

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 MOTION TO STRIKE
AND GRANTING REQUEST FOR CONFIDENTIAL TREATMENT**

(Issued November 20, 2008)

MOTION TO STRIKE

On April 22, 2008, Superior Telephone Company; 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; Great Lakes Communication Corp.; and Dixon Telephone Company (collectively, the "Respondents") filed with the Utilities Board (Board) a motion to strike all of the recommendations or requests for relief contained in the direct testimony filed by Qwest Communications Corporation (QCC) on March 18, 2008, relating to interstate tariffs or interstate traffic. In support of their motion, the Respondents state that while much of QCC's testimony regarding interstate tariffs and traffic may be relevant to the context of QCC's intrastate claims, a number of significant areas of QCC's testimony involve the interstate evidence to the exclusion of the intrastate evidence. The Respondents attached Exhibit A to their motion, which identifies the interstate data at issue.

The Respondents assert that when discussing minutes of use and revenues associated with the Respondents and other free calling service companies, QCC's witnesses offer charts, graphs, and other detailed information that relate either to total minutes or interstate minutes. The Respondents claim that no similar data is provided for intrastate traffic, even though QCC's complaint is limited to intrastate traffic. The Respondents assert that without the intrastate data, the interstate data is irrelevant. The Respondents asks that the Board order QCC to supplement its direct

testimony to provide the intrastate graphs, charts, and data that correspond to the interstate graphs, charts, and data or strike QCC's testimony relating to interstate tariffs and traffic, as identified in the Respondents' Exhibit A.

On May 6, 2008, QCC filed a resistance to the Respondents' motion. QCC states that the testimony the Respondents seek to strike is information that is integral to the understanding of QCC's intrastate claims. QCC asserts that the Respondents' suggestion that analysis of interstate traffic was performed at the expense of intrastate traffic is inaccurate. QCC states that the testimony it submitted contains an analysis of the total minutes involved, interstate and intrastate combined, but uses total volumes instead of solely intrastate volumes. QCC asserts that because the interstate tariffs are critical to the issues in this proceeding, there is no basis for the Respondents' conclusion that QCC must break out interstate and intrastate facts in order for those facts to be relevant and within the Board's jurisdiction.

The Board has reviewed the Respondents' motion and QCC's response and will deny the motion. The testimony identified in the Respondents' Exhibit A is information that is relevant to put QCC's intrastate claims into an appropriate context and the fact that QCC did not separate the interstate and intrastate facts does not negate their relevance. Therefore, the Board will deny the Respondents' motion to strike QCC's testimony relating to interstate tariffs and interstate traffic as requested on April 22, 2008. The Board will also deny the Respondents' request to direct QCC to supplement its testimony to include corresponding intrastate evidence.

REQUEST FOR CONFIDENTIAL TREATMENT

On May 6, 2008, QCC filed a request for confidential treatment of information filed with the Board in support of QCC's response to the Respondents' motion to strike. Specifically, QCC asserts that the information contained in its May 6, 2008, response to the Respondents' motion to strike filed April 22, 2008, 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 May 6, 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 May 6, 2008.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The motion to strike filed by Superior Telephone Company; 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; Great Lakes Communication Corp.; and Dixon Telephone Company on April 22, 2008, is denied.
2. The request for confidential treatment filed by Qwest Communications Corporation on May 6, 2008, is granted.

3. 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.