

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>LTDS CORPORATION,</p> <p style="padding-left: 100px;">Petitioner,</p> <p style="padding-left: 100px;">vs.</p> <p>IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. ARB-05-3</p>
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ARBITRATION ORDER

(Issued July 22, 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 has been identified as Docket No. ARB-05-3.

According to the petition, LTDS formally requested negotiations with Iowa Telecom on October 25, 2004, to produce an agreement for interconnection,

services, and network elements. Pursuant to 47 U.S.C. § 252(b)(1), either the incumbent local exchange carrier (ILEC) or the requesting carrier may petition a state commission to arbitrate any open issues by filing a request during the time period of 135 to 160 days after the date on which the request for negotiations was received.

On April 12, 2005, the Board issued an order docketing the petition for arbitration and scheduled a pre-hearing conference. Iowa Telecom filed its response to the arbitration petition on April 15, 2005.

A pre-hearing conference was held by telephone on April 21, 2005, at 10 a.m. Representatives from the Board staff, the Consumer Advocate Division of the Department of Justice (Consumer Advocate), LTDS, and Iowa Telecom participated in the call. The parties agreed to a procedural schedule that was adopted by the Board on May 6, 2005, and amended on May 13, 2005.

A hearing was held on May 24, 2005, for the purpose of receiving testimony and cross-examination of all witnesses. Both parties submitted initial briefs on June 6, 2005, and reply briefs on June 13, 2005.

STANDARD FOR ARBITRATION AND REVIEW

This arbitration was conducted pursuant to 47 U.S.C. § 252, which states in part:

- (c) Standards for arbitration. In resolving by arbitration under subsection (b) of this section any open issues and imposing conditions upon the parties to the agreement a State commission shall –
 - (1) ensure that such resolution and conditions meet the requirements of section 251 of this title,

including the regulations prescribed by the Commission pursuant to section 251 of this title;

- (2) establish any rates for interconnection, services, or network elements according to subsection (d) of this section; and
- (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

47 U.S.C. § 252(c).

Additionally, 47 U.S.C. § 252(e)(1) requires that any interconnection agreement adopted by negotiation or arbitration shall be submitted to the state commission for approval. Section 252(e)(2)(B) provides that a state commission may reject any portion of an interconnection agreement adopted by arbitration "if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section." Section 252(e)(3) further provides:

- (3) Preservation of authority. Notwithstanding paragraph (2), but subject to section 253 of this title, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

UNRESOLVED ISSUES

The parties agree that there are three issues to be resolved by the Board. The unresolved issues include:

Issue 1: Voice Traffic POI, Transport, and Cost of Voice Traffic

Issue 2: ISP-Bound Traffic

Issue 3: Loop Rates

The Board will discuss each of these issues separately.

ISSUE 1: Voice Traffic POI, Transport, and Cost of Voice Traffic

This issue concerns whether the parties will share the cost of transporting local traffic on each side of the Point of Interconnection (POI) where they exchange local traffic or whether the parties will pay the cost of transporting local traffic on their side of the POI only. The issue also concerns the rates, terms, and conditions of the cost of the transport. The LTDS-Iowa Telecom POIs are generally located at Iowa Telecom switches, meaning that nearly all the transport takes place between the POI and the LTDS switch.

There are three provisions of the Interconnection Agreement (Agreement) that are in dispute under this issue. Article V, Sections 3.3.1 and 4.2.4 concern the parties' differing positions on shared transport cost. Article V, Section 4.1.6 concerns the location of POIs in a local access transport area (LATA) where Iowa Telecom delivers local traffic. These sub-issues will be discussed separately.

A. Shared Transport Cost

LTDS Position

LTDS states that due to the current configuration of its network, LTDS interconnects with Iowa Telecom at an Iowa Telecom switch. (LTDS Brief, p. 1.) LTDS states that because the POI is already at an Iowa Telecom location, Iowa Telecom is relieved of any responsibility for transport of LTDS' local traffic to the POI.

