

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 QUASH SUBPOENA,
GRANTING CROSS-MOTION TO COMPEL, AND
GRANTING REQUESTS FOR CONFIDENTIAL TREATMENT**

(Issued December 11, 2008)

**MOTION TO QUASH SUBPOENA AND
CROSS-MOTION TO COMPEL**

Background

On December 28, 2007, Sully Telephone Association, Inc. (Sully), which is a not a party to this action, filed with the Utilities Board (Board) a motion to quash a subpoena issued by Qwest Communications Corporation (QCC) and served upon Sully in connection with this matter. The subpoena requests the deposition of Arie J. Scholten, Sully's general manager. Sully asserts that it has already presented a corporate representative, Gary Zingaretti, as a witness and Mr. Zingaretti has provided QCC a detailed deposition. Sully states that a second deposition of the company through Mr. Scholten is unnecessary and would impose undue burden and expenses on Sully.

In support of its motion, Sully states that on September 11, 2007, QCC served on Sully an amended notice for the oral deposition of a corporate representative for Sully to be examined on 17 topics designated by QCC. Sully states that in response to that notice, it designated Mr. Zingaretti, Senior Vice President of ICORE, Inc. (ICORE), as the best person to testify on behalf of Sully. Sully states that ICORE is responsible for billing and tariffs for Sully and Mr. Zingaretti is knowledgeable about technical matters concerning Sully. Sully states that Mr. Zingaretti's deposition took place on September 18, 2007, and lasted nearly seven hours.

Sully argues that in spite of Mr. Zingaretti's deposition, QCC issued a second subpoena to Sully asking to take the deposition of Mr. Scholten. Sully argues that it

is not a party to this proceeding and that any other deposition of the company is unnecessary. Sully asserts that a second deposition of the company would be unreasonably cumulative and duplicative because Mr. Zingaretti has already provided testimony on all topics designated for deposition and was able to provide information to QCC to pursue its claims against the respondents in this matter.

On January 11, 2008, QCC filed a response to Sully's motion as well as a cross-motion to compel the subpoenaed deposition of Arie Scholten. QCC asserts that the deposition is necessary to obtain critical information in this action. During the course of Mr. Zingaretti's deposition, it was clear to QCC that he was unprepared to answer questions about the facts surrounding the creation and implementation of the "traffic pumping" scheme in which, QCC alleges, Mr. Scholten was personally involved. QCC argues that Mr. Zingaretti has never worked for Sully and that while Mr. Zingaretti answered questions regarding each designated topic, he could not answer many important questions for the topics on matters that are known or reasonably available to Sully employees or executives. QCC asserts that a personal deposition of Mr. Scholten will not be duplicative, will be relevant to QCC's case, and therefore the Board should order Sully to present Mr. Scholten for deposition.

On January 18, 2008, Sully filed a reply to QCC's response as well as a response to QCC's cross-motion to compel Mr. Scholten's deposition. Sully generally restates its previous arguments and asserts that QCC has not demonstrated a need for Mr. Scholten's deposition.

Discussion

The Board has reviewed the materials submitted by Sully and QCC and finds that Sully should present Mr. Scholten for deposition in Jasper County, Iowa, on or before December 31, 2008. Mr. Zingaretti was unable to provide complete and detailed responses for several of the designated topics during his deposition. QCC's notice to Sully for deposition sought to depose the most knowledgeable person at Sully. Mr. Zingaretti is not an employee of Sully and does not have personal knowledge regarding information that would have been known by a Sully executive. The Board agrees with QCC that the unanswered questions are relevant to QCC's claims in this case and, therefore, the Board will grant QCC's cross-motion to compel the deposition of Mr. Scholten.

The Board also finds that in the absence of an agreement by the parties to take the deposition elsewhere, the deposition should take place in Jasper County, Iowa. QCC initially set Mr. Scholten's deposition in Polk County, Iowa, because QCC contends that Sully's counsel, Mr. James Troup, asked that his clients' depositions occur in Des Moines. Sully, however, argues that Mr. Scholten does not regularly transact business in Polk County and that Iowa Rule of Civil Procedure 1.1701(2)"c"(2) does not require a person who is not a party to travel to a place outside of the county in which that person lives, works, or regularly transacts business in person. QCC has stated that it does not object to modifying the subpoena to allow for Mr. Scholten's deposition to take place in Jasper County.

Therefore, the Board will direct Sully to make Mr. Scholten available for deposition in Jasper County on or before December 31, 2008.

REQUESTS FOR CONFIDENTIAL TREATMENT

On December 28, 2007, Sully filed a request for confidential treatment of certain material included in and attached to its motion to quash subpoena. Sully states that the information has been designated as confidential under protective agreements entered into specifically for this action.

On January 11, 2008, QCC filed a request for confidential treatment of certain information included in its response to Sully's motion to quash subpoena and in its cross-motion to compel. QCC states that the information was produced by Sully 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 already been filed.

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 quash subpoena filed by Sully Telephone Association, Inc., on December 28, 2007, is denied as described in this order.

2. The cross-motion to compel the deposition of Mr. Arie Scholten filed by Qwest Communications Corporation on January 11, 2008, is granted, as described in this order.

3. Sully Telephone Association, Inc., shall make Mr. Sholten available for deposition in Jasper County, Iowa, on or before December 31, 2008.

4. The request for confidential treatment filed by Sully Telephone Association, Inc., on December 28, 2007, is granted.

5. The request for confidential treatment filed by Qwest Communications Corporation on January 11, 2008, is granted.

6. 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.