

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>DEREGULATION OF SINGLE LINE FLAT-RATE LOCAL EXCHANGE SERVICES IN COMPETITIVE MARKETS</p>	<p>DOCKET NO. INU-05-2</p>
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ORDER INITIATING NOTICE AND COMMENT PROCEEDING

(Issued May 13, 2005)

BACKGROUND

On May 7, 2004, the Utilities Board (Board) initiated a deregulation proceeding on its own motion, pursuant to Iowa Code § 476.1D (2003) and 199 IAC 5.3(1) (2003) and identified as Docket No. INU-04-1, to consider whether local exchange service to business customers in 21 specific Iowa communities was subject to effective competition and should be deregulated. The Board also proposed to consider whether residential second line service throughout Iowa was subject to effective competition and should be deregulated.

On December 23, 2004, the Board issued its "Final Decision and Order" in that proceeding and determined that effective competition was present in 20 of the 21 identified communities and deregulated residential and business local exchange service in those markets. Also as part of the December 23, 2004, order, the Board retained service quality regulation over all telecommunications service providers in those communities pursuant to Iowa Code § 476.1D(5).

On March 15, 2005, Governor Vilsack signed into law an act, identified as House File 277 (HF 277), which amends Iowa Code §§ 476.1D and 476.55. The amended statute relates to the deregulation of retail rates for most local exchange communications services in Iowa except for single line flat-rated residential and business rates. Rates for these services are initially set at the corresponding rates charged by each rate-regulated utility as of January 31, 2005. These monthly rates may be increased by up to \$1 per year for residential service, or \$2 per year for business service, beginning July 1, 2005, until June 30, 2008. However, the residential rate cannot exceed \$19 per month and the rate for single line business service may not exceed \$38 per month during that time period.

Thus, while HF 277 deregulates most local exchange service retail rates, it continues rate regulation of two significant services: flat-rated residential and business lines. If these services are subject to effective competition, they should also be deregulated. On this basis the Board is commencing this proceeding.

APPLICABLE LEGAL STANDARDS

Iowa Code § 476.1D, as amended, requires that the Board deregulate a communications service or facility if the Board determines that the service or facility is subject to effective competition. In making that determination, the Board must consider, among other factors, (1) whether a comparable service or facility is available from a supplier other than the telephone utility and (2) whether the resulting market forces are sufficient to assure just and reasonable rates without regulation. Iowa Code § 476.1D(1)"a." The amended statute also requires that when

considering market forces in the market proposed to be deregulated, the Board shall consider factors that include, but are not limited to, the presence or absence of all of the following: wireless communications services, cable telephony services, Voice-over Internet Protocol (VoIP) services, and economic barriers to the entry of competitors or potential competitors in that market. Iowa Code § 476.1D(1)"b."

The Board has promulgated rules to aid in determining whether a service or facility is subject to effective competition. Subrule 199 IAC 5.6(1) provides that the Board may consider the following criteria when making this determination:

- a. The ability or inability of a single provider to determine or control prices;
- b. The ease with which other providers may enter the market;
- c. The likelihood that other providers will enter the market;
- d. The substitutability of one service or facility for another; and,
- e. Other relevant considerations.

199 IAC 5.6(1). The rules also specify additional criteria the Board may consider in determining whether a service or facility should continue to be subject to service quality regulation, notwithstanding the existence of effective competition. See 199 IAC 5.6(2).

The Board has adopted these rules to assist in determining where effective competition exists. The factors described in these rules are consistent with well-established economic theories regarding competitive markets that are widely used, in one form or another, by nearly all states. The determination of effective competition in a market, compared to the simple presence of multiple providers, is significant to

an analysis for deregulation since competition must be sufficient to prevent anti-competitive behavior upon deregulation. The mere presence of other providers in the market, by itself, is not enough to say that a market is effectively competitive. Rather, a finding of effective competition means that the current level of competition is sufficient to discipline prices and ensure reasonable service quality.

OVERBUILT MARKETS

As described above, HF 277 effectively deregulates rates for most retail business and residential local exchange service throughout Iowa, but some providers will continue to provide single line flat-rate service under some form of rate regulation until at least July 1, 2008. As such, the Board believes that there may be some exchanges in Iowa where effective competition exists and where this form of regulation is unnecessary.

