

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="padding-left: 100px;">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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ORDER DENYING REQUEST FOR RECONSIDERATION

(Issued July 31, 2008)

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.

On June 23, 2008, the Board issued an arbitration order resolving the issues identified in this proceeding by adopting Qwest's proposed language and by allowing Exhibit L to be attached to the proposed interconnection agreement.

On July 2, 2008, South Slope filed several exceptions to the Board's June 23 order pursuant to 199 IAC 38.7(3)"j." South Slope, in effect, asks that the Board reconsider and clarify its decision in this proceeding in light of those exceptions.

Therefore, the Board will treat South Slope's July 2, 2008, filing as a request for reconsideration pursuant to Iowa Code § 476.12.

Specifically, South Slope raises the following six exceptions to the June 23 order: (1) the June 23 order fails to address South Slope's motion to dismiss filed February 22, 2008; (2) the June 23 order fails to address the definition of "rate center"; (3) the Board's description of South Slope's argument is in error; (4) the Board has conditioned or revoked South Slope's certificate of public convenience and necessity; (5) the new interconnection agreement is encumbered by preexisting agreements; and (6) whether the Board has directed that there be no charges for local interconnection services by either party as long as South Slope and Qwest continue to use the current mid-span meet point of interconnection (POI).

On July 11, 2008, Qwest filed a response to South Slope's exceptions. The Board notes that Qwest's reply was filed two days past the deadline provided by 199 IAC 38.7(3)"j." However, the Board finds Qwest's explanation for the delay to be reasonable and will therefore consider Qwest's response.

Each exception raised by South Slope and responded to by Qwest will be discussed individually below.

SOUTH SLOPE'S MOTION TO DISMISS

South Slope asserts that the Board's June 23, 2008, order fails to address South Slope's motion to dismiss, filed on February 22, 2008, wherein South Slope sought dismissal of Qwest's petition for arbitration based on jurisdictional grounds.

Specifically, South Slope states that its February 22 motion presented a jurisdictional question regarding how 47 U.S.C. § 251(a)(1) constitutes a lawful request to South Slope.

Qwest states that the Board answered South Slope's motion *de facto* by docketing the arbitration, holding a hearing, and issuing an order. Qwest also states that the Board specifically answered the jurisdiction question in its June 23 order by stating that "Qwest has a duty to enter into an interconnection agreement with South Slope that addresses the new ILEC to CLEC arrangement, as required by 47 U.S.C. § 251." (Qwest Reply p. 2; Arbitration Order, p. 7).

The Board has reviewed South Slope's motion to dismiss filed on February 22, 2008, and agrees with Qwest that South Slope's question regarding jurisdiction has been answered by the Board. The Board's actions in docketing the petition, setting it for hearing, and issuing an arbitration order are sufficient.

Moreover, South Slope's own course of action amounted to a waiver or abandonment of the motion. South Slope filed its motion to dismiss in conjunction with a resistance to a joint motion filed by Qwest to adjust the date of the initiation of negotiations among the parties. In its motion, South Slope raises the question of jurisdiction in a single paragraph and in a manner whereby the question was directed to Qwest. South Slope did not make any additional jurisdictional argument in its motion.

On February 26, 2008, the Board issued an order amending the procedural schedule established in this proceeding. The order was issued, in part, in response

to a telephone conference held on February 25, 2008, which was held for the purpose of discussing the parties' positions regarding the timing of the initiation of negotiations for an interconnection agreement. During this conference, which involved representatives from Qwest, South Slope, and Board staff, the parties verbally agreed that a bona fide request to initiate negotiations for an agreement was received on September 24, 2007. South Slope did not renew its motion to dismiss during the telephone conference, nor did South Slope renew its motion at any other time during the hearing in this proceeding or post-hearing briefs.

The Board finds that South Slope's motion to dismiss was *de facto* denied by the Board's February 26, 2008, order amending the procedural schedule in this proceeding. South Slope did not effectively renew its motion at any time subsequent to that order and therefore, the motion is no longer ripe for review on reconsideration.

Finally, if the Board were considering the motion to dismiss on its merits, the Board would deny the motion. Qwest lawfully requested an interconnection agreement with South Slope to properly reflect their business relationship, pursuant to 47 U.S.C. §§ 251 and 252. South Slope may have preferred a different means of memorializing that relationship, but Qwest had the legal right to invoke this mechanism.

THE DEFINITION OF RATE CENTER

South Slope states that the Board's June 23, 2008, order fails to address the issue regarding the definition of the term "rate center" for purposes of the proposed

interconnection agreement. South Slope advocates the adoption of its definition, which is based upon the Alliance for Telecommunication Industry Solutions Telecom Glossary. South Slope states that if its definition is not adopted, the term will continue to be confused with the term "exchange," to the injury of South Slope and its consumers.

