

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: VOICE STREAM NETWORK, INC.	DOCKET NO. SPU-2015-0009
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**ORDER DENYING REQUEST TO WITHDRAW MODIFICATION APPLICATION,
GRANTING MOTION TO COMPEL, GRANTING MOTION TO REQUIRE
COMPLIANCE, GRANTING REQUEST TO INITIATE SHOW CAUSE
PROCEEDING, AND MODIFYING PROCEDURAL SCHEDULE**

(Issued July 31, 2015)

Background

On April 21, 2015, Voice Stream Network, Inc. (Voice Stream), filed with the Utilities Board (Board) an application to modify its certificate of public convenience and necessity. Voice Stream stated that it was granted Certificate No. 0360 on August 1, 2013, which authorized Voice Stream to provide local exchange service in the service areas where Qwest Corporation, d/b/a CenturyLink QC (CenturyLink), Frontier Communications of Iowa, Inc. (Frontier), and Windstream Iowa Communications, Inc. (Windstream), are the incumbent local exchange carriers.¹ Voice Stream sought to modify its certificate to extend its authority to provide local exchange service in the Hospers, Iowa, exchange. In support of its request, Voice Stream provided updated financial and managerial information pursuant to Iowa Code § 476.29.

¹ See *In re: Voice Stream Network, Inc.*, “Order Granting Application, Approving Concurrence in Maps, Approving Tariff, and Issuing Certificate No. 0360,” Docket No. TCU-2013-0004 (TF-2013-0459) (August 1, 2013).

On April 29, 2015, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed an objection to Voice Stream's certificate modification request. OCA stated that a preliminary review of Voice Stream's application raised several issues that require further investigation. OCA suggested that the Board docket Voice Stream's application to modify its certificate as a contested case proceeding to determine whether the application should be denied and whether Voice Stream's certificate should be revoked pursuant to Iowa Code § 476.29 and 199 IAC 22.20(5).

OCA stated the Iowa Secretary of State revoked Voice Stream's Certificate of Authority on August 11, 2014, and as of April 23, 2015, it has not yet been reinstated. In addition, OCA stated that the publicly available information about Voice Stream indicates that it is not providing local exchange service in Iowa as Voice Stream represented in its application. According to OCA, Voice Stream's Annual Report filed with the Board on January 17, 2014, shows no intrastate telecommunications revenues for 2013, and as of April 23, 2015, Voice Stream had not filed its annual report for the year 2014.² OCA noted that an entire block of 10,000 numbers is assigned to Voice Stream in the Hospers exchange even though Voice Stream is not authorized to provide local exchange service in Hospers, which is a town in northwest Iowa with a population of approximately 730 people.

OCA pointed out that Voice Stream is involved in at least four current informal customer complaints alleging fraudulent billing practices that are under investigation

² 199 IAC 23.1(2) requires annual reports to be filed with the Board by April 1 each year.

by the Board's customer service staff. According to OCA, Voice Stream's responses to inquiries in the complaint process include statements asserting that Voice Stream is not a traditional telephone carrier, it does not provide traditional phone services to individual end user customers, and it has no retail customers in Iowa.³ OCA stated that it is unclear how Voice Stream is using the block of 10,000 numbers it received for the Hospers exchange, but based on Voice Stream's statements, the numbers are not being used to provide retail local exchange service in Iowa.

The Board reviewed Voice Stream's application and OCA's objection and determined that Voice Stream's application to modify its certificate should be docketed for further investigation. The Board issued an order on May 20, 2015, in Docket No. SPU-2015-0009 to initiate a comprehensive review of Voice Stream's application to determine whether a certificate modification is appropriate or whether steps should be taken to consider revoking Voice Stream's certificate. Also on May 20, 2015, the Board established a procedural schedule for the matter, identifying June 29, 2015, as the date for Voice Stream to file its prepared direct testimony.

On July 1, 2015, OCA filed a motion to compel discovery responses. OCA stated that on May 22, 2015, OCA served eight data requests by electronic mail to counsel for Voice Stream. Objections or responses to these data requests were due May 27, 2015, but no objections or responses were received from Voice Stream.

³ See Letter from Harold Barr to Tara Ganpat-Puffett, dated April 22, 2015, p. 1. Attached to OCA's Objection as Exhibit 5.

OCA stated that it sent follow-up emails regarding the data requests on June 1 and June 16, 2015, but received no response from Voice Stream.

OCA stated that it telephoned counsel for Voice Stream on June 17, 2015, and the parties agreed to a new due date of June 24, 2015. On June 25, 2015, Voice Stream provided OCA with a notarized statement intended to be a response to OCA's eight data requests. OCA stated that Voice Stream's statement did not answer any of OCA's specific questions; provided none of the basic data, documents, or explanations requested; and raised new questions which OCA will need to investigate through additional discovery.

