

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE:</p> <p>IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM, AND PARTNER COMMUNICATIONS COOPERATIVE</p>	<p>DOCKET NOS. SPU-04-15 WRU-04-21-0263</p>
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**ORDER APPROVING JOINT APPLICATION FOR DISCONTINUANCE OF SERVICE, AUTHORIZING TRANSFER OF CERTIFICATE, AND GRANTING WAIVER**

(Issued June 23, 2004)

On May 24, 2004, Iowa Telecommunications Service, Inc., d/b/a Iowa Telecom (Iowa Telecom), and Partner Communications Cooperative (Partner) filed a joint application for discontinuance of service and transfer of certificate pursuant to Iowa Code §§ 476.20 and 476.29. The filing indicates that Partner has acquired from Iowa Telecom the assets to provide local exchange service in the Iowa exchanges of Baxter, Melbourne, Rhodes, and State Center. The acquisition will result in the discontinuance of service by Iowa Telecom and the assumption or continuance of service by Partner. The joint applicants request the transfer of Iowa Telecom's certificate for the Baxter, Melbourne, Rhodes, and State Center exchanges to Partner.

The filing states that Partner is presently certified to provide service in five Iowa exchanges (including the Baxter, Melbourne, and Rhodes exchanges). Partner

states that it is ready, willing, and able to provide comparable service to the Baxter, Melbourne, Rhodes, and State Center exchanges.

The filing includes the Affidavit of Donald S. Jennings, Executive Vice President and General Manager of Partner, who provided details about Partner's operational plans after the transfer of the four exchanges. Mr. Jennings indicates that local rates for transferred customers will be reduced. Mr. Jennings also states that Partner is a member of Iowa Network Services (INS) and provides equal access for both intraLATA long distance and interLATA long distance. Mr. Jennings asserts that Partner provides the same optional calling plans under its long distance service as those plans offered by Iowa Telecom.

Mr. Jennings also states that Partner will be offering enhanced services such as voicemail and high-speed Internet service. Mr. Jennings asserts that the high-speed Internet service footprint will mirror Iowa Telecom's current service area, but will be expanded as construction upgrades are completed over the next 3-5 years. Mr. Jennings also states that Partner intends to replace the Iowa Telecom digital subscriber line (DSL) service in the affected towns with cable modem service and intends to use the excess DSL equipment to expand into rural areas.

The filing also includes the Affidavit of Joseph L. Gerot, a Certified Public Accountant and Partner in Kiesling Associates, LLP, the firm that has prepared audited financial statements for Partner for over 30 years. Mr. Gerot states that

Partner is in healthy financial condition and its plans to purchase and operate the three exchanges are within its financial means.

The filing also contains the Affidavit of D. Michael Anderson, Vice President – External Affairs for Iowa Telecom. The affidavit pertains to the impact of the sale on Iowa Telecom's price plan. Under Iowa Code § 476.99(1), a price-regulated utility must make provisions to reflect in rates any changes due to changes in average costs resulting from the sale of exchanges. Mr. Anderson states that the impact of the sale of the three exchanges on average costs "would be so insignificant that they would not affect rates."

Iowa Code § 476.29(3) provides for the transfer of certificates of public convenience and necessity. The statute provides that with respect to a rate-regulated local exchange utility, a transfer shall be treated by the Board in the same manner as a reorganization pursuant to §§ 476.76 and 476.77. The joint applicants request a waiver of the reorganization requirements of §§ 476.76 and 476.77 stating that Board review of the transaction is unnecessary in the public interest and that review of the transaction is being conducted pursuant to Iowa Code § 476.20.

Iowa Code § 476.77(4) provides that "the board may waive the requirements of this section if the board finds that board review is not necessary in the public interest." In his supporting affidavit, D. Michael Anderson attested that this transaction will affect only 0.85 percent of Iowa Telecom's access lines and will not have a material impact on the ongoing operations of Iowa Telecom. The Board has

reviewed the joint applicants' request and based on the information provided, the Board finds the request for waiver is reasonable. The Board finds that a review of the proposed transaction pursuant to Iowa Code §§ 476.76 and 476.77 is unnecessary in the public interest and the reorganization requirements of Iowa Code §§ 476.76 and 476.77 will be waived.

