contacts with Iowa and the cause of action brought by Sprint are the same, that the majority of the parties named in Sprint's complaint are Iowa RLECs, and that Iowa is the most convenient forum for the majority of the parties and where much of the evidence and most of the likely witnesses are located. Sprint also states that even though Central Utah claims

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<sup>1</sup> See *Cascade Lumber Co. v. Edward Rose Bldg. Co.*, 596 N.W.2d 90, 92 (Iowa 1999) (identifying factors to be considered in determining sufficient minimum contacts including (1) the quantity of the contacts; (2) the nature and quality of the contacts; (3) the source of and connection of the cause of action with those contacts; (4) the interest of the forum state; and (5) the convenience of the parties).

it only provides wholesale service to the RLECs, the Board has determined that a wholesale provider may still be providing services to the public if it is making its services available to a substantial subset of retail providers.<sup>2</sup> Sprint also argues that the operation of facilities does not need to be linked to the ownership of those facilities and that resale should be considered an ability to operate a given facility. Sprint therefore argues that by "operating" facilities through resale, Central Utah satisfies the term "operate" as used in Iowa Code § 476.1 and places Central Utah under the jurisdiction of the Board.

On November 9, 2007, Central Utah filed a reply to Sprint's resistance asserting its previously raised arguments that it is not a public utility and is not subject to the Board's jurisdiction.

The Board notes that Zone Telecom, Inc., has not responded to Sprint's complaint by filing either an answer or a motion within the 20 days allowed by 199 IAC 7.9(2).

## **DISCUSSION**

### **Central Utah's Motion to Dismiss**

The Board has considered the arguments raised by the RLEC Group, Central Utah, and Sprint and will deny Central Utah's and the RLEC Group's motions to dismiss. For purposes of ruling on the motion, the Board will follow the well-

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<sup>2</sup> See In re: Sprint Communications Company L.P., "Order Canceling Certificate and Issuing Order in Lieu of Certificate," Docket No. FCU-05-21 (issued March 3, 2006).

established principles regarding motions to dismiss and will view the allegations raised in Sprint's complaint in the light most favorable to Sprint and resolve doubts in Sprint's favor. Based on these principles, the Board will deny a motion to dismiss if any reasonable grounds exist on which Sprint may be able to justify relief.

In this situation, Sprint alleges a complaint that describes a common scheme between Central Utah, the RLEC defendants, and Zone Telecom whereby Central Utah resells Sprint long distance service resold to the RLEC respondents. Sprint complains that the Respondents violated Iowa Code §§ 476.3 and 476.100 by collaborating to spread the RLECs' Internet offerings across exchange boundaries so that their Internet service customers could make non-toll calls. Sprint complains that the Respondents then conspired to send the calls on lines presubscribed by Central Utah to Sprint acting as a retail customer, but which Central Utah then resold wholesale to the RLEC respondents. Sprint alleges that by engaging in this activity, Sprint was forced to subsidize the RLECs' Internet service through payment of access charges. The Board finds that Sprint has alleged reasonable grounds on which Sprint may be entitled to relief from this agency, if proven, and will therefore deny Central Utah's and the RLEC Group's motions to dismiss.

The Board also rejects Central Utah's argument that it is not a public utility pursuant to Iowa Code § 476.1. The Board agrees with Sprint's assertion that the term "operate," as used in § 476.1, should be broadly interpreted to include the

resale of telecommunications services in Iowa as an act of operation. Therefore, the Board will deny Central Utah's motion to dismiss.

Sprint filed its initial complaint pursuant to Iowa Code §§ 476.3, 476.11, and 476.100. Sprint complains about the practices and charges of each of the Respondents, individually and collectively, regarding traffic stimulation and inappropriate access charges assessed to Sprint. The Board has reviewed the complaint and responses filed by the RLEC Group and Central Utah and will docket the complaint for further investigation pursuant to the Board's jurisdiction as provided for in Iowa Code §§ 476.3 and 476.11.

### **ORDERING CLAUSES**

#### **IT IS THEREFORE ORDERED:**

1. The complaint filed by Sprint Communications Company L.P., on September 14, 2007, against the following named Respondents: Danville Mutual Telephone Company; Dixon Telephone Company; Readlyn Telephone Company; Van Horne Cooperative Telephone Company; Wellman Cooperative Telephone Association; MTC Technologies; Northern Iowa Telephone Company; Webb-Dickens Telephone Corporation; Mutual Telephone Company; Central Utah Communications, d/b/a WRLD Alliance; and Zone Telecom, Inc., is docketed for investigation as Docket No. FCU-07-11, pursuant to Iowa Code §§ 476.3 and 476.11. The complaint is docketed for investigation of the matters asserted in the complaint and such other issues as may develop during the course of the proceedings.

2. The following procedural schedule is established for this proceeding:
  - a. Sprint Communications Company L.P. and any intervenors aligned with Sprint shall file prepared direct testimony, with supporting exhibits and workpapers, on or before May 5, 2008.
  - b. Respondents and any intervenors aligned with them shall file rebuttal testimony, with supporting exhibits and workpapers, on or before July 21, 2008.
  - c. Sprint Communications Company L.P. and any intervenors aligned with Sprint shall file reply testimony, with supporting exhibits and workpapers, on or before September 8, 2008.
  - d. A hearing for the purpose of receiving testimony and cross-examination of all testimony will commence at 9 a.m. on Tuesday, October 21, 2008, in the Board's hearing room, 350 Maple Street, Des Moines, Iowa. Parties shall appear at the hearing one-half hour prior to the time of hearing to mark exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 515-281-5256 to request appropriate arrangements.
  - e. Any party desiring to file a brief may do so on or before November 17, 2008.

3. In the absence of objection, all workpapers shall become a part of the evidentiary record at the time the related testimony and exhibits are entered in the record.

4. In the absence of objection, all data requests and responses referred to in oral testimony or cross-examination, which have not previously been filed with the Board, shall become a part of the evidentiary record. The party making reference to the data request or response shall file an original and six copies at the earliest possible time.

5. In the absence of objection, if the Board calls for further evidence on any issue and that evidence is filed after the close of hearing, the evidentiary record shall be reopened and the evidence will become a part of the evidentiary record three days after filing. All evidence filed pursuant to this paragraph shall be filed no later than five days after the close of hearing.

6. Pursuant to 199 IAC 7.7(2) and (11), the time for filing responses or objections to data requests and motions will be shortened to five days from the date the motion is filed or the data request is served. All data requests and motions should be served by facsimile transfer or by electronic mail, in addition to United States mail.

7. The request for dismissal filed by Danville Mutual Telephone Company, Dixon Telephone Company, Readlyn Telephone Company, Van Horne Cooperative Telephone Company, Wellman Cooperative Telephone Association, MTC

Technologies, Northern Iowa Telephone Company, Webb-Dickens Telephone Corporation, and Mutual Telephone Company on October 4, 2007, is denied.

8. The motion to dismiss filed by Central Utah Communications , d/b/a WRLD Alliance, on October 19, 2007, is denied.

**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 1<sup>st</sup> day of February, 2008.