(Id.) As such, it is LTDS' position that since both Iowa Telecom and LTDS are currently using 50 percent of the trunk's capacity, each carrier should pay 50 percent of the cost of the DS-1 transport trunk, a situation that is referred to as "relative use."

(Id. at 2-3.)

LTDS asserts that Federal law supports its relative use approach. The relevant Federal Communications Commission's (FCC's) rule states that

[T]he rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network.

47 CFR § 51.709(b).

In a related matter, LTDS disagrees with Iowa Telecom as to whether shared transport costs apply when an Iowa Telecom customer is in a different LATA than the LTDS switch. (LTDS Brief, p. 3.) LTDS asserts that since it has only a single switch in Fairfield, Iowa, but operates in three LATAs, this disagreement is significant. (Id.) LTDS states that the Agreement defines "transport" as "carriage of traffic from the POI to the terminating parties' host switch that serves the terminating customer."

(Id.) LTDS argues that the definition is without regard to LATA boundaries, nor is there anything in the Federal rules that would preclude cost sharing for interLATA transport. (Id. at 3-4.)

Iowa Telecom Position

Iowa Telecom believes that each party should bear its own transport costs for local traffic between the POI and its own switch, a situation that is referred to as a bill

and keep arrangement. (Iowa Telecom Brief, p. 3.) While Iowa Telecom agrees that LTDS and Iowa Telecom each use 50 percent of the relevant trunk capacity, Iowa Telecom asserts that compensation should not be exchanged for the transport and termination of traffic on the terminating carrier's side of the POI. (Id.)

Iowa Telecom rebuts LTDS' assertion that bill and keep arrangements only apply to the termination of traffic, rather than transport, by stating that both the Act and the FCC rules provide that bill and keep arrangements comply with Iowa Telecom's reciprocal compensation obligations with respect to both transport and termination. (Id. at 6.) Specifically, Iowa Telecom relies on 47 U.S.C. §§ 251(b)(5), 252(d)(2)(A), and 252(d)(2)(B), for support.

Section 251(b)(5) states:

- (b) Obligations of all local exchange carriers. Each local exchange carrier has the following duties:
 - * * *
 - (5) Reciprocal Compensation. The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

Section 252(d)(2)(A)(i) states:

- (A) For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5) of this title, a State commission shall not consider the terms and conditions of reciprocal compensation to be just and reasonable unless –
 - (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier.

Finally, section 252(d)(2)(B) states that "Section 252(d)(2)(A) should not be read as precluding arrangements that waive mutual recovery (such as bill-and-keep arrangements)."

Iowa Telecom also points to provisions of the FCC's rules implementing the reciprocal compensation provisions of 47 U.S.C. §§ 251 and 252 to support its position that bill and keep arrangements can apply to the entire reciprocal compensation relationship. Specifically, Iowa Telecom relies on 47 CFR § 51.701(e), which states:

[A] reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier.

Iowa Telecom also relies on 47 CFR § 51.705, which states:

- (a) An incumbent LEC's rates for transport and termination of telecommunications traffic shall be established, at the election of the state commission, on the basis of:
 - (1) The forward-looking economic costs of such offerings, using a cost study pursuant to Sec. 51.505 and 51.511;
 - (2) Default proxies, as provided in Sec. 51.707; or
 - (3) A bill-and-keep arrangement, as provided in Sec. 51.713.
- (b) In cases where both carriers in a reciprocal compensation arrangement are incumbent LECs, state commissions shall establish the rates of the smaller carrier on the basis of the larger carrier's forward-looking costs, pursuant to Sec. 51.711.

Section 51.713 of the FCC's rules defines bill and keep arrangements:

- (a) For purposes of this subpart, bill-and-keep arrangements are those in which neither of the two interconnecting carriers charges the other for the termination of telecommunications traffic that originates on the other carrier's network.
- (b) A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so, and no showing has been made pursuant to Sec. 51.711(b).
- (c) Nothing in this section precludes a state commission from presuming that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction and is expected to remain so, unless a party rebuts such a presumption.

