

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 GRANTING MOTION TO DISMISS,
CANCELING HEARING, AND CLOSING DOCKET**

(Issued May 16, 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 (Walnut). Complainants alleged that Walnut was failing to complete locally-directed calls to MCC customers in Avoca, Iowa, in violation of 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.

On April 23, 2008, Walnut filed a resistance and motion to dismiss the complaint. Walnut denied it is blocking local calls and stated that the problem was

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. According to Walnut, it offered to make local interconnection arrangements but Sprint insisted that Walnut transport and deliver Sprint's local traffic to Sprint's connection with Iowa Network Services (INS) in Des Moines. Walnut argued it is not obligated to provide anything more than a local interconnection between its local facilities and MCC's local facilities.

On May 1, 2008, the Board issued an order denying Walnut's motion to dismiss. The Board found that Sprint's claim that Walnut was blocking locally-dialed calls to MCC customers should go forward.

The Board found a sufficient basis for its consideration of this complaint under Iowa Code §§ 476.3 and 476.11.

On May 5, 2008, Walnut filed a motion to dismiss the complaint as moot. Walnut states it has made arrangements for the delivery of local calls from its customers to the customers of MCC by delivering that traffic indirectly to Sprint through INS. Walnut explains that its contract with INS was executed on April 29, 2008, and that arrangements for delivery of Walnut's local traffic to MCC customers in Avoca were implemented on May 2. Walnut states that although it has acceded to indirect connection, it reserves its right to make other arrangements for delivering its originating traffic to MCC customers in the Avoca, Iowa, exchange. Walnut also states that providing the indirect connection does not mean it agrees with Sprint's position that MCC facilities in Avoca cannot be used to connect local traffic between

Walnut and MCC. Walnut asserts that the issue of the complaint is moot and asks that the complaint be dismissed and the docket closed.

On May 12, 2008, Sprint filed a response to Walnut's motion to dismiss as moot. Sprint objects to Walnut's reservation of rights and states there is no assurance that Walnut's cooperation will continue if the complaint is dismissed. According to Sprint, to make the case truly moot, Walnut would have to concede on the merits of the complaint. Sprint suggests that Walnut is dictating to the Board how the case will be resolved and characterizes the motion to dismiss as a request for a de facto win on the merits.

If the Board does not allow a full hearing, Sprint asks the Board to dismiss the complaint but make clear statements in the order to prevent recurrence of the issue. Sprint also says that if Walnut wants the case to be moot, it should refile its motion without any conditions. Without one of these outcomes, Sprint does not agree the case is moot and resists any resolution that does not resolve the underlying issues and provide guidance going forward.

The Board's primary concern in this matter was how the parties' dispute may have affected customers in the Avoca exchange. Now that Walnut has made arrangements for the delivery of local traffic to MCC customers in Avoca, the complaint is moot. Because there is no longer a controversy regarding the calls between Walnut and MCC customers in Avoca, the Board will grant Walnut's motion to dismiss. To the extent that Walnut has preserved any arguments regarding its obligations regarding delivery of this traffic, it may never be necessary to resolve

those arguments. The Board does not agree with Sprint's assertion that by granting the motion to dismiss, the Board is giving Walnut a win on the merits. The Board makes no ruling on either party's arguments regarding Walnut's obligations in this context or on any other issue raised in the complaint. The Board docketed this complaint pursuant to Iowa Code § 476.3 based on a finding that there were reasonable grounds for further investigation of the matter. Now that arrangements for the delivery of local calls between Walnut and MCC customers have been implemented, the complaint is moot and there is no reason for further investigation. The Board will grant Walnut's motion to dismiss the complaint as moot and to close the docket.

IT IS THEREFORE ORDERED:

1. The "Motion to Dismiss as Moot" filed in this docket on May 5, 2008, by Walnut Communications is granted.
2. The hearing scheduled in this docket on May 29, 2008, is canceled.
3. Docket No. FCU-08-10 is closed.

UTILITIES BOARD

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 16th day of May, 2008.