

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 DENYING MOTIONS TO COMPEL AND
GRANTING REQUESTS FOR CONFIDENTIAL TREATMENT**

(Issued November 20, 2008)

I. MOTIONS TO COMPEL

Background

On June 4, 2008, Farmers Telephone Company of Riceville, Iowa; Farmers and Merchants Mutual Telephone Company of Wayland, Iowa; Interstate 35 Telephone Company, d/b/a Interstate Communications Company; and Dixon Telephone Company (collectively, the "Respondents") filed with the Utilities Board (Board) a motion to compel responses to certain data requests served upon Qwest Communications Corporation (QCC) in this proceeding. In support of their motion, the Respondents state that they served a set of data requests upon QCC in December 2007. Specifically, in Data Request Nos. 7 and 27, the Respondents requested information regarding revenue received by QCC for toll services. The Respondents assert that the information requested in these data requests is necessary to rebut certain testimony regarding QCC's claims of injury. The Respondents state that this information is relevant and discoverable.

On June 16, 2008, QCC filed a response to the Respondents' motion to compel. Qwest contends that the information sought by the Respondents in Data Request Nos. 7 and 27 is irrelevant, unduly burdensome, or unduly expensive for QCC to collect. QCC states that it objected to those requests because answering the requests would require a special study to analyze more than nine million individual calls. QCC also states that the information sought by these two data requests is irrelevant to this case as demonstrated by QCC's submitted testimony and that the

Respondents cannot justify the burden of creating special studies to produce this competitively sensitive information.

On June 23, 2008, the Respondents filed a reply to QCC's resistance. The Respondents state that QCC has admitted that increased toll traffic has resulted in some amount of increased revenues to QCC, but that QCC has refused to provide any information regarding the amount of those increased revenues. The Respondents assert that the information is necessary to calculate the amount of any alleged injury or loss to QCC and that without this information QCC's monetary remedies are overstated. The Respondents state that they attempted to resolve this discovery dispute by modifying the requests, but still did not get a response from QCC.

On September 11, 2008, the Respondents filed a renewed motion to compel this discovery, in addition to a request to compel QCC to respond to Data Request Nos. 9, 11-19, and 21. The Respondents state that with respect to Data Request Nos. 9, 11-16, and 18, QCC argues that the information sought is irrelevant and the collection of such information would create an undue burden on QCC. The Respondents also state that with respect to Data Request No. 17, QCC objects based on principles of economics and that QCC objects to Data Request No. 19 on the grounds that the terms "monitor" and "content" are vague and ambiguous. The Respondents assert that QCC finds Data Request No. 21 to be overly broad, unduly burdensome, oppressive, and seeks information not likely to lead to admissible

evidence. The Respondents state that the information sought by these data requests is necessary in order to rebut QCC's testimony and claims of injury. The Respondents argue that in order to calculate QCC's losses allegedly caused by the increased traffic at issue in this case, those alleged losses must be offset by the additional revenue received by QCC as a result of that increased traffic. The Respondents state that QCC refuses to provide the specifically requested information or the average revenue per minute so that these revenues can be estimated.

On September 18, 2008, QCC filed a response to the Respondents' second motion to compel. QCC asserts that the information sought by the Respondents in these data requests is of such a nature that the parties in this proceeding would not practically be able to separate it from their own pricing and marketing decisions and that, as such, the parties' protective agreements cannot sufficiently protect this highly confidential information. QCC also states that the discovery at issue seeks to obtain information about QCC's damages if the Respondents' tariffs do not apply to the traffic at issue in this proceeding. QCC argues that this information is irrelevant because QCC asserts that the Respondents are prohibited from charging QCC for these services, regardless of whether QCC's alleged damages were mitigated in some way.

QCC also states that the data requests at issue in the Respondents' second motion to compel ask for detailed cost, revenue, and profit data concerning QCC's long distance business, which is the same type of information that the Respondents

sought in their June 4, 2008, motion to compel. QCC reasserts its previous objections to the Respondents' request and argues that the Respondents' requests that relate to other information, such as Data Request Nos. 17 and 18 (the upward pressure on QCC's retail rates) and No. 19 (monitoring the content of customers' calls) have been fully answered by QCC. Qwest also asserts that competitive harm could result from disclosure of the competitively sensitive information sought by the Respondents.

On September 23, 2008, the Respondents filed a reply to QCC's response. The Respondents assert that QCC has repeatedly claimed that it has suffered losses and significant injury as a result of the Respondents' actions. The Respondents argue that they are entitled to conduct discovery regarding the underlying basis for these assertions. The Respondents also reassert their previous arguments that the material requested could be protected through the use of a protective agreement among the parties and that the requested information is relevant to the claims and testimony presented in this case.

Discussion

The Board has reviewed the Respondents' motions and QCC's responses and finds that the Respondents' Data Requests Nos. 7, 9, 11-16, 21, and 27 are unduly burdensome on QCC. While QCC has raised allegations of losses and significant injury as a result of the Respondents' actions, QCC's central complaint does not depend on an economic injury argument. QCC has asserted that it would require

thousands of hours to provide complete responses to the Respondents' requests and the Board finds that this expenditure of effort on QCC's part would be unduly burdensome for the collection of information for a marginally relevant issue.

Therefore, the Board will deny the Respondents' motion to compel regarding Data Request Nos. 7, 9, 11-16, 21, and 27.

With respect to Data Requests Nos. 17, 18, and 19, the Board finds that QCC has provided adequate responses and, therefore, the Board will also deny the Respondents' motion to compel regarding these data requests.

II. REQUESTS FOR CONFIDENTIAL TREATMENT

On June 16 and September 18, 2008, QCC filed requests for confidential treatment of information and documents filed with the Board in support of QCC's responses to the Respondents' motions to compel discovery. Specifically, QCC asserts that Exhibit 5, which accompanies its June 16, 2008, response to the Respondents' motion to compel filed June 4, 2008, and Exhibit 3, which accompanies its September 18, 2008, response to the Respondents' September 11, 2008, motion, 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 identified by QCC on June 16 and September 18, 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 and serves no public purpose. Therefore, the

Board will hold the requested information as confidential under the provisions of Iowa Code § 22.7(3) as requested by QCC on June 16 and September 18, 2008.

Also on September 11, 2008, the Respondents filed a motion to file portions of their Exhibit B of their motion to compel discovery responses as confidential. In support of their motion, the Respondents state that Exhibit B contains partial responses by QCC to the Respondents' Data Requests Nos. 9, 11, 21, and 27 and that the responses contain information that QCC designated as highly confidential. On September 18, 2008, QCC filed a response in support of the Respondents' motion stating that the information contained in the Respondents' Exhibit B contain highly confidential revenue information and should be maintained as confidential. The Respondents' Exhibit B was filed in a separate envelope and marked confidential.

As previously stated in this order, due to the unusual circumstances in this case, 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 in Exhibit B submitted by the Respondents on September 11, 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 and serve no public purpose. Therefore, the Board will hold the requested information as confidential under the provisions of Iowa Code § 22.7(3) as requested by the Respondents on September 11, 2008.

III. ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The motion to compel discovery filed by 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; and Dixon Telephone Company on June 4, 2008, is denied.
2. The second motion to compel discovery filed by 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; and Dixon Telephone Company on September 11, 2008, is denied.
3. The request for confidential treatment filed by Qwest Communications Corporation on June 16, 2008, is granted.
4. The request for confidential treatment filed by 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; and Dixon Telephone Company on September 11, 2008, is granted.

5. The request for confidential treatment filed by Qwest Communications Corporation on September 18, 2008, is granted.

6. 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 20th day of November, 2008.