The Board's evaluation of competitive markets to date has focused on communities where competitors have overbuilt incumbent facilities and obtained a market share greater than 50 percent for both residential and business customers. In Docket No. INU-04-1, 21 specific communities were considered for deregulation based on these two criteria. During the course of that proceeding, other communities were identified where competitors have substantially overbuilt the incumbent's network, but had not yet acquired 50 percent of the market. Therefore, in addition to the statutory factors and the criteria listed in the Board's rules, the Board will consider additional factors in its analysis of competitive markets in the communities where competitors have overbuilt the incumbent's facilities. Those factors may include, but

are not limited to, the number of competitive local exchange carriers (CLECs) providing service in the exchange area, the quality of service provided, the number of interconnection agreements that the CLECs have with the incumbents, the price of wholesale rates, the rates for unbundled network elements (UNEs), the number of switches or collocation points used by the CLEC, customer satisfaction measurements, and retail price comparisons for basic service.¹

The Board has identified 31 communities as having CLECs that have overbuilt the incumbent local exchange carriers' (ILECs) facilities, but have a market share of less than 50 percent. Based on the availability of a competing local exchange service to most customers from two providers with separate networks, the Board proposes to deregulate all local telecommunications services in the following communities:

Algona	Eagle Grove	Muscatine
Alta	Greene	Onawa
Belle Plaine	Grundy Center	Orange City
Bennett	Guthrie Center	Osage
Cambridge	Hartley	Oyens
Carter Lake	Humboldt	Paullina
Cedar Rapids	Manning	Reinbeck
Clarion	Marble Rock	Slater
Correctionville	Marengo	Wapello
Crescent	Marion	Waukee
Davenport		

Since the completion of the Board's telecommunications competition survey in 2003 and any updated responses received as part of Docket No. INU-04-1, market

¹ "State Analysis of Competition in the Telecommunications Markets: Results of an NRR I Survey," NRR I Report, October 2003. The NRR I survey may be viewed at www.nrr i.org.

shares in these listed communities may have changed. Therefore, the Board requests updated survey responses from all carriers that provide local voice service in these listed communities. The Board also requests that all carriers in these communities that provide UNEs for competitors also submit wholesale information on the number of inter-office trunks, UNE loops (UNE-L), UNE platforms (UNE-P),² and switching elements that are provided to each competitor.

ALTERNATIVES TO UNE-P

In August 2003, the Federal Communications Commission (FCC) issued its Triennial Review Order (TRO)³ wherein the FCC found that if an ILEC can demonstrate that three or more CLECs are using their own facilities, in whole or in part, to compete with the incumbent, then the ILEC should no longer be required to offer a UNE-P to its competitors in that market. Upon review of this portion of the TRO, a three-judge panel of the D.C. Circuit Court of Appeals found that the FCC erred in maintaining competitors' mass-market access to unbundled switching and inter-office transport and remanded this portion to the FCC for the development of new rules regarding unbundling.⁴ On February 4, 2005, the FCC released its newly-adopted rules for the network unbundling obligations of ILECs. The new rules

² Note: An unbundled network element platform is a complete set of all the network elements necessary to provide local exchange service.

³ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, and 98-147, "Report and Order on Remand and Further Notice of Proposed Rulemaking." (Rel. August 21, 2003).

⁴ *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

eliminated unbundled access to mass market circuit switching and UNE-P while retaining unbundled access to high-capacity loops and transports.

In anticipation of UNE-P no longer being made available to CLECs, Qwest Corporation (Qwest) developed a replacement offering, Qwest Platform Plus (QPP), which offers loop, switching, and vertical features to CLECs that had once purchased UNE-P from Qwest. In a July 20, 2004, press announcement, Qwest stated that QPP would be equivalent to UNE-P in price through December 31, 2004, at which point the price would rise incrementally during a transition period from January 2005 to January 2007. Qwest projected an average increase of less than \$5 by the end of the transition period.

On July 16, 2004, Qwest and MCImetro Access Transmission Services, LLC, signed what Qwest has referred to as the definitive agreement with regards to replacing UNE-P with QPP. The Board has seen a few adoptions of the QPP agreement by other CLECs, but anticipates that this number will increase as CLECs that are currently using UNE-P will have to decide between QPP, installation of a switch and utilizing UNE-L, or dropping out of the market due to an increase in cost of providing service.

