

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>PRAIRIEWAVE TELECOMMUNICATIONS, INC.,</p> <p style="text-align:center">Petitioner,</p> <p style="text-align:center">v.</p> <p>AT&T COMMUNICATIONS OF THE MIDWEST, INC.</p> <p style="text-align:center">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-05-71</p>
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**ORDER DOCKETING COMPLAINT, DENYING MOTION TO DISMISS, AND
ASSIGNING TO ADMINISTRATIVE LAW JUDGE**

(Issued January 11, 2006)

PROCEDURAL HISTORY

I. PrairieWave's complaint

On November 21, 2005, PrairieWave Telecommunications, Inc. (PrairieWave), filed with the Utilities Board (Board) a "Complaint and Request for Expedited Proceeding" against AT&T Communications of the Midwest, Inc. (AT&T). PrairieWave alleges AT&T used and benefited from, but failed to fully pay for, intrastate access services provided by PrairieWave.

Specifically, PrairieWave states it is a competitive local exchange carrier (CLEC) providing services in the Storm Lake and Lakeside, Iowa, exchanges.

PrairieWave asserts it provided originating and terminating access services to AT&T for customers who selected AT&T as their interexchange carrier from September 30, 2002, to the present. PrairieWave alleges that AT&T's use of the equal access service obligates AT&T to pay for the service under filed tariffs and applicable Iowa law. PrairieWave alleges that AT&T's refusal to pay the approved rate for the service is unjust and unreasonable and has resulted in damages to PrairieWave.

PrairieWave asserts AT&T owes PrairieWave a total of \$4,109.52 as of September 30, 2005, an amount that includes only the intrastate access charges.

PrairieWave asks for a judgment against AT&T requiring AT&T to pay for unpaid intrastate switched access services and late payment penalties, PrairieWave's costs, and pre- and post-judgment interest on the unpaid balances. PrairieWave also asks for any other relief the Board finds fair and just.

II. AT&T's answer, defenses, and counterclaims

On December 16, 2005, AT&T filed an answer, affirmative defenses, and counterclaims responding to PrairieWave's petition. Generally, AT&T states PrairieWave is charging unjust and excessive intrastate switched access rates. Pursuant to Iowa Code §§ 476.3, 476.11, and 476.101(1), AT&T asks the Board to find PrairieWave's access rates to be unjust, unreasonable, and unenforceable.

In its answer, AT&T denies most of PrairieWave's allegations, but admits that it is authorized to provide intrastate toll service in Iowa, admits PrairieWave provided some intrastate switched access service to AT&T, admits PrairieWave sent monthly

invoices to AT&T and made informal requests for payment, but otherwise denies PrairieWave's allegations regarding AT&T's payments.

As affirmative defenses, AT&T asserts PrairieWave has failed to state a claim upon which relief may be granted; PrairieWave's claims are barred by the doctrines of acquiescence, laches, estoppel, or waiver, and because its abusive and anti-competitive practices violate Iowa law; PrairieWave's claims for damages, costs, expenses, and pre- and post-judgment interest are barred because AT&T did not violate any duty owed to PrairieWave; AT&T has acted reasonably and in good faith to promote competition; and, pursuant to Iowa Code § 476.1, the Board may lack subject matter jurisdiction over PrairieWave's intrastate access rates and whether AT&T must pay them. AT&T states it reserves the right to raise additional defenses as this case develops.

In its counterclaims, AT&T asserts that, barring a contrary decision under Iowa Code § 476.1, the Board has jurisdiction over PrairieWave's rates and any related disputes, and by filing its complaint with the Board, PrairieWave has waived any claim that its access rates are outside of the Board's jurisdiction.

AT&T states that PrairieWave's rate for intrastate switched access service is approximately \$.06 per minute while Qwest Corporation charges less than \$.02 per minute for service in the same exchanges. AT&T asserts it can only reach PrairieWave's local customers who have chosen AT&T's in-state toll service by using PrairieWave's network. AT&T argues PrairieWave's rates create a disincentive for

AT&T and other providers to offer service in exchanges where CLECs charge excessively high rates.

AT&T asserts PrairieWave unilaterally sets unjust and unreasonable rates. AT&T contends that competitors of PrairieWave have no practical means of encouraging customers to choose local carriers that do not abuse the system.

AT&T asks the Board to dismiss PrairieWave's complaint with prejudice; to investigate PrairieWave's conduct and rates and find those rates are unjust, unreasonable, and harmful to the public interest; to order PrairieWave to set its intrastate switched access rates at reasonable levels; and to order any other relief the Board deems necessary.

III. PrairieWave's reply

On January 3, 2006, PrairieWave filed with the Board a response to AT&T's counterclaim. PrairieWave alleges that by submitting the counterclaim, AT&T has acknowledged the Board has jurisdiction over this matter. PrairieWave further argues that because AT&T's answer to the complaint contains frivolous defenses, PrairieWave can recover its costs in this matter. PrairieWave restates its request for an expedited proceeding, payment for unpaid switched access services and late payment penalties, costs and expenses, interest, and for any other relief the Board finds fair and just.

DISCUSSION

The Board has reviewed the record to date and will docket PrairieWave's complaint for a formal complaint proceeding, identified as Docket No. FCU-05-71. The Board will deny AT&T's motion to dismiss PrairieWave's complaint. While PrairieWave did not cite a particular statutory provision in its complaint or reply to AT&T's answer and counterclaims, the Board assumes the complaint was filed pursuant to Iowa Code Chapter 476, including, but not limited to, Iowa Code § 476.100. The issues in this proceeding will be those that have been raised in PrairieWave's complaint, AT&T's answer and counterclaims, PrairieWave's reply, and any others that may develop in the course of the proceeding.

The Board observes that while PrairieWave continues to request expedited proceedings, it still has not identified a specific statutory provision requiring the Board to complete the proceedings within a particular timeframe. Nevertheless, the Board will conduct this proceeding as rapidly as possible.

The Board will assign this matter to its administrative law judge for further proceedings pursuant to Iowa Code § 17A.11(1)(b) (2005) and 199 IAC 7.3. The ALJ may take all appropriate action, which may include setting a hearing date, presiding at the hearing, and issuing a proposed decision.

IT IS THEREFORE ORDERED:

1. The complaint filed on November 21, 2005, by PrairieWave Telecommunications, Inc., against AT&T Communications of the Midwest, Inc., is docketed as a formal complaint identified as Docket No. FCU-05-71.

2. The motion to dismiss PrairieWave Telecommunications, Inc.'s complaint filed by AT&T Communications of the Midwest, Inc., on December 16, 2005, is dismissed.

3. Pursuant to Iowa Code § 17A.11(1)(b) and 199 IAC 7.3, Docket No. FCU-05-71 is assigned to the Board's administrative law judge, Amy Christensen, for further proceedings. The administrative law judge shall have the authority provided under 199 IAC 7.3.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 11th day of January, 2006.