

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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IN RE:  IOWA TELECOMMUNICATIONS ASSOCIATION	DOCKET NO. TF-07-125 (TF-07-139)
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**ORDER GRANTING MOTION TO COMPEL DISCOVERY**

(Issued March 3, 2008)

On February 26, 2008, Sprint Communications Company L.P. (Sprint) filed with the Utilities Board (Board) a motion to compel discovery from the Iowa Telecommunications Association (ITA). Specifically, Sprint seeks responses to data requests 5 and 6 which seek information from the ITA's witness, Mr. Burnie Snoddy, that served as the foundation for Mr. Snoddy's testimony in this case and to data request 7, which seeks copies of reports that Iowa local exchange carriers (LECs) make to the National Exchange Carrier Association (NECA). Sprint asserts that the ITA's responses to data requests 5, 6, and 7 are non-responsive and that on February 25, 2008, after corresponding with Sprint about the requests, the ITA claims it is currently not in possession, custody, or control of the requested information. Sprint asks the Board to compel the ITA to provide complete responses to these data requests. In the alternative, Sprint asks that Mr. Snoddy's testimony be stricken, that the Board allow for extensive use of third-party subpoenas so that Sprint may obtain the information elsewhere, that the Board require the ITA to seek a release of the

data from its members that concur in Tariff No. 1, or that the Board suspend ITA Tariff No. 1.

On February 28, 2008, the ITA filed a response to Sprint's motion. The ITA asserts that because Mr. Snoddy is not a party to this proceeding, Sprint's requests for these documents from Mr. Snoddy are inappropriate and are not supported by Iowa law or the Iowa Rules of Civil Procedure. The ITA cites Woodbury County Attorney v. Iowa District Court for Woodbury County, 448 N.W.2d 20, 22 (Iowa 1989) and Martin v. BF Goodrich Co., 602 N.W.2d 343, 345 (Iowa 1999), as well as Iowa R. Civ. P. 1.512 and 1.513 as supporting authority for its position, which provide that information cannot be compelled from a non-party to the proceeding. In addition, the ITA maintains that the documents requested are not in the possession, custody, or control of the ITA and are neither relevant nor calculated to lead to the discovery of admissible evidence.

On February 29, 2008, Sprint filed a reply to the ITA's response. Sprint restates its previous arguments and offers possible compromises to satisfy its discovery requests. Sprint proposes that the ITA be directed to provide responses to data requests 5 and 7(b), and to those parts of data request 6 regarding witness Snoddy's "consulting regarding traffic or cost studies, rate design, rate setting, tariff development or filings, access issues of any manner" and provide only an inventory identifying by general type or nature the remaining documents that would fall under "other accounting issues" but not the documents themselves. Sprint also states that

if the ITA is willing to stipulate that its intrastate tariff filed with the Board is not based on any Iowa-based costs and that for rate elements not mirroring the NECA elements the ITA has no support, that would eliminate the need for any of the information that is sought in discovery and may support Mr. Snoddy's testimony. Sprint argues that absent such a concession from the ITA, Sprint has a right to determine what inputs Iowa LECs provide to the process that ultimately results in the ITA tariff and the information and background that make up Mr. Snoddy's expertise.

The Board has reviewed the information filed by the parties and finds that Sprint's motion to compel responses to data requests 5, 6, and 7 is appropriate. Sprint's request stems from Mr. Snoddy's direct testimony submitted by the ITA on December 21, 2007. Mr. Snoddy's testimony on behalf of the ITA indicates that he has worked as a consultant for many of the LEC members of the ITA and he relies upon his background of working with those LECs to support several areas of his testimony. Sprint is entitled to discovery of information that is or may be relevant to Mr. Snoddy's expertise.