The Board seeks comments regarding whether Qwest's QPP product is an adequate replacement for UNE-P arrangements in interconnection agreements with competitive carriers. Specifically, the Board seeks comments from competitors that currently offer service using UNE-P regarding how a transition to a QPP product will affect their ability to continue to provide service. The Board also requests comments

regarding whether those competitors will be using QPP or whether they anticipate using other alternatives, such as UNE-L and their own switching, or whether they intend to withdraw from the market.

SUBSTITUTIONS FOR WIRELINE SERVICE

Iowa Code § 476.1D(1)"a" directs the Board to consider whether a comparable service or facility is available from a supplier other than the telephone utility when determining whether to deregulate an exchange or service. Since the adoption of HF 277, the Board is also required to consider the presence or absence of technologies such as wireless, cable telephony, and VoIP when considering market forces for purposes of deregulation. See HF 277, Iowa Code § 476.1D(1)"b" (as amended).

Since the initiation of Docket No. INU-04-1, the telecommunications marketplace has undergone some significant changes. The FCC recently ruled that VoIP is not subject to state regulation⁵ and a current FCC proceeding is considering various legal and regulatory questions surrounding this technology.⁶ In addition, the FCC recently adopted a report on the state of competition in the wireless industry wherein the FCC stated that the nationwide penetration rate for wireless services is

⁵ *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, "Memorandum Opinion and Order" WC Docket No. 03-211 (issued Nov. 12, 2004) (determining that the type of Internet telephony service offered by Vonage Holdings Corp. is not subject to state jurisdiction).*

⁶ *In the Matter of IP-Enabled Services, WC Docket No. 04-36.*

approximately 54 percent of the population and the average minutes of use per subscriber is continuing to increase.⁷

The Board seeks comments regarding the impact that VoIP, cable telephony, and wireless services have on the telecommunications industry in Iowa, specifically as competitive alternatives or complements to wireline services. In addition, the Board seeks comments from interested parties regarding the type of data that should be collected from VoIP, cable telephony, and wireless providers and how that information should be obtained to facilitate the determination of market share.

CONFIDENTIAL TREATMENT AND PROTECTIVE ORDER

As part of the proceeding in Docket No. INU-04-1, the Board directed certain local exchange service providers to file updated responses to the Board's 2003 survey of local exchange service providers in Iowa. The updated responses included information that many companies considered to be trade secrets or otherwise entitled to confidential treatment, so many of the responses were filed with a request for confidential treatment pursuant to 199 IAC 1.9. On July 12, 2004, the Board issued an order in Docket No. INU-04-1 that granted confidential treatment to the updated survey responses pursuant to 199 IAC 1.9 and implemented a protective order that outlined the conditions under which participants could view survey information that was otherwise determined to be confidential.

⁷ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, "Ninth Report,"* Docket No. FCC-04-216 (released September 9, 2004).

In this proceeding, the Board requests updated survey responses from all carriers that provide local voice service in the 31 specified communities. These responses will also likely include information that may be considered trade secrets or are otherwise entitled to confidential treatment. Therefore, the Board will grant confidential treatment for the information submitted in the updated survey responses pursuant to Iowa Code § 22.7(3) and 22.7(6) and will issue a protective order, similar to that used in Docket No. INU-04-1, to outline the conditions under which participants to this proceeding can view the submitted information.

Iowa Code § 22.7(3) provides confidential treatment for trade secrets which are recognized and protected as such by law. The material requested of the carriers in the 31 specified communities as part of the updated survey includes specific line count information. The Board finds that line count information constitutes a trade secret under Iowa Code § 550.2(4) as it derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by a person able to obtain economic value from its disclosure. The Board finds that this information, if released, would provide an advantage to competitors.

Iowa Code § 22.7(6) provides confidential treatment to public records that are reports to government agencies and which, if released, would give advantage to competitors and would serve no public purpose. The Board finds that the responses to the updated survey constitute a report to a government agency and the Board finds that the release of the information would serve no public purpose.

