

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: QWEST CORPORATION AND SOUTH SLOPE COOPERATIVE TELEPHONE COMPANY	DOCKET NOS. C-07-246, C-07-251, C-07-252, C-07-256, C-07-257, C-07-265, C-07-266, C-07-270, C-07-271, C-07-272
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ORDER GRANTING MOTION FOR RECONSIDERATION

(Issued May 30, 2008)

On or about November 21, 2007, 11 residential and business customers from Cedar Rapids, Oxford, and Solon, Iowa, filed written complaints with the Utilities Board (Board) against Qwest Corporation (Qwest) and South Slope Cooperative Telephone Company (South Slope) for alleged discontinuance of toll-free calling to and from South Slope customers in Oxford, Solon, and Tiffin. The Qwest customers stated that they received a letter from Qwest on or about October 15, 2007, informing them that effective November 15, 2007, calls placed from Cedar Rapids to Oxford, Solon, and Tiffin would be billed as long distance calls and carried by their long distance telephone providers. The customers indicated Qwest advised the change was due to a ruling made by the Board.

Pursuant to the Board's rules for processing customer complaints, Board staff forwarded the complaints to South Slope and Qwest for investigation and response to these allegations. Qwest stated in its response of November 28, 2007, that it was

acting in accordance with a Board order issued in Docket No. FCU-06-25.¹ Qwest stated customers of Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), in Oxford, Solon, and Tiffin have always been long distance toll calls from Cedar Rapids; however, calls to South Slope customers in those exchanges were not being billed correctly under Qwest tariffs. Qwest stated it sent "goodwill" letters to its customers advising that calls from Cedar Rapids to Oxford, Solon, and Tiffin would be handled as toll calls starting November 15, 2007. Qwest stated there is not an Extended Area Service (EAS)² arrangement from Cedar Rapids to Oxford, Solon, and Tiffin. Qwest stated it does have an EAS agreement with South Slope for toll-free EAS from Cedar Rapids to North Liberty.

In its initial response, South Slope did not address the facts that led to the complaints. South Slope only asked the Board to require Qwest to submit for the Board's consideration a request to "discontinue, reduce or impair" South Slope's local service under Iowa Code § 476.20(1).

¹ On February 1, 2006, Iowa Telecom filed a complaint including a request for declaratory order against South Slope. The complaint was related to South Slope's status as an incumbent local exchange carrier (ILEC) or competitive local exchange carrier (CLEC) in the Oxford, Solon, and Tiffin exchanges. It was docketed as Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, v. South Slope Cooperative Telephone Company, Docket No. FCU-06-25. On January 23, 2007, the Board ruled that South Slope is offering service in the Oxford, Solon, and Tiffin exchanges as a CLEC, not an ILEC. The Board ruled that South Slope must make corrections to industry databases so that Iowa Telecom can properly port telephone numbers within Oxford, Solon, and Tiffin.

² EAS is a non-toll service between neighboring telephone exchanges, typically offered pursuant to tariffs filed pursuant to the Board's rules at 199 IAC 22.8.

On December 10, 2007, staff requested additional information from Qwest and South Slope. Qwest responded on December 20, 2007, and South Slope responded on December 21, 2007.

Staff issued a proposed resolution letter on December 31, 2007, based on the complaints and the company responses, concluding that Qwest was in violation of the rules by failing to provide proper notice to the Board of its discontinuance of EAS to customers in Cedar Rapids.

On January 14, 2008, Qwest provided additional information and requested that staff reconsider the proposed resolution. Qwest pointed out that the alleged EAS service from Cedar Rapids to Oxford, Solon, and Tiffin was never a tariffed service. Therefore, Qwest said it did not discontinue a service that was being provided pursuant to its tariff. Qwest argued the EAS agreement between South Slope and Qwest applies to Qwest customers in Cedar Rapids only when they call South Slope's customers in the North Liberty exchange. Qwest stated that calls to customers in Oxford, Solon, and Tiffin were treated as local calls only because the calls appeared to end in the North Liberty exchange (after South Slope made changes to the LERG³ and NANPA⁴ databases). Qwest stated that when the database entries were corrected, calls from Cedar Rapids to South Slope customers in Oxford, Solon, and Tiffin could be identified as interexchange traffic and therefore

³ Local Exchange Routing Guide

⁴ North American Number Pooling Administrator

had to be routed and billed as interexchange calls. Qwest requested that staff reconsider the proposed resolution.

Upon further review, staff issued a revised proposed resolution on February 1, 2008. Staff found Qwest never included EAS or toll-free service from Cedar Rapids to Oxford, Solon, and Tiffin in its tariff. Thus, calls from Cedar Rapids to Oxford, Solon, and Tiffin should always have been toll calls; they were treated as EAS calls only because they appeared to terminate in North Liberty. Staff concluded that since this was never a properly tariffed service, the Board's discontinuance of service rules would not apply. Staff also concluded that once the prefixes were changed to show the correct rate centers, the calls would not go through the North Liberty exchange to Oxford, Solon, and Tiffin, so Qwest was able to restore the calls to toll status.

On February 8, 2008, South Slope filed a request to reinstate staff's original proposed resolution or, if the previous resolution could not be reinstated, to initiate a formal complaint proceeding. South Slope argues that Qwest violated the Board rules because it failed to give proper notice to customers before it discontinued the EAS services in question and no legal basis was given for staff's revised proposed resolution. South Slope also argues that Qwest has an EAS agreement to provide service to South Slope customers in the North Liberty exchange.

