

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

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REASNOR TELEPHONE COMPANY, LLC,

Counterclaimant,

vs.

QWEST COMMUNICATIONS  
CORPORATION AND QWEST  
CORPORATION,

Counterclaim Respondents.

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**ORDER REGARDING PREHEARING CONFERENCE AND  
GRANTING MOTION TO POSTPONE HEARING**

(Issued December 2, 2008)

On October 24, 2008, Qwest Communications Corporation (QCC) filed a motion for a prehearing order establishing various procedures for the hearing in this docket scheduled to commence on December 8, 2008. Various parties filed responses to the motion, including a motion to postpone the hearing filed by Reasnor Telephone Company, LLC (Reasnor), on November 12, 2008.

In response to the motions, Board staff convened a prehearing conference call with counsel for each of the parties on November 18, 2008, to discuss QCC's proposals and other prehearing matters. This order summarizes the agreements reached during the call and rules on procedural matters that were proposed but were not the subject of agreement among the parties.

As mentioned above, on November 12, 2008, Reasnor filed a motion to postpone the hearing in this matter, arguing that Reasnor's discovery from QCC had been delayed to the point of requiring that the hearing be delayed. On November 24, 2008, QCC filed a response to that motion arguing it had fully responded to nearly every data request propounded by Reasnor; QCC offered a witness in a corporate deposition to answer questions about categories of information that are the subject of Reasnor's motions; and Reasnor has waited too long to raise its motion to compel as a basis for postponing the hearing.

On November 25, 2008, Reasnor filed a reply to QCC's opposition, asserting QCC has not fully responded to Reasnor's discovery requests and QCC's corporate witness was not able to answer some of Reasnor's questions.

The Board has reserved five days for this hearing, from December 8 to December 12, 2008, inclusive. Some of the parties asked the Board to prepare a tentative witness schedule so that they can schedule their witnesses accordingly. In furtherance of that effort, Board staff asked the parties to submit their proposed order of witnesses by close of business on Friday, November 21, 2008, by e-mail, along with an estimate of the anticipated length of cross-examination for each witness. The parties have provided their witness lists and estimates. Based on that information, it appears that the five days currently reserved for hearing will be an insufficient amount of time for the parties to fully present their case.

The Board will therefore reschedule the hearing. This matter has been pending since February 20, 2007, and the hearing has already been rescheduled a number of times. Nevertheless, the parties have motions that are still pending before the Board and have been engaging in discovery disputes right up to the start of this hearing, which may indicate the matter is not ready for hearing. In order to provide for an uninterrupted hearing in this matter, allow time to rule on outstanding motions, and allow the parties an opportunity to complete discovery, the Board will extend the hearing and will reserve seven business days, from Thursday, February 5, 2009, through Friday, February 13, 2009, inclusive, for the parties to present their cases. This will allow three and one-half days for each side.

The Board will establish January 12, 2009, as the discovery deadline in this proceeding and December 31, 2008, as the deadline for all discovery motions to be filed with the Board.

As stated above, Board staff asked the parties to submit their proposed order of witnesses by close of business on Friday, November 21, 2008, by e-mail, along with an estimate of the anticipated length of cross-examination for each witness. The parties provided their witness lists and estimates and, based on that information, the Board has assembled the following tentative, non-binding order of witnesses:

QCC

Jeff Owens  
Lisa Hensley-Eckert  
Anne Hilton  
(Dana Greeno of Aventure)  
(Arie Scholten of Sully)  
(Gary Neill of Reasnor)  
John Devolites  
Max Phillips

AT&T Communications of the Midwest, Inc. (AT&T)

Brian Benison  
Wauneta Browne

Sprint Communications Company L.P. (Sprint)

Julie Walker  
James Appleby

Respondents

Ron Laudner, The Farmers Telephone Co. of Riceville, Iowa  
Rex McGuire, The Farmers & Merchants Tel. Co. of Wayland, Iowa  
Howard Hunt, Dixon Telephone Company  
Pat McGowan, Interstate 35 Tel. Co., d/b/a Interstate Comm. Co.  
Gary Zingaretti, Reasnor  
Jim McKenna, Aventure Communications Technology, LLC  
Josh Nelson, Superior Telephone Cooperative (Superior)/Great Lakes  
Communication Corp. (Great Lakes)  
Larry Chu, Superior/Great Lakes  
Tom Mart, Superior/Great Lakes

Based on the time estimates submitted by the parties for cross-examination and the available time for hearing, the parties should expect that the witnesses for

QCC, AT&T, and Sprint will take the stand during the first three and one-half days of the hearing and the witnesses for the Respondents will take the stand during the second three and one-half days of hearing. As the parties requested during the prehearing conference call, this schedule depends to a very great extent on events that are not within the direct control of the Board or any of the parties, so it is tentative and subject to change.

When QCC submitted its proposed witness list, QCC identified three witnesses (identified by parentheses in the list above) for whom no prefiled direct testimony has been submitted. QCC proposes to call these adverse or hostile witnesses for direct examination at the hearing. Accordingly, on November 24, 2008, QCC filed a request pursuant to 199 IAC 7.10(3), asking for an order approving that proposal. The Board will set a deadline of December 5, 2008, for parties to file responses to that request, after which the Board will rule on the request.

