

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  QUALITY OF SERVICE REPORTING BY ELIGIBLE TELECOMMUNICATIONS CARRIERS [199 IAC 39]	DOCKET NO. RMU-05-4
---	---------------------

**ORDER COMMENCING RULE MAKING**

(Issued February 21, 2005)

Pursuant to the authority of Iowa Code §§ 17A.4 and 476.2 and 47 U.S.C. § 214(e), the Utilities Board (Board) proposes the amendments attached hereto and incorporated herein by reference. The proposed amendments to 199 IAC 39 require designated eligible telecommunications carriers (ETCs) to provide quality of service reporting to the Board.

State commissions have the primary responsibility of designating ETCs. See 47 U.S.C. § 214(e)(2). Carriers who wish to receive federal universal service funding must be designated as an ETC. The current rules in 199 IAC 39 outline the requirements a telecommunications carrier must meet when applying to the Board for an ETC designation. All incumbent local exchange carriers (ILECs) in Iowa, as well as some competitive local exchange carriers (CLECs) and wireless carriers, have received an ETC designation from the Board.

The Federal Communications Commission (FCC) reserves the right to designate an ETC if it determines that a state commission lacks the appropriate

jurisdiction to make such a designation. 47 U.S.C. 214(e)(2). In a recent case, Virginia Cellular, LLC (Virginia Cellular), sought designation as an ETC from the FCC because the Virginia commission determined that it lacked jurisdiction over wireless carriers. See In re: Virginia Cellular, LLC, "Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia," CC Docket No. 96-45, released Jan. 22, 2004. In making its determination of whether to designate Virginia Cellular as an ETC, the FCC stated:

[It would] weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame . . . We conclude these steps are appropriate in light of the increased frequency of petitions for competitive ETC designations and the potential impact of such designations on consumers in rural areas.

Id., ¶ 4. In addition, the FCC stated that the value of increased competition, by itself, is not sufficient to satisfy the public interest in rural areas. Id., ¶ 4.

In Iowa, ETC designations typically have been granted with less scrutiny than was applied by the FCC to Virginia Cellular's request. Nevertheless, the Board shares the FCC's concerns about the frequency of requests for ETC designation and the impact of those designations on both rural customers and the universal service fund as a whole.

The FCC has identified four criteria that must be met before the Board designates an ETC. Those criteria, enumerated in 199 IAC 39.2, require that the prospective ETCs must:

- 1) Offer the services supported by the federal universal service fund;
- 2) Offer service using its own facilities or a combination of its own facilities and resale (47 C.F.R. § 54.301(c) provides that "own facilities" includes purchased unbundled network elements);
- 3) Advertise the availability of the supported services; and
- 4) Offer the services throughout the designated service area.

In addition, an ETC must also offer an unspecified minimum amount of local exchange service, defined in usage minutes, at no additional cost to customers. See 199 IAC 39.2(1)"b."

All ETCs, including wireless ETCs, are obligated under 47 U.S.C. § 254(e) to use universal service fund support "only for the provision, maintenance, and upgrading of facilities and services for which support is intended." In addition, all ETCs are required under 47 C.F.R. §§ 54.313 and 54.314 to certify annually that they are in compliance with this requirement. As a means to address its concerns regarding the impact of ETC designations on rural customers, the FCC also required Virginia Cellular to "submit records and documentation on an annual basis detailing its progress towards meeting its build-out plans in the service areas it is designated as an ETC" in addition to information "detailing how many requests for service from potential customers in the designated service areas were unfulfilled for the past year." Id., ¶ 46. The FCC concluded that the fulfillment of these additional reporting requirements will further the Commission's goal of ensuring that Virginia Cellular satisfies its obligation under 47 U.S.C. § 214(e) to provide supported services throughout its designated service area. Id.

The FCC's concerns in the Virginia Cellular docket, and the additional reporting requirements imposed upon Virginia Cellular as a result of that proceeding, indicates the manner in which the public interest should be taken into consideration when designating an ETC. Rather than condition a designation on additional factors that have not been set forth by the FCC, the Board finds that reasonable monitoring of those services provided by ETCs that receive universal service support is appropriate and would satisfy the public interest.

Under the Board's current rules, the Board's jurisdiction in the area of service quality for ETCs extends only to those eligible carriers that provide traditional wireline service. Wireless carriers with ETC designation are currently exempt from the Board's service quality rules. The Board recognizes the inequity this causes between wireline and wireless ETCs in the issue of service quality. In re: Eligible Telecommunications Carrier Designation for Wireless Carriers, Docket No. RMU-03-13, the Board proposed a rule that would have subjected wireless ETCs to the Board's wireline service quality rules outlined in 199 IAC 22.6. In that proceeding, the Board also proposed a rule that would have required wireless ETCs to file with the Board customer service agreements that set out the rates, terms, and conditions applicable to ETC-designated local calling plans. See "Order Commencing Rule Making," In re: Eligible Telecommunications Carrier Designation for Wireless Carriers, Docket No. RMU-03-13, issued August 25, 2003.

During the course of that rule making proceeding, the participating wireless carriers expressed concerns regarding the appropriateness of some of the Board's existing service quality rules with respect to the wireless industry. In addition, some participating wireless carriers argued that the imposition of service quality over

wireless carriers is outside the Board's jurisdiction. The Board concluded that its existing wireline service quality rules were not well-suited to the wireless industry and withdrew the proposed rules from further consideration.