Iowa Telecom also states that bill and keep has been the basis on which Iowa Telecom and LTDS have compensated each other for local traffic for a number of years. (Id. at 7.) In addition, Iowa Telecom suggests that the Board rules establish a presumption for bill and keep as the default arrangement for intercarrier compensation for interconnected local traffic. (Id.) Specifically, Iowa Telecom points to 199 IAC § 38.6(2), which states:

A facilities-based local utility may file a cost based tariff for monetary compensation for terminating local access service, provided its filing includes a showing that in six consecutive calendar months of mutual traffic exchange between it and another facilities-based local utility the total terminating to

originating traffic for the entire six-month period was unbalanced by a ratio of at least 55 percent terminating to 45 percent originating.

Iowa Telecom asserts that LTDS has not been able to overcome the presumption of bill and keep in favor of the relative use approach. (Id. at 9.) Iowa Telecom also rebuts LTDS' assertion that bill and keep arrangements only pertain to termination by stating that such an interpretation is unsupported by the Act and conflicts with Section 51.713 of the FCC rules. (Id.)

Finally, Iowa Telecom states that the FCC rules do not support the arrangement proposed by LTDS. (Id.) Iowa Telecom states that the arrangement proposed by LTDS involves LTDS charging Iowa Telecom for half of LTDS' out-of-pocket costs for interconnection trunks and Iowa Telecom charging LTDS for half of Iowa Telecom's out-of-pocket costs for interconnection trunks. (Id. at 8.) Iowa Telecom states that LTDS' proposed arrangement will result in circumstances in which the reciprocal compensation rate charged by LTDS will differ from that charged by Iowa Telecom and will conflict with the symmetrical rate requirement of 47 CFR § 51.711. (Id.) Iowa Telecom also argues the LTDS proposal would violate 47 CFR § 51.705(a) because the rates would not be based on a total-element long-run incremental cost (TELRIC) study.

Analysis

This issue requires a decision regarding how these parties will compensate each other for the transport and termination of local traffic. LTDS suggests that the parties compensate each other based on the proportion of the trunk capacity used by

each carrier. Iowa Telecom suggests that the parties should continue with a bill and keep arrangement and each bear its own transport costs for local traffic between the POI and its own switch.

The record demonstrates that transport is not precluded from a bill and keep arrangement in situations where traffic is reasonably balanced. Section 251(b)(5) of the Act states that Iowa Telecom has a duty to establish a reciprocal compensation arrangement with LTDS for both the transport and termination of telecommunications services. In addition, section 252(d)(2)(A) of the Act provides that the terms and conditions of that arrangement shall provide for reciprocal compensation by both LTDS and Iowa Telecom for costs associated with both transport and termination on each carrier's network facilities of calls that originate on the other carrier's facilities. Section 252(d)(2)(B) of the Act provides that section 252(d)(2)(A), discussed above, does not preclude bill and keep arrangements. Therefore, the Board does not agree with LTDS' assertion that bill and keep arrangements apply solely to termination of traffic and not to the transport of telecommunications services.

The Board recognizes that relative use arrangements are sometimes used in the industry. For example, it is an available option for reciprocal compensation in the Statement of Generally Available Terms (SGAT) submitted by Qwest Corporation (Qwest). However, the fact that relative use is used in some situations does not mean it should be imposed in all situations. Here, the network was configured based on a bill and keep regime. LTDS wants to change that regime because it is now more expensive. LTDS' proposed change would cause Iowa Telecom to bear part of

the cost of transport on LTDS' network. The burden is on LTDS to show why a change would be appropriate.

Iowa Telecom and LTDS operated under a bill and keep arrangement for a number of years. The amount of telecommunications traffic from LTDS' network to Iowa Telecom's network is generally balanced with the amount of traffic flowing in the opposite direction. (Tr. 177.) Thus, it would appear bill-and-keep is not inappropriate. While the issue of Iowa Telecom's increased cost for interconnection trunks was raised by LTDS, the Board is not persuaded to alter the established bill and keep arrangement based solely on this increase. Iowa Telecom demonstrated that its proposed rates are based on a TELRIC study (Iowa Telecom Response, p. 4-5). LTDS did not rebut the TELRIC study regarding these rates and ultimately agreed to Iowa Telecom's proposed rates. (Tr. 56-57.)

