

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE:</p> <p>QWEST CORPORATION,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 40px;">vs.</p> <p>IOWA TELECOM COMMUNICATIONS, INC.,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:center">DOCKET NOS. FCU-03-52 TF-03-476</p>
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**PROCEDURAL ORDER AND NOTICE OF HEARING**

(Issued December 18, 2003)

On October 17, 2003, Iowa Telecom Communications, Inc. (ITC), filed with the Utilities Board (Board) a revised tariff sheet containing revisions to its intrastate access service rates. Prior to the tariff revision, ITC concurred in the access tariffs as filed by the Iowa Telecommunications Association in the State of Iowa with three exceptions: carrier common line access service, local switching, and transport interconnection charge. The revised tariff sheet eliminated the exceptions for local switching and transport interconnection charge. ITC requested approval of the revised tariff sheet, to be effective November 16, 2003. In its letter notifying affected intrastate access customers, ITC stated the rate element for local switching, per access minute, would increase from \$0.020297 to \$0.0404, and the rate element for transport interconnection charge, per access minute, would increase from \$0.00 to \$0.015055.

On November 6, 2003, Qwest Corporation (Qwest) filed an objection, complaint, and request for docketing with the Board regarding ITC's revised tariff sheet. In its complaint, Qwest contended that the proposed rates are significantly higher than the access rates Qwest is allowed to charge in its incumbent exchanges, and it believes ITC seeks to use its market power in its local exchange market to charge unreasonably high access charges so as to allow it to offer lower priced monthly residential and business services in competition with Qwest. It further argued that ITC offered no explanation that would justify the proposed increase, and that Qwest believes the proposed rates are higher than reasonable rates such that the proposed rates are unreasonable and unlawful. Qwest objected to the rates pursuant to Iowa Code §§ 476.3, 476.6(5), 476.11, and 476.101(1) (2003), and Board rule 199 IAC 6. Qwest stated that in In re: Fibercomm, L.C., et al. vs. AT&T Communications of the Midwest, Inc., Docket No. FCU-00-3, "Final Decision and Order," issued October 25, 2001, (Fibercomm decision) the Board determined it had jurisdiction over access rates of competitive local exchange carriers (CLECs)<sup>1</sup>. Qwest requested the Board to suspend and docket the proposed tariff revision and determine the reasonableness of the proposed intrastate access rate increase.

On November 14, 2003, the Board issued an order docketing the complaint pursuant to 199 IAC 6.5(1) and 22.14, ordering ITC to file a written response to the complaint pursuant to Iowa Code § 476.3(1), and deeming the proposed access

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<sup>1</sup> The Board's Fibercomm decision was reversed in part and affirmed in part on judicial review. AT&T Communications of the Midwest, Inc., v. Iowa Utilities Board, Polk County No. AA-CV-3985, "Ruling On AT&T's Petition for Judicial Review and Ruling On Complainants' Intervention and Claim Adverse to Petitioner and Respondent," issued March 19, 2003. That District Court decision has been appealed to the Iowa Supreme Court as AT&T Communications of the Midwest, Inc., v. Iowa Utilities Board, No. 03-0648.

service rates effective November 16, 2003, as requested, subject to change at the conclusion of the docket. The Board refused to suspend the tariff as requested because Qwest did not file its objection within the 14-day period required by 199 IAC 22.14(5).

On November 26, 2003, ITC filed a response as ordered by the Board. ITC stated in its initial tariff, approved by the Board on December 12, 2001, it concurred in the Iowa Telecommunications Association's (ITA's) access service tariff No. 1 with limited exceptions. ITC further stated the ITA's Tariff No. 1 adopts the access service provisions of the National Exchange Carrier Association (NECA) Tariff F.C.C. No. 5 with exceptions for certain services including carrier common line access service (CCL), local switching, and the transport interconnection charge (TIC). ITC stated the rates for CCL, local switching, and the TIC specified in the ITA tariff are higher than in the NECA tariff. ITC further stated that its initial access tariff adopted the terms and rates in the ITA tariff except that ITC adopted the lower NECA rates for local switching and the TIC and did not impose a CCL charge. ITC further stated it revised its access tariff three times prior to October 17, 2003, to mirror changes in the NECA rate for local switching.

In its response, ITC further stated its previous access tariff had concurred in the ITA access tariff with certain exceptions, and the proposed revisions would eliminate the exceptions for local switching and the TIC. ITC stated the consequence of eliminating the exceptions for local switching and the TIC moves the ITC's rates for those elements to the higher levels specified in the ITA tariff. ITC further stated it did not propose to adopt the ITA tariff rate for CCL, which is currently \$0.03 per minute.

