

number of other IXCs. Under least cost routing arrangements, IXCs contract with other carriers who can deliver toll traffic to certain locations at lower cost. QCC states that when conferencing traffic began to peak, QCC sent notices to IXCs stating that it would no longer be the least cost router to certain exchanges in Iowa. The Board finds that if there were undelivered calls to Reasnor, it is possible that this occurred after QCC ceased delivering calls as a least cost router for another carrier, which would not be an instance of call blocking.

However, the Board finds that the evidence in the record supports a finding that Sprint engaged in call blocking by routing FCSC traffic to inadequate facilities, effectively choking the traffic. In contrast to the actions taken by QCC, the record does not indicate that Sprint provided notice to any other party that it would not be delivering certain calls. Sprint states that the measures it took when delivering calls were meant to protect its customers and its network, but these measures also prevented Sprint from being charged for terminating switched access on any calls that could not be delivered to a LEC associated with a FCSC. Therefore, the Board finds that the measures taken by Sprint amounted to call blocking.

Reasnor asks the Board to impose civil penalties if it finds that call blocking occurred. Iowa Code § 476.51 provides that the Board is to give a utility written notice of a specific violation before civil penalties can be assessed. Therefore, the Board places Sprint on notice that it improperly engaged in call blocking and any

subsequent findings of call blocking may result in the imposition of civil penalties pursuant to Iowa Code § 476.51.

II. Unlawful Discrimination by QCC Through Payments to Customers

Reasnor's Position

Reasnor claims that QCC engaged in unlawful discrimination in violation of Iowa Code § 476.5 and 199 IAC 22.1(1)"d" because it makes payments to some, but not all of its customers. (Reasnor Initial Brief, pp. 47-48). Reasnor provided a list of 21 agents for operator services to whom QCC pays special commissions based on the volume of traffic generated. (Id. at 52-55; Confidential Exhibits 555-89). Reasnor contends that the purpose of this marketing program is to stimulate the use of QCC's services in order to increase traffic volumes and revenues. (Reasnor Initial Brief, pp. 52-55). Reasnor argues that QCC cannot complain that the Respondents have entered into marketing arrangements with conferencing companies to increase traffic levels when QCC hired agents to do the same. (Id.).

QCC's Position

QCC responds that the agent programs noted by Reasnor involve hotels that offer operator services to their customers. (Tr. 1110, 1312-13; Exhibit 1293). QCC states that the end user of the operator service is the person making the call from the hotel and QCC charges those end users its tariffed rate plus the hotel's property-imposed fee (PIF), which is also tariffed. (Id.). QCC claims that the PIF is sent to the agent, who presumably shares some or all of the PIF with the hotel. QCC argues

that there is no act of discrimination because QCC follows its tariff and commissions are paid to sales agents, not to customers. (Id.).

Analysis

This claim appears to be based on the premise that, through its operator services, QCC shares revenues with some customers by paying commissions based on the amount of traffic they generate. The Board has previously held in this order that revenue sharing is not inherently unreasonable, so this counterclaim is unavailing. QCC is not sharing its own revenues; it is collecting the PIF on behalf of the hotel. Moreover, the record demonstrates that QCC is paying these commissions to sales agents, which is not at all similar to sharing revenues with a customer. QCC's practices in this area are not relevant to this case.

III. Whether QCC Discriminated Against its Wholesale Carrier-Customers by Offering Them Unequal Discounts.

Reasnor's Position

Reasnor argues that QCC discriminates against its wholesale carrier-customers by offering them unequal discounts in violation of Iowa Code § 476.3. (Reasnor Initial Brief, p. 54). Reasnor provided the discount schedules that QCC offers to five of its wholesale customers. (Confidential Exhibits 580, 582-85). Reasnor states that the carriers are substantially similar to each other, yet QCC provides the carriers unequal discounts based upon the same monthly revenues. (Reasnor Initial Brief, pp. 54-56).

