

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<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>
---	-----------------------------

ORDER DENYING MOTION FOR PROTECTIVE ORDER

(Issued April 15, 2008)

On March 11, 2008, Sprint Communications Company L.P. (Sprint) filed with the Utilities Board (Board) a motion for a protective order. Sprint states that on February 13, 2008, Sprint served its first set of data requests on the local exchange

carrier respondents (LEC Respondents) in this case.¹ Sprint claims that on February 26, 2008, the LEC Respondents raised the need for a protective agreement and sent a proposed agreement to Sprint. Sprint states that the LEC Respondents informed Sprint that if they did not have a signed agreement by February 28, 2008, at noon, then Sprint would not receive all of the discovery responses that it was due on February 29, 2008. Sprint states that the parties have been unable to timely reach a negotiated protective agreement and therefore Sprint asks the Board to enter an order resolving this dispute and setting the terms of the protective order in this case.

In support of its motion, Sprint states that there are three paragraphs of the proposed protective agreement that remain at issue, identified as paragraphs 3, 8, and 12. Sprint asserts that each of these paragraphs address the treatment of a produced document; the LEC Respondents take the position that the producing party should have the ability to determine the treatment of the produced document whereas Sprint wants language in the agreement that states that the Board could resolve future disputes over how a document should be treated and whether a document can be used in other proceedings. Specifically, in paragraph 3 of the proposed agreement, Sprint suggests language that would allow it to challenge the confidential designation made by the LEC Respondents by petitioning the Board and asking the Board to redesignate the documents as non-confidential. In paragraphs 8

¹ The LEC Respondents are as follows: Danville Mutual Telephone Company, Dixon Telephone Company, Readlyn Telephone Company, Van Horne Telephone Company, Wellman Cooperative Telephone Association, MTC Technologies, Northern Iowa Telephone Company, Webb-Dickens Telephone Corporation, and Mutual Telephone Company.

and 12 of the proposed agreement, Sprint suggests language that would allow it to seek permission from the Board to disclose confidential information produced by the LEC Respondents in other proceedings. Sprint states that its proposed modifications provide a process to challenge a designation and that process involves the Board. Sprint states that its proposed modifications do not eliminate the LEC Respondents' protections, but still leave Sprint an opportunity to make its case regarding the confidential status of a document, if necessary.

On March 17, 2008, the LEC Respondents filed a resistance to Sprint's motion. The LEC Respondents state that the proposed protective agreement that they sent to Sprint on February 26, 2008, contained the same essential terms and provisions as were used in other protective agreements used by counsel for these parties in prior proceedings before the Board. The LEC Respondents state that Sprint's suggested modifications to the proposed agreement are inconsistent with provisions of agreements previously entered into by Sprint and other parties before the Board.

The LEC Respondents argue that Sprint's proposed modifications that allow for a process for the Board to redesignate confidential documents as non-confidential may cause the Board to become embroiled in disputes over the confidentiality of documents, even if the documents are never submitted in connection with the presentation of evidence before the Board. The LEC Respondents assert that the appropriate time for the Board's consideration of confidentiality issues is at the time

evidence is presented to the Board and that any confidentiality disputes presented to the Board before that point are premature, would prejudice the rights of litigants, and would waste the Board's resources.

The LEC Respondents also argue that allowing Sprint to use confidential information produced in this proceeding as evidence in other proceedings would constitute an abuse of the discovery process. The LEC Respondents cite Iowa Rule of Civil Procedure 1.501(2), which provides that the discovery rules "shall be enforced to provide the parties with access to all relevant facts." The LEC Respondents assert that Sprint's proposal to use confidential documents obtained in this proceeding in other proceedings inappropriately expands rule 1.501(2) to not only provide the parties in this case with access to all the relevant facts, but also provide other litigants in other forums with those facts.

The Board has considered Sprint's motion and has determined that it will not issue a protective order at this time. Sprint's proposed language for the protective agreement would allow the parties to challenge the confidential designation of a document by petitioning the Board to redesignate the documents as non-confidential and would allow confidential documents produced in this proceeding to be used in other forums in matters involving the same parties or related subjects. The Board finds that this proposed language does not advance the protections to both parties that are already in place in the Board's rules and in other protective agreements that have been previously signed by Sprint.

With respect to the proposed language that would allow the parties to petition the Board to redesignate a confidential document as non-confidential, the Board finds that such a modification is unnecessary. A procedure to redesignate documents that have been filed with the Board as confidential is already in place under the Board's confidentiality rules at 199 IAC 1.9. That procedure requires that when anyone asks to see a Board record filed as confidential, the Board must notify the party who asserts the information is confidential. The party then has 14 days to seek an order from a court to maintain that document as a confidential record. These rules provide sufficient protection to all parties regarding documents or information that has been submitted as confidential, while providing a mechanism for public release of records that are not really entitled to confidential treatment.

The Board does not intend to determine the confidential nature of documents that may never be filed before it. If it were to accept that duty, the Board might find itself using its resources to render decisions on confidentiality issues that are unrelated to the Board's jurisdictional duties. This would be an inappropriate result.

Moreover, language in Sprint's proposed protective agreement that would require the Board to determine the proprietary nature of documents would almost certainly cause the Board to become involved in multiple disputes over the confidentiality of documents, even if, as mentioned above, such documents are never submitted in connection with a filing or testimony before the Board in this docket.

Such language would likely result in discovery disputes that would unnecessarily tax the Board's resources.

With respect to Sprint's proposed language that would allow confidential documents produced in this proceeding to be used in other forums in matters involving the same parties or related subjects, the Board finds that this provision would result in an unnecessary extension of the discovery process. The Board traditionally has given liberal construction to discovery requests that appear to be reasonably calculated to lead to the discovery of admissible evidence. The Iowa Rules of Civil Procedure regarding discovery allow a party to prepare for a pending case by providing the parties with access to all relevant facts. Iowa R. Civ. P. 1.501(2). Sprint's proposed language could be interpreted in a manner inconsistent with the civil procedure rules. Discovery procedures are available in most governmental, administrative, judicial, or regulatory forums and should be followed independently of this proceeding.

The foregoing discussion does not mean that the Board will never consider the question of whether a document that is claimed to be confidential is actually entitled to that treatment. The Board reserves the authority to address those issues if unusual circumstances make it necessary. If, for example, a party received one set of documents in response to discovery in Board proceedings and then received a different set of documents in response to the same discovery requests in proceedings in another forum, then the discovering party would have a reasonable

basis to ask for permission to use the documents produced in the Board proceedings for comparison with the documents produced in the other forum. In a situation of that nature, the Board's broad general powers to effect the purposes of Iowa Code chapter 476 would permit it to consider an appropriate motion. (See Iowa Code § 476.2(1)). Such circumstances should be rare, but if they arise, the Board stands ready to address them.

IT IS THEREFORE ORDERED:

The "Motion for Protective Order" filed by Sprint Communications Company L.P., on March 11, 2008, 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 15th day of April, 2008.