STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: IT COMMUNICATIONS, LLC, Complainant, v. QWEST CORPORATION, Respondent.	DOCKET NO. FCU-08-19

ORDER DOCKETING COMPLAINT AND ESTABLISHING EXPEDITED PROCEDURAL SCHEDULE

(Issued December 4, 2008)

On November 26, 2008, IT Communications, LLC (IT Comm),[1] a competitive local exchange carrier (CLEC), filed with the Utilities Board (Board) a complaint against Qwest Corporation (Qwest) and requested expedited treatment pursuant to Iowa Code § 476.101(8). IT Comm states it provides local and interexchange telecommunications services in nine Iowa communities in which Qwest serves as the incumbent local exchange carrier (ILEC).

IT Comm explains it historically has provided local telecommunications services using Qwest's wholesale local telecommunications product, Qwest Local Service Platform (QLSP), but has acquired its own facilities for providing telephone

[1] IT Comm states it is a subsidiary of Iowa Telecom Communications, Inc., which is a subsidiary of Iowa Telecommunications Services, Inc.

exchange service, exchange access service, and other wholesale services. IT Comm states it either provides the services on its own or jointly with another CLEC or an ILEC.

IT Comm states that on November 29, 2007, IT Comm and Qwest signed a Letter Agreement in which IT Comm adopted 360networks (USA) Inc.'s (360networks) interconnection agreement with Qwest pursuant to 47 U.S.C. §§ 251 and 252. According to IT Comm, the Letter Agreement incorporated by reference and adopted the terms of the agreement Qwest had with 360networks (the Underlying Agreement), which was approved by the Board in Docket No. NIA-06-57. The Letter Agreement was filed with the Board by IT Comm and Qwest on December 12, 2007, identified as Docket No. NIA-07-34. IT Comm attached excerpts of the Underlying Agreement to its complaint as Exhibit 6.

IT Comm states that on March 25, 2008, it requested mid-span points of interconnection (POIs) between its points of presence in Davenport and Des Moines, Iowa, and Qwest's tandem switch offices; IT Comm reiterated its request on September 5, 2008. IT Comm states further it has attempted to negotiate mid-span meet POIs with Qwest, but the negotiations ended with Qwest's refusal to establish the requested POIs. IT Comm states that it invoked the dispute resolution provisions of the Underlying Agreement, but those steps did not result in Qwest's agreement to create the POIs requested by IT Comm. IT Comm now asks the Board to resolve the

dispute by interpreting and enforcing the terms of the Underlying Agreement pursuant to Iowa Code § 476.101 and chapter 7 of the Board's administrative rules.

In Count I of its complaint, IT Comm states it is attempting to establish POIs with Qwest at certain locations at which Qwest has meet points with other carriers. IT Comm asserts the mid-span meet POIs it has requested are technically feasible, as required by the Underlying Agreement. IT Comm alleges that Qwest has refused its request because IT Comm does not have a local switch, even though IT Comm informed Qwest that it negotiated a contract to acquire its own local switching capacities. Alternatively, IT Comm suggests that as long as its facilities are connected to those of another carrier that has local switching, any requirement that both parties have a switch is satisfied.

IT Comm alleges that Qwest's refusal to provide interconnection as requested by IT Comm constitutes a violation of the Underlying Agreement, which requires Qwest to provide interconnection pursuant to just, reasonable, and non-discriminatory rates, terms, and conditions. IT Comm also alleges that Qwest's refusal violates the Underlying Agreement, which requires Qwest to provide interconnection "at least equal in quality to that provided to itself, to any subsidiary, Affiliate, or any other party to which it provides Interconnection." (Complaint pp. 9-10, ¶ 32, Exhibit 6 at § 7.1.1.1.)

IT Comm states that part of its business strategy is to provide exchange access service and asserts it cannot bill for that service unless POIs between Qwest

and IT Comm are reflected in the National Exchange Carrier Association Tariff FCC No. 4 (NECA Tariff 4). IT Comm suggests that Qwest would have an incentive not to concur in IT Comm's NECA Tariff 4 revisions because Qwest could lose revenue where IT Comm competes with Qwest to provide transport. IT Comm asserts that any refusal to concur in the tariff for this reason would be unlawful because it would deprive IT Comm of the benefit of creating POIs with Qwest. IT Comm also alleges such refusal would be discriminatory because Qwest has concurred in the tariff revisions of other carriers which have established POIs with Qwest.

IT Comm also alleges in Count I that Qwest's refusal to provide mid-span meet POIs at locations requested by IT Comm constitutes a violation of Iowa Code § 476.100(5), under which a local exchange carrier may not "[u]nreasonably refuse or delay interconnections or provide inferior interconnections to another provider." Likewise, IT Comm alleges that any refusal by Qwest to concur in IT Comm's NECA Tariff 4 revision would violate § 476.100(5).

