

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
BEFORE THE IOWA UTILITIES BOARD

---

IN RE COMPLAINT OF:  REHABILITATION CENTER OF ALLISON	Docket No. FCU 2012-0019
--	--------------------------

---

**Reply to New Argument on Motion to Compel**

OCA replies as follows to new argument submitted September 21, 2015:

1. The court cases newly cited by CenturyLink (pp. 3-4) do not meet OCA's argument, supported by recent reasoning from the United States Supreme Court, that the context for application of 18 U.S.C. § 2703(c) is *criminal* law enforcement and *criminal* procedure. The seminal case newly relied on by CenturyLink, *Federal Trade Commission v. Netscape Communications Corp*, 196 F.R.D. 559 (N.D. Cal. 2000) (*Netscape*), did not purport to resolve the question. The court merely accepted the reality that the parties had "agreed that section 2703(c)(1)(c) applies to civil cases." The *court's* view, in contrast to that of the parties, was apparently to the contrary. It added: "even though the statute is drafted in such a manner that clearly anticipates the criminal context." *Id.* at 560. The reliance on *Netscape* in *State ex rel Koster v. Charter Comm., Inc.*, 461 S.W.3d 851 (Mo. Ct. App. 2015) (*Koster*), is thus misplaced. So is the reliance in *Koster* on *Telecommunications Regulatory Bd. v. CTIA-Wireless Ass'n*, 752 F.3d 60 (1st Cir. 2014), which, again, arose in the context of an attempt by the government of Puerto Rico to combat the anonymous use and exploitation of prepaid phones for criminal purposes.

2. CenturyLink tacitly concedes it took no affirmative action under 18 U.S.C. § 2703(c) when it provided the information to the FCC. It offers a convoluted argument (pp. 5-6) that disclosure to the FCC, but not the Board, is authorized without such action

under 18 U.S.C. § 2702(c)(3).<sup>1</sup> According to CenturyLink, the filing with the FCC was “required.” In fact, the filing was voluntary. No company is required to invoke the safe harbor.<sup>2</sup> Disclosures to the FCC and to the Board stand on the same footing.

3. CenturyLink argues (pp. 7-8) that the state has no interest in the legitimacy or illegitimacy of CenturyLink’s claimed safe harbor compliance and that the FCC’s actions “are adequate to protect the state’s interests.” CenturyLink is using the claimed safe harbor compliance, however, as a basis for arguing it deserves a waiver of state oversight. The Board, in partnership with the FCC, has an independent and focused interest in seeing that calls are completed to Iowa destinations. The information is well within the broad relevance standards of the discovery rules.

For these reasons, and others previously stated, the motion to compel should be granted.

Respectfully submitted,

Mark R. Schuling  
Consumer Advocate

/s/ Craig F. Graziano  
Craig F. Graziano  
Attorney

1375 East Court Avenue  
Des Moines, IA 50319-0063  
Telephone: (515) 725-7200  
E-Mail: [IowaOCA@oca.iowa.gov](mailto:IowaOCA@oca.iowa.gov)  
E-Mail: [Craig.Graziano@oca.iowa.gov](mailto:Craig.Graziano@oca.iowa.gov)

OFFICE OF CONSUMER ADVOCATE

---

<sup>1</sup>18 U.S.C. § 2702(c)(3) references disclosures “as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service.”

<sup>2</sup> By contrast, the company is required to respond to discovery requests.