

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE:</p> <p>LTDS CORPORATION,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 40px;">vs.</p> <p>IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>DOCKET NO. FCU-04-52</p>
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**ORDER GRANTING MOTION TO DISMISS AND  
DENYING MOTION TO RECONSIDER**

(Issued November 22, 2004)

On October 29, 2004, the Utilities Board (Board) issued an "Order Denying Request for Emergency Injunctive Relief and Requiring Additional Information" in this docket. The Board directed LTDS Corporation (LTDS) and Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), to submit additional filings describing a proposed course of action for this proceeding as well as the Board's authority for taking the proposed action.

On November 3, 2004, LTDS filed a motion requesting the Board reconsider its October 29 order. In support of its request, LTDS states that the facts of the dispute occurred so rapidly that LTDS did not have the opportunity to develop adequate support for its position.

On November 5, 2004, LTDS submitted its supplemental filing pursuant to the Board's October 29 order. LTDS states that as the incumbent, Iowa Telecom's facilities are essential to LTDS and that Iowa Telecom has the duty to exchange traffic with LTDS even in the absence of an interconnection agreement.<sup>1</sup> LTDS also states that Iowa Telecom has a duty to provide unbundled elements to LTDS independent of an interconnection agreement.<sup>2</sup> LTDS asserts that to avoid customer disruption, Iowa Telecom cannot block LTDS's traffic and that the companies will have to maintain their existing relationship while their contractual issues remain in dispute.

LTDS proposes that the Board; 1) immediately enjoin Iowa Telecom from blocking orders for new customers or disrupting existing customers; 2) order that the terms, conditions, and rates in the existing interconnection agreement between LTDS and Iowa Telecom are in effect and will remain so until further notice; and 3) encourage the parties to set the earliest possible date for arbitration or require status reports until February 8, 2005, and establish a procedural schedule for arbitrating outstanding issues after February 8. LTDS states that the Board has the authority, pursuant to Iowa Code chapter 476, to follow this proposed course of action.

Also on November 5, 2004, Iowa Telecom submitted its supplemental filing pursuant to the Board's October 29 order. Included in its November 5 filing, Iowa Telecom offered its resistance to LTDS's motion to reconsider. Iowa Telecom

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<sup>1</sup> See In re: Transit Traffic, Docket No. SPU-00-7, "Proposed Decision and Order" (Nov. 26, 2001).

<sup>2</sup> 47 U.S.C. § 251(c)(3).

asserts that the Board does not have the authority to grant any relief requested by LTDS. Iowa Telecom suggests that the only issue for which the Board would have the authority to intervene in this interconnection dispute is the interpretation of the formerly-existing contract between Iowa Telecom and LTDS, particularly whether Iowa Telecom's September 20, 2004, letter of termination gave the appropriate amount of notice.

Iowa Telecom states that the Board does not have the authority to order Iowa Telecom to honor the expired contract while negotiations continue, as requested by LTDS. In addition, Iowa Telecom states that the Board does not have the authority to require Iowa Telecom to request arbitration. Iowa Telecom asserts that the Telecommunications Act of 1996 (Federal Act) provides for a right to pursue arbitration, but does not provide for a duty to do so. Finally, Iowa Telecom states that because there is no basis for LTDS's complaint, it should be dismissed.

The Board finds that it lacks jurisdiction to hear the complaint. LTDS is, in essence, seeking the Board's involvement in the continuation of the expired contract, rather than demonstrating substantial movement towards a new agreement. The Board agrees with Iowa Telecom that any Board action to force Iowa Telecom to continue to process orders under the terms of the expired contract would be inappropriate. At issue between the parties is the termination of the agreement in accord with its terms. There is no allegation by LTDS that there is any unlawful action in the termination of the contract and there is no legal basis upon which to abrogate the termination; the best LTDS could reasonably hope for in this proceeding

is a 60-day extension of the expired agreement, by requiring a 90-day notice in place of the 30-day notice already given. However, the Board has already determined that the "month-to-month" extension of the former agreement meant that only 30 days' notice was required, and LTDS has not offered any reason to change that decision.

Iowa Telecom made clear to LTDS that the existing contract would not continue beyond its original terms and provided LTDS nearly ten months' notice of the contract's termination. During this time, the parties have not agreed to a new contract and neither party has pursued its rights to arbitration. LTDS argues that this situation may adversely affect its customers. However, LTDS can opt into another agreement with Iowa Telecom at any time, subject to a true-up when negotiation or arbitration results in a new agreement.<sup>3</sup>

Based on the record established in this docket, the Board lacks the jurisdiction to grant LTDS's requests; namely, that the Board require Iowa Telecom to continue to negotiate under the terms of the existing agreement or request arbitration. Therefore, the Board will dismiss LTDS's complaint.

**IT IS THEREFORE ORDERED:**

1. The "Motion to Reconsider Request for Emergency Injunctive Relief" filed by LTDS Corporation on November 3, 2004, is denied.

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<sup>3</sup> In this respect, the Board is aware that both parties have offered to continue service subject to true-up, but the terms of the offers are different. LTDS offers to continue under the expired agreement, and even that offer is conditional; Iowa Telecom must agree to an accelerated arbitration date. Iowa Telecom's offer, in contrast, is unconditional; LTDS can opt into any existing Iowa Telecom interconnection agreement while negotiations, and arbitration if necessary, continue.

2. The request of Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, in its November 5, 2004, supplemental filing, requesting dismissal of the complaint filed by LTDS Corporation on October 22, 2004, as supplemented on November 5, 2004, is granted.

**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 22<sup>nd</sup> day of November, 2004.