

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: QWEST CORPORATION	DOCKET NO. INU-03-4
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ORDER ACCEPTING FILING

(Issued August 7, 2003)

On July 2, 2003, Qwest Corporation (Qwest), filed a petition asking the Utilities Board (Board) to determine that retail services and facilities offered by Qwest in 37 exchanges have become subject to effective competition such that these services and facilities should be deregulated pursuant to Iowa Code § 476.1D (2003).

In its petition, Qwest alleges it is faced with effective competition in each of the 37 identified exchanges. Qwest's petition indicates that it will provide the Board with evidence of effective competition, specific to each exchange, at hearing.¹ Qwest asserts that there are some competitive factors applicable to all exchanges, including the use of wireless telephone service and high-speed data transmission via cable modems.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a response to the petition on July 22, 2003, asking the Board to docket Qwest's petition as a contested case proceeding and to establish a procedural schedule. On August 4, 2003, MCI, Inc. (MCI), filed an intervention request,

¹ See, for example, Paragraphs 33.38, 48, 55, 61, 71, and 80 of Qwest's petition.

objection to Qwest's petition, and a request that the petition be dismissed.

Alternatively, MCI requests that Qwest be required to provide a more definite statement and that MCI and other interested parties be given an additional opportunity to respond pursuant to a procedural schedule established by the Board. AT&T Corp. and AT&T Communications of the Midwest, Inc. (AT&T), filed a letter on August 4, 2003, indicating that it has an interest in the proceeding and asking to reserve its right to intervene.

Iowa Code § 476.1D(1) (2003) provides for deregulation of communications services if the Board determines that the services are subject to effective competition. In making that determination, the Board must consider, among other factors, (1) whether a comparable service or facility is available from a supplier other than the regulated telephone utility and (2) whether market forces are sufficient to assure just and reasonable rates without regulation. If the Board determines the service is an essential communications service and the public interest warrants continued service regulation, the Board has the option of deregulating rates but continuing service regulation, pursuant to § 476.1D(5).

The Board may consider certain additional criteria in determining whether a service is subject to effective competition. Pursuant to 199 IAC 5.6(1), the Board may consider each of the following:

- a. The ability of a single provider to determine or control prices;
- b. The ease with which other providers may enter the market;

- c. The likelihood that other providers will enter the market;
- d. The substitutability of one service for another; and
- e. Other relevant considerations.

For purposes of determining the applicable level of regulation for a communications service or facility, the Board has adopted rules detailing the content requirements for a petition seeking deregulation. Specifically, 199 IAC 5.2(2) provides that a petition must contain, or be submitted with the following information:

- a. The specific service or facility which the petitioner is asking the Board to consider;
- b. Data sufficient to support a *prima facie* finding that the service or facility is or is no longer subject to effective competition or is an essential communications service or facility and the public interest warrant service regulation;
- c. In a petition for determination of whether a communications service or facility is subject to effective competition, an identification of all persons or parties who are actual or potential competitive providers of the service or facility.

If the petition complies with the requirements of 199 IAC 5.2(2), the Board may issue an order docketing the matter as a formal notice and comment proceeding. Additionally, the Board may initiate evidentiary hearings to develop a reliable record of facts related to the issues raised and to allow discovery to the extent deemed necessary.

The Board finds that Qwest's petition does not provide sufficient data to support a *prima facie* finding of effective competition. Therefore, the Board will not formally docket this matter at this time; when Qwest files additional information

sufficient to make a *prima facie* case, the matter will be formally docketed. At such time, the Board will determine an appropriate procedural schedule for this proceeding.

Qwest's petition is insufficient in its current form because it only satisfies one of the two statutory factors. Qwest alleges that comparable services or facilities are available from other suppliers in each of the 37 exchanges, but there is no evidence that the market force in those exchanges "are sufficient to assure just and reasonable rates without regulation." This may be the evidence Qwest indicates it will provide in its statement of position or at hearing, but that promise of future evidence is not enough to comply with the requirements of 199 IAC 5.2(2)"b." Once that evidence is filed, the Board will be able to proceed with this docket.

The Board notes that Consumer Advocate requested that this matter be docketed as a contested case proceeding. The Board notes that its rules specifically provide, at 199 IAC 5.3(1), that petitions for deregulation are to be docketed as formal notice and comment proceedings.

IT IS THEREFORE ORDERED:

1. The petition for deregulation filed by Qwest Corporation on July 2, 2003 is assigned Docket No. INU-03-4.
2. Once Qwest has filed sufficient additional information to support a *prima facie* finding of effective competition, the Board will issue an order docketing

the petition as a formal notice and comment proceeding and setting an appropriate procedural schedule.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 7th day of August, 2003.