OCA stated that additional information is crucial for OCA to further investigate Voice Stream's modification application. Voice Stream's testimony supporting its application was due on June 29, 2015, but no testimony has been filed. OCA stated that its testimony is due on August 4, 2015, and the hearing is set for September 15, 2015, but without Voice Stream's timely responses to both pending and future discovery requests, OCA's ability to address the issues in this case is prejudiced.

Also on July 1, 2015, OCA filed a motion asking the Board to require Voice Stream to comply with the Board's rules regarding representation. OCA stated that according to 199 IAC 7.4(8)(a), a party to a proceeding before the Board may appear through a licensed attorney and if the attorney is not licensed by the state of Iowa, permission to appear must be granted by the Board. In addition, OCA noted that according to 199 IAC 7.4(8)(b) a corporation may appear and present evidence by an

officer or employee, but only licensed attorneys shall represent a party before the Board in any matter involving the exercise of legal skill or knowledge, unless the Board consents. OCA stated that neither of these requirements has been met as no attorney has complied with the requirements of 199 IAC 7.4(8)(a) and Voice Stream has not sought an exception from 199 IAC 7.4(8)(b) to allow it to be represented by a corporate officer. OCA asked that the Board require Voice Stream to comply with the Board's rules regarding representation so that communication difficulties involving discovery issues between OCA and Voice Stream may be reduced.

On July 2, 2015, Voice Stream filed with the Board a one-sentence request to withdraw its application to modify its certificate.

On July 8, 2015, OCA filed a response to Voice Stream's request to withdraw its application. OCA stated that while it does not object to the Board granting Voice Stream's request to withdraw the portion of this proceeding regarding the amendment of Voice Stream's service territory to include the Hospers, Iowa, exchange, several issues remain regarding Voice Stream's operations in Iowa that should be addressed. OCA identified seven of these issues in its response including, but not limited to, whether Voice Stream is providing local exchange service anywhere in Iowa; how Voice Stream obtained 10,000 local telephone numbers in the Hospers, Iowa, exchange when it is not authorized to provide service in that exchange; whether Voice Stream's authority to conduct business in Iowa has been reinstated by the Iowa Secretary of State's Office; and whether Voice Stream has been inaccurate

or misleading in its representations to the Board. In addition, OCA noted that Voice Stream has been the subject of recent customer complaints submitted to the Board in which allegations of cramming or fraudulent billing were made. OCA asked that the Board issue a show cause order requiring Voice Stream to demonstrate why its certificate should not be revoked given the issues that have developed in this case.

Discussion

Voice Stream's Request to Withdraw its Application

Iowa Code § 476.29(9) is the statute that governs certificates issued for the provision of local telecommunications services. According to the statute, a utility must have a certificate issued by the Board before furnishing land-line local telephone service in Iowa. (Iowa Code § 476.29(1)). The Board is required to issue a certificate if it determines that the service the company proposes to render “will promote the public convenience and necessity,” provided that the “applicant possesses the technical, financial, and managerial ability to provide the service and the service is in the public interest.” (Iowa Code § 476.29(2)). A utility that is not providing local exchange service to traditional end user customers does not require a certificate under this statute.

A certificate must also “define the service territory in which land-line local exchange service will be provided.” (Iowa Code § 476.29(4)). The service territory is to be shown on the carrier's maps and each local exchange utility is obligated to

serve all eligible local exchange customers within its service territory. (Iowa Code § 476.29(4) and (5)).

A certificate may be revoked by the Board pursuant to Iowa Code § 476.29(9). Specifically, the Board may revoke a certificate, after notice and opportunity for hearing,

for a failure of a utility to furnish reasonably adequate telephone service and facilities. The board may also order a revocation affecting less than the entire service territory, or may place appropriate conditions on a utility to ensure reasonably adequate telephone service. Prior to revocation proceedings, the board shall notify the utility of any inadequacies in its service and facilities and allow the utility a reasonable time to eliminate the inadequacies.

(Iowa Code § 476.29(9)).

Voice Stream's application to modify its certificate states that Voice Stream is authorized by Certificate No. 0360 to provide local exchange service in the service areas where CenturyLink, Frontier, and Windstream are the incumbent local exchange carriers; these areas do not include the Hospers, Iowa, exchange. However, OCA's April 29, 2015, objection to Voice Stream's application asserts that Voice Stream does not have any local exchange customers but has been assigned a block of 10,000 numbers in the Hospers exchange despite Voice Stream lacking the authority to provide service in that exchange and it is unclear whether Voice Stream is using those numbers for the provision of local exchange service.

Voice Stream has asked that the Board dismiss its application to add the Hospers exchange to its authorized service area. However, it remains unclear

whether Voice Stream is providing local exchange service to end user customers in Iowa or whether it has been attempting to offer service in the Hospers exchange, where it lacks authorization.