Pursuant to this order, the participants to this proceeding shall have access to information that is filed with the Board as confidential under the conditions specified in Attachment A to this order. Those conditions may be briefly described as follows:

1. The information is to be used solely for purposes of this proceeding or any subsequent, directly-related proceedings;
2. Only the attorneys for the participant and expert witnesses (who are not otherwise involved in advising the party on business development, pricing, marketing, product development, or related matters) (and their associates as necessary) in this proceeding will have such access;
3. The information shall not be shared with persons responsible for the participants' marketing, pricing, and product or service development;
4. All persons proposed to have access to the confidential information for purposes of the proceeding must be identified by the participant and execute a document acknowledging this protective order and agreeing to be bound by the order;
5. In the event that the participant makes a subsequent filing, or intends to provide testimony at hearing, utilizing the confidential information, it shall make every effort to protect the confidential information; and,
6. Any participant desiring to opt out of the Board's protective order and relinquish its access to the confidential information must do so in writing and shall then not have access to any such confidential information unless and until the participant opting out negotiates a separate confidentiality agreement with the other participant or otherwise seeks access in accordance with the Board's rules.

Thus, if a participant desires access to the confidential material filed with the Board, but does not wish to negotiate a separate confidentiality agreement with the participant that originally submitted the confidential material (the producing participant), then the participant seeking access shall submit a data request to the producing participant requesting the information. The data request should be accompanied by a written statement acknowledging this protective order and

identifying each person who will be reviewing or have access to the information, by name and job title or other job description.

The Board emphasizes that it will not provide access to the confidential material through its Records and Information Center, as the Board has no process in place for verifying participant status or otherwise applying the requirements of this order on a day-to-day basis. The participants are to obtain the information from the producing participant.

INITIATION OF FORMAL PROCEEDING

Pursuant to 199 IAC 5.3(1), the Board will initiate a formal notice and comment proceeding, identified as Docket No. INU-05-2, proposing to consider whether residential and business local exchange service in the 31 communities identified in this order should be deregulated. The Board also seeks comments regarding the nature of Qwest's QPP product as a replacement for UNE-P arrangements in interconnection agreements with competitive carriers and whether VoIP, wireless service, or cable telephony are comparable to or substitutions for wireline service.

The Board intends to develop a complete evidentiary record concerning the application of the criteria in 199 IAC 5.6(1), along with the additional criteria discussed in this order, to the identified services. Participants in this docket will be permitted to file sworn statements of position and counterstatements, pursuant to 199 IAC 5.4. An oral presentation, at which all participants will be permitted to cross-examine other participants, will be held pursuant to 199 IAC 5.3(4) and 5.5.

NOTICE

The Board's rules require that upon docketing a petition for deregulation of a telecommunications service or facility, the Board will cause notice of the proceeding to be published in the Iowa Administrative Bulletin and the Board may require specific notice to persons identified as competitors. 199 IAC 5.3(3). The Board will direct the Executive Secretary to serve a copy of this order on each telecommunications carrier with a tariff on file with the Board.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. A formal notice and comment proceeding, identified as Docket No. INU-05-2, is initiated proposing to consider deregulation of the services described in this order, pursuant to Iowa Code § 476.1D (2003), as amended, and 199 IAC 5.
2. The Executive Secretary of the Board is directed to cause notice of these proceedings to be published in the Iowa Administrative Bulletin in the form attached to this order. In addition, a copy of this order shall be mailed to each telecommunications carrier with a tariff on file with the Board.
3. The following procedural schedule is established:
 - a. Any interested person may file, on or before June 13, 2005, a statement of position concerning any of the issues specifically addressed in this order. Statements of position must substantially comply with 199 IAC 2.2(2). Ten copies must be filed with the original.

b. Any person filing a statement of position may file a counterstatement replying to the comments of other participants no later than July 18, 2005. The original and ten copies must be filed with the Board and copies must be served upon all participants. Counterstatements must substantially comply with 199 IAC 2.2(3).

c. All statements and counterstatements shall be sworn and shall be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

d. An oral presentation is scheduled for the purpose of taking sworn testimony concerning the statements and counterstatements. The oral presentation shall be held August 16, 2005, beginning at 10 a.m. in the Board's hearing room at 350 Maple Street, Des Moines, Iowa. All persons filing written statements shall have at least one witness available at the oral presentation who may be cross-examined on the subject matter of the written statement. Cross-examination may be by the Board, the Consumer Advocate Division of the Department of Justice, and other participants as the Board may deem appropriate to develop the record fully. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 515-281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

4. All ILECs and CLECs providing service in the exchanges listed in this order shall file updated survey responses for those exchanges. The updated

responses shall be filed on or before June 13, 2005, and shall include data as of May 1, 2005. A copy of the survey form is attached to this order as Attachment B. If assembling data as of May 1, 2005, is likely to present an undue burden for an ILEC or CLEC, the company may file a request for authorization to use other data. The request, which must be filed on or before May 23, 2005, shall specify the reason that the May 1, 2005, data would be unduly burdensome and shall identify the data that is available and proposed for use.

