

/STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>QWEST CORPORATION,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="text-align:center">vs.</p> <p>SOUTH SLOPE COOPERATIVE TELEPHONE COMPANY,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. ARB-08-1</p>
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ARBITRATION ORDER

(Issued June 23, 2008)

PROCEDURAL HISTORY

On February 7, 2008, Qwest Corporation (Qwest) filed with the Utilities Board (Board) a petition for approval of an interconnection agreement between Qwest and South Slope Cooperative Telephone Company (South Slope). The request was filed pursuant to the provisions of 199 IAC 38.4(3) and 38.7(3) and 47 U.S.C. § 252(b). The petition has been identified as Docket No. ARB-08-1.

In its petition, Qwest stated that the Federal Communications Commission (FCC) requires Qwest to request and enter into interconnection agreements with competitive local exchange carriers (CLECs) with whom Qwest exchanges traffic. 47 U.S.C. § 251. Qwest stated that the Board's final order in Docket No. FCU-06-25¹

¹ See In re: Iowa Telecommunications Services, Inc. vs. South Slope Cooperative Telephone Company, "Final Order," Docket No. FCU-06-25 (issued January 23, 2007).

identified South Slope as a CLEC in the Oxford, Solon, and Tiffin, Iowa, exchanges. Qwest asserted that since it is an incumbent local exchange carrier (ILEC) in the neighboring Cedar Rapids and Iowa City, Iowa, exchanges, Qwest invited South Slope to enter into negotiations to establish an interconnection agreement as required, but received no response. According to its petition, Qwest requested negotiations with South Slope on August 30, 2007. Qwest attached a proposed interconnection agreement to its petition and stated that there were no unresolved issues in this case because South Slope did not respond to Qwest's attempts to negotiate the terms of the agreement.

On February 11, 2008, the Board issued an order docketing Qwest's petition and scheduling a pre-hearing conference. On February 15, 2008, the Board issued an order setting the procedural schedule in this proceeding.

On February 25, 2008, a telephone conference was held for the purpose of discussing the parties' positions regarding the initiation of Qwest's negotiations with South Slope for an interconnection agreement. Representatives from Qwest and South Slope participated in the call along with Board staff. During this conference, the parties agreed that the negotiations were initiated on September 24, 2007, rather than August 30, 2007. Because the parties agreed that the negotiations were initiated on September 24, 2007, the Board issued an amended procedural schedule on February 26, 2008, that reflected the new dates. Pursuant to that amended procedural schedule, a final order regarding this petition for arbitration shall be issued on or before June 24, 2008.

Pursuant to the procedural schedule established and amended in this proceeding, South Slope filed its prepared direct testimony, with supporting exhibits and workpapers, on February 22 and March 24, 2008. Qwest filed its prepared direct testimony, with supporting exhibits and workpapers, on March 24, 2008. The parties simultaneously filed rebuttal testimony on April 7, 2008.

A hearing to receive all pre-filed testimony and allow for cross-examination of all witnesses was held on April 22, 2008.

The parties simultaneously filed initial briefs on May 12, 2008, and reply briefs on May 23, 2008.

STANDARD FOR ARBITRATION AND REVIEW

This arbitration is to be conducted pursuant to 47 U.S.C. § 252, which states in part:

- (c) Standards for arbitration. In resolving by arbitration under subsection (b) of this section any open issues and imposing conditions upon the parties to the agreement a State commission shall –
- (1) ensure that such resolution and conditions meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title;
 - (2) establish any rates for interconnection, services, or network elements according to subsection (d) of this section ; and
 - (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

47 U.S.C. § 252(c).

Additionally, 47 U.S.C. § 252(e)"1" requires that any interconnection agreement adopted by negotiation or arbitration shall be submitted to the state commission for approval. Section 252(e)"2"(B) provides that a state commission may reject any portion of an interconnection agreement adopted by arbitration "if it finds

that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section." Section 252(e)"3" further provides:

(3) Preservation of authority. Notwithstanding paragraph (2), but subject to section 253 of this title, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

ISSUES FOR ARBITRATION

As part of its initial testimony, Qwest identified the following four issues that are being disputed by the parties: (1) Existing Interconnection Agreements; (2) IntraLATA local exchange carrier (LEC) Toll; (3) Charges Associated with Local Interconnection Service (LIS); and (4) Liability Insurance. During the course of this proceeding, a fifth issue arose regarding whether a network diagram found in confidential Exhibit L should be allowed to be an attachment to an interconnection agreement between the parties.