Qwest asserts that the June 23, 2008, order addresses the definition of "rate center" and adopts Qwest's proposed language defining the term.

The Board finds that its June 23, 2008, decision specifically directed the parties to adopt Qwest's proposed language in the interconnection agreement. This direction includes the definition of the term, "rate center."

DESCRIPTION OF SOUTH SLOPE'S ARGUMENT

South Slope states that the Board's description of South Slope's argument is materially in error. Specifically, South Slope refers to the following statement on page 6 of the June 23, 2008, order:

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 be effectively reversed. (Tr. 248).

South Slope states that the cited transcript page 248 does not contain a reference to Docket No. FCU-06-25. South Slope also asserts that the Board's orders in Docket Nos. C-07-246, et al., are currently subject to reversal because they

are being reconsidered by the Board.¹ South Slope argues that the Board's characterization of South Slope's argument resulted in an erroneous conclusion that "the incorporation of previous arrangements by reference into this proposed interconnection agreement may undermine recent Board decisions." (Arbitration Order, p. 8).

Qwest asserts that the Board's citation to page 248 of the transcript was sufficient to support the Board's characterization of South Slope's argument. Qwest states that the entire line of questioning referenced by the Board extended from page 248 of the transcript through page 249. Qwest states that the Board's failure to cite to an additional page in the transcript is no basis for the Board to favorably consider South Slope's exception.

The Board acknowledges that the testimony relied upon for the statement in the June 23, 2008, order actually begins on page 245 and extends to page 249, wherein South Slope's witness discusses the expanded North Liberty exchange with respect to extended area service (EAS).²

In Docket No. FCU-06-25, the Board discussed an EAS issue insofar as the Board ordered South Slope to make changes to the local exchange routing guide (LERG) following the Board's determination that South Slope was operating as a competitive local exchange carrier (CLEC) in the Oxford, Solon, and Tiffin

¹ See In re: Qwest Corporation and South Slope Cooperative Telephone Company, "Order Granting Motion for Reconsideration," Docket Nos. C-07-246, et al., (issued May 30, 2008).

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

exchanges. Those LERG changes affected the existing EAS arrangement between South Slope and other interconnecting carriers. In Docket Nos. C-07-246, et al., 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 for a period of time because they appeared to Qwest as though they terminated in the North Liberty exchange.³

After a discussion found in pages 245 through 249 of the transcript regarding EAS in the expanded North Liberty exchange, the witness acknowledged that if South Slope's language incorporating previous agreements was included in the proposed interconnection agreement, then the Board's decisions regarding EAS with respect to South Slope's expanded North Liberty exchange would effectively be undone. Specifically, the exchange between Board Member Hanson and J. R. Brumley, witness for South Slope, was as follows:

BOARD MEMBER HANSON: Is it your understanding that if we adopted South Slope's language incorporating previous agreements that the people whose services may have changed a few weeks ago as a result of the recent Board order will revert back to the services that they have had in the previous eleven years?

THE WITNESS: I believe that's correct.

BOARD MEMBER HANSON: Okay. So your language in this – your proposed language in that section would, in effect, undo that Board order then?

³ This decision is currently before the Board for reconsideration. See Qwest Corporation and South Slope Cooperative Telephone Company, "Order Granting Motion for Reconsideration," Docket Nos. C-07-246, et al., (issued May 30, 2008).

THE WITNESS: It preserves what we have and it would
– yes, it would do that.

BOARD MEMBER HANSON: Okay. Thank you.

(Tr. 248-49.)

Despite the absence of an extended citation to the transcript in the June 23, 2008, order, the Board finds that its characterization of South Slope's argument as recorded in the transcript is accurate.

THE CONDITIONING OR REVOCATION OF SOUTH SLOPE'S CERTIFICATE

South Slope argues that the Board's arbitration order effectively conditions or revokes its certificate of public convenience and necessity. South Slope states that the EAS arrangement between Qwest and South Slope prior to the Board's decision in Docket No. FCU-06-25 was a proper interconnection agreement because it was approved by the Board in a fully litigated case, identified as Docket No. TCU-96-12. South Slope also states that the interconnection agreement is an express condition of its certificate of public convenience and necessity.

South Slope claims that the result of the Board's June 23, 2008, order is that the expanded boundary of South Slope's North Liberty exchange is rolled back and the Board's action thereby conditions or revokes South Slope's certificate without following the procedures for such a process as set forth in Iowa Code § 476.29.