5. The updated survey responses shall be granted confidential treatment pursuant to Iowa Code §§ 22.7(3) and 22.7(6) and 199 IAC 1.9.

6. The Board hereby enters this protective order as described in Attachment A, which is incorporated herein by this reference.

7. Within 14 days of the date of this order, any participant may file a motion to modify the terms of this protective order, specifically stating the proposed modification and the reasons in support of the proposal.

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 13th day of May, 2005.

UTILITIES DIVISION [199]

NOTICE OF INTENDED ACTION

The Utilities Board (Board) hereby gives notice that on May 13, 2005, the Board issued an order in Docket No. INU-05-2, In re: Deregulation of Single Line Flat-Rate Local Exchange Services in Competitive Markets, "Order Initiating Notice and Comment Proceeding," pursuant to Iowa Code § 476.1D, as amended by HF 277, to consider whether single line flat-rate local exchange service in 31 Iowa exchanges should be deregulated.

Copies of the Board's complete order initiating notice and comment proceeding may be obtained from the Board by calling 515-281-6240 or the Board's web page, <http://www.state.ia.us/iub>.

Any interested person may file, on or before June 13, 2005, a statement of position concerning the possible deregulation of single line flat-rate local exchange service in any of the 31 Iowa exchanges. Statements of position must substantially comply with 199 IAC 2.2(2). Ten copies must be filed with the original. All written statements should clearly state the author's name and address and should make specific reference to Docket No. INU-05-2.

Any person filing a statement of position may file a counterstatement replying to the comments of other participants no later than July 18, 2005. Ten copies must be filed with the original and copies must be served upon all participants filing

statements to which the counterstatement responds. Counterstatements must substantially comply with 199 IAC 2.2(3).

All statements and counterstatements shall be sworn and directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

An oral presentation is scheduled, pursuant to 199 IAC 5.3(4) and 5.5, for the purpose of taking sworn testimony concerning the statements and counterstatements. The oral presentation shall be held August 16, 2005, beginning at 10 a.m. in the Board's hearing room at 350 Maple Street, Des Moines, Iowa. All persons filing written statements shall have at least one witness available at the oral presentation who may be cross-examined on the subject matter of the written statement. Cross-examination may be by the Board, the Consumer Advocate Division of the Department of Justice, and other participants as the Board may deem appropriate to develop the record fully. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 515-281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

May 13, 2005

/s/ John R. Norris

John R. Norris
Chairman

ATTACHMENT A

PROTECTIVE ORDER

1. On May 13, 2005, the Iowa Utilities Board (Board) initiated this proceeding to consider whether certain local exchange services are subject to effective competition and should be deregulated pursuant to Iowa Code § 476.1D and 199 IAC 5. Some of the participants to this proceeding seek documents in this proceeding from one or more of the other participants that contain proprietary or confidential information and, therefore, should be made available only pursuant to a protective agreement. Consequently, the Board is entering this protective order to ensure that the documents considered by the producing participant to be confidential and proprietary are afforded protection but are also available to other participants on reasonable terms. This protective order does not constitute a resolution of the merits concerning whether any confidential information would be released publicly by the Board upon a proper request.

2. *Non-disclosure of stamped confidential documents.* Except with the prior written consent of the producing participant, or as hereinafter provided under this order or any subsequent Board order, neither a Stamped Confidential Document nor the contents thereof may be disclosed by a receiving participant to any person. A "Stamped Confidential Document" shall mean any document that has been submitted to the Board pursuant to a request for confidential treatment and bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL" to signify that it contains information that the producing participant believes should be subject to protection. For purposes of this order, the term "document" means all written, recorded, electronically stored, or graphic material, whether produced or created by any participant or another person.