Each of these issues will be discussed individually below, with the exception of the issue of liability insurance, which the parties state is no longer in dispute.

(Tr. 105).

1. Whether existing interconnection arrangements between Qwest and South Slope apply to the terms of Qwest's proposed agreement.

Parties' positions

Qwest states that it does not have an existing interconnection agreement with South Slope in the Oxford, Solon, and Tiffin exchanges where South Slope operates

as a CLEC. Qwest also states that pursuant to 47 U.S.C. § 251(c)"2"(D), CLECs must compensate ILECs, such as Qwest, for certain interconnection costs and that Qwest, as an ILEC, has certain responsibilities including:

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network –

...

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

(Qwest Initial Brief, pp. 3-4).

In contrast, South Slope states that it has been interconnected with Qwest for some time under a Board-approved agreement stemming from Docket No. TCU-96-12. (Tr. 152-53). South Slope states that in that proceeding, the Board approved South Slope's existing extended area service (EAS) agreement with Qwest to provide telecommunications services to South Slope's expanded North Liberty, Iowa, exchange, which served portions of Qwest's service area in Iowa City, Iowa.² (Tr. 175-76). South Slope asserts that it did not set up its CLEC operations as a separate entity and that it has been operating under this agreement for both its ILEC and CLEC operations. (Tr. 165, 177). South Slope states that there is no need for a new interconnection agreement because of this established relationship and that Qwest has not demonstrated any legal reason as to why this existing agreement

² The Board approved two additional expansions of South Slope's North Liberty exchange in Docket Nos. TCU-98-13 and TCU-98-15, which resulted in the expansion of the North Liberty exchange into a portion of Qwest's Cedar Rapids exchange and into all of the Oxford, Solon, and Tiffin exchanges. EAS is a non-toll service between neighboring telecommunications exchanges, typically offered pursuant to tariffs filed in accordance with the Board's rules at 199 IAC 22.8.

should be discontinued. (Tr. 177). South Slope has proposed to add language to Qwest's proposed agreement that incorporates references to preexisting agreements.

Qwest asserts that South Slope's proposed language incorporating references to preexisting arrangements is unreasonable and discriminatory. (Qwest Initial Brief, p. 4). Qwest states that it has entered into thousands of interconnection agreements and has standardized the terms and conditions in order to treat all parties in a reasonable and nondiscriminatory manner. (Id.). Qwest states that other CLECs have relied on Qwest's proposed language to allow for flexibility of technically feasible interconnection. Qwest claims that South Slope's proposed language does not comply with the distinct relationships and duties between ILECs and CLECs as established by 47 U.S.C. § 252. (Tr. 17, 22, 26).

South Slope argues that if its proposed language changes are adopted, its existing relationship with Qwest will be preserved and recent Board orders in Docket Nos. FCU-06-25 and C-07-246, et al., will effectively be reversed.³ (Tr. 248). South Slope argues that its customers have enjoyed the benefit of EAS whenever the

³ In Docket No. FCU-06-25, the Board determined that South Slope was operating as a CLEC in the Oxford, Solon, and Tiffin exchanges. Part of the practical result of that decision was that Oxford, Solon, and Tiffin are not included in the EAS provisions for the North Liberty exchange that provides toll-free calling from Cedar Rapids, Iowa, until a new EAS arrangement is negotiated by the parties. See also In re: Qwest Corporation vs. South Slope Cooperative Telephone Co., Docket Nos. C-07-246, et al., "Order Denying Request for Formal Complaint Proceeding," (issued April 4, 2008). In that informal complaint proceeding, the Board determined that calls from Cedar Rapids to Oxford, Solon, and Tiffin should have been toll calls, although they had been treated as EAS calls because they appeared to Qwest as though they terminated in the North Liberty exchange. With respect to this proceeding, South Slope believes that by incorporating its proposed language changes regarding previous interconnection arrangements into Qwest's proposed interconnection agreement, the Board's determination could be reversed and South Slope's customers could continue to benefit from EAS in the Oxford, Solon, and Tiffin exchanges.

