

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>LTDS CORPORATION,</p> <p style="text-align:center">Complainant,</p> <p style="text-align:center">vs.</p> <p>IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM,</p> <p style="text-align:center">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-05-68</p>
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**ORDER DENYING REQUEST FOR EMERGENCY INJUNCTIVE RELIEF
AND DENYING FORMAL COMPLAINT PROCEEDINGS,
WITHOUT PREJUDICE**

(Issued November 23, 2005)

On November 15, 2005, LTDS Corporation (LTDS) filed with the Utilities Board (Board) a "Complaint and Request for Emergency Injunctive Relief" naming Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), as respondent. The complaint seeks emergency and permanent injunctive relief on an expedited basis, along with notice for purposes of civil penalties and damages, if available.

I. Summary of the complaint filed by LTDS

LTDS alleges that on November 9, 2005, Iowa Telecom sent a letter to LTDS notifying LTDS that on November 16, 2005, Iowa Telecom would cease providing

certain facilities and services to LTDS in the Centerville, Chariton, Eddyville, Keota, and Washington exchanges. The services in question were being provided by Iowa Telecom pursuant to an interconnection agreement between the parties; Iowa Telecom proposed to provide LTDS with retail services in the identified exchanges that would replicate, as closely as possible, the interconnection services LTDS had been receiving. Iowa Telecom proposed to take this action because, to the best of Iowa Telecom's knowledge, LTDS had not complied with the terms of the interconnection agreement that required LTDS to provide certain services in those exchanges by October 23, 2005.

On November 11, 2005, LTDS sent a response to Iowa Telecom agreeing that it would transition to retail services in the Washington exchange and explaining that LTDS had either met the service requirement in the other exchanges or had ordered facilities with which to meet that requirement, which LTDS believed to be sufficient to avoid disconnection of its interconnection services. LTDS asked Iowa Telecom to withdraw its proposed disconnection by noon on Monday, November 14, 2005.

LTDS did not receive the requested withdrawal, so on the afternoon of November 15, 2005, LTDS filed its complaint and request for emergency relief. LTDS alleges that Iowa Telecom's threatened disconnection would violate certain provisions of Iowa Code §§ 476.20 and 476.100, along with 47 U.S.C. §251(a)(1). LTDS requested an expedited complaint proceeding pursuant to Iowa Code § 476.101(8), which provides that when a complaint is filed with the Board alleging a

violation of § 476.100 (among other sections), the Board may initiate a formal complaint proceeding and, if it does, the Board shall render a decision within 90 days after the date of filing.

LTDS requested an emergency injunction to prevent disconnection on November 16, 2005; a permanent injunction against disconnection; that notice be given to Iowa Telecom for purposes of civil penalties pursuant to § 476.51; and for any and all damages permitted by law.

II. Summary of Iowa Telecom's response letter

Later in the afternoon of November 15, 2005, Iowa Telecom sent a letter in response to LTDS's letter of November 11, 2005. The letter was copied to the Board, but was not filed in this docket; pursuant to § 17A.14(4), the Board will take official notice of the letter. In the letter, Iowa Telecom expresses the view that as of October 23, 2005, when LTDS failed to satisfy the requirements of Article V, Section 3.3.c of the interconnection agreement with respect to certain exchanges, Iowa Telecom was relieved of its interconnection obligations in those exchanges. Iowa Telecom further states that "[f]rom that date forward, Iowa Telecom need not provide facilities or services to LTDS pursuant to the [interconnection agreement] in those exchanges."

Notwithstanding this position, Iowa Telecom committed that it will not disconnect any existing service that it provides to LTDS in the identified exchanges until November 30, 2005, although the effective date for billing at retail rates will

remain October 23, 2005. Iowa Telecom asks LTDS to work with it to develop a plan to convert to appropriate Iowa Telecom retail services.

III. Board analysis

LTDS did not cite any authority for the Board to issue the preliminary injunction that it requests. The Board can only assume that LTDS seeks relief pursuant to Iowa Code § 17A.18A, "Emergency adjudicative proceedings," which authorizes agencies to use emergency adjudicative proceedings in situations involving an immediate danger to the public health, safety, or welfare requiring immediate agency action.

Based on the November 15, 2005, letter from Iowa Telecom to LTDS, the Board finds that immediate agency action is not required at this time, because Iowa Telecom has agreed to postpone disconnection until November 30, 2005. Accordingly, the Board will deny the request for emergency or preliminary injunctive relief (LTDS uses both terms in its complaint), without prejudice to re-filing if necessary.

The Board will also deny LTDS's request for formal complaint proceedings pursuant to § 476.101(8), without prejudice to re-filing, if necessary. The Board takes this action in order to avoid a potential waste of resources. If the Board were to grant the motion, the 90-day clock provided in that statute would start to run and it would be necessary to establish a procedural schedule immediately, probably leading to a hearing in late December. Conducting discovery and preparing prefiled testimony in the limited time available would likely distract the parties from their planning for the

possible events of November 30, 2005. It is likely that the parties' resources would be better used to develop that plan, whatever it may be, without losing any part of the 90 days available for a contested case proceeding before the Board. If the parties still have a material dispute for the Board to consider as the new disconnection date approaches, then a new complaint may be filed.

IT IS THEREFORE ORDERED:

1. The request for emergency or preliminary injunctive relief filed by LTDS Corporation on November 15, 2005, is denied. This denial is without prejudice.

2. The complaint filed on November 15, 2005, by LTDS Corporation against Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, is dismissed. This dismissal is without prejudice.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 23rd day of November, 2005.