

State of Minnesota
Wright County

District Court
Tenth Judicial District

Court File Number:	86-CV-08-4555
Case Type:	Civil Other/Misc.

Notice of Filing of Order

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Bridgewater Telephone Company Inc vs CITY OF MONTICELLO

You are notified that an order was filed on this date. Copy enclosed.

Dated: October 10, 2008

LaVonn Nordeen
Court Administrator
Wright County District Court
10 2nd Street NW Rm 201
Buffalo MN 55313-1192
763-682-7539

cc: PATRICK M O'DONNELL

A true and correct copy of this notice has been served by mail upon the parties herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

Court File No.: 86-CV-08-4555

Bridgewater Telephone Company, Inc.,

Plaintiff,

v.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER DENYING LEAVE TO
FILE SECOND AMENDED COMPLAINT**

City of Monticello,

Defendant.

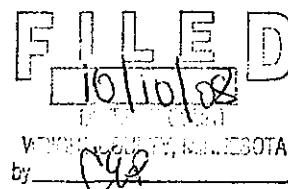
The above-captioned matter came before the undersigned Judge of District Court, at the Wright County Government Center, Buffalo, Minnesota on August 21, 2008, on Plaintiff's Motion for Leave to File Second Amended Complaint for Declaratory and Other Relief.

Patrick O'Donnell, Esq. and David Johnson, Esq. (appearing *pro hac vice*) appeared for Plaintiff. John Baker, Esq. and Pamela VanderWiel, Esq. appeared for Defendant.

Based on evidence adduced at the hearing, together with the oral arguments of counsel, and all files, records, and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. On May 21, 2008, Plaintiff Bridgewater Telephone Company, Inc. ("Bridgewater") filed a Complaint for Injunctive, Declaratory and Other Relief ("Complaint") against the City of Monticello ("City") in the above-named matter. The Complaint requested that the Court provide the following relief: (1) preliminarily and then permanently enjoining the issuance or sale of the fiber-to-the-premises ("FTTP") project revenue bonds; (2) declaring any revenue bonds issued to be void; and (3) entering such other and further relief as the Court deems just.



2. Bridgewater's Complaint challenges the City's statutory authority under Minn. Stat. §475.52, subd. 1 (2008) to issue bonds to generate funds for the FTTP project.

3. On June 6, 2008, the City filed a Notice of Motion and Motion to Require Plaintiff to Post a Surety Bond under Minn. Stat §562.02 and to Expedite Proceedings.

~~4. On June 13, 2008, the Court found that this litigation presented a substantial~~
issue of statutory construction. The Court ordered Bridgewater to post a surety bond in the amount of \$2.5 million to protect the public or taxpayers from any loss or damage which may result from the pendency of this action. On July 14, 2008, a personal surety bond was posted by Bridgewater in the amount of \$2.5 million.

5. Pursuant to Minn. Stat. §562.04 (2000) and the posting of the bond, the Court gave the parties the ability to have motions heard on an expedited basis by reorganizing the Court's normal hearing calendar to accommodate a more speedy resolution of contested matters which affect the public body.

6. On August 5, 2008, Plaintiff filed Motion for Leave to File Second Amended Complaint for Declaratory and Other Relief. Bridgewater filed a copy of the proposed Second Amended Complaint for Declaratory Relief and Other Relief ("Second Amended Complaint") as part of the motion.

7. Bridgewater seeks to file a Second Amended Complaint that takes into account the City's July 29, 2008 announcement that it was constructing a "Fiber Loop" to connect commercial, industrial, and civic facilities. Bridgewater argues that the "Fiber Loop project" is related to the FTTP project, but funds for construction of the "Fiber Loop project" will be provided by the City. The Second Amended Complaint adds an additional claim for relief, "Declaring that the City is not authorized to construct, own, or operate the Fiber Loop Project in order to sell high speed internet services to area businesses." The new allegations contained in the Second Amended Complaint are wholly unrelated to the issue of whether the City possesses statutory authority under Minn. Stat. §475.52, subd. 1 (2008) to issue bonds to

generate funds for the FTTP project. The new allegations and prayer for relief relate to whether the City may use its own funds to develop the Fiber Loop Project.

8. By Order filed on October 8, 2008, this Court dismissed the original Complaint for failure to state a claim upon which relief could be granted based exclusively on a legal issue of statutory construction. ~~The parties have conceded that the narrow legal issue of statutory~~ construction of Minn. Stat. §475.52, subd. 1 was a matter of first impression and that any decision of the Court would likely be appealed.

CONCLUSIONS OF LAW

1. If a responsive pleading has been served, a party may amend a pleading only by leave of court or by written consent of the adverse party. Minn.R.Civ.Pro 15.01. Leave to amend pleadings should be freely granted unless it results in prejudice to the other party. *Voicestream Minneapolis, Inc. v. RPC Properties, Inc.*, 743 N.W.2d 267 (Minn. 2008).

2. The stage of the proceedings at which amendment is requested may be considered. *Envall v. Independent Sch. Dist. No. 704*, 399 N.W.2d 593, 597 (Minn.Ct.App. 1987). Generally, defending an additional claim is not sufficient prejudice to disallow amendment. *See, Hughes v. Micka*, 130 N.W.2d 505, 510 (Minn. 1964). If the amendment will produce significant delay, however, it may be denied. *Id.* at 130 N.W.2d at 510-11.

3. Time is of the essence in this litigation. *See*, Minn.Stat. §562.04 (2000)("[w]henver a bond has been required in any action under section 562.02, the court shall advance the case on its calendar for trial at the earliest feasible date, or the court may advance for trial only the issues which affect the public body.")

4. Permitting Bridgewater to amend its Complaint to add an additional claim that is based upon factual allegations not germane to the initial prayers for relief will produce significant delay in the likely appeal of this Court's October 8, 2008 Order of Dismissal. Because the

propose new cause of action does not concern bonding authority, the Court concludes permitting Bridgewater to add an additional prayer for relief that to this lawsuit will significantly delay this matter and potentially harm the public body. The Court is not, however, making any judgment about the independent viability of the additional claim.

ORDER

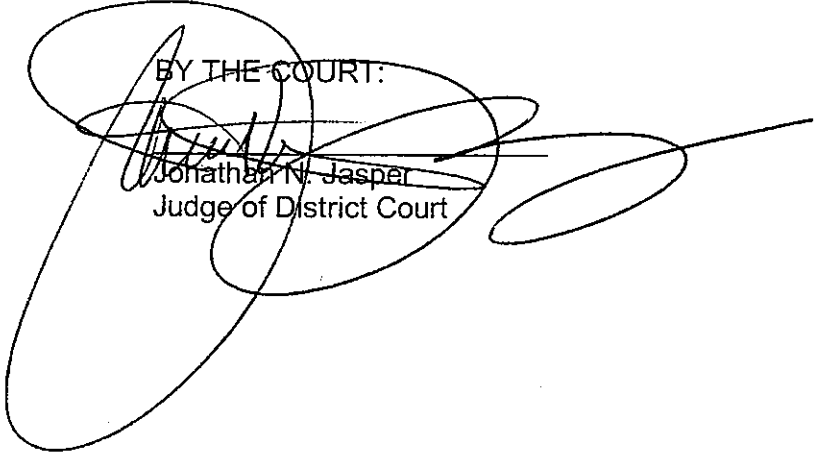
IT IS HEREBY ORDERED THAT:

1. Plaintiff's Motion for Leave to File Second Amended Complaint for Declaratory Relief is **DENIED**.

IT IS SO ORDERED.

Dated: 10/10, 2008

BY THE COURT:



Jonathan N. Jasper
Judge of District Court