

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: QWEST CORPORATION	DOCKET NO. INU-08-2
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**PROCEDURAL ORDER AND NOTICE OF HEARING
AND GRANT OF PETITIONS TO INTERVENE**

(Issued October 13, 2008)

On June 20, 2008, Qwest Corporation (Qwest) filed with the Utilities Board (Board) a petition to open an investigation to develop a Board-approved initial list of non-impaired wire centers pursuant to the *Triennial Review Remand Order*¹ issued by the Federal Communications Commission (FCC). In its petition, Qwest stated that the primary purpose of the docket is to review the number of business lines and fiber-based collocators in the following four Iowa wire centers that Qwest alleges meet the non-impairment criteria set forth by the FCC in the TRRO: Des Moines Main, Des Moines Ashworth, Davenport Downtown, and Sioux City Downtown. Qwest raised other related issues in its filing. On June 27, 2008, Qwest filed confidential exhibits in support of its petition.

On August 25, 2008, the Board issued an order docketing the case for investigation and assigning it to the undersigned administrative law judge.

¹ In the Matter of Review of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, "Order on Remand," CC Docket No. 01-338, WC Docket 04-313 (Released February 4, 2005) (TRRO).

On September 30, 2008, a prehearing conference was held in Conference Room 3, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa. Qwest was represented by its attorneys Mr. Alex Duarte and Mr. George Baker Thomson, who were connected to the prehearing conference by telephone conference call. Mr. Robert Brigham was also present by telephone for Qwest. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) was represented by its attorneys Ms. Alice Hyde and Mr. Ron Polle. Mr. Dave Weiss, Internet Solver, Inc. (Internet Solver), appeared pro se. Mr. Weiss stated that Internet Solver is a competitive local exchange carrier (CLEC) affected by the case. The undersigned directed Mr. Weiss to have his attorney file an appearance and a petition to intervene if Internet Solver wished to participate as a party to the case. Mr. Edward Krachmer, Director of Regulatory Affairs for Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), was present as an observer but did not participate. Qwest was directed to file a list of issues and applicable federal and state authority, and the parties agreed to the following procedural schedule at the prehearing conference. Qwest filed the list of issues and applicable authority on October 3, 2008.

Pursuant to the Board's order docketing the case for investigation, Iowa Code §§ 17A.11(1)"b" and 17A.12, and 199 IAC 7, a procedural schedule will be established and a hearing date set.

The statutes and rules involved or potentially involved in this case include 47 U.S.C. §§ 201, 202, 251, the TRRO, the FCC's *Triennial Review Order*,² Iowa Code chapter 476, and Board rules at 199 IAC 1.8, 1.9, and chapters 7, 22, and 38. Links to the Iowa Code and the Board's administrative rules (in the Iowa Administrative Code (IAC)) are contained on the Board's Web site at www.state.ia.us/iub.

THE ISSUES

The issues in this case include the following:

1. Does Qwest meet the TRRO's Tier 2 non-impaired wire center criteria for DS3 and dark fiber transport at the Des Moines Main, Des Moines Ashworth, Davenport Downtown, and Sioux City Downtown wire centers?
 - a. Do Qwest's business line counts meet the FCC's Tier 2 non-impaired wire center criteria for the Des Moines Main and Des Moines Ashworth wire centers?
 - b. Do Qwest's collocations at the Davenport Downtown and Sioux City Downtown wire centers meet the FCC Tier 2 non-impaired wire center criteria for fiber-based collocators?
2. Should the Board's rulings in this docket be binding on all CLECs in Iowa?

² In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, "Report and Order and Order on Remand and Further Notice of Proposed Rulemaking," CC Docket Nos. 01-338, 96-98, 98-147 (Released August 21, 2003) (TRO); vacated in part, remanded in part, U.S. Telecom Ass'n v. FCC, 359 F.3d 554 (D.C. Cir. March 2, 2004).

3. Should the Board adopt the Qwest/Joint CLEC multi-state settlement agreement that was filed with Qwest's petition in this case on June 20, 2008, or adopt the procedures in such settlement agreement, for future non-impaired wire center petitions?

a. If the Board does not adopt the Qwest/Joint CLEC multi-state settlement agreement, or the procedures in such settlement agreement, for future updates of Qwest's list of non-impaired wire centers, what should be the process for future updates of Qwest's list of non-impaired wire centers?

4. Should Qwest have a right to assess a nonrecurring charge at applicable tariffed rates for converting impacted high-capacity loop and transport facilities in non-impaired wire centers to alternative products, and if so, at what rate?

5. The parties may raise other issues during the course of this proceeding.

PREPARED TESTIMONY AND EXHIBITS

All parties will have the opportunity to present and respond to evidence and make argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision that will be issued in this case must be based on evidence

contained in the record and on matters officially noticed. Iowa Code §§ 17A.12(6) and 17A.12(8).

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1) and (3); 199 IAC 7.10.

