

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 COMPEL IN PART, DENYING IN PART, AND
GRANTING REQUESTS FOR CONFIDENTIAL TREATMENT**

(Issued December 11, 2008)

MOTION TO COMPEL

Background

On January 4, 2008, Reasnor Telephone Company, LLC (Reasnor), filed with the Utilities Board (Board) a motion to compel answers to discovery requests served by Reasnor upon Qwest Communications Corporation (QCC). In support of its motion, Reasnor states that on August 9, 2007, it issued written data requests to QCC seeking specific information that is relevant and material to the issues raised in QCC's complaint and in Reasnor's affirmative defenses and counterclaims. Reasnor states its data requests are intended to examine whether QCC has any basis for claiming that it has been injured and to define what facts support QCC's claims. Reasnor also asserts that its data requests seek information regarding whether QCC engaged in unlawful self-help by refusing to pay the full tariff rate for Reasnor's services or whether QCC engaged in unlawful discrimination by making payments and providing service discounts to some, but not all, QCC customers.

Specifically, Reasnor asserts that QCC has not provided all of the information requested by Data Request Nos. 1-25, 27-30, 32-38, and 42-46 and, in some instances, the information that has been received has been vague and generalized. Reasnor also asserts that QCC's objections to the data requests are meritless and the public interest requires QCC provide full and complete responses.

On January 16, 2008, QCC filed a response to Reasnor's motion to compel. QCC argues that it has already responded fully to Reasnor's data requests or was in the process of supplementing those responses when Reasnor filed its motion with the Board.

QCC states that it has provided full and complete responses to Data Request Nos. 1-9, 28-30, and 34, 35, 37, and 38, and that it is still supplementing its original responses. QCC argues, however, that in response to Data Request Nos. 10-25, which seek information about the conferencing services that QCC provides to its customers, QCC informed Reasnor that the only conference relationship that has any bearing to this case is QCC's relationship with Genesys Conferencing, Inc. (Genesys). QCC states that it provided a copy of its contract and documents exchanged between Genesys and QCC. QCC objects to Reasnor's attempts to gain access to additional materials pursuant to this request.

QCC also argues that with respect to Data Request Nos. 32 and 33, which seek the names of other long distance carriers and least cost routers and the contracts they have with QCC, these contracts have provisions that make them confidential. QCC argues that the Board has previously held that non-parties are not required to produce confidential documents when they had not signed a protective agreement in this action.¹ QCC asserts that Reasnor is seeking the agreements of hundreds of non-parties that have not signed a protective agreement in this case and therefore production of such contracts cannot be compelled.

QCC claims that it has fully responded to Reasnor's Data Request Nos. 42 and 43, regarding persons whom QCC compensates for marketing its services, and argues that it does not maintain the information sought in Data Request Nos. 44-46,

¹ In re: Qwest Communications Corporation vs. Superior Tel. Co., et al., "Order Granting Motion to Withdraw and Granting Motions to Compel in Part and Denying in Part," Docket No. FCU-07-2, issued August 16, 2008.

which ask QCC to identify the amounts QCC received from each of its long distance customers to carry calls to the Reasnor exchange in any readily available format. QCC states that the information sought in Data Request Nos. 42 and 43 is irrelevant and to obtain the information Reasnor seeks in Data Request Nos. 44-46 will require a special study. QCC states it has provided Reasnor with all the information it has available in response to Reasnor's request.

On January 23, 2008, Reasnor filed a reply to QCC's response. Reasnor generally restates its previous arguments and asserts that QCC has not provided full and complete responses to its data requests.

Discussion

Reasnor asks the Board to compel QCC to provide full and complete responses to Data Request Nos. 1-25, 27-30, 32-38, and 42-46. QCC asserts that it has provided complete responses to Data Request Nos. 1-9, 28-30, and 34, 35, 37, and 38, and is still supplementing many of its responses. QCC also argues that with respect to Data Request Nos. 32 and 33, the contracts requested by Reasnor have provisions that make them confidential and the Board should not require QCC to produce these confidential documents when the other companies to the contracts have not signed a protective agreement in this action.

QCC also objects to Data Request Nos. 10-25, which seek information about the conferencing services that QCC provides to its customers. QCC asserts that it has complied fully with this request and provided Reasnor with a copy of a contract between Genesys and QCC as well as other documents. Finally, QCC claims that it has fully responded to Reasnor's Data Request Nos. 42 and 43 regarding persons

whom QCC compensates for marketing its services and argues that it does not maintain the information sought in Data Request Nos. 44-46, which ask QCC to identify the amounts QCC received from each of its long distance customers to carry calls to the Reasnor exchange in any readily available format.