In QCC's prehearing motion, QCC proposed allowing one and one-half hours for each side for opening statements and additional time for summaries of prefiled testimony by each witness. During the prehearing conference call, QCC indicated it would forego the witness summaries, but reiterated its proposal for opening statements, perhaps reduced to one hour per side. Other parties indicated either support for or opposition to the proposal for opening statements, at least one proposing limits of 15 to 20 minutes. Staff proposed the alternative of prehearing briefs, but the parties generally rejected that approach.

Because of the limited time available, the Board will deny the request for opening statements. With 18 to 21 witnesses, there simply is not time, even with the longer hearing time.

In its prehearing motion, QCC also raised some questions regarding the treatment of confidential information during the hearing. The Board's practice has been that if confidential information must be discussed during the hearing, the party that claims the information is entitled to confidential treatment (and therefore should not be part of the public record) is responsible for moving to close the hearing.<sup>1</sup> If that motion is granted, the hearing room will be closed and only persons who have executed an appropriate confidentiality agreement and employees of the Iowa Utilities Division and the Consumer Advocate Division of the Department of Justice (Consumer Advocate) may remain. The Board does not have information regarding who has, and who has not, signed a confidentiality agreement, so it will be up to the parties to notify the Board if anyone remains in the hearing room who should be excluded. Once the hearing room is closed, that part of the transcript will be treated as confidential and withheld from public inspection. As soon as the discussion of confidential information is concluded, the hearing room will be re-opened to the public. The Board asks that counsel try to concentrate their cross-examination involving confidential information, to the extent possible, to avoid the need to move repeatedly from open session to closed and back to open.

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<sup>1</sup> If the information in question has previously been determined to be confidential, a motion is not necessary. A request to close the hearing will be sufficient.

Another matter discussed during the prehearing conference was the possibility of any initial procedural matters. Typically, the Board takes up any prehearing matters at the start of the hearing, based upon oral motions or other statements, but in this case the Board will direct the parties to pre-file any final prehearing motions on or before January 16, 2009. The Board understands that some additional matters may arise between that date and the start of the hearing, making oral motions or statements necessary, but to the extent any such motions can be pre-filed it may be possible to minimize the hearing time required for ruling on those motions.

To the same end, the Board will direct the parties to file their re-numbered exhibit lists on or before January 16, 2009. Typically, the parties identify their prefiled exhibits with a variety of identifiers, such as the initials of the sponsoring witness and a number, when they are filed. Those identifiers are then replaced with more traditional, sequential exhibit numbers at the start of the hearing. In order to save the time normally required for that renumbering process, the Board will assign exhibit number ranges and direct the parties to pre-number their prefiled exhibits. QCC, AT&T, and Sprint should use exhibit numbers in the range from 1 to 400. The Respondents should use exhibit numbers in the range from 401 to 700. Consumer Advocate may use exhibit numbers in the range from 701 to 800. If these ranges are not adequate, the parties should agree on different ranges.

During the prehearing conference call, Board staff directed the attention of the parties to rule 7.10(2), which provides that if a witness has more than three

corrections to make to his or her testimony, then the corrections should be filed in advance of the hearing. Those filings should also be made on or before January 16, 2009.

In their response to QCC's prehearing motion, Great Lakes and Superior suggested the Board issue an order generally prohibiting "friendly" cross-examination, that is, cross-examination of a witness by counsel for parties that generally share the same litigation position and interests as the party for whom the witness prefiled direct testimony. Board staff raised this proposal during the prehearing conference call and all of the parties agreed to it. Accordingly, cross-examination by friendly parties will not be permitted.

**IT IS THEREFORE ORDERED:**

1. Any responses to the "Motion to Present Testimony of Subpoenaed Witnesses at Hearing" filed by Qwest Communications Corporation on November 24, 2008, must be filed on or before December 5, 2008.
2. On or before December 31, 2008, each party shall file any motions regarding outstanding discovery disputes.
3. On or before January 16, 2009, each party shall file any remaining prehearing motions or other matters it wishes the Board to consider prior to the first witness being called; a re-numbered exhibit list, consistent with the exhibit number

ranges specified in the body of this order; and corrections to the prefiled direct testimony for any witnesses who have more than three corrections to make.

4. Pursuant to the agreement of the parties, there will be no cross-examination of a witness by counsel for parties that generally share the same litigation position and interests as the party for whom the witness prefiled direct testimony. Thus, Qwest Communications Corporation, AT&T Communications of the Midwest, Inc., and Sprint Communications Company L.P. will not cross-examine each other's witnesses and the Respondents will not cross-examine each other's witnesses.

5. The motion to postpone the hearing filed by Reasnor Telephone Company, LLC, on November 12, 2008, is granted. The hearing will be rescheduled to commence on February 5, 2009, at 9:00 am.

**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 2<sup>nd</sup> day of December, 2008.