Board approved expansions of the North Liberty exchange and that the adoption of Qwest's proposed agreement would result in lost EAS for South Slope's customers. (South Slope Initial Brief, pp. 4-5).

Analysis

Qwest operates as an ILEC in the Cedar Rapids and Iowa City exchanges and according to Qwest, previous interconnection arrangements between Qwest and South Slope, including the EAS arrangement that resulted from the Board's decision in Docket No. TCU-96-12, were based on South Slope's ILEC operations in the expanded North Liberty exchange. Since the Board's decision in Docket No. FCU-06-25 established that South Slope is operating as a CLEC in the Oxford, Solon, and Tiffin exchanges, Qwest has a duty to enter into an interconnection agreement with South Slope that address the new ILEC to CLEC arrangement, as required by 47 U.S.C. § 251.

South Slope does not believe that the boundaries of the North Liberty exchange have been modified as a result of the Board's decision in Docket No. FCU-06-25. Rather, South Slope believes that the agreement approved by the Board in Docket No. TCU-96-12, which it views as both an EAS arrangement and interconnection agreement, is still applicable. South Slope argues that its customers will be harmed if its proposed language is not adopted.

Prior to the Board's decision in Docket No. FCU-06-25, the relationship between Qwest and South Slope was treated as an ILEC-to-ILEC relationship and any existing agreement between the parties prior to the Board's decision in Docket No. FCU-06-25 reflects this arrangement. The Board's determination that South

Slope is a CLEC in the Oxford, Solon, and Tiffin exchanges changes this relationship to an ILEC-to-CLEC relationship.

Additional obligations and requirements are placed on ILECs in this type of relationship pursuant to 47 U.S.C. § 251 and Qwest is attempting to meet these obligations by establishing an appropriate interconnection agreement that clearly identifies the new relationship between Qwest and South Slope. Any interconnection agreement between Qwest as the ILEC and South Slope as a CLEC should identify Qwest's obligations pursuant to 47 U.S.C. § 251 and should stand on its own merits without being encumbered by preexisting arrangements. The preexisting EAS arrangement relied upon by South Slope does not satisfy these criteria.

It appears that the incorporation of previous arrangements by reference into this proposed interconnection agreement may undermine recent Board decisions. South Slope is attempting to preserve the relationship it has enjoyed with Qwest for many years, despite the Board's clear determination that South Slope's position in that relationship has changed. While the Board recognizes that the EAS arrangement relied upon by South Slope operated in the past as a *de facto* interconnection arrangement, going forward, this arrangement is no longer workable.

The language proposed by Qwest has been incorporated into hundreds of similar interconnection agreements and has been found to be just, reasonable, and nondiscriminatory. Therefore, the Board will allow Qwest's proposed language regarding the establishment of a specific interconnection agreement, which identifies the role of each party, specifically Qwest's role as the ILEC and South Slope's role as the CLEC.

2. Whether Qwest can route LEC-originated IntraLATA toll calls bound for CLEC customers over LIS trunks, rather than through the Iowa Network Services (INS) tandem.

Parties' positions

The record demonstrates that the parties agree to interconnect using LIS. However, Qwest wishes to include language in the proposed interconnection agreement that gives it the option to route intraLATA LEC toll calls over LIS trunks. (Tr. 27). South Slope argues that the Board's decision in Docket No. RPU-88-2 requires the routing of these calls via INS.⁴ In addition, South Slope proposes to eliminate Qwest's proposed definition for intraLATA LEC toll. (Tr. 182).

South Slope argues that it, not Qwest, can determine how intraLATA LEC toll calls are terminated to South Slope in its North Liberty exchange, which is consistent with the Board's order in Docket No. RPU-88-2 that created INS and the INS access tariff. (Tr. 181). South Slope claims that Qwest has not demonstrated why the Board's decision in Docket No. RPU-88-2 is not applicable to South Slope in this situation or why routing intraLATA LEC toll calls over LIS trunks is an accepted and approved method of interconnection.