Qwest states that the Board has not taken any action to revoke South Slope's certificate. Qwest asserts that South Slope's exception to the June 23, 2008, order

regarding this issue is a collateral attack on the Board's final order in Docket No. FCU-06-25 and is not permissible here. Qwest also states that the Board's June 23, 2008, order correctly places South Slope's customers on equal footing with all other CLEC customers throughout Iowa.

The Board notes that South Slope has raised the question regarding the Board's conditioning or revocation of South Slope's certificate in Docket Nos. C-07-246, et al.⁴ The Board finds that its arbitration order did not reach any conclusions that would condition or revoke South Slope's certificate. Rather, the arbitration order addressed only the way in which South Slope and Qwest would interconnect pursuant to 47 U.S.C. § 251.

Therefore, the Board finds that this issue is best determined by the Board in the reconsideration proceedings in Docket Nos. C-07-246, et al., and does not offer any basis for changing the arbitrated interconnection agreement in this docket.

THE NEW INTERCONNECTION AGREEMENT IS ENCUMBERED BY PREEXISTING AGREEMENTS

South Slope states that the claim that a new interconnection agreement would be "encumbered by preexisting agreements" is neither sustainable under the law nor consistent with the Board's principles of *res judicata*. South Slope argues that the resulting interconnection agreement is unjust to South Slope and its customers because EAS will be discontinued, that the agreement is unreasonable because it

⁴ See *In re: Qwest Corporation vs. South Slope Cooperative Telephone Co.*, Docket Nos. C-07-246, et al., "Order Granting Motion for Reconsideration," p. 8 (issued May 30, 2008).

discards the basis for interconnection which was considered and approved by the Board, and that the agreement is discriminatory to South Slope because it ignores the unique circumstances of the Board's approval of the expansion of the North Liberty exchange.

Qwest states that the agreement is neither unjust, unreasonable, nor discriminatory because the provisions in the agreement that contain Qwest's proposed language exist with the same language in hundreds of interconnection agreements with CLECs throughout Iowa and Qwest's 14-state incumbent local service territory. Qwest suggests that to adopt South Slope's language would have discriminated against other Qwest CLEC and ILEC customers in favor of South Slope's customers.

In its June 23, 2008, order, the Board explained that prior to its decision in Docket No. FCU-06-25, the relationship between Qwest and South Slope was treated as an ILEC-to-ILEC relationship and that 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 in Docket No. FCU-06-25 that South Slope is a CLEC in the Oxford, Solon, and Tiffin exchanges changed the relationship to an ILEC-to-CLEC relationship.

The Board determined in the arbitration order that the incorporation by reference of previous arrangements either agreed to or approved prior to the Board's decision in Docket No. FCU-06-25 may undermine recent Board decisions and may

create confusion regarding the obligations and requirements placed on the parties by 47 U.S.C. § 251.

South Slope did not present any new information in its July 2, 2008, filing that would cause the Board to reconsider its previous decision. Therefore, the Board finds that it is appropriate to adopt Qwest's language regarding the inclusion of preexisting agreements.

TRUNKING CHARGES

South Slope raises a conditional exception, which it states is resolvable by clarification, regarding whether the Board has directed that there be no charges for local interconnection services by either party as long as South Slope and Qwest continue to use the current mid-span POI.

Qwest states that the Board's language in the June 23, 2008, order is clear and does not need further clarification. Qwest claims that South Slope is asking the Board to restrict Qwest from charging for trunk expansion, even to South Slope's CLEC operations, so long as the current meet point of interconnection is where such augmentation occurs.

On page 13 of the Board's June 23, 2008, arbitration order, the Board stated that South Slope objected to local interconnection service charges listed in the proposed interconnection agreement because South Slope does not use Qwest's facilities for these services and, therefore, the charges are not applicable to South

Slope. The Board determined that it was nevertheless reasonable to provide flexibility for South Slope should its condition change.

The Board agrees with Qwest that the Board's June 23, 2008, order is clear. Nevertheless, for the purpose of clarification, the Board finds that the local interconnection service rates should be included in the proposed interconnection agreement. The Board finds that Qwest may charge South Slope for these services at the rates listed in the interconnection agreement if South Slope uses Qwest's facilities for these services.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The request for reconsideration filed by South Slope Cooperative Telephone Company on July 2, 2008, is denied.

2. The Board's "Arbitration Order" issued June 23, 2008, is clarified and modified as described in this order.

UTILITIES BOARD

/s/ John R. Norris

ATTEST:

/s/ Margaret Munson
Executive Secretary, Deputy

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 31st day of July, 2008.