

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:

QWEST COMMUNICATIONS  
CORPORATION,

Complainant,

vs.

SUPERIOR TELEPHONE COOPERATIVE;  
THE FARMERS TELEPHONE COMPANY OF  
RICEVILLE, IOWA; THE FARMERS &  
MERCHANTS MUTUAL TELEPHONE  
COMPANY OF WAYLAND, IOWA;  
INTERSTATE 35 TELEPHONE COMPANY,  
d/b/a INTERSTATE COMMUNICATIONS  
COMPANY; DIXON TELEPHONE COMPANY;  
REASNOR TELEPHONE COMPANY, LLC;  
GREAT LAKES COMMUNICATION CORP.;  
AND AVENTURE COMMUNICATION  
TECHNOLOGY, LLC,

Respondents;

DOCKET NO. FCU-07-2

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REASNOR TELEPHONE COMPANY, LLC,

Counterclaimant,

vs.

QWEST COMMUNICATIONS  
CORPORATION AND QWEST  
CORPORATION,

Counterclaim Respondents.

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**ORDER DENYING REQUEST FOR STAY,  
GRANTING MOTION FOR EXTENSION OF TIME, AND  
GRANTING REQUEST FOR CONFIDENTIAL TREATMENT**

(Issued June 9, 2008)

### REQUEST FOR STAY

On May 14, 2008, Superior Telephone Company; Farmers Telephone Company of Riceville, Iowa; Farmers and Merchants Mutual Telephone Company of Wayland, Iowa (Farmers and Merchants of Wayland); Interstate 35 Telephone Company, d/b/a Interstate Communications Company; Dixon Telephone Company; and Great Lakes Communication Corp. (hereinafter the Respondents) filed with the Utilities Board (Board) a request to stay this proceeding until the Federal Communications Commission (FCC) has ruled on a motion filed by Qwest Communications Corporation (QCC) for reconsideration in a separate case between QCC and Farmers and Merchants of Wayland.<sup>1</sup> Aventure Communication Technology, L.L.C. (hereinafter included in all references to the Respondents), filed a joinder in the Respondents' motion on May 19, 2008. The Respondents request, in the alternative, that the Board extend all deadlines and the hearing in this case by a period of 90 days.

The Respondents state that QCC's intrastate claims before the Board in this complaint are dependent upon the interpretation of their interstate access tariffs and National Exchange Carrier Association (NECA) tariffs that are within the FCC's jurisdiction. The Respondents assert that while the Board has jurisdiction to regulate intrastate communications, it does not have jurisdiction over communications services where the interstate and intrastate components are inseverable and the

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<sup>1</sup> See In re: Qwest Communications Corporation vs. Farmers & Merchants Mutual Telephone Company of Wayland, Iowa, File No. EB-07-MD-001 (hereinafter referred to as "FCC Complaint").

Board cannot regulate the intrastate component without regulating the interstate component.<sup>2</sup> The Respondents propose that the Board stay this proceeding until the FCC has issued its final order in QCC's FCC Complaint and then defer to the FCC's interpretation of the interstate charges for the Board's interpretation of the intrastate charges at issue in this proceeding.

In the alternative, the Respondents request that the Board extend all deadlines and the hearing in this docket by 90 days. The Respondents state that QCC filed 15 notebooks of initial testimony and supporting exhibits with the Board and included over 3,000 pages of deposition testimony that was not specifically cited in witness testimony. The Respondents state that because of the volume of QCC's initial testimony and exhibits, Respondents have spent considerable resources reviewing the testimony for confidential information and will not have sufficient time to file their responsive testimony by June 16 as scheduled. In addition, the Respondents state that there are scheduling conflicts with some of their witnesses during the week of the rescheduled hearing in this proceeding and therefore the hearing date should be extended.

On May 23, 2008, QCC filed a response to the Respondents' motion. QCC states that the Board, not the FCC, has the jurisdictional authority to hear this case. QCC states that in its original complaint, it asked the Board to interpret and apply the

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<sup>2</sup> Citing Vonage Holdings Corp. v. Minnesota PUC, 394 F.3d 568 (8<sup>th</sup> Cir. 2004), citing In re: Vonage Holdings Corp., 2004 FCC LEXIS 6429, WC Docket NO. 03-211, FCC 04-267 (FCC rel. Nov. 12, 2004); Illinois Bell Telephone Co. v. Globalcom, Inc., 2003 U.S. Dist. LEXIS 7620 (N.D. Ill. 2003); Vonage Holdings Corp. v. Nebraska PSC, 2008 U.S. Dist. LEXIS 16735 (D. Neb. 2008).

facts presented to local exchange tariffs, state law, and state regulations. QCC asserts that while the Respondents' actions that for the basis of this complaint may involve a significant amount of interstate traffic, interstate traffic has no bearing on the Board's ability to hear the full scope of the allegations and render a decision regarding intrastate traffic and the Respondents' local exchange tariffs.

In addition, QCC states that a 90-day extension of the deadlines in this case is unnecessary. QCC states that the Respondents were aware of the content of QCC's testimony and participated in the depositions that were conducted and therefore they have had sufficient time to put together their initial testimony by the established deadline. QCC offers the Respondents a two-week extension of the filing date for their initial testimony and a similar extension for filing QCC's reply testimony, due to the recent extension of the hearing date established by Board order on August 25, 2008.