Iowa Code § 476.20(1) states that a utility shall not discontinue service to a community unless permission is obtained from the Board. The Board's rules at 199 IAC 7.12 address the discontinuance of service incident to utility property transfer. Within 30 days, the Board must either approve an application or docket it for further investigation; otherwise, it will be deemed approved. The Board may grant an application if the Board finds the transferee is ready, willing, and able to provide comparable utility service. Based on the information provided, the Board finds that Partner has demonstrated a history of providing local exchange telecommunications service in compliance with the Board's rules and requirements and that it is ready, willing, and able to provide comparable service in the Baxter, Melbourne, Rhodes, and State Center exchanges. The Board finds that the requirements of Iowa Code § 476.20(1) are satisfied and will approve the joint request for discontinuance of service by Iowa Telecom and Partner in the Baxter, Melbourne, Rhodes, and State Center, Iowa, exchanges pursuant to 199 IAC 7.12 and 22.16 and Iowa Code § 476.20(1). Since Partner is already certificated to provide service in the Baxter, Melbourne, and Rhodes exchanges, the Board will also approve the joint request to

transfer Iowa Telecom's certificate to serve the State Center exchange to Partner, pursuant to Iowa Code § 476.29(3).

The Board's rules under 199 IAC 22.23 require telecommunications service providers to obtain customer authorization prior to enacting a change in service. Under the joint application, toll and local service customers will be transferred from Iowa Telecom to Partner. The joint applicants request a waiver of 199 IAC 22.23(2), which has been identified as Docket No. WRU-04-21-0263. If approved, the waiver would allow the joint applicants to mail customers a notice rather than obtain authorization from each customer to be transferred. On May 25, 2004, the joint applicants provided a copy of the proposed notice letter. The notice informs affected customers of the transfer of service, the reduced rates, and substantially similar calling plans. The notice letter also informs customers who use Iowa Telecom as their long distance carrier that Partner Long Distance will be their new long distance carrier unless an alternative long distance carrier is chosen prior to the transition date.

Pursuant to 199 IAC 1.3, the Board may waive its rules if the Board finds that application of the rule would pose an undue hardship; that waiver will not prejudice the substantial legal rights of any person; that the provisions of the rule are not mandated by a statute or other rule of law; and that substantially equal protection of the public health, safety, and welfare will be afforded by other means. Here, application of rule 22.23 would pose an undue hardship on Iowa Telecom and

Partner by requiring that they obtain a substantial number of authorizations; waiver will not prejudice the substantial legal rights of any person, since the customers will receive the same or better service at the same or lower rates; the provisions of the rule are not mandated by any other rule of law; and substantially equal protection of the public health, safety, and welfare will be provided by the notice that Iowa Telecom and Partner will send to the affected customers. The request for waiver will be granted.

In connection with the transfer, the joint applicants state they will require a waiver from the Federal Communications Commission (FCC) of the FCC's study area requirements. It has been the FCC's policy not to accept a waiver petition unless the state regulatory agency indicates that it does not object to changes in the study area boundaries. In previous transfers of this type, the Board has affirmatively stated that it does not object to the FCC granting a study area waiver.<sup>1</sup> The Board finds it is appropriate to make the same statement in this docket.

Finally, Iowa Telecom and Partner will be required to file new tariffs and service area boundary maps reflecting the transfer of the Baxter, Melbourne, Rhodes, and State Center exchanges within 30 days of this order. Iowa Telecom's tariffs will need to be modified to reflect the deletion of the four exchanges. Since Partner

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<sup>1</sup> See, for example, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, and Norway Rural Telephone Service, "Order Approving Joint Application for Discontinuance of Service and Authorizing Transfer of Certificate," Docket No. SPU-02-2, ordering clause #4, issued March 12, 2002.

already serves the Baxter, Melbourne, and Rhodes exchanges, Partner's tariff will need to be modified to reflect the addition of the State Center exchange.

**IT IS THEREFORE ORDERED:**

1. The joint application for approval of discontinuance of service and partial transfer of certificate with regard to the Baxter, Melbourne, Rhodes, and State Center, Iowa, exchanges filed May 24, 2004, by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, and Partner Communications Cooperative is approved to be effective upon the issuance of this order.
2. Partner Communications Cooperative is directed to file new tariff pages and exchange boundary maps showing the addition of the State Center, Iowa, exchange to its territory within 30 days of this order.
3. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, is directed to file new tariff pages and exchange boundary maps showing the removal of the Baxter, Melbourne, Rhodes, and State Center, Iowa, exchanges within 30 days of this order.
4. The request for waiver of 199 IAC 22.23, filed on May 24, 2004, is granted.

5. The Board affirmatively states that it does not object to the request that a study area waiver be granted by the FCC.

**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 23<sup>rd</sup> day of June, 2004.