In contrast, Qwest states that Docket No. RPU-88-2 was decided prior to the enactment of the federal Telecommunications Act of 1996, which created the legal foundation under which CLECs operate and identified how CLECs and ILECs are to interconnect. (Tr. 28). Qwest also states that the removal of its option to use LIS trunking to deliver this traffic to South Slope discriminates against other CLECs in

⁴ In re: Iowa Network Access Division, Division of Iowa Network Services, "Final Decision and Order," Docket No. RPU-88-2 (issued October 18, 1988).

several of their Board-approved interconnection agreements with Qwest. (Qwest Initial Brief, p. 7). Qwest maintains that the Board's decision in Docket No. RPU-88-2 dealt with the Board's desire to protect rural telecommunications companies and their customers, but that the situation here is that South Slope's CLEC operations are competing with Qwest in metropolitan areas. (Tr. 28; Qwest Initial Brief, p. 7). Qwest contends that it is not insisting that all designated traffic flow over LIS trunks, but is seeking to preserve its option to use LIS trunks when it is the most efficient way to interconnect with South Slope. (Qwest Initial Brief, p. 8; Qwest Reply Brief, p. 10).

Analysis

With respect to South Slope's proposal to eliminate Qwest's proposed definition of intraLATA LEC toll, the Board finds that the effect of such a language change is that LIS will be used only for EAS and local traffic and not for the routing of intraLATA toll calls. The Board finds that South Slope's proposed change would require all intraLATA LEC toll calls to be routed through INS. The Board finds it reasonable to include Qwest's proposed definition of intraLATA LEC toll so as to provide specific clarification regarding how certain traffic is to be identified and routed and to allow for a potentially more efficient way to route traffic.

The Board does not agree with South Slope that the Board's order in Docket No. RPU-88-2 should dictate the manner in which South Slope's CLEC calls are routed, given the fact that the INS order pre-dates the 1996 Telecommunications Act. Given that timeline, the Board finds that its order in Docket No. RPU-88-2 applies to South Slope's ILEC operations, since the 1996 Telecommunications Act dictates interconnection between ILECs and CLECs.

In light of the Board's recent orders in Docket Nos. FCU-06-25 (where the Board determined that South Slope is operating as a CLEC in the Oxford, Solon, and Tiffin exchanges) and C-07-246, et al. (where the Board determined that calls from Cedar Rapids to Oxford, Solon, and Tiffin should be toll calls, rather than EAS calls, because they appeared to terminate in the North Liberty exchange), the record demonstrates that South Slope's billing system will require changes to accommodate the billing of toll calls to Oxford, Solon, and Tiffin. The parties were asked during the hearing in this proceeding whether their costs would substantially increase if calls were routed through the LIS trunks or through INS. (Tr. 102). Neither party was able to quantify costs for either routing situation. Therefore, the Board finds that a change in the billing system to accommodate routing of some intraLATA toll calls over Qwest's LIS would not be an undue burden on South Slope.

The Board finds that it is reasonable to allow Qwest's proposed language regarding intraLATA LEC toll calls in the interconnection agreement, especially since Qwest is not insisting that all traffic flow over LIS trunks, but rather wants to maintain the option to use those trunks when it is the most efficient way to interconnect with South Slope. Moreover, the record demonstrates that routing calls over the LIS trunks would not result in a substantial increase in cost to South Slope and may become a more efficient way to route traffic. Therefore, the Board will allow the inclusion of Qwest's proposed language regarding intraLATA LEC toll calls in the interconnection agreement.

3. Whether Qwest can charge South Slope for local interconnection services.

Parties' positions

While the parties agree that they will interconnect using LIS, they do not agree on what can be charged to South Slope for the interconnection. South Slope proposes to strike several sections of the proposed interconnection agreement that specify charges for LIS. Specifically, South Slope objects to the indemnification and intraLATA LEC toll language. South Slope also states that direct trunked transport should not have a rate element in this agreement because there are no transport facilities provided by either party. South Slope argues that because the LIS trunks are already in place, nonrecurring charges should not apply and miscellaneous charges are not necessary to this agreement. South Slope also objects to the Internet service provider provision in the proposed agreement because it does not appear to be relevant to the North Liberty exchange.