3. *Permissible disclosure.* Subject to the requirements of paragraph 5, Stamped Confidential Documents may be reviewed by counsel for a receiving participant who are actively engaged in the conduct of this proceeding, provided that those counsel seeking access are not involved in competitive decision-making; i.e., counsel's activities, association, and relationship with a client that are not such as to involve counsel's advice and participation in any or all of the client's business decisions made in light of similar or corresponding information about a competitor. Subject to the requirements of paragraph 5 and subject to the obligation to secure the confidentiality of Stamped Confidential Documents in accordance with the terms of this Agreement, such counsel may disclose Stamped Confidential Documents to: (i) the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in this proceeding; (ii) the receiving participant's staff members involved in this proceeding; (iii) any outside consultant or expert retained for the purpose of assisting counsel in

these proceedings and who undertakes not to become involved during the pendency of this proceeding and two years thereafter, either in the analysis of underlying business decisions or the making of business decisions of any competitor, or any customer (other than a customer who purchases tariffed products only) of, or person who has a non-disclosure agreement with the producing participant; (iv) employees of such counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving data or designing programs for handling data connected with this proceeding; and (v) employees of third-participant contractors performing one or more of these functions. The producing participant shall have the right, at its option, to impose reasonable restrictions on the review and disclosure of Stamped Confidential Documents containing highly sensitive information and designated as "Highly Sensitive." Any participant may seek relief from the Board from any restrictions imposed by another participant on information claimed to be highly sensitive.

4. *Access to confidential documents.* Counsel described in paragraph 3 shall have the obligation to ensure that access to Stamped Confidential Documents is strictly limited as prescribed in this order. Such counsel shall further have the obligation to ensure (i) that Stamped Confidential Documents are used only as provided in this order; and (ii) that Stamped Confidential Documents are not duplicated except as necessary for use in these proceedings.

5. *Procedures for obtaining access to confidential documents.* In all cases where access to Stamped Confidential Documents is permitted pursuant to paragraph 3, and before reviewing or having access to any Stamped Confidential Documents, each person, other than counsel, seeking such access shall execute the Acknowledgment of Confidentiality in the form attached hereto as Exhibit A, which the receiving counsel will retain on file, prior to such person's reviewing or having access to any such Stamped Confidential Documents.

6. *Use of confidential information.* Counsel described in paragraph 3 may, in any documents that they file in this proceeding, refer to information found in Stamped Confidential Documents or derived therefrom (hereinafter, "Confidential Information"), but only if they comply with the following procedure:

a. Any portion of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings.

b. The portions of pleadings containing or disclosing Confidential Information must be covered by a separate letter to the Executive Secretary of the Board referencing this order.

c. Each page of any participant's filing that contains or discloses Confidential Information subject to this order must be clearly marked "Confidential."

d. The confidential portion(s) of the pleading shall be served upon the Executive Secretary of the Board and the participants to this agreement. Such confidential portions shall be served under seal and shall not be placed in the Board's public files. A participant filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Board's public files.

e. The producing participant shall have at least 14 days after the filing of sealed Confidential Information to seek confidential treatment pursuant to the Board's rules.

f. The receiving participant shall exercise good faith to advise the producing participant of the anticipated filing of sealed Confidential Information as soon as possible prior to the filing.

7. *No waiver of confidentiality.* Disclosure of Stamped Confidential Documents or Confidential Information as provided herein by any person shall not be deemed a waiver by the producing participant of any privilege or entitlement to confidential treatment of such documents or information. Reviewing participants, by viewing Stamped Confidential Documents or Confidential Information: (a) agree not to assert any such waiver; (b) agree not to use information derived from any Stamped Confidential Documents or Confidential Information or to seek disclosure in other proceedings; and (c) agree that accidental disclosure of Stamped Confidential Documents or Confidential Information by the receiving participant shall not be deemed a waiver of any privilege or entitlement as long as the receiving participant takes prompt remedial action.

8. *Subpoenas by courts or other agencies.* If a court, law enforcement authority, or another administrative agency subpoenas or orders production of Stamped Confidential Documents or Confidential Information that any participant has obtained under terms of this order, that participant shall promptly notify the producing participant of the pendency of such subpoena or order. Consistent with the independent authority of any court or administrative agency, such notification must be accomplished such that the producing participant has full opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document or Confidential Information.

