

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MCC TELEPHONY OF IOWA, INC.	DOCKET NOS. TCU-04-4 TF-04-537
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ORDER APPROVING TARIFF AND ISSUING CERTIFICATE

(Issued March 14, 2005)

PROCEDURAL HISTORY

On April 1, 2004, the Utilities Board (Board) issued an order approving an application for public convenience and necessity to MCC Telephony of Iowa, Inc. (MCC), subject to the filing of approved tariffs and service area maps. The application was identified as Docket No. TCU-04-4.

On December 27, 2004, MCC filed a proposed local exchange tariff and a service area map for Board approval. The tariff was identified as TF-04-537 and the map was identified as TF-04-538. In addition to the map, MCC filed a listing of communities where MCC's cable affiliates have franchise service agreements that would permit installation of facilities to allow MCC to provide local exchange service in those communities. In addition, MCC filed a list of the locations where some facilities already exist as well as a list of locations where MCC intends to provide local exchange service. These lists were also included in MCC's proposed tariff.

On January 12, 2005, MCC filed a request for a waiver of Board rule 199 IAC 22.20(3)"a" which relates to map specifications. The waiver request was identified as Docket No. WRU-05-2-3755.

On January 31, 2005, MCC filed a withdrawal of its request for waiver stating that it will adopt the maps of the incumbent local exchange carriers (ILECs) that are on file for the areas that MCC intends to provide service, subject to the limitations stated in MCC's proposed tariff. The Board granted MCC's withdrawal of its waiver request by order issued February 11, 2005.

Also on January 31, 2005, the Iowa Telecommunications Association (ITA) filed an objection to MCC's proposed tariff, map, and request for waiver. ITA stated objections concerning the following issues: 1) proper notice of filings; 2) the service area description proposed by MCC; 3) MCC's waiver of the Board's map requirements; 4) the need for further description in the proposed tariff regarding a 2-PIC option availability with MCC service bundles; and 5) MCC's access, modification, and disconnection of the network interface device.

On February 8, 2005, MCC filed a resistance to ITA's objections in which MCC addressed each of ITA's concerns as well as arguing that ITA did not have proper standing to raise its objections. ITA filed a response on February 18, 2005, stating that its objection to the granting of MCC's waiver request was moot due to the Board's February 11 order granting withdrawal of the waiver request. Nevertheless, ITA stated that its objections remained with respect to MCC's compliance with the Board's mapping rules. ITA also stated that it withdrew its original objection regarding MCC's proper notice of its filing.

This order will address all remaining objections raised by ITA as well as the standing issue that was raised by MCC in its February 8 filing.

1. Whether ITA has standing to raise its objections in this proceeding.

MCC asserts that the Board does not need to reach a decision regarding ITA's objections because ITA lacks standing and because the objections were untimely. MCC argues that only the Consumer Advocate Division of the Department of Justice (Consumer Advocate) and an affected customer have proper standing to file objections and request that a tariff be docketed. MCC asserts that ITA is not an affected customer and therefore lacks standing to raise its objections. In addition, MCC contends that the Board should not consider ITA's objections because they were filed 34 days after the tariff was filed well beyond the 20 days provided by 199 IAC 7.5(1).

ITA responds to MCC's assertions regarding standing by stating that the Board has previously permitted the ITA to participate in proceedings on behalf of its affected member companies. ITA asserts that to change this precedent would be inconsistent with the due process that has been previously established by the Board.

The Board finds that ITA has the standing to respond to MCC's tariff filing on behalf of its affected member companies. With respect to the timeliness of ITA's objection, the Board finds that while ITA's filing was received 14 days beyond what is normally allowed, ITA raised several issues that merit further consideration by the Board. Therefore, the Board will accept ITA's objections late-filed.

2. Whether MCC's concurrence in previously-approved service area maps is sufficient to denote the locations where MCC intends to provide local exchange service.

Included in MCC's proposed tariff filing was "Attachment A," which lists (a) the communities where an MCC cable affiliate has franchise agreements that would

permit installation of facilities to provide local exchange service, (b) communities where at least some facilities exist that will allow MCC to provide local exchange service, and (c) where MCC intends to offer local exchange service. MCC states that local exchange service may not be initiated in all listed communities simultaneously. In addition, MCC states that it intends to adopt the approved service area maps of the ILECs in the areas where MCC intends to provide local exchange service. However, MCC indicated that its adoption of those maps would be subject to certain limitations listed in its tariff. Those limitations specifically relate to MCC providing service to only portions of an exchange.

ITA objects to MCC's proposed adoption of the ILEC service area maps subject to the limitations delineated in MCC's tariff. ITA asserts that without a clearly delineated service area, a question remains regarding whether the public interest is adequately served.