LTDS seems to argue that because there is a bill and keep assumption of equal traffic, then 47 CFR § 51.709 allows for the costs of the trunk to be half of the rate proposed by Iowa Telecom. (LTDS Brief, p. 2.) The record indicates that a shared transport arrangement, as suggested by LTDS, is usually applied in a situation where traffic from multiple carriers is being transported over the same transport link and the transport is literally shared. (Tr. 175.) In this case, the interconnection trunks at issue are not shared transport but dedicated facilities leased by LTDS to provide connectivity to its customers. They are not shared facilities in the way that the FCC intended the term to be used. (Tr. 176.) Moreover, LTDS did not offer a peak/non-peak usage study to go beyond the equal usage assumption, nor

did LTDS provide an example of shared transport costs in a competitive market. Based on the record in this proceeding, the Board cannot determine whether the imposition of relative use as suggested by LTDS accurately reflects costs imposed by various users.

For the foregoing reasons, the Board finds that it is appropriate for the parties to continue with a bill and keep arrangement for reciprocal compensation until such a time as either of the parties makes a showing of traffic imbalance or asymmetrical rates, as required by 47 CFR § 51.711.

Finally, LTDS seems to assert that the FCC's local interconnection rules apply when a CLEC switch is not located in the same LATA as the ILEC's end office switch that is originating or terminating the traffic. LTDS did not explain or provide legal support as to how its relative use concept applied to interLATA transport, nor did LTDS offer examples of where other CLECs are leasing interLATA transport under a similar shared cost system. As such, the Board finds that the record does support adoption of LTDS' position at this time.

The Board approves Iowa Telecom's proposed language for Article V, Sections 3.3.1 as follows:

Local Traffic. Parties will use two-way trunking for Local Traffic. Each party will establish transport on its side of the POI either by using its own network or by purchasing unbundled dedicated transport from the other party or another carrier. Each Party will pay 100% of the trunking and transport costs on its side of the POI.

The Board also approves the Iowa Telecom language for Article 5, Section 4.2.4 as follows with the exception of the last sentence (included below), which will be discussed as part of Issue 2:

Interoffice Transport. To transport Local Traffic, LTDS may acquire interoffice dedicated transport (IDT) between Iowa Telecom Wire Centers at the Non-Recurring and Recurring charges specified in Appendix D. LTDS may provide its own or lease at Iowa Telecom's tariffed rates local special access circuits to use as entrance facilities (formerly CLEC Dedicated Transport – CDT). LTDS may also lease local or interexchange special access circuits at Iowa Telecom's tariffed rates to transport ISP-bound traffic.

B. Location of POIs in the LATA (Article V, Section 4.1.6)

This issue involves the question of which party will designate the location of the POI for the exchange of local traffic.

LTDS Position

LTDS states that it is entitled under Federal law to designate where traffic is exchanged. (LTDS Reply Brief, p. 5.) LTDS states that when traffic is delivered at a remote, the inability to process that traffic at the remote means that traffic is not actually exchanged there; it is exchanged at the host. (Id.) LTDS also states that connecting with Iowa Telecom at a remote switch is not always efficient because Iowa Telecom's remotes are not capable of trunk-side switching. (Id.)

To support its position, LTDS cites to the FCC's *First Report and Order* issued on August 8, 1996.¹ The relevant paragraph states:

¹ See In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, CC Docket No. 185 (Issued August 8, 1996).

The interconnection obligation of section 251(c)(2), discussed in this section, allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic.

First Report and Order, ¶ 172.

Iowa Telecom Position

Iowa Telecom believes that LTDS must locate a POI in every exchange where LTDS receives Internet service provider (ISP) bound traffic, locates equipment, or expects Iowa Telecom to interconnect to another carrier to exchange traffic destined to LTDS. (Iowa Telecom Brief, p. 4.) Iowa Telecom states that if LTDS engages in any of these activities in an exchange, there must be a point at which LTDS' and Iowa Telecom's networks interface. (Id.) According to Iowa Telecom, such an interface would be a POI. (Id.)