On June 3, 2008, the Respondents filed a reply to QCC's response. The Respondents generally restate their previous arguments regarding the necessity of a stay of these proceedings. In addition, the Respondents assert that QCC has requested and received five extensions of filing deadlines since this case was docketed, while the Respondents have not asked for any extensions. The Respondents again assert that a two-week extension as proposed by QCC is not sufficient time given the volume of testimony filed by QCC.

The Board has reviewed and considered the Respondents' request and QCC's response and finds that a stay of this proceeding is unnecessary and inappropriate, but an extension of the filing deadlines and hearing by approximately 90 days is

appropriate. The Board agrees with the Respondents that the FCC's decision in its reconsideration of the FCC complaint is likely to be instructive to the Board's decision in this proceeding. However, the Board also agrees with QCC that the Board has jurisdiction to hear the full context of this case and to determine the issues brought by QCC regarding intrastate traffic and the Respondents' local exchange tariffs. As such, the Board finds that a stay of this proceeding pending the FCC's determination is unnecessary.

With respect to the Respondents' request for an extension of the filing deadlines and hearing in this case, QCC asserts that the Respondents are already aware of the content of QCC's testimony given their involvement in the depositions taken in this case and their review of QCC's testimony and supporting exhibits for confidential information. However, the Board finds that granting the Respondents an extension of time is appropriate given that the Board has granted similar requests made by QCC during the course of this proceeding. The Board will grant the Respondents' request and extend the filing deadlines for the Respondents' initial testimony and QCC's rebuttal testimony. An amended procedural schedule will be established accordingly.

#### **REQUEST FOR CONFIDENTIAL TREATMENT**

On May 23, 2008, QCC filed a request for confidential treatment of certain information submitted in support of QCC's response to the Respondents' motion. QCC states that certain Respondents have designated this information as confidential pursuant to a protective agreement and that the Board has previously

designated this information as confidential. The material for which confidentiality was requested was filed in a separate envelope and marked confidential.

Board rule 199 IAC 1.9(6)"b" provides that in a request for confidential treatment, the facts underlying the legal basis for the request shall be supported by an affidavit executed by a corporate officer with personal knowledge of the specific facts. Therefore, the Board generally requires an affidavit from an officer of the company where the documents originated to attest to the confidential nature of the information.

The Board recognizes the unusual circumstances in this case, whereby QCC and the Respondents in this matter have obtained access to confidential documents from several non-parties pursuant to an executed protective agreement. In addition, the Board notes that it has already determined this information is confidential. Therefore, the Board will not require an affidavit attesting to the confidential nature of the information and finds that its previous determination acts as substantial compliance with 199 IAC 1.9(6) in this matter.

The Board finds that the application and affidavit filed by QCC on May 23, 2008, constitutes a trade secret under Iowa Code § 550.2(4) as it derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by a person able to obtain economic value from its disclosure, and it is the subject of reasonable efforts to maintain its secrecy. The Board finds that this information, if released, would provide an advantage to competitors. Therefore, the Board will hold the requested

information as confidential under the provisions of Iowa Code § 22.7(3) as requested by QCC on May 23, 2008.

### **ORDERING CLAUSES**

#### **IT IS THEREFORE ORDERED:**

1. The motion to stay filed by Superior Telephone Company; Farmers Telephone Company of Riceville, Iowa; The Farmers and Merchants Mutual Telephone Company of Wayland, Iowa; Interstate 35 Telephone Company, d/b/a Interstate Communications Company; and Dixon Telephone Company on May 14, 2008, is denied as described in this order.

2. The motion for an extension of time filed by Superior Telephone Company; Farmers Telephone Company of Riceville, Iowa; The Farmers and Merchants Mutual Telephone Company of Wayland, Iowa; Interstate 35 Telephone Company, d/b/a Interstate Communications Company; and Dixon Telephone Company on May 14, 2008, is granted as described in the order and as set forth below.

3. The procedural schedule in this docket is amended to reflect the following changes:

a. The Respondents in this proceeding and any intervenors aligned with them shall file prepared direct testimony, with supporting exhibits and workpapers, on or before September 15, 2008.

b. QCC and any intervenors aligned with it shall file rebuttal testimony, with supporting exhibits and workpapers, on or before October 13, 2008.

c. A hearing for the purpose of receiving testimony and cross-examination of all testimony will commence at 9 a.m. on Monday, December 8, 2008, in the Board's hearing room, 350 Maple Street, Des Moines, Iowa. Parties shall appear at the hearing one-half hour prior to the time of hearing to mark exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 515-281-5256 to request appropriate arrangements.

d. Any party desiring to file a brief may do so on or before December 22, 2008.

4. The request for confidential treatment filed by Qwest Communications Corporation on May 23, 2008, is granted.

5. The information shall be held confidential by the Board subject to the provisions of 199 IAC 1.9(8)"b"(3).

**UTILITIES BOARD**

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/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 9<sup>th</sup> day of June, 2008.