Reasnor also alleges QCC is in violation of 47 U.S.C. § 254(g), which addressed geographic rate averaging (which requires IXCs to charge rates in rural and high cost areas that are no higher than rates in urban areas) and rate integration (which requires IXCs to charge rates in each state that are no higher than rates in any other state). (Id. at 57).

QCC's Position

Regarding Reasnor's claim that QCC discriminates against wholesale carrier-customers, QCC responds stating that it is appropriate for least cost routing to be structured with different rates for different IXCs because of different routing. (QCC Reply Brief, pp, 48-49). QCC contends that it is impossible to discriminate in the provision of wholesale long distance services to other IXCs because there is no monopoly, wholesale long distance services are fully competitive, and those services have been deregulated for many years. (Id.).

QCC responds to Reasnor's allegations regarding QCC violations of 47 U.S.C. § 254(g) by stating that the rate averaging and rate integration requirements do not pertain to wholesale long distance contracts. (Id. at 51). QCC states that the requirements under § 254(g) require IXCs to offer the same prices to subscribers; carriers purchasing wholesale services from QCC are not subscribers under this provision. (Id.).

Analysis

Reasnor argues that QCC is engaged in unlawful discrimination by offering different service discounts to different wholesale customers. However, that situation is not comparable to the Respondents' activities in this case. QCC is offering discounts in a competitive market that is deregulated and detariffed because market forces are believed to be sufficient to ensure nondiscriminatory treatment. If QCC is overcharging a wholesale customer, presumably some other provider will step up and offer cheaper service to that customer. Reasnor has not shown a market failure that could potentially justify re-regulation.

Reasnor also argues that QCC's wholesale rates are in violation of the prohibition of geographic deaveraging, but the FCC's rate integration and rate averaging rules under 47 C.F.R. § 1801 pertain only to retail subscribers not to the wholesale carriers that deliver toll traffic.

Finally, Reasnor's claims that QCC is somehow providing preferential discounts to its local exchange affiliate appeared for the first time in Reasnor's initial brief. The Board finds that Reasnor raised this claim too late into the proceeding and therefore, the Board will not consider it.

IV. Conclusions.

The Board will deny Reasnor's counterclaims against QCC for alleged self-help and unlawful discrimination. The Board finds that the evidence in the record supports a finding that Sprint engaged in call blocking. Therefore, the Board places

Sprint on notice that it improperly engaged in call blocking and any subsequent findings of call blocking may result in the imposition of civil penalties pursuant to Iowa Code § 476.51.

MOTION TO STAY PROCEEDINGS

On August 17, 2009, Great Lakes and Superior filed a joint motion to stay the issuance of a final order in this proceeding. In support of its motion, Great Lakes and Superior state that because only a small portion of the traffic at issue in this case deals with intrastate calls (the majority of the call traffic being interstate in nature), this case is preempted by the FCC. Great Lakes and Superior filed a Petition for Declaratory Ruling and a Petition for Preemption with the FCC on August 14, 2009,²⁶ seeking a ruling that all matters relating to interstate access charges are exclusively within federal jurisdiction and seeking that the FCC preempt any Board action that encroaches on that jurisdiction. Great Lakes and Superior supplemented its motion on August 21, 2009.

On August 24, 2009, Aventure joined in Great Lakes and Superior's motion.

On August 28, 2009, QCC, AT&T, and Sprint filed resistances to the motion all of which generally argue that the Board is within its jurisdiction to determine this case because it is authorized to interpret the Respondents' local exchange tariffs, which is the basis for this complaint. The IXCs also argue that the motion is impractical

²⁶ See "In the Matter of Petition for Declaratory Ruling to the Iowa Utilities Board and Contingent Petition for Preemption," WC Docket No. 09-152 (filed August 14, 2009).

because it is attempting to stay an order that is based on a decision that has already been announced.²⁷

On August 31, 2009, Consumer Advocate filed a resistance stating that the Board has the authority to determine QCC's complaint with respect to intrastate traffic.

On September 1, 2009, Great Lakes and Superior filed a motion for leave to file a reply supporting its August 17, 2009, motion as well as its reply and generally restate their earlier arguments.