In addition, Iowa Telecom states that the parties have agreed that Iowa Telecom will deliver local traffic to the closest POI if LTDS has more than one POI in a LATA. (Id.) Iowa Telecom states that there is no specification in the Agreement (Article 5, Section 4.1.6) regarding use of the POI closest to any particular switch. (Id.)

Analysis

The dispute in this issue centers on which of the two parties will designate the location of the POI for the exchange of local traffic. Section 251(c)(2)(B) of the Act states in part that each incumbent local exchange carrier has the duty to

[P]rovide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . at any technically feasible point within the carrier's network.

47 U.S.C. § 251(c)(2)(B).

The Board finds that both the language of the Act and the FCC's *First Report and Order* indicate that LTDS has the right to designate the location of the POI for the exchange of local traffic. Iowa Telecom has a duty under the Act to interconnect with LTDS at any technically feasible point within Iowa Telecom's network. In addition, the FCC's *First Report and Order* gives competing carriers, in this case LTDS, the ability to choose the most efficient point to exchange traffic with the incumbent, Iowa Telecom.

The Board finds that the Agreement language in Article V, Section 4.6.1 shall indicate that LTDS has the right to designate a POI for the exchange of local traffic at any technically feasible point of its choosing on the Iowa Telecom network, including at a host switch within the same LATA as the traffic being exchanged originates, even if there are other physical connections between Iowa Telecom and LTDS within that LATA.

The Board approves LTDS' language for Article V, Section 4.1.6 as follows:

The Parties will mutually designate at least one POI on Iowa Telecom's network within each LATA for the transfer of Local Traffic to be exchanged under this agreement. LTDS also will designate a POI in each host exchange where it: receives ISP traffic (including Internet-bound traffic); locates equipment; or expects Iowa Telecom to interconnect to another carrier to exchange traffic destined to LTDS. If LTDS has more than one POI in a

LATA, Iowa Telecom may deliver local traffic to the closest POI regardless of the location of any LTDS switch.

ISSUE 2: ISP-Bound Traffic

This issue concerns whether the parties will exchange ISP-bound traffic (data traffic as opposed to local traffic, which was discussed above) at a POI in each exchange where LTDS operates as a competitive local exchange carrier (CLEC) or whether the parties will exchange ISP-bound traffic only at Iowa Telecom host switching offices. The issue also concerns the rates, terms, and conditions of the cost of the transport associated with this specific traffic. In addition, Iowa Telecom seeks relief from any interconnection obligations under the Act in five exchanges where LTDS is currently providing only data service and not voice service.

LTDS Position

LTDS states that Iowa Telecom has already voluntarily agreed to provide terms, conditions, products, services, and rates pursuant to the interconnection agreement even where the traffic at issue is ISP traffic. (LTDS Brief, p. 5.)

Specifically, LTDS points to Article V, Section 3.1, a section not in dispute, which provides:

Traffic to be exchanged. The parties shall reciprocally terminate local, intraLATA toll, optional EAS, information service . . . [,] jointly provided IXC traffic . . . or other traffic the parties agree to exchange originating on each other's network using either direct or indirect network interconnections as provided in Section 4 or Section 5 herein.

(Tr. 170.)

LTDS argues that Iowa Telecom is operating contrary to the purpose of the Act by attempting to force LTDS to interconnect with Iowa Telecom at a remote switch, rather than at the host, for the purpose of transporting information services. (LTDS Reply Brief, p. 6.) LTDS states that if it is forced to interconnect data traffic in the remote wire center after the traffic has been transported back and forth to the host by Iowa Telecom, LTDS will then be forced to arrange its own transport between the remote and host for each remote, either through wireless connections or by leasing T-1 circuits from Iowa Telecom. (LTDS Brief, p. 6.) LTDS argues that interconnection at the host eliminates inefficient and unnecessary transport from a remote that is incapable of trunk-side switching. (Id. at 7.)

