

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: QWEST CORPORATION AND SOUTH SLOPE COOPERATIVE TELEPHONE COMPANY	DOCKET NO. FCU-08-14 (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 DOCKETING CASE AND
ASSIGNING TO ADMINISTRATIVE LAW JUDGE**

(Issued September 8, 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 between certain Qwest customers and South Slope customers in Oxford, Solon, and Tiffin. The Qwest customers said 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.

Board staff forwarded the complaints to South Slope and Qwest for response. Qwest filed its response on November 28, 2007, saying that it was acting in accord

with a Board order issued in Docket No. FCU-06-25.¹ Qwest said that calls from its Cedar Rapids customers to 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; however, calls to South Slope customers in those exchanges were not being billed correctly under Qwest tariffs. Qwest stated it sent letters to its customers advising that calls from Cedar Rapids to all customers in Oxford, Solon, and Tiffin would be handled as toll calls starting November 15, 2007. Qwest said it has an extended area service (EAS) agreement with South Slope for toll-free EAS from Cedar Rapids to North Liberty, but not to Oxford, Solon, and Tiffin.

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

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.

¹ On February 1, 2006, Iowa Telecom filed a complaint including a request for declaratory order against South Slope. The complaint involved 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.

Staff issued a proposed resolution letter on December 31, 2007, concluding that Qwest violated the Board's rules by failing to provide proper notice to the Board of its discontinuance of EAS for calls between Cedar Rapids and the three identified exchanges.

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 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 South Slope's 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 LERG² and NANPA³ 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 had to be routed and billed as interexchange calls. Qwest requested that staff reconsider the proposed resolution.

² Local Exchange Routing Guide.

³ North American Number Pooling Administrator.

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 rules regarding discontinuance of service do not apply. Staff also concluded that once the databases were corrected, the Oxford, Solon, and Tiffin customers of South Slope would not appear to be in the North Liberty exchange, 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 argued that Qwest violated 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 argued that Qwest has an EAS agreement to provide service to South Slope customers in the North Liberty exchange, apparently asserting that all of its customers continue to be properly associated with that 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 events as follows, based on its understanding at that time: 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, changes were made to the LERG and NANPA databases so that South Slope's customers in Oxford, Solon, and Tiffin appeared to be located in North Liberty. This had consequences; 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 to include South Slope customers in those exchanges (but not Iowa Telecom's customers in the same

exchanges). Further, Iowa Telecom 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 were 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.

The Board found in Docket No. FCU-06-25 that 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 was 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.

Based on this understanding of the situation, the Board concluded that Qwest's actions were not a discontinuance of service pursuant to Iowa Code § 476.20. Instead, Qwest was taking action to ensure it was providing service pursuant to the terms of its tariff, as required by § 476.5. Because this result was required by statute, the Board concluded, 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 alleged that the Board has conditioned, restricted, and partially revoked its certificate and that the Board did so without giving South Slope notice and opportunity for hearing. South Slope asked 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 was filed.

On May 30, 2008, the Board issued an order granting South Slope's motion for reconsideration. The Board agreed that if its understanding of the circumstances is incorrect and there are issues of material evidentiary fact in this matter, then it should be set for hearing. The Board therefore required South Slope to 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.

On June 19, 2008, South Slope filed its response. No reply has been filed. South Slope again asserts that the Board's actions to date represent an attempt to condition or revoke South Slope's certificate, which was issued pursuant to Iowa Code § 476.29. South Slope indicates in its response that it is identifying material factual disputes that should be set for hearing, and then makes various allegations of fact, some of which may be disputed by another party. On the basis of these allegations, the Board will set this matter for hearing to investigate and consider the circumstances surrounding EAS service from Qwest's customers to South Slope's customers and to order any relief that may be appropriate. The Board believes the parties and the public will benefit from quick resolution of this matter. Therefore, pursuant to Iowa Code § 17A.11(1)"b" and 199 IAC 7.3, the Board will assign this matter to its administrative law judge (ALJ), Amy Christensen, to conduct a hearing and issue a proposed decision.

One matter that should be addressed at this time involves South Slope's assertion that the Board's actions in this case amount to imposing conditions on South Slope's certificate or to partial revocation of that certificate. As noted by South Slope, § 476.29(9) provides that if the Board proposes to condition, restrict, or revoke a certificate due to a utility's failure to provide adequate services or facilities, the Board must notify the utility of the inadequacies and allow the utility a reasonable time to eliminate them. South Slope argues it has not been notified of any alleged inadequacies or given a reasonable opportunity to cure them.

In order to respond to this argument, the Board must make certain tentative rulings now, subject to change after hearing the evidence and argument. At this time, the Board does not agree with South Slope that the Board is conditioning, restricting, or revoking South Slope's certificate or proposing to take any such action. A certificate of public convenience and necessity issued pursuant to § 476.29 represents authorization to offer landline local telephone service in a defined service territory in Iowa. It does not specify, limit, or define the terms and conditions of that service offering; that is typically done in the Board's rules or the utility's tariff. The Board is not proposing to revoke or alter South Slope's authorization to offer local services in the exchanges it serves; instead, the issues here appear to revolve around statutes, rules, and tariff provisions, not certificates. Thus, there is no need to notify South Slope of any inadequacies in its services and facilities or to allow South Slope an opportunity to cure the alleged inadequacies, because there is no expectation that this proceeding will result in Board-ordered changes to South Slope's certificate.

The Board emphasizes that this is a tentative conclusion, offered for the guidance of the parties. If, after hearing the evidence and argument, the ALJ concludes that it is, in fact, necessary to place conditions on South Slope's certificate or to revoke it, in whole or in part, the ALJ will notify South Slope of any identified inadequacies in its services and facilities and will allow South Slope a reasonable time to address them.

IT IS THEREFORE ORDERED:

1. This matter is docketed for investigation as Docket No. FCU-08-14, pursuant to Iowa Code § 476.3 (2007).

2. Pursuant to Iowa Code § 17A.11(1)"b" and 199 IAC 7.3, this docket is assigned to the Board's administrative law judge, Amy Christensen, to conduct a hearing and issue a proposed decision. The administrative law judge shall have the authority provided under 199 IAC 7.3.

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 8th day of September, 2008.