

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 EXCLUDE EVIDENCE
AND GRANTING REQUEST FOR CONFIDENTIAL TREATMENT**

(Issued November 26, 2008)

MOTION TO EXCLUDE EVIDENCE

Background

On November 12, 2008, Great Lakes Communications Corp. and Superior Telephone Cooperative (collectively "Respondents") filed with the Utilities Board (Board) a motion to exclude evidence filed by Qwest Communications Corporation (QCC) in this case on the grounds that it is irrelevant, prejudicial, and not within the Board's jurisdiction. The Respondents assert that QCC has attempted to enter evidence in this case on matters that have no probative value to QCC's claims. The Respondents also assert that QCC has attempted to introduce conclusory allegations for which it has not provided supporting data and as a result has prejudiced the Respondents' ability to defend this case. The Respondents identify the portions of written and deposition testimony that they seek to exclude in the Appendix attached to their motion.

The Respondents state that the categories of evidence they seek to exclude by this motion are evidence of pornography or adult content; evidence of alleged harm to children or the community due to the content of calls; evidence of alleged losses or financial harm to QCC or other interexchange carriers; evidence regarding interstate and international traffic; and evidence regarding the scope of the Respondents' certificates of public convenience and necessity. The Respondents assert that all of the evidence relating to these categories is irrelevant and therefore is excludable pursuant to Iowa Rule of Evidence 5.402. The Respondents also

allege that even if the Board finds this evidence relevant, it is prejudicial to the Respondents and outweighs any probative value and should be excluded pursuant to Iowa Rule of Evidence 5.403.

On November 24, 2008, QCC filed a response to the Respondents' motion. QCC states that there is no basis for the exclusion of any of its evidence from the Board's consideration. QCC argues that its complaint in this proceeding is broad and covers all of the conduct described in its pre-filed testimony and, therefore, all of QCC's submitted testimony is relevant to its claims. Moreover, QCC asserts that the exclusion of this evidence would deprive QCC of due process.

QCC also states that unfair prejudice is not a basis for the exclusion of evidence pursuant to Iowa Code § 17A.14. QCC asserts that the Respondents have not cited any Board orders where the Board has excluded evidence because it was unfairly prejudicial and has not provided statutory support or precedent for exclusion on such grounds.

Discussion

The Board has reviewed the Respondents' motion and QCC's response and finds that the evidence is relevant to put QCC's claims into an appropriate context and is not unduly prejudicial to the Respondents. Therefore, the Board will deny the Respondents' motion to strike.

QCC's initial complaint is sufficiently broad to relate to the categories of evidence raised by the Respondents. In addition, the Board's evidentiary rulings are

governed by Iowa Code § 17A.14, which provides that evidence that is irrelevant, immaterial, or unduly repetitious shall be excluded. The Board has considered the arguments raised by the Respondents based on the Iowa Rules of Evidence as instructional, however, the Board is not bound by those rules in this proceeding. The evidence submitted by QCC is relevant and material to its claims and is not unduly repetitious. Therefore, the Respondents' motion to exclude the evidence will be denied.

REQUEST FOR CONFIDENTIAL TREATMENT

On November 24, 2008, Qwest Communications Corporation (QCC) filed a request for confidential treatment of information filed with the Board in support of QCC's response to the Respondents' motion to exclude evidence. Specifically, QCC asserts that the information contained in its November 24, 2008, response to the Respondents' motion to exclude evidence filed November 12, 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 November 24, 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 November 24, 2008.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The motion to exclude evidence filed by Great Lakes Communications Corp. and Superior Telephone Cooperative on November 12, 2008, is denied.
2. The request for confidential treatment filed by Qwest Communications Corporation on November 24, 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 26th day of November, 2008.