9. *Client consultation.* Nothing in this order shall prevent or otherwise restrict any participant's counsel from rendering advice to its clients relating to

the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Confidential Documents; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not disclose Stamped Confidential Documents or Confidential Information.

10. *Violations of agreement.* Persons obtaining access to Stamped Confidential Documents or Confidential Information under this Agreement shall use the information solely for the preparation and conduct of this proceeding and any subsequent judicial or administrative proceeding arising directly from this proceeding and, except as provided herein, shall not use such information for any other purpose, including business, governmental, commercial, or other administrative, regulatory, or judicial proceedings. Should any person that has obtained access to Stamped Confidential Documents or Confidential Information under this order violate any of its terms, the participant shall immediately convey that fact to the producing participant. Further, should such violation consist of improper disclosure of a Stamped Confidential Document or Confidential Information, the violating participant shall take all necessary steps to remedy the improper disclosure. The Board has full authority to fashion appropriate sanctions for violations of this order.

11. *Prohibited copying.* If, in the judgment of the producing participant, a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited," and no copies of such document, in any form, shall be made. Application for relief from this restriction against copying may be made to the Board, with notice to counsel for the producing participant.

12. *Termination of proceeding.* The provisions of this order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding (which includes any administrative or judicial review), Stamped Confidential Documents and all copies of same shall be destroyed. No material whatsoever derived from Stamped Confidential Documents may be retained by any person having access thereto, except counsel to a receiving participant (as described in paragraph 3) may retain, under the continuing strictures of this order, two copies of pleadings containing Confidential Information prepared on behalf of that receiving participant.

EXHIBIT A

ACKNOWLEDGEMENT OF PROTECTIVE ORDER

Iowa Utilities Board Docket No. INU-05-1

I have been presented with a copy of the Protective Order issued by the Iowa Utilities Board in Docket No. INU-05-1. I have read the Protective Order and agree to be bound by each and every term of the Agreement.

Dated _____, 2005.

[Signature of person requesting
review of Stamped Confidential
Information]

[Full Name]

[Title]

[Company]

[Permanent Address]

Iowa Utilities Board
INU-05-2 Telecommunications Competition Survey for Retail Local Voice Services

Competition Survey Instructions and Guidelines

This survey only addresses retail local voice services being provided to consumers within the state of Iowa. This survey instrument is divided into three sections. Part I of this survey requests a physical count on the number of customer connections for which a service provider is billing consumers for retail local voice service. Part Two requests information on the recurring monthly pricing of the retail local voice services offered to consumers. Part III asks for information on how your organization advertises the availability of services to consumers. All requested information is as of **May 1, 2005**. Listed below are a few definitions taken in part from the Iowa Administrative Code (IAC) that should help in defining the scope of this survey.

“Local service” means telephone service furnished between customers or users located within an exchange or service area. (199 IAC 22.1(3).)

“Exchange area” or “Service area” means the general area in which the telephone utility holds itself out to furnish local telephone service. (199 IAC 22.1(3).)

For the purpose of this survey, Retail Local Voice Service Connections or the functional equivalent are facilities that provide voice grade access to the public switched network that includes local usage, dual tone multi-frequency signaling or its functional equivalent, access to emergency services, access to operator services, access to interexchange services, and access to directory assistance. Toll limitation for qualifying low-income consumers is not included in this list of functionalities since carriers requesting federal “Eligible Telecommunications Carrier (ETC)” status have been granted a waiver of this provision. (199 IAC 39.2(1).)

PART I: Customer Connections

The purpose of this portion of the survey is to obtain actual counts of the number of retail local voice service connections being furnished by each carrier to end users or customers in the various communities of Iowa. Many different types of facilities and technologies are used within the state to provide retail local voice services. Count customer connections based on how customers are billed rather than how services are provisioned. For the purpose of this survey, retail local voice services or the functional customer connection equivalents must be capable of providing service functionalities as defined in the previous paragraph and must be producing billed revenues for the service provider.

