

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

(Issued November 26, 2008)

On November 13, 2008, 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 (collectively "Respondents") filed with the Utilities Board (Board) a motion to strike and exclude evidence submitted by Qwest Communications Corporation (QCC), Sprint Communications Company L.P. (Sprint), and AT&T Communications of the Midwest, Inc., and TCG Omaha (collectively "AT&T") in this case on the grounds that it is irrelevant, immaterial, or prejudicial to the contested matters at issue in this proceeding.

The Respondents state that the categories of evidence they seek to exclude by this motion are evidence of chat lines and adult content; evidence relating to fraud and fraudulent conduct; evidence relating to conspiracy; evidence relating to interstate traffic; evidence relating to the respondents dropping out of or opting back into the National Exchange Carrier Association (NECA) interstate access services tariff; and evidence relating to the termination of toll traffic. The Respondents assert that all of the evidence relating to these categories is irrelevant and therefore should be stricken pursuant to 199 IAC 7.14. The Respondents also allege that in addition to being irrelevant, evidence of interstate traffic should be stricken from the record pursuant to Iowa Rule of Evidence 5.403 because admission of such evidence would cause an unnecessary delay in the presentation of evidence.

On November 21, 2008, Sprint filed a response to the Respondents' motion. Sprint states that the testimony submitted by Sprint that the Respondents seek to

exclude pertains only to the categories of adult content, interstate traffic, and opting out of, or into, the NECA tariff, but supports QCC and AT&T with respect to the remaining categories of fraud, conspiracy, and the high level of access rates. Sprint asserts that all of the evidence submitted by Sprint, QCC, and AT&T is relevant to QCC's initial claim in this proceeding and is a part of the full context of this case. Sprint asserts that under the broad standard of evidence before an administrative agency, there is no basis in fact or law to exclude the challenged evidence.

Also on November 21, 2008, AT&T filed a response to the Respondents' motion. AT&T states that the Board should consider its testimony in the context in which it was offered, which is directly relevant to the issues before the Board in this case. AT&T also states that its testimony will not cause confusion of the issues or mislead the Board and asks that it be permitted to put on its own evidence.

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.

The Board has reviewed the Respondents' motion and the responses filed by Sprint, AT&T, and QCC and finds that the evidence identified by the Respondents is relevant to QCC's claims and allows QCC and the other interexchange carriers to put their claims into an appropriate context. 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.

IT IS THEREFORE ORDERED:

The motion to strike 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 November 13, 2008, is denied.

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.