

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE:</p> <p>SPRINT COMMUNICATIONS COMPANY L.P.,</p> <p style="text-align:center">Complainant,</p> <p style="text-align:center">vs.</p> <p>IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM,</p> <p style="text-align:center">Respondent.</p>	<p>DOCKET NO. FCU-2010-0001</p>
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**ORDER GRANTING MOTION TO WITHDRAW, DENYING  
MOTION FOR CLARIFICATION, CANCELING HEARING,  
AND REVISING PROCEDURAL SCHEDULE**

(Issued February 1, 2010)

**I. BACKGROUND**

On January 6, 2010, Sprint Communications Company L.P. (Sprint) filed with the Utilities Board (Board) a complaint against Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), alleging Iowa Telecom was assessing incorrect charges for routing and handling certain telecommunications traffic. Sprint alleged that it properly disputed the charges and withheld the disputed amounts, as contemplated by Iowa Telecom's access tariffs. Sprint further alleged that Iowa Telecom was going to cease providing facilities for Sprint traffic beginning on

January 8, 2010, effectively blocking calls. Sprint requested emergency relief to prevent Iowa Telecom from doing so.

Sprint filed its petition pursuant to Iowa Code §§ 476.3, 476.100, and 476.101. Pursuant to § 476.101(8), when a written complaint is filed asking the Board to determine compliance by a local exchange carrier with the provisions of §§ 476.100 or 476.101, the Board must render a decision in the proceeding within 90 days after the date the written complaint was filed.

On January 7, 2010, Iowa Telecom filed a preliminary partial answer saying that it would not discontinue access services to Sprint as long as Sprint remained current on newly-billed access charges. This appeared to remove the need for emergency relief.

On January 19, 2010, Iowa Telecom filed an answer and motion for injunctive relief. Iowa Telecom observed that the switched access charge billing dispute it has with Sprint involves both interstate and intrastate services, but the Board's jurisdiction in this matter is limited to intrastate services. Iowa Telecom alleged that it had assessed the appropriate intrastate access charges under its tariff and denied that its access services tariff permits continued withholding of payment after a dispute has been denied. Iowa Telecom generally disputed many of Sprint's allegations and asserted that it is required to disconnect Sprint's intrastate switched access service due to Sprint's nonpayment of carrier common line charges.

Iowa Telecom sought a Board order directing Sprint to immediately pay to Iowa Telecom all withheld intrastate switched access charges invoiced to date and in the future. Iowa Telecom further requested that Sprint be prohibited from offsetting funds payable to Iowa Telecom for any other services provided to Sprint or its affiliates, either now or in the future. Finally, Iowa Telecom requested that if Board approval is required before it may disconnect access services to Sprint (a proposition which Iowa Telecom does not accept), then the Board grant that approval.

On January 22, 2010, the Board issued an order docketing the matter as Docket No. FCU-2010-0001 and setting an expedited procedural schedule that would have produced a Board decision by April 6, 2010, as required by Iowa Code § 476.101(8). Under the procedural schedule set in the docketing order, Sprint's first round of testimony is due February 3, 2010.

## **II. SPRINT'S MOTION TO WITHDRAW AND IOWA TELECOM'S RESPONSE**

On January 27, 2010, Sprint filed a motion to withdraw, motion for clarification, and a contingent motion to revise the procedural schedule. With respect to its request to withdraw the complaint, Sprint asserts that the only relief it requested was for the Board to prohibit Iowa Telecom from discontinuing service and that the specific claims in its complaint are no longer ripe. In characterizing the current posture of the case as "fatally flawed," Sprint asserts that Iowa Telecom has not properly filed any claims to date; Iowa Telecom's filings raise broader issues than

those stated in Sprint's complaint; and that Iowa Telecom's claims would not be eligible for expedited resolution under Iowa Code § 476.101(8).

Acknowledging that the parties' potential call blocking dispute is likely to recur, Sprint asks the Board to require Iowa Telecom to clarify whether it is raising counterclaims and, if so, to state those claims more clearly. Sprint suggests the Board could sever the claims eligible for expedited review from non-expedited claims. Sprint asserts that the only issue in dispute in this proceeding is the propriety of call blocking or threats to block calls and argues that this is a legal issue that can be resolved without a hearing. Sprint urges the Board to move directly to briefing rather than requiring testimony and hearing.

In the event the Board denies Sprint's motion to withdraw its complaint, Sprint asks the Board to suspend the February 3 deadline for Sprint's testimony and all other deadlines until the procedural issues are resolved.

On January 28, 2010, Iowa Telecom filed a response resisting Sprint's motions. Iowa Telecom argues the Board must consider the underlying merits of the parties' billing dispute in the context of the expedited proceeding already underway. Iowa Telecom rejects Sprint's assertion that the issues involved in this controversy are not ripe and states the matter is likely to recur quickly if Sprint is allowed to withdraw its complaint.

Iowa Telecom states that the Board's rule at 199 IAC 7.21 allows the Board to consider whether there are good reasons to consider the complaint even though the

complainant has requested a withdrawal. Iowa Telecom also argues that the Board has discretion to continue the case, especially where the dispute is likely to repeat itself. Iowa Telecom states its agreement to refrain from disconnecting Sprint was conditioned upon this docket remaining open and subject to the 90-day deadline for resolution. Iowa Telecom suggests that if Sprint is allowed to withdraw its complaint, Iowa Telecom's commitment to refrain from disconnection would cease and disconnection notices from Iowa Telecom would follow.