LTDS cites to a decision by the Court of Appeals for the Third Circuit to support its assertion that connecting at numerous remotes rather than at a single host is problematic. (Id. at 6.) Specifically, LTDS cites the following language:

To the degree that a state commission may have discretion in determining whether there will be one or more interconnection points within a LATA, the commission, in exercising that discretion, must keep in mind whether the cost of interconnection at multiple points will be prohibitive, creating a bar to competition . . . If only one interconnection is necessary, the requirement by the commission that there be additional connections at an unnecessary cost to the CLEC, would be inconsistent with the policy behind the Act.

MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvania, 271 F.3d 491, 517 (3rd Cir. 2001).

LTDS also claims that Iowa Telecom raises the issue of the five exchanges where LTDS provides only data services as an attempt to limit competition for Internet service in those exchanges. (LTDS Brief, p. 5.)

Iowa Telecom Position

Iowa Telecom rebuts LTDS' claim that Iowa Telecom is obligated to provide terms, conditions, products, services, and rates for ISP-bound traffic by arguing that Section 3.1 of the Agreement is a general provision concerning the types of traffic to be exchanged. (Iowa Telecom Brief, p. 12.) Iowa Telecom also states that Article V, Sections 3.2 and 3.3 explicitly provide for separate treatment of ISP-bound traffic from local traffic. (Id.) Iowa Telecom argues that because ISP-bound traffic differs from local traffic, the local exchange carrier interconnection concepts of the Agreement, such as maintaining the obligation for Iowa Telecom to bear the cost of transport from its switch to the POI, do not apply. (Id. at 16.)

Iowa Telecom asserts that ISP-bound traffic should be interconnected as interexchange traffic. (Id. at 13.) Iowa Telecom supports this argument by relying on the FCC's decision In re: Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001),² where the FCC held that local interconnection rules do not apply to ISP-bound traffic. (Id.)

Iowa Telecom argues that because ISP-bound traffic is considered interexchange traffic, not local traffic, Iowa Telecom has no obligation to provide interconnection, number portability, unbundled network elements, or collocation to

² Iowa Telecom points out on page 13 of its brief that this order has been remanded by the U.S. Court of Appeals for the D.C. Circuit in WorldCom, Inc. v. FCC, 288 F.3d 429 (D.C. Cir. 2002). The FCC's conclusion that ISP-bound traffic is not subject to reciprocal compensation has been left undisturbed, pending further analysis by the FCC.

LTDS in exchanges where LTDS is only providing ISP service. (Iowa Telecom Brief, p. 11.) In addition, Iowa Telecom asserts that ISP-bound traffic is beyond the scope of section 251(b)(5) of the Act and is therefore not subject to reciprocal compensation. (Id. at 17.) Specifically, Iowa Telecom cites to 47 CFR 51.305(b), which states that

A carrier that requests interconnection solely for the purpose of originating or terminating its interexchange traffic on an incumbent LEC's network and not for the purpose of providing to others telephone exchange service, exchange access service, or both, is not entitled to receive interconnection pursuant to section 251(c)(2) of the Act.

Iowa Telecom also cites 47 CFR 51.309(b):

A requesting telecommunications carrier may not access an unbundled network element for the sole purpose of providing non-qualifying services.

Analysis

While Issue 1 concerns the manner in which the parties will interconnect and bear the costs of the interconnection for local traffic, Issue 2 concerns the manner in which the parties will interconnect and bear the costs of the interconnection for ISP-bound traffic, which is not local, according to the FCC. The primary focus of this issue concerns whether LTDS is required to connect with Iowa Telecom at a remote switch in the exchange where it receives ISP-bound traffic or at the Iowa Telecom host switch that serves the remote. The FCC rules indicate that a CLEC using interconnection pursuant to section 251 of the Act may also utilize the same arrangements for information services as long as the CLEC is providing telecommunications services, that is, the data traffic may use the § 251

interconnection if it is ancillary to the local traffic. Specifically, 47 CFR § 51.100(b) states:

A telecommunications carrier that has interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well.