ITC admits the effect of eliminating the exceptions is to increase the rates to \$0.04 per minute for local switching and to \$0.015055 per minute for the TIC.

ITC argues that Qwest failed to allege that the difference between the old and new rates will cause injury to Qwest or have any material impact on Qwest. ITC argues the comparison of Qwest's and ITC's access rates is not relevant to any issue in this proceeding. ITC denies it has market power in its local exchange market and that the proposed rates are unreasonably high. ITC further argues that Qwest failed to assert any factual basis for its belief that ITC has market power in any Qwest exchange. ITC denies Qwest's allegation that it offered no explanation to justify the proposed rates, and denies that the proposed rates are unreasonable or unlawful. ITC further argues that 199 IAC 22.14(2) provides that a non-rate-regulated local exchange utility may concur in this intrastate access tariff filed by another non-rate-regulated local exchange utility or in an association tariff. ITC further alleged that it examined the access tariffs of most CLECs operating in Iowa and determined that all but a few concur in the ITA tariff and charge rates for local switching and the TIC equal to those in the proposed tariff. ITC further argues that its concurrence in the ITA tariff and adoption of the access rates specified therein is neither unreasonable nor unlawful, and requested the Board find Qwest's complaint to be without basis and terminate this proceeding.

On December 15, 2003, the Board issued an order assigning this docket to the undersigned administrative law judge to conduct a hearing and issue a proposed decision.

### **THE BOARD'S JURISDICTION AND THE ISSUE IN THE CASE**

The Board has jurisdiction over the ITC tariff discussed above and the parties in the case pursuant to Iowa Code § 476.3(1), various sections of Iowa Code Chapter 476, and Board rules at 199 IAC 6.5(1) and 22.14. The primary issue in this case is whether ITC's tariff change complies with the statutes and rules administered by the Board. In their pleadings, the parties have identified a number of specific issues. However, all of the specific issues identified relate to this primary issue.

If the parties believe there are other primary issues in this case, or other specific issues not previously identified in the pleadings filed to date, they should file an identification of those issues as soon as possible.

The parties should note that, pursuant to 199 IAC 22.14(5)"c," Qwest has the burden to support its resistance to ITC's revised tariff.

### **STIPULATION OF FACTS, PREHEARING TESTIMONY, AND PREHEARING BRIEF**

In their prehearing testimony, the parties must provide evidence to support the allegations made in their respective filings and to address the allegations made by other parties. It appears from the parties' filings that they may be able to stipulate to certain facts, so that only facts in dispute need be resolved in this proceeding. Therefore, the parties are encouraged to file a stipulation of facts in accordance with the procedural schedule set forth below. It is also appropriate, given the nature of this proceeding and the allegations set forth in the pleadings, that the parties file prehearing briefs that identify and discuss their respective positions.

Since Qwest has the burden to support its resistance to the revised tariff, it will be given the opportunity to offer rebuttal prepared testimony.

**IT IS THEREFORE ORDERED:**

The following procedural schedule is established.

a. On or before Monday, January 12, 2004, ITC must file prepared direct testimony and exhibits. When numbering exhibits, ITC should use numbers one and following.

b. On or before Monday, February 2, 2004, Qwest and the Consumer Advocate must file prepared direct testimony and exhibits. When numbering exhibits, Qwest should use numbers 100 and following and the Consumer Advocate should use numbers 200 and following.

c. On or before Monday, February 16, 2004, ITC must file rebuttal testimony and exhibits.

d. On or before Monday, March 1, 2004, Qwest must file rebuttal testimony and exhibits.

e. On or before Monday, March 1, 2004, the parties must file a written stipulation of facts or a statement that they are unable to stipulate to any facts.

f. On or before Monday, March 1, 2004, ITC and Qwest must file prehearing briefs. If the Consumer Advocate chooses to file a prehearing brief, it must do so on or before Monday, March 1, 2004.

g. A public hearing for the presentation of evidence and the cross-examination of witnesses will be held on Tuesday, March 9, 2004, in the Board hearing room, 350 Maple Street, Des Moines, Iowa, beginning at 9:30 a.m. If a party's exhibits are extensive, the party should provide an index listing the

exhibits to the undersigned, opposing counsel, and the court reporter, and must file a copy with the Board Records and Information Center. Each party must provide a copy of its prefiled testimony to the court reporter. Persons with disabilities requiring assistive services or devices to observe or participate in the hearing should contact the Board at (515) 281-5256 in advance of the scheduled hearing date to request that appropriate arrangements be made.

h. If necessary, a briefing schedule will be established at the conclusion of the hearing.

i. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become a part of the evidentiary record of these proceedings. Pursuant to 199 IAC 7.2(6), the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Board at the earliest possible time.

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 18<sup>th</sup> day of December, 2003.