Specifically, in data requests 5, 6, and 7, Sprint seeks information from Mr. Snoddy pertaining to his knowledge and documents in his control based on his work and that of Mr. Snoddy's consulting firm, Kiesling & Associates, regarding the LECs for which he has consulted. Sprint acknowledges that data request 6 is overbroad insofar as it does not indicate a time range for the information sought, but agrees that the request can be limited to documents since January 2003, the same time period

as other data requests in this case. Nevertheless, the ITA objects to these requests stating that the ITA does not have possession, custody, or control of the documents sought by Sprint and that Sprint cannot compel Mr. Snoddy, a non-party to this proceeding, to produce the information pursuant to the holding in Woodbury (supra). The ITA also suggests that the information sought is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Iowa Rule of Civil Procedure 1.503(1) provides that

[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party . . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

It is also well established that discovery rules mandate a liberal construction of the scope of discoverable materials. Carolan v. Hill, 553 N.W.2d 882, 886 (Iowa 1996) (citing Hutchinson v. Smith Lab., Inc., 392 N.W.2d 139, 140-41 (Iowa 1986)); see also Jochims v. Isuzu Motors, Ltd., 145 F.R.D. 507, 509 (S.D. Iowa 1992).

The Board has broad discretion in rulings on discovery matters and the information sought by Sprint appears to be reasonably calculated to lead to the discovery of admissible evidence relevant to the witness's expertise and credibility.

Moreover, the Board agrees with Sprint that Mr. Snoddy is an expert witness testifying on behalf of the ITA. Mr. Snoddy was selected to testify for the ITA based on his expertise. As such, Iowa Rule of Evidence 5.705 is instructive:

The expert may testify in terms of opinion or inference and give reasons therefore without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

An expert can be required to disclose the facts and data supporting his opinion during the cross-examination process. Thus, the expert can be required to provide the same information during discovery. The Board agrees with Sprint that if Mr. Snoddy's conclusions are based on his consulting experience with all of the LEC members of the ITA, Sprint is entitled to ask Mr. Snoddy for the information he relies upon to support his conclusions.

Given the unique manner in which pre-filed testimony is used in proceedings before the Board, the appropriate method for seeking out this information is through discovery requests, such as those initiated by Sprint. While third-party subpoenas are available for obtaining documents from non-parties, Sprint would be forced to ask the Board to issue 132 third-party subpoenas to receive the same information that could be received from the discovery requests presented to the ITA. As Sprint points out, the ITA is permitted to file an association tariff so that its members can avoid the expense and inconvenience of conducting multiple proceedings. That convenience should be a two-way street; the ITA should be prepared to respond to reasonable requests for information that is referred to in its own testimony and is available from its members.

For the reasons discussed above, the Board finds that data requests 5, 6, and 7 as served upon the ITA on February 6, 2008, are appropriate and the ITA should be directed to respond. While the discovery requests may not be as carefully crafted as they could be, the ITA's responses to those requests did not provide Sprint with the type of information that Sprint could have used to re-draft and improve its requests. Good faith discovery can be an interactive process, requiring a certain amount of give-and-take by both sides to make it work.

The ITA is directed to submit complete responses to data requests 5, 6, and 7 on or before March 5, 2008. The Board is sympathetic to the ITA's claim that to respond to Sprint's requests in their entirety would require Mr. Snoddy to sift through multiple file drawers of documents. Therefore, the Board requires the ITA to provide responses to Sprint's requests in general terms so that Sprint's requests are satisfied. The Board also recognizes that Sprint may not have sufficient time to process through the information received from the ITA in advance of its March 10, 2008, deadline to file rebuttal testimony. Therefore, the Board will allow Sprint until March 14, 2008, to supplement its testimony, if necessary, with the limitation that the supplemental testimony must be based upon the information received from the ITA on March 5, 2008.

**IT IS THEREFORE ORDERED:**

1. The motion to compel discovery filed by Sprint Communications Company L.P. on February 26, 2008, is granted as described in this order.

2. The Iowa Telecommunications Association is directed to submit complete responses to Data Requests 5, 6, and 7 to Sprint Communications Company L.P. on or before March 5, 2008, as described in this order.

3. Sprint Communications Company L.P. may file supplemental rebuttal testimony, if necessary, on or before March 14, 2008, with the limitation that the supplemental testimony must be based upon the information received from the Iowa Telecommunications Association on March 5, 2008.

**UTILITIES BOARD**

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/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 3<sup>rd</sup> day of March, 2008.