MCC states that it can only provide local exchange service in areas where its cable affiliate has the authority to maintain or install the necessary facilities; the cable affiliates have not relied upon the traditional local exchange boundaries of the service areas. As such, MCC cannot fully adopt the service area maps of the underlying ILECs without certain limitations. In addition, MCC states that the Board has acknowledged that its rules contemplate granting certificates to telephone utilities that propose to serve only a portion of an exchange. See In re: Intrastate Access Service Charges, "Order Terminating Rule Making Proceeding," Docket No. RMU-03-7 (Feb. 6, 2004).

The Board has reviewed MCC's request to adopt the approved service area maps of the ILECs in the areas where MCC intends to provide local exchange service as well as the limitations that have been delineated in MCC's proposed tariff, and finds that the service area and limitations should provide sufficient detail regarding where MCC's local exchange service will be available. The Board will accept MCC's concurrence with the incumbents' service area maps on file with the Board.

3. Whether MCC should specify the manner by which it will provide 2-PIC dialing methodology.

In its objection, ITA asserts that it is in the Board's interest to inquire as to how MCC intends to implement 2-PIC dialing methodology and bundling of services. ITA argues that MCC should be required to clarify its plan for providing customers with the option and ability to automatically route their long distance calls to the long distance carrier of their choice.

MCC argues that the Board's rules do not require that a company include in its tariff a description of how it intends to provide carrier choice, so long as the company agrees to provide that choice.

The Board routinely relies on the statements of local exchange carriers (LECs) assuring the Board that they will implement 2-PIC dialing methodology when approving applications or granting certificates of public convenience and necessity. The Board will rely on MCC's assertion that it will offer 2-PIC dialing methodology and will take up the question of how it is done only if there is a problem.

4. Whether intercarrier aspects of Network Interface Device (NID) access are within the scope of MCC's proposed tariff.

In its objection, ITA asserts that MCC provides in its tariff that MCC may be required to access, modify, or disconnect the network interface device (NID), installed by a customer's previous local exchange service provider for the purpose of allowing multi-carrier access to the customer. ITA states that the NID is the property of the customer's previous service provider and, as such, MCC should be required to negotiate access to the NID. In addition, ITA asserts that MCC should be liable for any charges incurred to the customer as a result of MCC's access, modification, or disconnection of the NID.

In its response, MCC explains that ITA misunderstood its intent regarding NIDs. MCC states that it does not intend to connect at the NID. MCC clarifies that older NIDs are not designed with a demarcation point inside of the physical box which separates the wires belonging to the customer from those belonging to the LEC. MCC states that it will use a multimedia terminal adapter to "light" the inside wiring at a customer's premises so that any existing working telephone jack will work with MCC's technology. MCC states that because the inside wiring often connects to the customer's previous carrier's network at the NID, stray signal could inappropriately pass upstream onto the prior carrier's network. To prevent this, MCC states it will cut the customer's wiring at a point prior to the NID. MCC states that it will negotiate any access to a NID as may be necessary, but that this issue is not one to be raised within the scope of an objection to a proposed tariff.

The Board has reviewed ITA's concerns in light of MCC's response and finds that disconnection of the customer's wiring at the NID, as well as MCC's assertion that it does not intend to use or damage the NID in order to provide local exchange service is sufficient to address ITA's objection.

5. Whether MCC has adequately explained its handling of 911 calls.

ITA asserts that MCC's application for certificate indicates that MCC will, subject to certain technical limitations, offer emergency services such as 911 and E911 through its own operations or by acquiring those services from other underlying carriers. ITA argues that MCC should be required to clarify whether its plan for making emergency services available to customers also includes access to 911 and E911 during power outages.

MCC states that its proposed tariff clarifies that its 911 service may not be available to customers in the event of a power outage. MCC states that its technology is not self-powered. Instead, it relies on power from the customer's electric service.

The Board finds that the clarifying language in the proposed tariff regarding 911 and E911 services is satisfactory and there is no need for further clarification.

CONCLUSION

The Board has reviewed MCC's proposed tariff and finds that it substantially complies with Board rules for the filing and processing of tariff pages. The tariff contains the rates for both business and residential customers. Notice was provided to all affected carriers. The Board will approve the tariff effective the date of this

order and issue MCC a certificate of public convenience and necessity concurrent with this order.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The tariff filed by MCC Telephony of Iowa, Inc., on December 27, 2004, is approved, effective the date of this order.
2. A certificate, identified as Certificate No. 0290, is being issued to MCC Telephony of Iowa, Inc., concurrently with this order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 14th day of March, 2005.