Iowa Telecom argues it would be unfair to allow complainants to invoke emergency injunctive relief, as Sprint did in its complaint, but avoid consideration of the merits of the dispute. Iowa Telecom points to Iowa Code § 17A.18A for support, arguing that the General Assembly intended that an agency's order for emergency relief be followed by a full determination of the merits of the dispute.

Iowa Telecom rejects Sprint's arguments about the form, clarity, and sufficiency of Iowa Telecom's responses in this proceeding to date. Iowa Telecom argues it is not required to file its own complaint with the Board to ensure payment from Sprint after invoking its statutory right to disconnect service. According to Iowa Telecom, Sprint should have expected to be required to defend the merits of its position and the Board has not limited the scope of the issues for consideration in this proceeding.

Iowa Telecom asserts it has a right to be heard on all of the merits of Sprint's complaint and that this controversy should be resolved promptly. Iowa Telecom urges the Board to continue the expedited schedule already in place.

### **III. DISCUSSION**

In this case, both parties acknowledge that there is an underlying dispute about the parties' rights and obligations with respect to the application of tariffed charges to certain telecommunications traffic. And, in different ways, the parties are seeking the Board's involvement in resolving the dispute that resulted from Sprint's withholding of payment and Iowa Telecom's subsequent move to disconnect service to Sprint. The parties acknowledge this pattern is likely to recur. Sprint seeks to withdraw its complaint, which it characterizes as relating only to the threat of disconnection, and offers alternatives for how the Board might consider the underlying precipitating issues. On the other hand, Iowa Telecom resists Sprint's request to withdraw the complaint and urges the Board to give full consideration to the merits of the parties' dispute within the confines of the expedited procedural schedule that was established in response to Sprint's complaint.

The Board finds merit in certain positions of each party. The Board will allow Sprint to withdraw its complaint but will continue this proceeding in order to give full consideration to the underlying dispute that resulted in the threatened disconnection. This docket will remain open, but not under the expedited procedural established in the Board's docketing order, as explained below.

The Board will recast the proceeding to consider Iowa Telecom's claims about the propriety of Sprint's withholding of access charge payments for the traffic at issue. The Board does not agree with Sprint's assertion that Iowa Telecom has not identified the issues for the Board's consideration with sufficient clarity. The Board will not require Iowa Telecom to file any additional claims or clarification. Without limiting consideration of any issue that may develop in the course of this continuing proceeding, the issues as they have been expressed in the parties' filings to date relate generally to the parties' rights and obligations (as provided in federal law, state law, and Iowa Telecom's tariff) regarding intrastate switched access charges, including carrier common line charges, and particularly as applied to Voice over Internet Protocol (VoIP) traffic, including non-nomadic VoIP traffic. Related issues include a party's right to withhold payment for disputed charges and a party's right to disconnect service for non-payment. The Board recognizes the beginning of a discovery dispute between the parties regarding the amount of traffic involved. At this stage, however, the Board believes the issues between the parties relate to what rules apply to the traffic in question, not the amount of traffic subject to charges.

The Board agrees with Sprint that the issues raised in Iowa Telecom's pleadings to date are more appropriate for consideration outside of an expedited proceeding conducted pursuant to Iowa Code § 476.101(8). Further, an accelerated schedule pursuant to § 476.101(8) does not apply to a complaint against a carrier

other than a local exchange carrier. The Board believes that all parties will benefit from a revised schedule.

It appears that the issues in this case are legal issues and that there are no material factual disputes which would require a hearing. Therefore, the Board will cancel the rounds of testimony included in the present procedural schedule and will require simultaneous briefs and reply briefs from the parties. The Board will cancel the hearing that is presently scheduled for March 8, 2010, and will not conduct a hearing under the revised procedural schedule unless either party can identify a material factual dispute that makes a hearing necessary.

#### **IV. ORDERING CLAUSES**

##### **IT IS THEREFORE ORDERED:**

1. Sprint Communications Company L.P.'s January 27, 2010, motion to withdraw, motion for clarification, and contingent motion to revise procedural schedule is granted in part and denied in part. Sprint's motion to withdraw its complaint is granted. Sprint's motion for clarification is denied as explained in the body of this order. Sprint's contingent motion to revise the procedural schedule is granted as explained in the body of this order.
2. The hearing scheduled for March 8, 2010, in this docket in the Board's January 22, 2010, "Order Setting Expedited Procedural Schedule" is canceled.

3. The procedural schedule established in this docket in the Board's January 22, 2010, "Order Setting Expedited Procedural Schedule" is stricken and replaced with the following schedule:

- a. On or before March 1, 2010, each party shall file an initial brief.
- b. On or before March 22, 2010, each party shall file a reply brief.

**UTILITIES BOARD**

/s/ Robert B. Berntsen

/s/ Krista K. Tanner

ATTEST:

/s/ Sharon Mayer  
Executive Secretary, Assistant to

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 1<sup>st</sup> day of February 2010.