

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>SPRINT COMMUNICATIONS COMPANY L.P. AND MCC TELEPHONY OF IOWA, INC,</p> <p style="text-align:center">Complainants,</p> <p style="text-align:center">vs.</p> <p>WALNUT COMMUNICATIONS, INC.,</p> <p style="text-align:center">Respondent.</p>	<p>DOCKET NO. FCU-08-10</p>
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**ORDER DOCKETING COMPLAINT AND
ESTABLISHING PROCEDURAL SCHEDULE**

(Issued April 21, 2008)

On April 15, 2008, Sprint Communications Company L.P. (Sprint) and MCC Telephony of Iowa, Inc. (MCC) (collectively, Complainants), filed with the Utilities Board (Board) a complaint against Walnut Communications, Inc. (Walnut). Complainants allege that Walnut and MCC are both offering local telecommunications service in Avoca, Iowa, but customers of Walnut are currently unable to dial MCC customers in Avoca as a 7-digit local call. If they dial calls in that manner, they receive an intercept message. A Walnut customer in Avoca can only call an MCC customer in the same community by dialing "1+" and the area code and the number, making it a toll call.

Complainants allege that Walnut's failure to complete locally-directed calls to MCC customers in Avoca is unlawful and discriminatory under Iowa Code §§ 476.3,

476.100, and 476.101, as well as 47 U.S.C. §§ 202 and 251. Complainants request an expedited complaint proceeding pursuant to Iowa Code § 476.101(8), which would require that the Board issue a decision in this docket within 90 days of the date the complaint was filed, that is, by July 14, 2008.

Walnut's answer to the complaint is not yet due. However, for reasons described below, and in order to expedite this proceeding, the Board is docketing the complaint and establishing a procedural schedule at this time.

Iowa Code § 476.101(8) provides for 90-day proceedings in the following circumstances:

Any person may file a written complaint with the board requesting the board to determine compliance by **a local exchange carrier** with the provisions of sections 476.96 through 476.100, 476.102, and this section, or any board rules implementing those sections.

(Emphasis added.) The term "local exchange carrier" is defined, for purposes of § 476.101, as "any person that was the incumbent and historical rate-regulated wireline provider of local exchange services ... within a specific geographic area ... as of September 30, 1992." Walnut was not the incumbent, historical, rate-regulated provider of local exchange services in Avoca on September 30, 1992, so it is not a "local exchange carrier" as defined for purposes of § 476.101(8). Thus, the requirement for a mandatory 90-day docket is not applicable to this complaint.

However, the Board has the discretion to expedite this docket if necessary to protect the public interest and attain justice. See Iowa Code § 474.3. In past orders, the Board has indicated that the public interest requires that customers' calls should not be blocked because of economic disputes between carriers. Based on the

allegations of the petition, it appears that may be happening in Avoca. In order to minimize the adverse effect on the public, the Board will expedite this proceeding as if the 90-day requirement of § 476.101(8) applied.

Complainants have asserted jurisdiction pursuant to Iowa Code §§ 476.3, 476.100, and 476.101, as well as 47 U.S.C. §§ 202 and 251. In addition to those provisions, it appears the Board also has jurisdiction of this matter pursuant to the unnumbered second paragraph of § 476.11, which provides:

The board may resolve complaints upon notice and hearing, that a utility, operating under section 476.29, has failed to provide just, reasonable, and nondiscriminatory arrangements for interconnection of its telecommunications services with another telecommunications provider.

Based upon the limited information available at this time, this section may be applicable to the allegations of the petition.

IT IS THEREFORE ORDERED:

1. The complaint filed on April 15, 2008, by Sprint Communications Company L.P. and MCC Telephony of Iowa, Inc., against Walnut Communications, Inc., is docketed as Docket No. FCU-08-10, pursuant to Iowa Code §§ 476.3, 476.11, 476.100, and 476.101, and 47 U.S.C. §§ 202 and 251. The issues in this proceeding will be as alleged in the complaint, as they may be raised in the answer, and as they develop during the course of this proceeding.
2. The following procedural schedule is established:
 - a. Complainants shall file prepared direct testimony, with underlying workpapers and exhibits, on or before April 25, 2008. If Complainants refer to

a data request in their prepared testimony, the data request shall be filed as an exhibit. This requirement shall apply to all prefiled testimony by any party.

b. Walnut shall file its direct testimony, with underlying workpapers and exhibits, on or before May 5, 2008.

c. Complainants shall file their rebuttal testimony on or before May 15, 2008.

d. A hearing shall be held beginning at 9 a.m. on May 29, 2008, for the purpose of receiving testimony and the cross-examination of all testimony. The hearing shall be held in the Board's Hearing Room, 350 Maple Street, Des Moines, Iowa. The parties shall appear one-half hour prior to the time of the hearing for the purpose of marking exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

e. The parties may file simultaneous briefs on or before June 10, 2008.

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

4. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination which have not been previously filed shall become a part of the evidentiary record of these proceedings. The party making

reference to the data request shall file an original and six copies of the data request and response with the Board at the earliest possible time.

5. In the absence of objection, when the Board has called for further evidence on any issue and the evidence is filed after the close of the hearing, the evidentiary record will be reopened and the evidence will become part of the record five days after the evidence is filed with the Board. All evidence filed pursuant to this paragraph shall be filed no later than seven days after the close of the hearing in this proceeding.

6. Pursuant to 199 IAC 7.4(10)"d," the shortened time limits and additional service requirements applicable to expedited proceedings are applicable to this docket. Specifically, and without limiting the generality of that statement, 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.

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 21st day of April, 2008.