

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: WALNUT TELEPHONE COMPANY	DOCKET NOS. TCU-03-12 WRU-03-46-509
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**ORDER GRANTING APPLICATION, APPROVING CONCURRENCE IN MAPS,
AND GRANTING WAIVER**

(Issued September 25, 2003)

On August 1, 2003, Walnut Telephone Company (Walnut) filed an application with the Utilities Board (Board) for issuance of a certificate of public convenience and necessity, pursuant to Iowa Code § 476.29 (2003), stating its intention to provide local exchange service in the Shelby, Minden, and Avoca, Iowa, exchanges currently served by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom). The application has been identified as Docket No. TCU-03-12. Walnut has provided the qualifications of its company officers and financial statements and has stated it will support a 2-PIC methodology for dialing parity.

Iowa Code § 476.29(2) provides that a local exchange carrier shall not be denied a certificate if the Board finds that the applicant “possesses the technical, financial, and managerial ability to provide the service it proposes to render and the Board finds the service is consistent with the public interest.”

The Board has reviewed Walnut's application and finds the necessary technical, financial, and managerial abilities to provide local exchange service have been demonstrated. It is in the public interest to approve Walnut's application.

Walnut also states that its service area will mirror the service territory of the exchanges and service area maps of Iowa Telecom as they are currently filed and may be modified in the future. Iowa Code § 476.29(4) requires that each certificate define the service territory in which land-line local telephone service will be provided and authorizes the Board to promulgate rules establishing the requirements for filing maps showing the service territory. Subrule 199 IAC 22.20(3) requires that all utilities have maps on file with the Board that show exchange boundaries. The Board finds that Walnut has complied with the statutory and rule requirements by concurring in the exchange maps of Iowa Telecom.

Walnut also requests a waiver of 199 IAC 22.3(1), requiring it to independently publish a directory. The waiver request is identified as Docket No. WRU-03-46-509. The Board will grant the waiver based upon Walnut's statement that it will arrange for its customers to be included in the directories published in the areas it provides local exchange service.

Rule 199 IAC 1.3 states that the Board may grant waivers if it finds, based upon clear and convincing evidence, that the application of the rule would pose an undue hardship, the waiver would not prejudice the substantial legal rights of any person, the provisions waived are not specifically mandated by statute, and

substantially equal protection of public health, safety, and welfare will be afforded after the waiver. The Board has considered the waiver request as described above and finds that the waiver meets the four criteria of the rule and the evidence in support of the waiver is clear and convincing.

Adherence to these rules would be an undue hardship on Walnut because each rule would involve additional expense without necessity or benefit. The Board finds there are no substantial legal rights of any person that are affected by these waivers and there is no statute that specifically mandates the actions waived. Additionally, the Board finds that there will be substantially equal protection for health, safety, and welfare provided since the actions waived will be completed under different circumstances.

Walnut has not filed proposed tariffs for Board approval setting out the prices, terms, and conditions of providing local exchange service. The Board finds that a certificate should not be issued to Walnut until it has filed tariffs which are then approved by the Board.

IT IS THEREFORE ORDERED:

1. The application for a certificate of public convenience and necessity filed by Walnut Telephone Company on August 1, 2003, is granted, subject to the requirement that follows.

2. The Board will issue a certificate of public convenience and necessity allowing Walnut Telephone Company to provide local exchange service upon

approval of tariffs reflecting the prices, terms, and conditions, of local exchange service in Iowa.

3. The concurrence in the maps and boundaries of the exchanges of Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, is approved.

4. The waiver of 199 IAC 22.3(1) identified as Docket No. WRU-03-46-509 is granted as described in this order.

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 25th day of September, 2003.