

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: QWEST CORPORATION AND SOUTH SLOPE COOPERATIVE TELEPHONE COMPANY	DOCKET NO. FCU-08-14 (C-07-246, C-07-251, C-07-252, C-07-254, C-07-256, C-07-257, C-07-265, C-07-266, C-07-270, C-07-271, C-07-272)
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ORDER GRANTING PETITION TO INTERVENE

(Issued December 17, 2008)

During October and November 2007, 11 residential and business customers from Cedar Rapids, Oxford, Solon, and Marion, Iowa, filed written complaints with the Utilities Board (Board) against Qwest Corporation (Qwest) and South Slope Cooperative Telephone Company (South Slope). The customers complained that Qwest and South Slope discontinued toll-free calling between certain Qwest and South Slope customers in Cedar Rapids, Oxford, Solon, and Tiffin, Iowa.

The complaints were the subject of informal complaint dockets, which are incorporated into the record in this formal proceeding pursuant to 199 IAC 6.7. South Slope and one of the complaining customers, Mr. Aaron Smith, requested a formal complaint proceeding. Although the Board originally denied the requests for a formal proceeding in an order issued April 4, 2008, it later issued an order on September 8, 2008, docketing the case for a formal proceeding and assigning it to the undersigned

administrative law judge. After holding a prehearing conference, on November 13, 2008, the undersigned issued a procedural order and notice of hearing.

On December 3, 2008, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), filed a petition to intervene in the case. Iowa Telecom argues that the issues in the case are primarily devoted to matters pertaining to the manner of South Slope's operation in the Oxford, Solon and Tiffin exchanges (referred to as the three exchanges in this order), in which Iowa Telecom is the incumbent local exchange carrier (ILEC). Iowa Telecom argues that the issues in this case involve matters that have been the subject of litigation between Iowa Telecom and South Slope in Docket No. FCU-06-25, and the Board previously resolved the issues in Iowa Telecom's favor.¹ Specifically, Iowa Telecom argues, the Board held in the prior case that South Slope is operating as a competitive local exchange carrier in the three exchanges and that South Slope had unlawfully changed its Local Exchange Routing Guide (LERG) entries so that its central office codes originally associated with the three exchanges became associated with South Slope's North Liberty Exchange. The result of the unlawful activity by South Slope, argues Iowa Telecom, was that Iowa Telecom could not lawfully port numbers between itself and South Slope customers in the three exchanges. Iowa Telecom argues that an additional resulting disadvantage to it was that South Slope's

¹ Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom v. South Slope Cooperative Telephone Co., Docket No. FCU-06-25, Final Order, (January 23, 2007).

customers in the three exchanges had free long-distance service with Qwest's Cedar Rapids rate center, while Iowa Telecom's customers in the same three exchanges did not. Iowa Telecom argues that the Board ordered South Slope to correct its LERG entries and make necessary filings to correct the situation. Iowa Telecom argues that the dispute in this proceeding arises directly from the Board's decision in Docket No. FCU-06-25, and therefore pertains to matters on which the Board has implicitly found Iowa Telecom to have standing to seek relief. Iowa Telecom argues that South Slope did not appeal the Board's decision in Docket No. FCU-06-25, it is final and binding, and South Slope's arguments in this case constitute a collateral attack on the decision.

Iowa Telecom further argues that the other cases South Slope relies on in support of its position in this case also involve Iowa Telecom or its predecessor company, and Iowa Telecom and its counsel are uniquely positioned to address issues that may arise with respect to those cases.

Iowa Telecom states that it currently intends to fully participate in the case, although it reserves the right not to participate in any particular phase, and its participation will not cause any undue delay in the case nor prejudice any party. Iowa Telecom asks the Board to grant its petition to intervene.

