

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;

REASNOR TELEPHONE COMPANY, LLC,

Counterclaimant,

vs.

QWEST COMMUNICATIONS
CORPORATION AND QWEST
CORPORATION,

Counterclaim Respondents.

DOCKET NO. FCU-2007-0002

ORDER GRANTING MOTIONS TO DISMISS

(Issued July 17, 2015)

On February 20, 2007, Qwest Communications Corporation (QCC) filed with the Utilities Board (Board) a complaint pursuant to Iowa Code §§ 476.2, 476.3, and 476.5; 199 IAC chapters 4 and 7; and 199 IAC 22.14 alleging violations of the terms, conditions, and application of the intrastate tariffs of the following telecommunications carriers: Superior Telephone Cooperative (Superior); The Farmers Telephone Company of Riceville, Iowa (Farmers-Riceville); The Farmers & Merchants Mutual Telephone Company of Wayland, Iowa (Farmers & Merchants); Interstate 35 Telephone Company, d/b/a Interstate Communications Company (Interstate); Dixon Telephone Company (Dixon); Reasnor Telephone Company, LLC (Reasnor); Great Lakes Communication Corp. (Great Lakes); and Aventure Communication Technology, LLC (Aventure) (collectively referred to as Respondents).

QCC claimed that the Respondents engaged in a fraudulent practice that involved free conference calls, chat rooms, podcasts, voicemail, and international calling services being used to stimulate terminating switched access traffic. This practice has been characterized as “traffic pumping” and is more thoroughly described in the Board’s Final Order in this proceeding issued September 21, 2009.

In its complaint, QCC alleged that traffic pumping is inconsistent with the switched access services language of the Iowa Telecommunications Association

Tariff No. 1 (ITA Tariff) to which the Respondents subscribe.¹ Section 1.1 of the ITA

Tariff states:

[T]he provision of [switched access service] is specifically intended to provide exchange network access to [interexchange carriers delivering intrastate switched access traffic] for their own use or in furnishing their authorized intrastate services to End Users, and for operational purposes directly related to the furnishing of their authorized services. Operational purposes include testing and maintenance circuits, demonstration and experimental services and spare services.

QCC claimed that the revenue received by the Respondents was not being used for the purposes stated in the ITA Tariff. In addition, QCC asserted that the Respondents were charging QCC for terminating calls via their intrastate tariffs for calls that were actually terminated outside of the Respondents' local calling areas as specified in their certificates of public convenience and necessity issued to them by the Board pursuant to Iowa Code § 476.29.²

QCC also alleged that the Respondents unlawfully discriminated against their other customers when they shared revenues on a preferential basis with free calling service companies (FCSC) and that the arrangements between the Respondents and the FCSCs constituted an unfair and unreasonable practice under Iowa Code § 476.5 and 19 IAC 22.1(1)(a) and (d).³

¹ QCC Complaint, p. 12.

² *Id.* at 13.

³ *Id.* at 14.

AT&T Communications of the Midwest, Inc., with TCG Omaha, and Sprint Communications Company L.P. (Sprint) intervened on October 16 and October 19, 2007, respectively.

The Board issued a Final Order in this docket on September 21, 2009, and an Order Denying Requests for Reconsideration on February 4, 2011, which upheld Qwest's claims against the Respondents. These orders were affirmed by the Iowa Court of Appeals on February 13, 2013.

On June 4, 2015, AT&T Corp., successor by merger to AT&T Communications of the Midwest, Inc., and Teleport Communications America, LLC, successor by merger to TCG Omaha (collectively AT&T), filed a motion to voluntarily dismiss its claims against Dixon in this proceeding, with prejudice. AT&T stated that it reached a settlement agreement with Dixon that resolves AT&T's claims against it in this case and that the terms of the settlement are confidential. AT&T stated that the settlement is reasonable in light of the whole record, is consistent with the law and with the public interest, and was entered into without any admission of liability or admission of any issue of fact or law by either party.

On June 18, 2015, AT&T filed a motion to voluntarily dismiss its claims against Farmers & Merchants in this proceeding. AT&T stated that it reached a settlement agreement with Farmers & Merchants that resolves AT&T's claims against it in this case and that the terms of the settlement are confidential. AT&T stated that the settlement is reasonable in light of the whole record, is consistent with the law and

with the public interest, and was entered into without any admission of liability or admission of any issue of fact or law by either party.

In support of its motions to dismiss, AT&T asserted generally that the scope of the settlements involve mutually-agreed upon monetary arrangements to resolve its respective claims and charges. AT&T also asserted that Farmers & Merchants and Dixon are not presently engaged in the provision of the types of high-volume access services that were disputed in this case, and Farmers & Merchants' and Dixon's access tariffs will comply prospectively with the FCC's *Connect America Fund* Order.⁴ AT&T stated that the settlements are in the public interest because the public has an interest in conserving the Board's resources by the reduction of the number of parties in contested cases. AT&T also stated that these settlements are consistent with the Board's policy with respect to disputes between private litigants and the effectiveness of the Board's orders issued in this case will not be affected by these settlements.

Pursuant to 199 IAC 7.18, parties to a contested case proceeding may propose to settle all or some of the issues in the case and the Board will approve the settlement when it is reasonable in light of the whole record, consistent with law, and in the public interest. The Board has not had the opportunity to review the actual settlement agreements identified in this order. However, these parties in this proceeding have voluntarily reached mutual agreements on the issues and have

⁴ *In the Matter of Connect America Fund*, "Report and Order and Further Notice of Proposed Rulemaking," FCC 11-161 (rel. November 18, 2011).

specifically asserted to the Board that their settlements meet the requirements of 199 IAC 7.18. Based on these specific assurances from opposing parties, and in light of the unusual circumstances surrounding this case,⁵ the Board will approve the settlements and grant Sprint's motion to dismiss its outstanding claims against Farmers & Merchants and grant QCC's motion to dismiss its outstanding claims against Dixon from this proceeding and any future proceeding regarding a calculation of damages associated with the actions that are the subject matter of this docket. These dismissals are with prejudice.

IT IS THEREFORE ORDERED:

1. The motion to dismiss claims against Dixon Telephone Company, with prejudice, filed by AT&T Corp., successor by merger to AT&T Communications of the Midwest, Inc., and Teleport Communications America, LLC, successor by merger to TCG Omaha, on June 4, 2015, is granted.

2. The motion to dismiss claims against Farmers & Merchants Mutual Telephone Company of Wayland, Iowa, with prejudice, filed by AT&T Corp., successor by merger to AT&T Communications of the Midwest, Inc., and Teleport

⁵ The Board notes that this is an intercarrier dispute involving an unusually large number of parties with many different interests. These complicating factors weigh in favor of approving the settlements even when they have not been submitted for Board review, in order to promote the public interest in efficient resolution of this matter.

Communications America, LLC, successor by merger to TCG Omaha., on June 18, 2015, is granted.

UTILITIES BOARD

/s/ Geri D. Huser

ATTEST:

/s/ Trisha M. Quijano
Executive Secretary, Designee

/s/ Nick Wagner

Dated at Des Moines, Iowa, this 17th day of July 2015.