

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

(Issued November 20, 2008)

Background

On October 21, 2008, Aventure Communication Technology, LLC (Aventure), filed with the Utilities Board (Board) a motion to compel discovery against AT&T Communications of the Midwest, Inc., and TCG Omaha (collectively "AT&T"), an intervenor in this proceeding. Aventure states that it seeks to compel AT&T to provide information and documents related to Data Request Nos. 1-3 as served on AT&T on September 25, 2008. Specifically Aventure seeks the production of executed copies of all settlement agreements entered into between AT&T and any defendant in the case of *AT&T Corporation vs. Superior Telephone Cooperative, et al.*, Case No. 4:07-cv-000043-JEG-RAW, which is currently pending in the U.S. District Court for the Southern District of Iowa; the production all settlement agreements between AT&T and any incumbent local exchange carrier (ILEC) or competitive local exchange carrier (CLEC) regarding terminating access charges for traffic involving free conference or chat line calling; and the production of all documents or data compilations that reflect that AT&T is now paying terminating access charges for free conference or chat line calling pursuant to settlement agreements between AT&T and any ILEC or CLEC.

Aventure states that AT&T claims that all of the agreements sought in response to data requests are confidential and that Aventure is not privy to the terms of those agreements. Aventure states that AT&T has adopted the position of Qwest Communications Corporation (QCC) that terminating access charges are not payable

to Aventure and other respondents because the traffic from free conference and chat line companies is illegal. Aventure asserts that the settlement agreements sought in Data Request Nos. 1-3 would necessarily include an agreement by AT&T to pay terminating access charges for free conference and chat line calling, which is the same traffic that is the subject of the complaint raised by and agreed to by AT&T and which AT&T has maintained is illegal.

Aventure also states that AT&T intends to rely on Rule 5.408 of the Iowa Rules of Evidence, which excludes admission of evidence of compromise of a disputed claim to prove liability. Aventure claims that the question of whether the evidence may be admissible at trial or hearing is not the test for whether the information is discoverable. Aventure asserts that while the Board may determine that AT&T's settlement agreements are not admissible at the hearing in this proceeding, this should not preclude the discovery of those agreements.

Finally, with respect to Data Request No. 3, Aventure states that AT&T objected on the grounds that the request was overly broad and unduly burdensome in its request for "all" documents and compilations that "in any way" reflect payment of terminating access charges by AT&T. Aventure asserts that it is willing to accept a summary of AT&T's payments to LECs for terminating access charges pursuant to Iowa Rule of Evidence 5.1006.

On October 31, 2008, AT&T filed a response to Aventure's motion to compel. AT&T states that Iowa Rule of Evidence 5.408 generally makes evidence of

settlement and compromise irrelevant and inadmissible to rebut claims of liability. AT&T asserts that Rule 5.408, as well as the Board's rule 199 IAC 17.18(7), expressly precludes the use of a settlement to invalidate a party's claim. AT&T states that Aventure claims AT&T cannot make payments under these agreements without invalidating AT&T's claims against Aventure. AT&T claims that Aventure's attempts to obtain this information through its discovery runs counter to Iowa precedent that precludes the relevance and admission of compromise or settlement to disprove the claim at issue. AT&T also asserts that should the Board grant Aventure's motion, the result may be a "chill" on settlements and settlement attempts.

On November 17, 2008, Aventure filed a reply to AT&T's response. Aventure states that AT&T's settlement agreements with regard to payment of terminating access charges are relevant and discoverable because they may demonstrate that AT&T is paying terminating access charges on free conferencing and chat line traffic. Aventure states that it anticipates that at the hearing in this proceeding, one or more witnesses testifying on behalf of AT&T will testify that such traffic is not authorized by the applicable tariffs or is otherwise illegal. Aventure asserts that it cannot conduct meaningful cross-examination of the AT&T witnesses without access to this data that may impeach such testimony by demonstrating that AT&T is paying terminating access charges for such traffic to a number of different LECs.

Aventure also states that AT&T and other interexchange carriers in this proceeding are asserting that it is illegal discrimination for a local exchange carrier to

have marketing arrangements with free conference or chat line companies and not with other customers or end users. Aventure asserts that the settlement agreements it seeks from AT&T may show voluntary participation by AT&T in similar arrangements.

Finally, Aventure reasserts its position regarding Data Request No. 3, as described above.

Discussion

The Board has reviewed Aventure's motion and AT&T's response and finds that Aventure is entitled to complete responses to Data Request Nos. 1 and 2, specifically the production of executed copies of all settlement agreements entered into between AT&T and any defendant in the case of *AT&T Corporation vs. Superior Telephone Cooperative, et al.*, Case No. 4:07-cv-00043-JEG-RAW now pending in the U.S. District Court for the Southern District of Iowa, and any settlement agreements between AT&T and any ILEC or CLEC that settled, compromised, or satisfied any claim against AT&T for terminating access charges for traffic involving free conference or chat line calling. The Board also finds that Aventure is entitled to a summary of AT&T's payments to LECs for terminating access charges in response to Data Request No. 3.

The Board has considered AT&T's argument regarding the relevance of the requested information. Aventure makes a persuasive argument that the information is likely to be relevant for cross-examination of one or more of AT&T's witnesses.

The Board finds that the information sought by Aventure is relevant and material to the issues before the Board in this proceeding and is not unduly repetitious.

Therefore, the Board will compel AT&T to provide complete responses to Data Request Nos. 1 and 2 and a summary of AT&T's payments to LECs for terminating access charges as requested by Data Request No. 3.

IT IS THEREFORE ORDERED:

1. The motion to compel filed by Aventure Communication Technology, LLC, on October 21, 2008, is granted.

2. AT&T Communications of the Midwest, Inc., and TCG Omaha are directed to provide responses to the data requests as described in this order within seven days of the issuance of this 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 20th day of November, 2008.