The record indicates that Iowa Telecom is offering a POI for voice traffic at the host switch. Pursuant to 47 CFR § 51.100(b), the same arrangement may be used by LTDS for information services. Therefore, in those exchanges where LTDS is offering telecommunications services or voice traffic, LTDS may also connect with Iowa Telecom at the host switch for ISP traffic.

The question the Board must consider is whether the same arrangement should be offered to LTDS in those five exchanges where LTDS is not providing voice services. It is well established that ISP-bound traffic is not subject to reciprocal compensation. See 47 CFR §§ 51.305(b), 51.309(b), and 51.100(b). As such, the bill and keep arrangement that is in place for the provision of voice services should not be offered to LTDS in the five exchanges where LTDS is not providing voice services, but is providing ISP services, if this situation continues.

The extent to which LTDS markets and sells its voice service has been an issue before the Board in prior proceedings. The Board was presented with the same general issue in Docket No. TCU-01-13. Ultimately, the Board ordered LTDS to file a revision to its tariff so that the tariff would list only the exchanges in which LTDS was actually providing, or soon would provide, voice service. ("Final Decision

and Order" issued January 9, 2002.) During the course of the hearing in this proceeding, however, LTDS conceded that it had not changed its tariff to include only those exchanges where it was providing voice service. (Tr. 96-97.) However, in this proceeding LTDS committed to having voice service in all the exchanges listed in its tariff, including the five ISP-only exchanges identified by Iowa Telecom, within three months. (Tr. 97.) Based on this commitment, the Board will allow the interconnection arrangement for the provision of ISP traffic in all of LTDS' exchanges for three months. At that time, if LTDS is still not providing voice local services in addition to ISP services in the five identified exchanges, or any others, Iowa Telecom will be relieved of all interconnection obligations under the Act in the exchanges where voice service is not being provided by LTDS.

The Board approves LTDS' proposed language for Article V, Section 3.3.3 as follows:

ISP-Bound Traffic. When Iowa Telecom customers originate the call, Iowa Telecom will establish and pay all costs for transport on its side of the POI. LTDS will establish and pay all cost of transport on its side of the POI. Iowa Telecom will choose the POI at any technically feasible point on the LTDS network. When LTDS customers originate the ISP-bound call, LTDS will then choose the POI at any technically feasible point on the Iowa Telecom network.

The Board approves Iowa Telecom's proposed language for Article V, Section 4.2.4 as identified in Issue 1, without the final sentence.

ISSUE 3: Loop Rates

This issue involves the appropriate rate to be charged for LTDS' use of Iowa Telecom's loops. Under the old interconnection agreement, the rate for a UNE loop was \$38.71 per month. In this proceeding, Iowa Telecom offers a TELRIC model run that produces a statewide average UNE loop rate of \$52.00 per month, with three pricing zones at \$27.65, \$38.71 and \$78.67. LTDS does not directly dispute Iowa Telecom's TELRIC model run, but argues the results should be rejected because it is simply too high and the effect will be reduced competition for Iowa customers. LTDS also disputes Iowa Telecom's proposed grouping of exchanges in the three proposed rate zones.

LTDS Position

LTDS states that the Board should disregard Iowa Telecom's loop cost model because it results in an outcome that is discriminatory, unjust, unreasonable, and unlawful. (LTDS Brief, p. 11.) LTDS asserts that TELRIC is not the sole requirement of a loop rate and that Iowa Telecom should not be allowed to offer any numbers it wants simply because LTDS has not sponsored its own cost study. (Id. at 10.)

LTDS also claims that Iowa Telecom's proposed rates are unreasonable because the lowest Zone 1 rate offered by Iowa Telecom, for copper only, is nearly twice what LTDS has been quoted for building fiber loops. (Tr. 50; LTDS Brief, p. 12.) LTDS states that nearly all of Iowa Telecom's proposed rates exceed what the market will bear for standard retail services. (Tr. 46-47; LTDS Brief, p. 12.)