PARTY STATUS AND COMMUNICATION WITH THE BOARD

Qwest and the Consumer Advocate are the original parties in this proceeding. As set forth below, this order grants the petitions to intervene filed by 360networks (USA) inc. (360networks), and McLeodUSA Telecommunications Services (McLeodUSA). Therefore, 360networks and McLeodUSA are also parties in the case. As of the date of this order, Internet Solver has not filed a petition to intervene, and is therefore not yet a party. If Internet Solver wishes to become a party to this case, it must file a petition to intervene as discussed below. If any other CLEC or

other person wishes to become a party to this case, the CLEC or other person must file a petition to intervene as discussed below.

Any party who communicates with the Board must send an original and ten copies of the communication to the Executive Secretary, 350 Maple Street, Des Moines, Iowa, 50319-0069, accompanied by a certificate of service. One copy of the communication must also be sent at the same time to each of the other parties to this proceeding, including intervenors, except that three copies must be served on the Consumer Advocate. 199 IAC 7.4(6)"c."

These procedures are necessary to comply with Iowa Code § 17A.17 and 199 IAC 7.22, which prohibit ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

The materials that have been filed in this docket are available for inspection at the Board Records and Information Center, 350 Maple Street, Des Moines, Iowa 50319. Copies may be obtained by calling the Records and Information Center at

515-281-5563. There will be a charge to cover the cost of the copying. Board orders are available on the Board's Web site at www.state.ia.us/iub.

All parties should examine the applicable law listed above for substantive and procedural rules that apply to this case.

PETITIONS TO INTERVENE

On September 30, 2008, 360networks filed a petition to intervene with the Board. The petition meets the requirements of 199 IAC 7.13 and 360networks has a unique interest that should be represented in this case. Therefore, the petition should be granted. 360networks must take notice of the Board's rule regarding counsel not admitted to practice in Iowa at 199 IAC 7.4(8) and must follow the requirements of the rule.

On October 3, 2008, McLeodUSA filed an appearance and petition to intervene. The petition meets the requirements of 199 IAC 7.13 and McLeodUSA has a unique interest that should be represented in this case. Therefore, the petition should be granted.

The Board's intervention rule at 199 IAC 7.13 requires petitions to intervene to be filed no later than 20 days following the issuance of the order setting the procedural schedule, unless otherwise ordered. Therefore, petitions to intervene in this case must be filed with the Board on or before November 3, 2008. As stated in the rule, petitions to intervene must substantially comply with the form prescribed in 199 IAC 2.2(10).

IT IS THEREFORE ORDERED:

1. If Internet Solver, Inc. wishes to become a party to this case, it must file a petition to intervene with the Board on or before November 3, 2008.

2. Any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 IAC 7.13 and must file a petition to intervene with the Board on or before November 3, 2008. 199 IAC 7.13(1).

3. The petition to intervene filed by 360networks on September 30, 2008, is hereby granted. 360networks must follow the requirements of 199 IAC 7.4(8) regarding representation by attorneys not admitted to practice in Iowa.

4. The petition to intervene filed by McLeodUSA on October 3, 2008, is hereby granted.

5. On or before November 20, 2008, Qwest must file prepared direct testimony and exhibits. Qwest must also file an exhibit list with its exhibits. Qwest should use exhibit numbers one and following.

6. If the Consumer Advocate or any intervenor wishes to file testimony and exhibits in this case, the testimony and exhibits must be filed on or before December 18, 2008. Such testimony and exhibits are to be both the initial testimony of the party and testimony responsive to Qwest's testimony. The Consumer Advocate should use exhibit numbers 100 and following and must file an exhibit list with its exhibits. Intervenors who file exhibits should use exhibit numbers that begin with the sponsoring witness's initials followed by numbers beginning with 200 and must file an exhibit list.

7. If Qwest chooses to file prepared reply testimony and exhibits, it must do so on or before January 8, 2009. If it files additional exhibits, Qwest must file an updated exhibit list.

8. If a party wishes to have a witness connected to the hearing by telephone conference call, the party must file a request with the Board on or before December 8, 2008. Any party objecting to the participation of the witness by telephone conference call must file an objection with the Board on or before December 15, 2008.

9. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa, beginning at 9:00 a.m. on Wednesday, January 21, 2009, and continuing on Thursday, January 22, 2009, if needed. Witnesses who have been approved to participate in the hearing by telephone conference call must dial 1-866-685-1580, and enter the conference code 2816326 followed by # when prompted. Each party must provide a copy of its prepared testimony and exhibits to the court reporter. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 515-281-5256 no later than five business days prior to the hearing to request that appropriate arrangements be made.

10. A post-hearing briefing schedule will be set at the conclusion of the hearing.

11. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record

of this proceeding. Pursuant to 199 IAC 7.23(4)"d," the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Board at the earliest possible time.

12. A courtesy copy of this order will be sent to Mr. Dave Weiss, Internet Solver, Inc., 11308 Aurora Avenue, Urbandale, Iowa 50322. Unless it files a petition to intervene by the deadline set in this order, no further orders will be sent to Internet Solver, Inc.

13. A letter notifying CLECs that this order has been issued and the deadline for filing intervention petitions will be sent to all CLECs in Iowa. CLECs who wish to receive any further notifications in this docket must follow the requirements for intervention set forth in this order.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 13th day of October, 2008.