

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE ARBITRATION OF:</p> <p>LTDS CORPORATION,</p> <p style="padding-left: 100px;">Petitioning Party,</p> <p style="padding-left: 40px;">vs.</p> <p>IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM,</p> <p style="padding-left: 100px;">Responding Party.</p>	<p>DOCKET NO. ARB-05-3</p>
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ORDER DENYING MOTION TO DISMISS

(Issued April 26, 2005)

PROCEDURAL HISTORY

On March 31, 2005, LTDS Corporation (LTDS) filed a petition with the Utilities Board (Board) requesting the Board arbitrate certain terms and conditions of a proposed Interconnection Agreement between LTDS and Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom). The petition was filed pursuant to the provisions of Board rules 199 IAC 38.4(3) and 38.7(3) and § 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 101-104, 110 Stat. 56 (1996) (hereinafter referred to as the "Act"). The petition was identified as Docket No. ARB-05-3.

On April 12, 2005, the Board issued an order docketing the petition for arbitration and scheduling a telephone conference, as required by 199 IAC 38.7(3)"g," for April 21, 2005.

IOWA TELECOM'S MOTION TO DISMISS

Also on April 12, 2005, Iowa Telecom filed a motion to dismiss the LTDS petition for arbitration. Iowa Telecom states that the Board's procedural rules regarding arbitration petitions establish a number of filing requirements. See 199 IAC 38.7(3)"b." Iowa Telecom argues that the LTDS petition fails to comply with the requirements of paragraph 38.7(3)"b" or with the more general requirement of 47 U.S.C. § 252(b)(2)(A) (the petition should include "all relevant documentation"). Iowa Telecom asserts that the LTDS petition fails to provide any support for material portions of the issues sought to be arbitrated.

With respect to the first issue presented in the petition, transport of voice traffic, Iowa Telecom asserts that the only support provided by LTDS consists of citations to certain Federal Communications Commission (FCC) regulations, with no explanation as to how the cited provisions are applicable to the dispute. With respect to the second issue, point of interconnection for ISP-bound traffic, Iowa Telecom states that LTDS provides only a citation to an FCC order with no information as to how the order is supposed to support LTDS's position.

With respect to the third issue, the appropriate rate for interoffice transport, Iowa Telecom asserts that LTDS supports its proposed rates with the alleged retail rates of Iowa Network Services, Inc. (INS), without cost support or other supporting

documentation or any explanation as to how the INS rates are claimed to be relevant to Iowa Telecom's situation.

With respect to the fourth issue, the potential grandfathering of line sharing, Iowa Telecom says that LTDS provides only one sentence of rationale. Finally, with respect to the fifth issue (unbundled loop rates), Iowa Telecom says that LTDS provides no supporting documents and only two citations to FCC regulations, without further explanation.

As a result, Iowa Telecom claims that it can only speculate as to the legal theories or alleged facts relied upon by LTDS, leaving Iowa Telecom without a fair opportunity to respond to the petition.

Iowa Telecom asserts that dismissal is the only appropriate remedy for the shortcomings of the petition. Iowa Telecom acknowledges that the consequences to LTDS would not be insignificant, as the period during which LTDS can request arbitration has now closed. However, LTDS could continue to operate under the terms of the current agreement between the parties and could make a new request for negotiations if it wants to pursue other terms, thereby opening another arbitration window in a few month's time.

On April 15, 2005, pursuant to the Board's order of April 12, 2005, Iowa Telecom filed a response to the petition.

LTDS'S RESISTANCE

On April 20, 2005, LTDS filed a resistance to the motion to dismiss. First, LTDS argues that Iowa Telecom is, and must be, fully aware of the issues in this

matter, as the parties have been actively negotiating for over a year. Second, LTDS asserts that Iowa Telecom's response filed April 15, 2005, demonstrates that Iowa Telecom is, in fact, able to respond to the issues sufficiently.

Third, LTDS argues that the only items listed in 199 IAC 38.7(3)"b" which were not included in the petition were supporting documents, in particular cost studies. LTDS states that it will be able to present additional documents after discovery and that its lack of documentary support is not grounds for dismissal. Paragraph 38.7(3)"g" clearly contemplates that additional evidence and information will develop after the petition is filed, as the purpose of the scheduling conference includes identifying additional information that will be needed and scheduling the production of documents and other information.

In summary, LTDS says that it does not read the Board's arbitration rules to require that the entire case be presented in the initial petition, rather, the rules describe a process that begins with the petition and contemplates the development of further information after the petition is filed.

ANALYSIS

The Board will deny the motion to dismiss. The LTDS petition appears, at this time, to be technically in compliance. However, as will be discussed below, the Board has reservations about the continued adequacy of the petition and will re-visit the question at a later stage of this proceeding, if necessary.

Iowa Telecom is correct that the Board's rules, in spirit and in substance, contemplate a more complete petition. However, the purpose of the rule is not so

that a respondent can learn the issues. Pursuant to the provisions of 47 U.S.C. § 252, the parties have been engaged in good faith negotiations for a period of 135 to 160 days prior to the filing of the petition for arbitration. As a result, the parties should be well aware of their respective positions and the arguments and facts relied upon in support of those positions.

The purpose of the Board's rules is to inform the Board regarding the issues, arguments, and allegations, in order to allow completion of the arbitration proceeding within the abbreviated time period allowed by § 252(b)(4)(C). That section requires that the state commission resolve any unresolved issues not later than nine months after the date on which the local exchange carrier received the request for negotiations; of course, the first 135 to 160 days of that period were used for negotiations, leaving only about 110 to 135 days to complete the arbitration.

Thus, Iowa Telecom's claim that it has been harmed by LTDS's petition at this stage of the proceeding is without merit. Iowa Telecom knows the issues; it knows the arguments; and it was able to file a timely and adequate response on April 15, 2005.

At the same time, it is clear that LTDS's petition fails to meet the spirit and intent, if not the letter, of the Board's rules. Iowa Telecom may have been able to figure out the issues based on the petition and on its participation in negotiations with LTDS, but the Board does not have that information and does not find the petition as helpful as it should be. Thus, while the Board is not dismissing this petition at this time, it does not recommend that future arbitration petitioners follow this example.

Further, it appears possible that Iowa Telecom's interests and position in this proceeding may be unfairly harmed if, as the proceeding develops, LTDS attempts to expand the issues or rely on new or different supporting documentation and arguments, especially if that documentation or those arguments were reasonably available to LTDS at the time the petition was filed. The Board will consider appropriate motions if there is any attempt by LTDS to unreasonably expand this matter beyond the statements in the petition in a manner that adversely affects Iowa Telecom or this proceeding.

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

The motion to dismiss filed by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, on April 12, 2005, is denied.

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 26th day of April, 2005.