In Count II of the complaint, IT Comm states that the Underlying Agreement requires the parties to negotiate the establishment of POIs. IT Comm asserts that Qwest has failed to negotiate in good faith on this issue.

Regarding its request for expedited treatment under § 476.101(8), IT Comm states it is alleging violations of Iowa Code §§ 476.100(5) and 476.101(2). IT Comm notes that its provision of exchange access service to at least one customer is being

delayed as a result of Qwest's refusal to provide interconnection as requested by IT Comm.

IT Comm asks the Board to issue an order requiring Qwest to establish mid-span meet POIs at locations requested by IT Comm; to jointly provide switched and dedicated access services as required by the Underlying Agreement; to perform all administrative functions regarding the joint provision of exchange access as described in the Underlying Agreement; and promptly process any future requests from IT Comm for POIs. Further, IT Comm asks the Board to conclude that Qwest has failed to negotiate in good faith with respect to the establishment of POIs and order Qwest to negotiate in good faith.

The Board will docket IT Comm's complaint for further investigation. Iowa Code § 476.101(8) provides, in relevant part, that when the Board initiates formal complaint proceedings in response to a written complaint regarding a local exchange carrier's compliance with §§ 476.96 through 476.102, "[t]he Board shall render a decision in the proceeding within ninety days after the date the written complaint was filed." Thus, the deadline for Board action in this docket is February 24, 2009, and the Board will establish a procedural schedule that will allow it to satisfy that requirement. The parties are advised that any modifications to the expedited schedule established in this order will almost certainly require the parties to waive the requirement that the Board render a decision by February 24, 2009.

The Board also notes that this order is being issued before the date by which Qwest must file its answer to the complaint. Given the date by which the Board must issue a decision in this matter, the Board finds it necessary to proceed before receiving Qwest's answer. If the Board finds that Qwest's answer contains anything which requires any modifications to this order, the Board will consider such modifications at a later date.

Finally, the Board notes that its electronic filing system is scheduled to be activated while this matter is pending. The Board intends that dockets that start in the existing paper filing system will continue to be processed on paper and typically will not be entered into the electronic filing system. If this docket extends longer than anticipated, however, it may be desirable to shift this docket to the electronic filing system at some point. In order to preserve that option, the Board will direct the parties to file electronic copies of all filings, on CD or DVD, in a format complying with the rules the Board adopted in Docket No. RMU-08-2 to implement the electronic filing system, at the same time as they make their paper filings. In this way, if the Board orders that this docket should be shifted to the new system, the entire record will be available on the new system.

IT IS THEREFORE ORDERED:

1. The complaint filed on November 26, 2008, by IT Communications, LLC, against Qwest Corporation is docketed for a formal complaint proceeding

identified as Docket No. FCU-08-19. The issues in this case are as alleged in the complaint and as they may develop during the course of this proceeding.

2. The following procedural schedule is established for this proceeding:

a. IT Comm shall file prepared direct testimony, with supporting exhibits and workpapers, on or before December 17, 2008.

b. Qwest shall file rebuttal testimony, with supporting exhibits and workpapers, on or before January 5, 2009.

c. IT Comm may file reply testimony, with supporting exhibits and workpapers, on or before January 13, 2009.

d. A hearing for the purpose of receiving testimony and cross-examination of all witnesses will commence at 9 a.m. on Tuesday, January 27, 2009, in the Board's hearing room at 350 Maple Street, Des Moines, Iowa. Parties shall appear at the hearing one-half hour prior to the time of hearing to mark exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 515-281-5256 in advance of the scheduled date to request that appropriate arrangements be made. The parties are advised that the Board has reserved three days for the hearing in this matter.

e. Any party desiring to file a post-hearing brief may do so on or before February 3, 2009.

3. In the absence of objection, all workpapers shall become a part of the evidentiary record at the time the related testimony and exhibits are entered in the record.

4. In the absence of objection, all data requests and responses referred to in oral testimony or cross-examination, which have not previously been filed with the Board, shall become a part of the evidentiary record. The party making reference to the data request or response shall file an original and six copies at the earliest possible time.

5. In the absence of objection, if the Board calls for further evidence on any issue and that evidence is filed after the close of hearing, the evidentiary record shall be reopened and the evidence will become a part of the evidentiary record three days after filing. All evidence filed pursuant to this paragraph shall be filed no later than five days after the close of hearing.

UTILITIES BOARD

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 4th day of December, 2008.