Qwest argues that pursuant to 47 U.S.C. § 251, it has a duty to provide interconnection with its local exchange network on rates, terms, and conditions that are just, reasonable, and nondiscriminatory and that CLECs must compensate ILECs for the costs the ILECs incur to provide interconnection. Qwest states that while South Slope has historically not compensated Qwest for interconnection services, that arrangement originated when South Slope was operating as an ILEC in the Oxford, Solon, and Tiffin exchanges. Qwest argues that now that it has been determined that South Slope is operating as a CLEC in those exchanges, it is no longer entitled to the same arrangement. Qwest also states that allowing South

Slope to continue with this arrangement would be discriminatory to other CLEC customers that must pay LIS rates pursuant to similar interconnection agreements. Finally, Qwest also states that if new facilities need to be added or alternate meet points are established, then these contingencies should be addressed in this agreement to avoid potential disputes later. (Qwest Reply Brief, p. 11).

Analysis

Based on the record in this case, it appears that South Slope is not suggesting that the specific rates for the services listed in the proposed interconnection agreement are improper. Rather, South Slope objects to these charges as being unnecessary because South Slope does not use Qwest's facilities for these services and therefore, the charges are not applicable. The record is unclear as to whether South Slope will be assessed any costs for these services at all given the fact that South Slope uses its own facilities for these services. However, it is reasonable to include these charges in this agreement in order to provide flexibility for South Slope should its condition change. Therefore, the Board approves Qwest's proposed language regarding the charges associated with LIS in the interconnection agreement.

4. Whether the network diagram in confidential Exhibit L should be allowed as an attachment to the agreement.

Parties' positions

The parties disagree as to whether confidential Exhibit L, a network diagram, should be included in the interconnection agreement.

South Slope argues that the confidential exhibit should be attached to the proposed interconnection agreement because it visually depicts the existing interconnection between Qwest and South Slope. South Slope acknowledges that the exhibit does not depict the typical LIS connection, but rather shows the parties' mutual understanding of how their networks will interconnect. South Slope states that while the depiction on the exhibit likely will change over time, attaching the exhibit to the proposed interconnection agreement will eliminate future network and facility misunderstandings and future billing disputes.

Qwest states that its principal objection to the drawing is that the information depicted on it will change over time and will become obsolete. (Tr. 120). Qwest states that it does not typically allow drawings as part of its interconnection agreement when there is a need for updating the drawing when any change occurs. Qwest argues that changes in trunking needs, switching options, and traffic volumes are often frequent and, therefore, the maintenance of the drawing would become burdensome to Qwest. (Tr. 121). However, Qwest stated during the hearing in this proceeding and in its initial brief that it is not opposed to using a diagram to depict the initial interconnection with South Slope's CLEC operations if the diagram is not made a permanent exhibit to the agreement and will not be updated if the information in it becomes obsolete within a specific period of time after initial interconnection arrangements are completed. (Tr. 242; Qwest Initial Brief, p. 10).

Analysis

The Board finds that Qwest's concession to attach the network drawing to the proposed interconnection agreement, as long as it protects confidential information,

is a reasonable compromise. The Board recognizes that the diagram may become obsolete, but notes that it demonstrates the mutual understanding of how Qwest and South Slope will interconnect. Therefore, the Board will allow Exhibit L to be attached to the proposed interconnection agreement, despite the fact that it may become obsolete at some point, with the condition that the diagram protect confidential information and does not include specific trunk route information.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The interconnection agreement between Qwest Corporation and South Slope Cooperative Telephone Company shall incorporate the language approved by the Board in this Arbitration Order.
2. Within 30 days of the issuance of this order, the parties shall submit an interconnection agreement consistent with the terms of this Arbitration Order.

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 23rd day of June, 2008.