On December 11, 2008, South Slope filed a response to Iowa Telecom's petition to intervene. South Slope argues that the issues in this case are separate and distinct from the issues raised in Docket No. FCU-06-25. South Slope argues

the issues in this case relate to Qwest's obligations under Qwest's Extended Area Service Agreement with South Slope, and the impact of Qwest's discontinuance of toll-free calling between Qwest customers in Cedar Rapids and South Slope's customers in the "Oxford, Solon and Tiffin areas," which South Slope argues are in violation of the Certificate awarded to South Slope. South Slope further argues it is not attempting to collaterally attack the Board's decision in Docket No. FCU-06-25. Instead, argues South Slope, Qwest has collaterally attacked the Certificate awarded to South Slope in 1997 and subsequently amended. South Slope argues that Iowa Telecom is also attempting to collaterally attack South Slope's Certificate by its actions in the petition to intervene. South Slope asks the Board to deny the petition to intervene.

The Board's intervention rule is at 199 IAC 7.13. Subrule 7.13(3) provides that, "any person having an interest in the subject matter of a proceeding may be permitted to intervene at the discretion of the board or presiding officer." In deciding whether to grant intervention, the undersigned is to consider: a) the prospective intervenor's interest in the subject matter of the proceeding; b) the effect of the decision on the prospective intervenor's interest; c) the extent to which the prospective intervenor's interest will be represented by the other parties; d) the availability of other means by which the prospective intervenor's interest may be protected; e) the extent to which the prospective intervenor's participation may

reasonably be expected to assist in the development of a sound record through presentation of relevant evidence and argument; and f) any other relevant factors.

Board subrule 7.13(5) states that the Board or presiding officer may limit a person's intervention to particular issues or to a particular stage of the proceeding, or may otherwise condition the intervenor's participation. The same subrule states that the Board or presiding officer shall generally grant leave to intervene to any person with a cognizable interest in the proceeding. Subrule 7.13(7) states that the intervenor is bound by any agreement, arrangement, or order previously made or issued in the case.

It is clear that Iowa Telecom has a cognizable interest in this proceeding. It is the ILEC in the three exchanges and it has litigated prior Board cases that form the history of this proceeding and that are related to the issues in this proceeding. Although it is unclear at this point, the decision in this case may affect Iowa Telecom's interests in the three exchanges. Because of its participation in the prior cases, Iowa Telecom's participation in this case may assist in the development of a sound record. No other parties will represent Iowa Telecom's interest in this case. Therefore, Iowa Telecom's petition to intervene should be granted. In granting the petition to intervene, the undersigned is making no ruling on the allegations of collateral attack made by both Iowa Telecom and South Slope.

IT IS THEREFORE ORDERED:

1. The "Petition to Intervene" filed by Iowa Telecom on December 3, 2008, is hereby granted.

2. Iowa Telecom is bound by the requirements set forth in the "Procedural Order and Notice of Hearing" issued on November 13, 2008.

3. If Iowa Telecom wishes to file testimony and exhibits in this case, the testimony and exhibits must be filed on or before January 16, 2009. Such testimony and exhibits are to be both the initial testimony of the party and testimony responsive to South Slope's and Qwest's testimony. Iowa Telecom should use exhibit numbers 400 and following and must file an exhibit list with its exhibits.

4. As ordered in the "Procedural Order and Notice of Hearing," on or before January 23, 2009, South Slope and Qwest must file a stipulation of facts with the Board. South Slope and Qwest must provide a draft copy of the stipulation of facts to the Consumer Advocate, to Mr. Aaron Smith, and to Iowa Telecom at least one week prior to January 23, 2009. In the filing, South Slope and Qwest must state whether the Consumer Advocate, Mr. Aaron Smith, and Iowa Telecom agree or disagree with the stipulation of facts. If there is any disagreement by the Consumer Advocate, Mr. Aaron Smith, or Iowa Telecom with the stipulation of facts, the party with the disagreement must file a statement detailing the disagreements on or before January 30, 2009.

5. If Iowa Telecom chooses to file a prehearing brief, it must do so on or before February 6, 2009.

6. All provisions of the "Procedural Order and Notice of Hearing" issued on November 13, 2008, remain in effect unless specifically modified by this order.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 17th day of December, 2008.