The Board has reviewed the materials submitted by Reasnor and QCC and finds that QCC may have fully responded to Reasnor's data requests at this time. Since Reasnor filed its motion to compel, QCC states that it has continued to collect appropriate information to supplement its original responses. Because of the amount of discovery that has been conducted throughout this proceeding, it appears that QCC may have provided complete supplemental responses to Reasnor's requests after the motion was filed. At a minimum, Reasnor has not renewed or updated its motion after receiving the supplemental responses. Therefore, with respect to Data Request Nos. 1-25, 28-30, and 34-38, the Board will deny Reasnor's motion to compel.

With respect to Data Request Nos. 32 and 33, the Board finds that the protective agreement that Reasnor entered into with QCC sufficiently preserves the confidentiality of the contracts requested by Reasnor. Reasnor states that it has limited its request to a few large carriers and does not require the disclosure of hundreds of contracts as suggested by QCC. The Board finds that this information is relevant to Reasnor's counterclaims and will therefore require QCC to provide full and complete responses to these requests. The Board will grant Reasnor's motion to compel with respect to Data Request Nos. 32 and 33.

Data Request Nos. 42 and 43 seek information regarding persons whom QCC compensates for marketing its services, and the Board finds that with respect to Data Request Nos. 42 and 43, QCC has not provided full and complete responses. In its response to Data Request No. 42, QCC stated that its own marketing department was responsible for marketing its services. However, QCC did not provide any additional or specific information with respect to that department or any other companies that may have assisted in the marketing of QCC's services. Therefore, the Board will grant Reasnor's motion to compel with respect to Data Request Nos. 42 and 43 and will direct QCC to provide full and complete responses within seven days of the date of this order.

Data Request Nos. 44-46 ask QCC to identify the amounts QCC received from each of its long distance customers to carry calls to the Reasnor exchange. QCC states that it does not maintain this information in a format that makes it readily available to Reasnor. QCC has asserted that it would require thousands of hours to provide complete responses to these data requests and the Board finds that this expenditure of effort on QCC's part would be unduly burdensome for the collection of information for a marginally relevant issue. Therefore, the Board will deny Reasnor's motion to compel regarding Data Request Nos. 44-46.

REQUESTS FOR CONFIDENTIAL TREATMENT

On January 4 and January 23, 2008, Reasnor filed requests for confidential treatment of certain material attached to its motion to compel and to its reply to QCC's response to that motion. Reasnor states that the information has been

designated as confidential under protective agreements entered into specifically for this action.

On January 16, 2008, QCC filed a request for confidential treatment of certain material information included in its response to Reasnor's motion to compel. QCC states that the information was produced by Reasnor and by other non-parties to this action, including Sully Telephone Association, Inc., and has been designated as confidential under protective agreements entered into for this action.

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 has recognized the unusual circumstances in this case whereby QCC and the respondents in this matter have obtained access to confidential information, pursuant to protective agreements and unilateral designations of confidentiality. Under these circumstances, the Board has not required affidavits for requests for temporary confidential treatment of information belonging to other parties, and the Board will grant all such requests for temporary confidential treatment to allow the party that has designated the information as confidential to file a request for permanent confidential treatment. All such requests should be filed within 14 days of the date of this order, if they have not been filed already.

In each of these requests described above, the Board finds that the request for confidential treatment supports a finding that the information 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. Therefore, the Board will grant the various requests under the provisions of Iowa Code § 22.7(3).

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The motion to compel filed by Reasnor Telephone Company, LLC, on January 4, 2008, is denied with respect to Data Request Nos. 1-25, 28-30, 34-38, and 44-46, as described in this order.
2. The motion to compel filed by Reasnor Telephone Company, LLC, on January 4, 2008, is granted with respect to Data Request Nos. 32 and 33, as described in this order.
3. The motion to compel filed by Reasnor Telephone Company, LLC, on January 4, 2008, is granted with respect to Data Request No. 42 and 43, as described in this order.

4. Qwest Communications Corporation is directed to submit full and complete responses to Data Request Nos. 42 and 43 within seven days of the date of this order.

5. The requests for confidential treatment filed by Reasnor Telephone Company, LLC, on January 4 and January 23, 2008, are granted.

6. The request for confidential treatment filed by Qwest Communications Corporation on January 16, 2008, is granted.

7. All of the information described in the requests for confidential treatment that are being granted shall be held confidential and shall not be made part of the public record unless the Board orders otherwise.

UTILITIES BOARD

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 11th day of December, 2008.