On April 4, 2008, the Board issued an order denying formal complaint proceedings. Pursuant to Iowa Code § 476.3, the Board must grant a request for formal complaint proceedings if the Board finds there are any reasonable grounds for

further investigation of the complaint. The Board found that the relevant facts had been established in the informal complaint files or in other dockets and were not disputed and concluded that the application of the law to the facts would not be affected by holding an evidentiary hearing. The Board concluded that there were no reasonable grounds for further investigation and therefore denied formal complaint proceedings.

The Board described the relevant events as follows: In the late 1990s, South Slope began offering local exchange service in competition with Iowa Telecom in the Oxford, Solon, and Tiffin exchanges. At that time, it made no difference (from a regulatory standpoint) whether South Slope offered that service by expanding the scope of its existing certificate or by applying for and receiving a separate certificate covering the Oxford, Solon, and Tiffin exchanges. South Slope chose to expand its existing certificate and the Board approved that choice.

Subsequent events made this decision more significant. At some point in time, South Slope caused changes to be made to the LERG and NANPA databases so that its customers in Oxford, Solon, and Tiffin appeared to be located in North Liberty. This caused some practical problems; for example, Qwest was unable to distinguish South Slope's North Liberty customers from South Slope's customers in Oxford, Solon, and Tiffin, so EAS from Cedar Rapids was effectively expanded. Further, Iowa Telecom found it was unable to port telephone numbers from South Slope in the subject exchanges, because number porting is only permitted within a

rate center and South Slope's customers in Oxford, Solon, and Tiffin were now assigned to the North Liberty rate center.

During the same general time frame, the Board amended its rules to require that competitive local exchange service providers reduce their charges for exchange access services when offering service in exchanges where the incumbent's access service charges are below certain levels. These rules applied to South Slope's service offerings in Oxford, Solon, and Tiffin, making it necessary to be able to readily identify calls to and from customers in those communities in order to apply the proper access charges.

In order to correct the number porting and access charge problems, the Board found South Slope was offering service as a CLEC in Oxford, Solon, and Tiffin and ordered South Slope to take all steps necessary to implement local number portability so that porting could occur within the boundaries of the Oxford, Solon, and Tiffin rate centers and so that South Slope's access charges in those exchanges could be billed correctly. One additional result of these changes is that Qwest was once again able to properly identify calls from its customers in Cedar Rapids to South Slope's customers in Oxford, Solon, and Tiffin. Qwest therefore took action to restore service as it was prior to the database changes. The Board found that this was not a discontinuance of service pursuant to Iowa Code § 476.20. Instead, Qwest was taking action to ensure it was, and is, providing service pursuant to the terms of its tariff, as required by § 476.5. The Board found this result was required by statute, so

there were no reasonable grounds for further investigation of this matter and the requests for formal complaint proceedings were denied.

On April 30, 2008, South Slope filed a motion for reconsideration of the order denying formal complaint proceedings. South Slope alleges that the Board has somehow conditioned, restricted, and partially revoked its certificate and that the Board has acted without giving South Slope notice and opportunity for hearing. South Slope further alleges that the Board's actions in this docket violated Iowa Code §§ 17A.10(d), (f), and (g); 17A.18(3); 17A.19(10"f"; 476.29(2) and (9); and 476.101(1), along with 199 IAC 22.20(5). South Slope asks that the Board reconsider its order "in a manner following prescribed procedures, considering the statutes cited herein and considering evidence submitted in an evidentiary hearing." No response to the motion for reconsideration has been filed.

South Slope's motion for reconsideration does not identify any material fact issue that is disputed. South Slope appears to take issue with the Board's analysis of the facts and the Board's legal conclusions, rather than the facts on which that analysis is based. Nonetheless, South Slope requests an evidentiary hearing. The Board agrees that if there are issues of material evidentiary fact in this matter, then it should be set for hearing, but it is up to South Slope to identify those issues.

Therefore, the Board will grant South Slope's motion for reconsideration and require that South Slope file either a statement of issues of material factual disputes that require setting this matter for hearing or a statement that there are no such

issues. At the same time, South Slope should state why it believes the Board has violated § 17A.10, which is addressed to informal settlements and waivers. It is not clear from South Slope's motion how this statute could be applicable to this proceeding.

Finally, at this time the Board does not agree with South Slope that the Board's orders in this matter to date have affected South Slope's certificate of public convenience and necessity issued pursuant to Iowa Code § 476.29. The Board is also unconvinced that § 17A.18(3), relating to revocation, suspension, annulment, or withdrawal of a state-issued license, is applicable to this proceeding. If, however, South Slope insists that the statute applies, then South Slope should also indicate in its statement whether it is willing to waive formal service of any possible notice of hearing in connection with this matter, as required by that statute. It is clear that South Slope is aware of these proceedings and is, in fact, an active participant, and it would be inefficient for the Board to have to serve a possible notice of hearing by restricted certified mail or personal service in place of the Board's usual service of orders by U.S. mail.

The Board will issue further orders as appropriate once South Slope has filed its statement.

IT IS THEREFORE ORDERED:

On or before 21 days from the date of this order, South Slope Cooperative Telephone Company shall file a statement identifying any material issues of fact in

this matter that, in South Slope's view, must be resolved by hearing, or a statement that there are no such issues of fact. The statement shall also explain the basis for South Slope's claim that Iowa Code § 17A.10 is relevant to this proceeding. Finally, and assuming that § 17A.18(3) is applicable to this proceeding, the statement shall also indicate whether South Slope is willing to accept service of a notice of hearing by first-class mail pursuant to 199 IAC 7.4(6)"a," rather than in the more formal manner otherwise required by § 17A.18(3).

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 30th day of May, 2008.