

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 GRANTING MOTION TO MODIFY AND QUASH SUBPOENAS
AND DENYING MOTION TO COMPEL**

(Issued December 10, 2008)

Background

On September 7, 2007, Audiocom LLC (Audiocom), a non-party to this proceeding, filed with the Utilities Board (Board) a motion to modify and quash the document and deposition subpoenas served upon Audiocom by Qwest Communications Corporation (QCC). Audiocom argues that QCC's subpoenas on Audiocom as a non-party violate a Board ruling in this proceeding regarding QCC's attempts to obtain discovery from non-parties. In addition, Audiocom states that the subpoenas are overbroad and not reasonably calculated to lead to the discovery of admissible evidence and that complying with the subpoenas will require Audiocom to disclose confidential and proprietary information if they are not quashed.

Audiocom states that on August 16, 2007, the Board issued an order which, among other things, stated that QCC should not be permitted to seek discovery from a non-party to this proceeding if QCC is reasonably able to obtain the information from parties to this action through established discovery methods. Audiocom argues that Subpoena Request No. 1 (which seeks all correspondence or other documentation exchanged between Audiocom and the respondents since January 2002) and No. 11 (which seeks all documents relating to the assignment of telephone numbers to Audiocom or the changing of telephone numbers for Audiocom customers to call) seek information that is obtainable by parties to this action. Audiocom asserts that unless QCC demonstrates it cannot obtain this information

from the parties, Audiocom should not be required to respond to Subpoena Request Nos. 1 and 11 in light of the Board's August 16, 2007, order.

Audiocom also states that several of the subpoena requests ask for documents and information that contain proprietary and confidential information. Audiocom asserts that the Board's August 16, 2007, order does not require non-parties to produce such documents or information. Specifically, Audiocom states that document Subpoena Request Nos. 2 through 4 and deposition Subpoena Request Nos. 3 through 4 seek all correspondence, documentation, and contracts exchanged between Audiocom and any provider of telecommunications services in Iowa from January 1, 2002, to present; document and deposition Subpoena Request No. 6 seeks all documents relating to the volume of traffic routed to Audiocom from any provider of telecommunications services in Iowa; document and deposition Subpoena Request No. 10 seeks all documents relating to the projections of call volumes expected to be delivered to Audiocom; document Subpoena Request Nos. 8, 9, and 17 and deposition Subpoena Request Nos. 9 and 17 seek all documents related to money Audiocom has paid to any provider of telecommunications services in Iowa since January 1, 2002; document and deposition Subpoena Request No. 16 seeks all documents relating to call detail records, log files, or call collections information relating to all traffic volumes associated with traffic delivered to Audiocom; document Subpoena Request Nos. 20 through 22 and deposition Subpoena Request Nos. 19 through 21 seek all documents relating to where calls to Audiocom were terminated;

and document Subpoena Request Nos. 5 and 18 and deposition Subpoena Request No. 5, seeks all correspondence or other documents exchanged with or relating to the Rural Iowa Independent Telephone Association (RIITA) and the Iowa Telecommunications Association, Burnie Snoddy, or Kiesling Associates since January 1, 2002. Audiocom states that these requests extend beyond the Board's ruling in the August 16, 2007, order, as they seek information that is either available from the parties to this action or require a non-party to produce confidential or proprietary information.

Audiocom also argues that many of the above mentioned subpoena requests are overbroad and not reasonably calculated to lead to the discovery of admissible evidence.

On September 20, 2007, QCC filed a response to Audiocom's motion as well as a cross-motion to compel Audiocom to comply fully with the subpoena requests. QCC states that Audiocom's reliance on the Board's August 16, 2007, order is misplaced. QCC argues that Audiocom takes the Board's order out of its proper context and attempts to apply it to the subpoena requests it received from QCC.

QCC asserts that the subpoena requests served upon Audiocom are distinguishable from those ruled upon in the Board's August 16, 2007, order. QCC states that in this instance, it cannot know if the materials that the respondents exchanged with Audiocom are produced in their entirety unless Audiocom is required to produce them as well. QCC asserts that the requests at issue seek Audiocom's

information regarding its relationships with providers of telecommunications services and the various categories of information that arise from or relate to those relationships. QCC argues that the respondents do not have the same set of documents that Audiocom has regarding these issues.

QCC also argues against Audiocom's assertion that it cannot release confidential or proprietary information to QCC. QCC states that as a subpoena recipient, Audiocom can become a signatory to the protective agreement that has been executed by the respondents and several other non-parties. QCC asserts that the Board's August 16, 2007, order regarding the production of confidential information provides that such information should not be provided to companies that are not a party to this action or that are not signatories to a protective agreement. QCC argues that Audiocom's concerns regarding the production of confidential or proprietary information can be remedied by entering into a protective agreement with QCC.

QCC asserts that subpoena requests served on Audiocom are not overbroad or unduly burdensome and seek relevant, discoverable information that the Board should compel Audiocom to produce. QCC states that Audiocom has not provided any support for its contention that producing the documents would be unduly burdensome.

On October 29, 2007, Audiocom filed a reply supporting its motion to modify and quash QCC's subpoenas as well as a response to QCC's motion to compel.

Audiocom states that QCC cannot overcome the Board's August 16, 2007, order restricting QCC's discovery requests served on non-parties, the requests are overly broad and not reasonably calculated to lead to the discovery of evidence admissible in this proceeding, and the requests for information are irrelevant insofar as all of the evidence that may be produced relates only to interstate traffic, which is not within the Board's jurisdiction.

Discussion

Iowa Code § 17A.13(1) provides that agency subpoenas shall be issued to a party on request and that discovery procedures that are applicable to civil actions are available to all parties in contested cases before an agency. Iowa Rule of Civil Procedure 1.514 provides that an independent action against a non-party for production of documents may be allowed.

Based on the information submitted by Audiocom and QCC, it appears that the information QCC seeks to obtain from Audiocom may be discoverable by other means and from other parties to this action. Audiocom states that QCC served a document subpoena on Audiocom that contained 21 requests and a deposition subpoena that parallels the substance of the document subpoena. QCC and Audiocom state that the requested information includes documents related to revenue sharing; correspondence between Audiocom and telecommunications service providers in Iowa, including those providers that are named parties in this action; documents exchanged with certain consultants that have already produced

documents in this case; documents related to types of equipment and configurations used in the schemes QCC alleges in its complaint; documents related to call routing; and documents related to traffic volumes. This information is substantially similar to the information sought by QCC from RIITA through similar subpoenas. The Board has previously held that this information appears to be ascertainable from the other parties to this action through the discovery procedures available to QCC. Therefore, the Board will grant Audiocom's motion and deny QCC's motion to compel until a showing is made that Audiocom has, or is likely to have, documents that the respondents do not.

IT IS THEREFORE ORDERED:

1. The motion to modify and quash subpoenas filed by Audiocom LLC, on September 7, 2007, is granted.
2. The motion to compel filed by Qwest Communications Corporation on September 20, 2007, is denied.

UTILITIES BOARD

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 10th day of December, 2008.