The Board has considered the motion and the responses and finds that the motion is improper. The Board announced its decision at the August 14, 2009, decision meeting stating its findings regarding QCC's complaint with respect to the intrastate portion of traffic that is at issue here. The Board is aware of its jurisdictional limitations with respect to interstate and international traffic and as such has limited its findings in this final order to the intrastate issues raised in QCC's complaint. Therefore, the Board will deny Great Lakes and Superior's motion.

FINDINGS OF FACT

1. The FCSCs did not subscribe to the Respondents' intrastate switched access or local exchange tariffs.

²⁷ A decision meeting in this matter was held by the Board on August 14, 2009, at which the Board announced its findings regarding QCC's complaint.

2. FCSCs are not end users as defined by the Respondents' tariffs.
3. The Respondents did not net, or offset, fees to the FCSCs.
4. Certain Respondents improperly backdated bills and contract amendments to misrepresent transactions with the FCSCs.
5. The Respondents did not provide local exchange service to FCSCs through special contract arrangements.
6. The Respondents and FCSCs acted as business partners.
7. The filed tariff doctrine does not apply to the Respondents in this case.
8. The sharing of revenues between Respondents and FCSCs is not inherently unreasonable, but may be an indication that a particular service arrangement is unreasonable.
9. At least one Respondent has improperly assigned all of its telephone numbers to FCSCs, which are not end users.
10. The intrastate toll traffic did not terminate at the end user's premises.
11. The intrastate toll traffic, including international, calling card, and prerecorded playback calls, did not terminate within the Respondents' certificated local exchange areas and were not subject to intrastate terminating access charges.
12. Some Respondents engaged in traffic laundering by billing the terminating access rates of one LEC for calls that terminated in a different LEC's exchange.

13. Several Respondents partnered with FCSCs that provided free calling services for obscene or pornographic content creating an inability for parents to regulate their children's access to pornographic services over the telephone, which is contrary to the public interest.

14. QCC did not engage in unlawful discrimination.

15. QCC and Sprint withheld payment of access charges, but no remedy is necessary or appropriate.

16. Sprint blocked calls and is notified that it may be assessed a civil penalty for a future infraction.

CONCLUSIONS OF LAW

The Board has jurisdiction of the intrastate claims in this matter pursuant to Iowa Code chapter 476.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The Board finds that the Respondents named in this complaint violated the terms of their access tariffs when they charged QCC, Sprint, and AT&T for terminating switched access fees for the traffic at issue in this case.

2. The Board directs the Respondents named in this complaint to refund the terminating switched access fees charges associated with the delivery of intrastate interexchange calls to numbers or destinations assigned to or associated with FCSCs and that were paid by QCC, Sprint, or AT&T. The Respondents are also

directed to credit QCC, Sprint, and AT&T for any such charges that were billed but not paid.

3. The Board directs QCC, Sprint, and AT&T to file their calculations of the amount of terminating switched access fees for the traffic at issue in this case and eligible for refund or credit within 30 days of the date of this order. QCC, Sprint, and AT&T are authorized to conduct additional discovery to make those calculations if necessary.

4. All of the Respondents, with the exception of Great Lakes, are directed to file reports with the Board within ten days of the date of this order stating whether they have any telephone numbering blocks that are not assigned to end users and state how many non-FCSC end users currently have numbers out of each telephone numbering block.

5. The motion to stay proceedings filed in this docket on August 17, 2009, by Great Lakes and Superior is denied.

6. Sprint is hereby on notice that it improperly engaged in call blocking in the manner described in this order, in violation of Iowa Code § 476.20, and any subsequent violations of the same statute, rule, or Board order may result in the imposition of civil penalties pursuant to Iowa Code § 476.51.

7. The North American Numbering Plan Administrator and the Pooling Administrator are directed to commence reclamation proceedings of all blocks of telephone numbers assigned to Great Lakes Communications Corp.

UTILITIES BOARD

/s/ Robert B. Berntsen

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 21st day of September, 2009.