Column ----- Column Description ----- Explanation

- (a) Community Name – Community Name
- (b) Exchange Name or Service Area – General area or location where telephone service utility holds itself out to furnish retail local voice service.
- (c) Service Provider Type – Incumbent or Competitor
- (d) How the Service is Provisioned:
 - F = Facilities Based owned by the provider
 - U = Service provided using leased or purchased UNEs
 - R = Service provided through the use of resale facilities.
 - C = Service provided by using a combination of owned facilities and purchased UNEs
- (e) NPA-NXX – Each Number Plan Area-NXX as assigned to your organization by NANPA.
- (f) Number of Retail Local Service Connections or Functional Equivalent for each NPA-NXX – Numerical count of the quantity of retail local voice connections provided to end users. Please provide counts, if possible, based on the service being provided as being residential (RES) or business (BUS). If offered services are not distinguished as either residential or business, enter the counts in the combination (COMB) column.

PART II: Pricing Information

The purpose of this portion of the survey is to obtain pricing information on retail local voice service. Local service providers often provide numerous calling plans for consumers in specific areas and local service plans vary by service provider. Please list all the local service plans offered in each of the exchanges or service areas where service is provided. Local service plans or packages may also include other services, such as regional toll calling, custom calling features, or extended area calling service.

Column ----- Column Description ----- Explanation

- (g) Exchange Name or Service Area – Same as column (b).
- (h) NPA-NXX – Same as Column (e).
- (i) Type of service or service plan – Common name of the service or plan as sold by the service provider.
- (j) Monthly Rate – Recurring monthly dollar amount for the service being provided.
- (k) Recurring Monthly End User Charges – Charges added to the consumer billing as part of the charges for receiving service.
- (l) Other Monthly Recurring Charges – Charges that are added to the end users bill that are not usually considered to be part of the rates for recovering the costs associated with the service. These charges could include assessments for 911/E911, property tax surcharges, number portability charges or local fees, taxes, and surcharges. **Do not include federal universal service charges, state taxes, or federal taxes.** Please identify each charge.
- (m) Service or Service Plan Details – Briefly describe the service and the components of each plan. Explanations could include: residential single line service, business multi-line service, includes custom calling features, regional calls included, 500-minute plan with 120 minutes of 7 AM to 7 PM usage, etc.

PART III: Advertising / Marketing

This section of the survey is structured to gather information on how service providers advertise or market their retail local services. If your organization has advertised in Iowa in the past 12 months (May 2004 through April 2005), please respond to the questions in this section and provide copies of written or printable advertisements.

Other Information:

Should you have questions concerning this survey or desire to have an electronic copy, contact Larry Stevens at (515) 281-4725 or at larry.stevens@iub.state.ia.us. Survey forms are to be completed on or before **June 13, 2005**, and be filed with the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

Iowa Utilities Board
INU-05-2 Telecommunications Competition Survey for Retail Local Voice Services

As of May 1, 2005

Company Name _____ Address _____

Contact Person _____ Telephone _____ Fax _____

E-Mail _____

1.) Does your company currently provide local telecommunications retail voice service in the State of Iowa?

Yes No

2.) If yes, what type of Service provider:

ILEC CLEC Cable Wireless Other Explain: _____

3.) Please use the worksheet formats in the following three pages to provide information on the communities and locations in Iowa where you provide retail local voice services. Create additional pages as needed to complete this survey.

PART I: Customer Connections

Community Name (a)	Exchange Name or Service Area (b)	Service Provider Type: I=Incumbent C=Competitor (c)	How the Service is Provisioned: F = Facilities Based U = UNEs R = Resale C = Combination (d)	NPA-NXX (e)	Number of Local Voice Service Connections or Functional Equivalents for Each NPA-NXX (f)		
					RES	BUS	COMB

Iowa Utilities Board

INU-05-2 Telecommunications Competition Survey for Retail Local Voice Services
As of May 1, 2005

PART III: Advertising / Marketing

Company Name _____

1. During the past 12 months (May 2004 – April 2005) has your organization advertised the availability of retail local service, by itself or included as a service in a package offering, to any consumers in the State of Iowa?

Yes No

2. In how many months of the last 12 did your organization advertise? _____ (Answer: 0-12)

3. If you answered yes to question 1, how has your organization advertised (mark all that apply):

_____ Newspaper _____ Radio _____ Telemarketing
_____ Television _____ Billing Insert
_____ Internet (other than web site) _____ Direct Mailing

Other. Please list each:

4. If the advertisement has been in a written or printable format, please attach a photocopy of each advertisement to the completed survey. If the survey is being completed in an electronic format, advertisements can be scanned and returned as electronic files.