LTDS submits Exhibit 6 to demonstrate rates that in LTDS' view would be justified as average loop rates because they would be non-discriminatory as compared to Iowa Telecom's internal value for the same product. (LTDS Brief, p. 13.) LTDS presents an alternative proposal based on application of Iowa Telecom's own formulas to a \$38.71 statewide loop average and a competitively neutral and more equitable distribution of lines across rate zones. (Id.) LTDS states that these rates are derived using the same approach and same formulas as the rates sponsored by Iowa Telecom. (Id. at 15.)

Iowa Telecom Position

Iowa Telecom asserts that its proposed UNE loop and sub-loop rates, including the manner in which such rates are grouped into geographic zones, should be adopted by the Board. (Iowa Telecom Brief, p. 17.) Iowa Telecom states that pursuant to 47 CFR § 51.503, a necessary condition for arbitrated UNE rates is that such costs must be based on forward-looking economic cost or proxy ceilings. (Id. at 17-19.) Iowa Telecom asserts that its proposed UNE loop rates are based on TELRIC methodology, which is a qualifying forward-looking economic cost. (Id. at 19.)

Iowa Telecom states that LTDS does not challenge that Iowa Telecom's proposed loop rates are TELRIC-compliant, but challenges the manner in which Iowa Telecom proposes to group exchanges into three geographic zones. (Id.) Iowa Telecom argues that its proposal complies with the federal requirements and should be approved. (Id.)

Analysis

The FCC requires that loop rates must be based upon a forward-looking economic cost, such as TELRIC, and they must be just, reasonable, and non-discriminatory. (47 CFR §§ 51.503, 51.505, 51.511.) In analyzing the first requirement, the Board finds that the record supports that the rates generated by the TELRIC study offered by Iowa Telecom must be used since arbitrated loop rates must be based upon TELRIC (47 CFR § 51.503(a)(1)) and the proposed Iowa Telecom loop rates are the only rates in this proceeding based upon TELRIC-generated costs. LTDS did not present its own TELRIC study and LTDS does not dispute that Iowa Telecom's proposed rates are TELRIC-compliant.

With respect to the second requirement, the Board finds that the record does not provide sufficient information to demonstrate that Iowa Telecom's rates are not just, reasonable, and non-discriminatory. While the Iowa Telecom rates may appear to be high, they are the only TELRIC-based rates in this record. The Board cannot arbitrarily reduce the TELRIC results based on LTDS' preference to pay less.

The Board also finds that the zone groupings offered by Iowa Telecom are reasonable. The record supports the finding that when all of the zones are considered, LTDS will pay less, as a total, than if it were paying \$38.71 for each loop like the other CLECs. (See, Exhibit 101.) Iowa Telecom's proposed average rate for exchanges in Zone 1 is \$27.65, and the proposed average rate for exchanges in Zone 2 is \$38.71. (See Exhibit 101.) Since all of LTDS' current exchanges fall into

Iowa Telecom's proposed Zone 1 or Zone 2 (with the exception of Eddyville), it is clear that LTDS will be paying less than \$38.71 per loop, on average.

LTDS does not dispute Iowa Telecom's argument that although it was initially offered the same \$38.71 rate that is offered to all other CLECs that purchase loops from Iowa Telecom, LTDS rejected the compromises made by the other CLECs in order for those CLECs to get a \$38.71 rate. In addition, the record demonstrates that the \$38.71 loop rate was not a TELRIC-generated rate. Therefore, the Board does not find the use of the non-TELRIC rate of \$38.71 as a basis for calculation of zones, as suggested by LTDS, is allowable.

The Board approves the UNE-loop and sub-loop rates and the geographic rate zones proposed by Iowa Telecom as follows:

ZONE	EXCHANGES	RATE
Zone 1	Forest City, Iowa to Pella, Iowa	\$27.65
Zone 2	Story City, Iowa to Keota, Iowa	\$38.71
Zone 3	Fairbank, Iowa to Benton, Iowa	\$78.67

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The interconnection agreement between LTDS Corporation and Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, shall incorporate the language adopted by the Board in this Arbitration Order.

2. Within 30 days of the issuance of this order, the parties shall submit an interconnection agreement consistent with the terms of this Arbitration Order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Margaret Munson
Executive Secretary, Deputy

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 22nd day of July, 2005.