In lieu of attempting to draft detailed service quality rules that are technologically neutral in an industry that is constantly changing, in this rule making the Board proposes to adopt rules that require carriers with ETC designation, regardless of whether they are wireline or wireless carriers, to periodically report various indicators of the general quality of their universal service fund-based services. This reporting requirement is consistent with the FCC's directive, as discussed in the Virginia Cellular decision, to satisfy public interest concerns, especially in rural areas. The Board proposes to disseminate the reports it receives from the ETCs on the Board's Web site so that consumers will have more accurate information about providers of the services supported by the universal service fund. The Board believes that these services are important to Iowa consumers and by making the reported information available to the public, the Board will be able to assist consumers in making value-based telecommunications choices. The reporting requirement would promote competitive choice among carriers and would assist consumers in making comparisons between various telecommunications service providers and would allow the public to know of changes and improvements in the market place.

The Board anticipates that wireless carriers will again participate in this docket and will assert that the Board cannot impose service quality regulations on wireless carriers. However, the Board believes that when it designates a wireless carrier as an ETC, that wireless carrier benefits from the public funding that ensues. By the

same token, when an ETC voluntarily applies for and receives designation, it appears that the wireless carrier has an obligation to remain accountable to the public for the services it provides that are funded in part by the universal service fund. The Board invites comments on these propositions.

**IT IS THEREFORE ORDERED:**

1. A rule making proceeding, identified as Docket No. RMU-05-4, is commenced for purposes of receiving comments upon the proposed rule attached to this order.

2. The Executive Secretary is directed to submit for publication in the Administrative Bulletin, a notice in the form attached to and incorporated by reference 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 21<sup>st</sup> day of February, 2005.

## UTILITIES DIVISION

### Notice of Intended Action

Pursuant to Iowa Code sections 17A.4 and 476.2 and 47 U.S.C. § 214(e), the Utilities Board (Board) gives notice that on February 21, 2005, the Board issued an order in Docket No. RMU-05-4, In re: Quality of Service Reporting by Eligible Telecommunications Carriers [199 IAC 39], "Order Commencing Rule Making," to receive public comment on new proposed rules requiring designated eligible telecommunications carriers (ETCs) to provide quality of service reporting to the Board regarding those services that are supported by the federal universal service fund.

Under the Board's current rules, the Board's jurisdiction in the area of service quality for ETCs extends only to those eligible carriers that provide traditional wireline service. Wireless carriers with ETC designation are currently exempt from the Board's existing service quality rules outlined in 199 IAC 22.6.

In lieu of attempting to draft detailed service quality rules that attempt to be technologically neutral in an industry that is always changing, the Board proposes in this rule making to adopt rules that require carriers with ETC designation, regardless of whether they are wireline or wireless carriers, to periodically report various indicators of the quality of their universal service fund-based services. This reporting requirement is consistent with the FCC's directive to satisfy public interest concerns, especially in rural areas. The Board proposes to disseminate the reports it receives from the ETCs on the Board's Web site so that consumers will have more accurate information about the

providers of the services supported by the universal service fund. By making the reported information available to the public, the Board will be able to assist consumers in making value-based telecommunications choices. The proposed rules will promote competitive choice among carriers, assist consumers in making comparisons between various telecommunications service providers, and allow the public to know of changes and improvements to the market place. In addition, the adoption of the proposed rules will help ensure uniform treatment of all ETCs.

The order commencing rule making contains a more thorough discussion of the reasons for the proposed rule making. The order is available on the Board's Web site at [www.state.ia.us/iub](http://www.state.ia.us/iub).

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed rule. The statement must be filed on or before April 4, 2005, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed rules will be held at 9 a.m. on Wednesday, May 11, 2005, in the Board's hearing room at the address listed above. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

The proposed amendments are intended to implement Iowa Code section 476.2 and 47 U.S.C. § 214(e) and amends Chapter 39 – Universal Service.

The following amendments are proposed:

ITEM 1. Amend paragraph 39.3(1)"b" to read as follows:

b. Eligible carriers that do not file tariffs with the board shall include the Link-up and Lifeline offerings in their agreements to provide service to customers. These eligible carriers shall file with the board copies of their current customer service agreements. Eligible wireless carriers should include with these filings coverage and build-out plans on an annual basis.

ITEM 2. Add section 39.5(476) to read as follows:

199–39.5(476) Quality of service reporting by eligible telecommunications carriers. Carriers designated by the utilities board as eligible to receive universal service support pursuant to 47 U.S.C. § 214(e) must measure and report to the board quality of service performance for the criteria listed below. Quality of service reporting shall be provided quarterly in a format determined by the Board.

a. Service connections. The average time to establish service, for all orders, after acceptance of the end-use customer's application for service during the reporting period.

b. Service connection delays. The percentage of service connections requiring more than five days to establish service after acceptance of the end-use customer's application for services during the reporting period.

c. Local usage. The amount of minutes of service provided each month, without any additional charge, as part of the ETC-eligible service.

- d. Access to emergency services. Whether the ETC currently provides automatic numbering information (ANI) and automatic location information (ALI) as part of its E911 services.
- e. Service outages. The percentage of customers affected by network outages during the reporting period.
- f. Duration of service outages. The average time affected customers were without service during the reporting time.
- g. Extended service outages. The number of customers affected by network outages lasting more than 24 hours during the reporting period.
- h. Answer time. The average time end-user customers are left "on hold" when calling a customer service center. "On hold" times shall be measured from the time a caller indicates a preference to be connected to a customer service agent.
- i. Business offices. The number and location of business offices in Iowa that can handle walk-in customers.

February 21, 2005

/s/ Diane Munns

Diane Munns  
Chairman