

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

REASNOR TELEPHONE COMPANY, LLC

Counterclaimant,

vs.

QWEST COMMUNICATIONS
CORPORATION AND QWEST
CORPORATION,

Counterclaim Respondents.

**ORDER GRANTING MOTION TO COMPEL, DENYING REQUEST FOR
SANCTIONS, DENYING CROSS-MOTION, AND
GRANTING REQUEST FOR CONFIDENTIAL TREATMENT**

(Issued November 3, 2008)

**I. MOTION TO COMPEL, REQUEST FOR SANCTIONS,
AND CROSS-MOTION FOR PROTECTIVE ORDER**

On September 25, 2008, Qwest Communications Corporation (QCC) filed with the Utilities Board (Board) an emergency motion requesting the Board compel the deposition of Mr. Gary Zingaretti as a witness for respondent Reasnor Telephone Company, LLC (Reasnor). In support of its motion, QCC states that Mr. Zingaretti is the sole witness to provide direct testimony on behalf of Reasnor in this proceeding and Reasnor has not made him available for deposition. QCC asserts that it needs to take Mr. Zingaretti's deposition by mid-November so that it can complete its preparation for the hearing before the Board, which is scheduled to begin on December 8, 2008.

QCC states that Reasnor's basis for its refusal to present Mr. Zingaretti for deposition is that QCC's request is duplicative because a third party, Sully Telephone Association, Inc. (Sully), also used Mr. Zingaretti as its corporate representative and QCC deposed him as Sully's corporate witness. QCC asserts that it never deposed Mr. Zingaretti regarding many of the subjects on which he presents testimony for Reasnor, including Reasnor's counterclaim against QCC. QCC also states that Mr. Zingaretti is the only witness for Reasnor and has presented over 80 pages of testimony, 30 pages of which discuss Reasnor's counterclaims against QCC.

QCC also requests that the Board sanction Reasnor for refusing to make Mr. Zingaretti available for deposition. QCC states that its counsel has attempted in

good faith to resolve this dispute with Reasnor, but that Reasnor has been uncooperative.

On September 30, 2008, Reasnor filed a resistance to QCC's motion. In support of its resistance, Reasnor states that QCC had ample opportunity to depose Mr. Zingaretti with regard to Reasnor when it deposed Mr. Zingaretti regarding third-party Sully. Reasnor states that QCC asked and received detailed information from Mr. Zingaretti during the earlier deposition regarding Reasnor's operations in connection with its provision of local service to conference call companies.

Reasnor asserts that Mr. Zingaretti is a consultant retained by Reasnor. As such, he is a fact witness. Reasnor states that Iowa Rule of Civil Procedure 1.503(3) provides that QCC may discover information from Mr. Zingaretti as his role as consultant only upon a showing that QCC has a substantial need of the materials in its preparation for the case and that the party seeking discovery is unable to obtain the materials by other means, without undue hardship. Reasnor also asserts that QCC already has all of the information in its possession to address Reasnor's counterclaims because QCC is the custodian of the records and information needed to refute the claims.

Finally, Reasnor presents a cross-motion before the Board requesting the issuance of a protective order that denies QCC the requested deposition and prevents QCC from imposing additional discovery requirements and costs through a second deposition of Mr. Zingaretti.

On October 7, 2008, QCC filed a reply to Reasnor's resistance and cross-motion. QCC states that Iowa Rule of Civil Procedure 1.707 distinguishes a corporate deposition from a personal deposition. QCC asserts that while it deposed Mr. Zingaretti as a corporate witness testifying on behalf of Sully, QCC does not have all the information necessary without deposing Mr. Zingaretti as an individual testifying on behalf of Reasnor. QCC states that it intends to question Mr. Zingaretti regarding his written testimony submitted on behalf of Reasnor last month, which was not available at the time when QCC first deposed Mr. Zingaretti.

The Board has reviewed QCC's motion and the response filed by Reasnor and finds that QCC is entitled to depose Mr. Zingaretti as an individual testifying on behalf of Reasnor. Mr. Zingaretti is the only witness for Reasnor and has presented more than 80 pages of testimony, much of which is given in support of Reasnor's counterclaim. QCC did not have an opportunity to depose Mr. Zingaretti during the prior deposition regarding the testimony he presented on Reasnor's behalf. That deposition was taken before Reasnor's testimony was filed and when Mr. Zingaretti was a corporate consultant for third-party Sully. Based on the filings submitted regarding this motion, the Board finds that QCC has demonstrated a substantial need for the deposition of Mr. Zingaretti in the preparation of its case and therefore compels Reasnor to make Mr. Zingaretti available for deposition.

Because the Board has granted QCC's motion to compel Mr. Zingaretti's deposition, QCC's request for sanctions and Reasnor's cross-motion for a protective order will be denied.

II. REQUEST FOR CONFIDENTIAL TREATMENT

On September 30, 2008, Reasnor filed a request for confidential treatment of information and documents submitted in support of its resistance to QCC's motion to compel Mr. Zingaretti's deposition. Reasnor asserts that the information requested to be withheld from public inspection includes information that was produced and designated as confidential by QCC and other participants, parties, and non-parties to this proceeding, 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 information discussed in the application filed by Reasnor on September 30, 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 Reasnor on September 30, 2008.

III. ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The motion to compel the deposition of Mr. Gary Zingaretti filed by Qwest Communications Corporation on September 25, 2008, is granted as described in this order.
2. The request for sanctions filed by Qwest Communications Corporation on September 25, 2008, is denied.

3. The cross-motion for a protective order filed by Reasnor Telephone Company, LLC, on September 30, 2008, is denied.

4. The request for confidential treatment filed by Reasnor Telephone Company, LLC, on September 30, 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

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 3rd day of November, 2008.