It is in the public interest for the Board to ensure that local exchange companies in Iowa are operating within the terms of their certificates to provide reasonably adequate telephone service as is required by Iowa Code § 476.29. OCA has identified several issues regarding Voice Stream's technical, financial, and managerial ability to provide adequate telephone service in Iowa. These issues are a public interest concern to the Board and raise the question of whether Voice Stream is providing local exchange service to end user customers in accordance with its certificate. Therefore, the Board will deny Voice Stream's request to withdraw its application to amend its certificate at this time in order to further investigate Voice Stream's provision of local exchange service pursuant to its certificate and to give Voice Stream the opportunity to show cause why it should be allowed to maintain a certificate in Iowa. Voice Stream's failure to comply with this order illustrates an inability to provide adequate local exchange service in Iowa and will result in the revocation of Voice Stream's certificate pursuant to § 476.29(9).

OCA's Motion to Compel

On July 1, 2015, OCA filed a motion to compel discovery responses from Voice Stream. OCA's motion states that it submitted eight initial data requests to Voice Stream on May 22, 2015, but did not receive any timely responses. According

to OCA, Voice Stream provided a notarized statement in response to the data requests on June 25, 2015, but that statement does not answer any of OCA's specific questions. Voice Stream did not file a response to OCA's motion.

The Board has reviewed OCA's data requests and Voice Stream's June 25 statement and finds that OCA's data requests are reasonable. Therefore, the Board will compel Voice Stream to submit full and complete responses to OCA's data requests pursuant to this order.

OCA's Motion to Require Compliance

On July 1, 2015, OCA filed a motion asking the Board to require Voice Stream's compliance with the Board's rules regarding representation. OCA states that Voice Stream's application was signed and submitted by its regulatory attorney, Mr. Edward A. Maldonado of the Maldonado Law Group located in Coral Gables, Florida. According to OCA, Mr. Maldonado is not licensed to practice law in Iowa and has not sought permission to appear before the Board pursuant to 199 IAC 7.4(8)(a). OCA argues that requiring Voice Stream to comply with the requirements of 199 IAC 7.4(8) regarding representation will reduce communication problems that have been experienced in this case.

The Board finds that OCA's motion to require compliance of 199 IAC 7.4(8) is reasonable and given that Voice Stream did not respond to OCA's motion, the Board will require Voice Stream to comply with the Board's rules regarding representation.

Modification of Procedural Schedule

The Board issued a procedural schedule in this case on May 20, 2015. That schedule stated that Voice Stream was to file prepared testimony and exhibits on or before June 29, 2015; OCA was to file prepared reply testimony on or before August 4, 2015. Voice Stream did not file any prepared testimony by the June 29 deadline, nor did Voice Stream provide full and complete responses to OCA's data requests, thereby making it difficult for OCA to prepare any meaningful reply testimony. Moreover, as discussed previously in this order, information has been brought before the Board by OCA that calls into question whether Voice Stream is providing local exchange service pursuant to its certificate and the Board now requires that Voice Stream show cause as to why it should be allowed to maintain its certificate. Because of the absence of testimony filed in this matter, the Board will modify the existing procedural schedule to allow Voice Stream to respond to data requests and file testimony. In addition, the Board directs Voice Stream to include in its testimony responses to the seven issues identified in OCA's July 8, 2015, response to Voice Stream's notice to withdraw its application to modify its certificate.

IT IS THEREFORE ORDERED:

1. The request filed by Voice Stream Network, Inc., on July 2, 2015, to withdraw its application to modify its certificate of public convenience and necessity is denied as described in this order.

2. The motion to compel discovery responses filed by Office of Consumer Advocate on July 1, 2015, is granted. Within seven days of the date of this order, Voice Stream Network, Inc., shall provide full and complete responses to the May 22, 2015, data requests presented by Office of Consumer Advocate.

3. The motion to require compliance filed by Office of Consumer Advocate on July 1, 2015, is granted. Within seven days of the date of this order, Voice Stream Network, Inc., shall comply with the Board's rules regarding representation identified in 199 IAC 7.4(8).

4. Pursuant to Iowa Code § 476.29, Voice Stream Network, Inc., is directed to show cause why the Board should not cancel its certificate of public convenience and necessity, identified as Certificate No. 0360, for failure to furnish reasonably adequate telephone service in accordance with its certificate.

5. The procedural schedule established by the Board in this proceeding on May 20, 2015, is modified as follows:

- a. Voice Stream Network, Inc., shall file prepared testimony and exhibits addressing the issues identified in this order, along with any supporting workpapers on or before August 14, 2015.

b. Office of Consumer Advocate and any intervenors shall file reply testimony, with supporting exhibits and workpapers, on or before August 31, 2015.

6. All other provisions of the May 20, 2015, procedural schedule remain in full effect.

UTILITIES BOARD

/s/ Geri D. Huser

/s/ Elizabeth S. Jacobs

ATTEST:

/s/ Trisha M. Quijano
Executive Secretary, Designee

/s/ Nick Wagner

Dated at Des Moines, Iowa, this 31st day of July 2015.