

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>LTDS CORPORATION,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="text-align:center">v.</p> <p>IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>DOCKET NO. FCU-05-72 (ARB-05-3)</p>
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ORDER GRANTING TEMPORARY INJUNCTIVE RELIEF¹

(Issued November 29, 2005)

BACKGROUND

On November 28, 2005, LTDS Corporation (LTDS) filed with the Utilities Board (Board) a "Complaint and Renewed Request for Emergency Injunctive Relief" (the Complaint) naming Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), as respondent. LTDS alleges that Iowa Telecom has notified LTDS that Iowa Telecom will cease providing facilities and services for the use of LTDS as

¹ Board member Stamp previously was an attorney with the law firm which is representing LTDS in this matter. During his time with the firm, Board member Stamp worked for LTDS in connection with Docket No. ARB-05-3, but not in connection with the precise subject matter of this docket. He was not involved in counseling or advising LTDS regarding this precise matter and was not privy to any confidential information regarding this matter. After reviewing the relevant professional codes, General Counsel has advised Board member Stamp that he may participate in this procedural order; however, to avoid any possible appearance of impropriety, Board member Stamp will not take part in the final decision-making in this docket.

a competitive local exchange carrier (CLEC) in five named exchanges on November 30, 2005. (Complaint, ¶¶ 1, 6.) LTDS alleges the transition from wholesale, or CLEC, services to retail services may adversely affect LTDS's existing customers in the affected exchanges. LTDS argues the discontinuance of its CLEC services would violate Iowa Code §§ 476.20, 476.100(1), 476.100(3), 476.100(5), and 476.101(9)"c" (2005), along with 47 U.S.C. § 251(a)(1).

LTDS seeks an emergency injunction requiring Iowa Telecom to continue to provide service to LTDS as a CLEC in the five exchanges. LTDS has suggested to Iowa Telecom that the current wholesale services should remain in place, but LTDS will pay Iowa Telecom retail rates pending the resolution of this dispute. (Complaint, ¶ 8.c.) It is not clear whether LTDS's offer remains open at this time.

AUTHORITY TO ISSUE TEMPORARY INJUNCTION

Iowa Code § 17.18A provides that, notwithstanding any other provision of chapter 17A and to the extent consistent with the Constitution, an agency may use emergency adjudicative proceedings in a situation involving an immediate danger to the public health, safety, or welfare and requiring immediate agency action. However, the agency may take only such action as is necessary to prevent or avoid the immediate danger that justifies use of emergency adjudication.

The agency order must include a brief statement of findings of fact and conclusions of law to justify the determination of an immediate danger and the agency must give such notice as is practicable to persons who are required to

comply with the order. However, unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in emergency adjudicative proceedings or for judicial review thereof.

Finally, the agency order is effective when issued.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to prevent discontinuance of service to all or part of a community pursuant to Iowa Code § 476.20, which provides, in relevant part, as follows:

1. A utility shall not, except in cases of emergency, discontinue, reduce, or impair service to a community, or a part of a community, except for nonpayment of account or violation of rules and regulations, unless and until permission to do so is obtained from the board.

2. The Board has authority to grant emergency adjudicative relief pursuant to Iowa Code § 17A.18A.

FINDINGS OF FACT

1. Based on the Complaint filed by LTDS, the Board finds that Iowa Telecom intends to cease providing CLEC services to LTDS in the Centerville, Chariton, Eddyville, Keota, and Washington, Iowa, exchanges commencing on Wednesday, November 30, 2005.

2. The Board further finds that such action by Iowa Telecom would create a danger to the public safety because services to existing LTDS customers would be affected in unknown ways. This could have adverse effects on calls to emergency

services, for example. There is no guarantee that any such calls would be affected, or that any such calls would even be made, but the Board finds that the public interest requires maintenance of the status quo until such time as adequate assurances regarding these points has been received.

3. Because the Complaint was filed on Monday, November 28, 2005, and the change is scheduled to commence on Wednesday, November 30, 2005, the Board finds that the danger described in Finding of Fact No. 2, above, is an immediate danger requiring immediate agency action, even though Iowa Telecom has not yet had an opportunity to respond to the Complaint.

4. Based on the Complaint filed by LTDS, the proposed transition would be a discontinuance, reduction, or impairment of service to a part of a community (specifically, affected customers of LTDS).

5. Based on Findings of Fact Nos. 1 through 4, the Board finds that an injunction should issue directing Iowa Telecom to cease and desist from all plans to block the disputed traffic.

6. Findings of Fact Nos. 1 through 5 are based upon the Complaint filed this day by LTDS, to which Iowa Telecom has had no opportunity to respond. Accordingly, the Board finds that this emergency adjudication should be temporary in nature and that each of these findings, and the injunction itself, should be reconsidered by the Board after Iowa Telecom has had an opportunity to respond to the Complaint and LTDS and any other interested persons have had an opportunity to reply.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, is hereby enjoined from discontinuing CLEC services to LTDS Corporation in the Centerville, Chariton, Eddyville, and Keota² exchanges, as described in Iowa Telecom's letter to LTDS dated November 9, 2005 (Complaint, Exhibit A), or in any other manner. This injunction is temporary in nature and shall continue in force only until further Board order in this docket.
2. On or before December 5, 2005, Iowa Telecom shall file its response to LTDS's Complaint.
3. All replies to Iowa Telecom's response shall be filed within four business days of the date Iowa Telecom's response is filed.
4. All replies and responses shall be served by electronic mail or facsimile transmission, or as the parties may otherwise agree, in addition to standard service.

² LTDS agrees to the transition of the services in the Washington, Iowa, exchange. Complaint, ¶ 3.

5. The Board's General Counsel shall contact counsel for the parties by the best means available to inform them of this order.

UTILITIES BOARD

/s/ John R. Norris

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 29th day of November, 2005.