

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,</p> <p style="text-align:center">Respondent.</p>	<p>DOCKET NO. FCU-08-10</p>
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**ORDER DENYING MOTION TO DISMISS AND
DENYING REQUEST FOR INFORMAL DISPUTE RESOLUTION**

(Issued May 1, 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 a complaint against Walnut Communications (Walnut). Complainants allege that Walnut customers are not able to dial MCC customers in Avoca, Iowa, as a 7-digit local call, and that Walnut's failure to complete locally-directed calls to MCC customers in Avoca violates Iowa Code §§ 476.3, 476.100, and 476.101, and 47 U.S.C. §§ 202 and 251.

On April 21, 2008, the Board issued an order docketing Sprint's complaint and establishing a procedural schedule (Docketing Order).

On April 23, 2008, Walnut filed a resistance and motion to dismiss the complaint, along with a request that the Board order the parties to participate in a mediation session conducted by Board staff. Walnut denies it is blocking local calls from Walnut customers to MCC customers in the Avoca exchange. Walnut states that the problem is that Complainants did not make arrangements for interconnection of local traffic between Walnut and MCC customers before starting to provide local service in the Avoca exchange. Walnut states that it offered to make local interconnection arrangements in any of the exchanges in which it provides service. According to Walnut, Sprint wants Walnut to transport and deliver Sprint's local traffic to Sprint's connection with Iowa Network Services (INS) in Des Moines. Walnut asserts it is not obligated to provide anything more than a local interconnection between its local facilities and MCC's local facilities. Walnut states that because it has not refused to arrange for local interconnection with MCC, the complaint must be dismissed.

Walnut notes that Complainants requested expedited proceedings pursuant to Iowa Code § 476.101(8). Walnut states that it is neither a rate regulated wireline provider nor the incumbent wireline provider and thus is not a "local exchange carrier" as defined in Iowa Code § 476.96(5). According to Walnut, because the complaint is not authorized as requested under § 476.101(8), it should be dismissed.

On April 30, 2008, Complainants filed a resistance to Walnut's motion to dismiss and the request for informal dispute resolution. Complaints assert there is no

good faith argument that the complaint fails to state a claim under § 476.3. In response to Walnut's request that the Board order informal dispute resolution, Complainants suggest that mediation in this case is not appropriate.

In ruling on a motion to dismiss, the Board considers the pleadings in the light most favorable to the petitioner and will deny the motion if any reasonable grounds exist on which the petitioner may be able to justify relief. Based on that standard, the Board will deny Walnut's motion to dismiss. The complaint states a claim that Walnut is engaging in unlawful and discriminatory behavior by blocking locally-dialed calls to MCC customers. If that claim is proven, it would justify some relief, if only to protect the customers affected by this dispute.

Further, the Board does not agree with Walnut's assertion that because Complainants requested expedited proceedings pursuant to Iowa Code § 476.101(8), a provision that does not appear to apply in this case, the complaint should be dismissed. The Board finds that there is a sufficient basis for its consideration of this complaint under Iowa Code §§ 476.3 and 476.11, as discussed in the Docketing Order.

Finally, the Board will not order the parties to participate in a mediation session conducted by Board staff. The parties are always free to negotiate a resolution of this dispute and the Board concludes it is not necessary to involve Board staff in an attempt to resolve this matter informally.

IT IS THEREFORE ORDERED:

1. The motion to dismiss filed by Walnut Communications on April 23, 2008, is denied.

2. The request for informal dispute resolution filed by Walnut Communications on April 23, 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 1st day of May, 2008.