

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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PROCEDURAL ORDER AND NOTICE OF HEARING

(Issued January 23, 2006)

PROCEDURAL HISTORY AND ISSUES

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 alleged that AT&T used and benefited from, but failed to fully pay for, intrastate access services provided by PrairieWave.

PrairieWave stated it is a competitive local exchange carrier (CLEC) providing services in the Storm Lake and Lakeside, Iowa, exchanges and asserted it has 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 alleged 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. It alleged that AT&T's refusal to pay the approved rate for the service is unjust and unreasonable and has damaged PrairieWave.

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

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

In its answer, AT&T denied most of PrairieWave's allegations. AT&T admitted that it is authorized to provide intrastate toll service in Iowa and that PrairieWave provided some intrastate-switched access service to AT&T. AT&T admitted that PrairieWave sent monthly invoices to AT&T and made informal requests for payment, but otherwise denied PrairieWave's allegations regarding AT&T's payments.

As affirmative defenses, AT&T asserted PrairieWave 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; PrairieWave's claims are barred by unclean hands and its violation of Iowa law for its abusive practices that undermine competition and limit or prohibit fair access to its end-user customers; 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 reserved the right to raise additional defenses as the case develops.

In its counterclaims, AT&T asserted 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 intrastate switched access rates are beyond the Board's jurisdiction.

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

AT&T asserted that pursuant to Iowa Code §§ 476.101(9) and 476.11, AT&T may not avoid PrairieWave's excessive access rates and still comply with its interconnection obligations. It requested the Board to investigate PrairieWave's conduct pursuant to Iowa Code § 476.101(1) and find that PrairieWave's conduct, service, and rates are inadequate, discriminatory and harmful to competition and that PrairieWave's rates are unjust and unreasonable.

AT&T requested 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.

On January 3, 2006, PrairieWave filed a response to AT&T's counterclaim. PrairieWave denied the allegations contained in "paragraphs 32, 33, and 34 of AT&T's counterclaim," although it is unclear what paragraphs PrairieWave meant to refer to, since there is no paragraph 34. PrairieWave alleged that by submitting the counterclaim, AT&T has acknowledged the Board has jurisdiction over this matter. PrairieWave further argued that because AT&T's answer to the complaint contains frivolous defenses, PrairieWave can recover its costs in this matter. PrairieWave

restated its request for an expedited proceeding, payment for unpaid intrastate-switched access services and late payment penalties, costs and expenses, interest, and for any other relief the Board finds fair and just.

On January 11, 2006, the Board issued an order docketing the complaint, denying AT&T's motion to dismiss, and assigning the case to the undersigned administrative law judge. The Board noted that although PrairieWave did not cite a particular statutory provision in its complaint or reply, the Board assumed the complaint was filed pursuant to Iowa Code Chapter 476, including, but not limited to, Iowa Code § 476.100. In the order, the Board stated that the issues in this proceeding are those raised in PrairieWave's complaint, AT&T's answer, affirmative defenses and counterclaims, PrairieWave's response, and any others that may develop in the course of the proceeding. The Board observed that while PrairieWave continues to request expedited proceedings, it has not identified a specific statutory provision requiring the Board to complete the proceedings within a particular timeframe. Nevertheless, the Board stated it would conduct this proceeding as rapidly as possible.

Pursuant to the Board's order and Iowa Code §§ 476.3(1), 476.11, and 476.101, a procedural schedule will be established and a hearing date set.

APPLICABLE STATUTES AND RULES

The statutes and rules involved in this case that are known as of the date of this order include Iowa Code §§ 476.1, 476.3, 476.11, 476.100, and 476.101, and Board rules at 199 IAC 1.8, 1.9, 22.14, and chapters 6 and 7. The parties may raise other statutes and rules that apply. Links to the Iowa Code and the Board's administrative rules are contained on the Board's Web site at www.state.ia.us/iub. The parties should be aware that the Board recently amended its procedural rules in rule 1.8 and chapter 7, and the amended rules became effective December 14, 2005. All rule references in this order are to the amended procedural rules.

PREPARED TESTIMONY AND EXHIBITS

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1) and (3); 199 IAC 7.10.

IT IS THEREFORE ORDERED:

1. On or before February 15, 2006, PrairieWave and any intervenors must file prepared direct testimony and exhibits and a prehearing brief. In prepared testimony and exhibits, PrairieWave must address the issues discussed above and support each of the allegations made in its complaint and response. PrairieWave should use exhibit numbers one and following. In its prehearing brief, PrairieWave must provide statutory or other legal support for its positions.

2. On or before March 10, 2006, AT&T must file prepared testimony and exhibits and a prehearing brief. In its prepared testimony and exhibits, AT&T must address the issues discussed above and support each of the allegations made in its answer, affirmative defenses, and counterclaims. AT&T should use exhibit numbers 100 and following. In its prehearing brief, AT&T must provide statutory or other legal support for its positions.

3. If PrairieWave chooses to file prepared rebuttal testimony and exhibits or a rebuttal brief, it must do so on or before March 28, 2006.

4. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa, on Tuesday, April 18, 2006, commencing at 9 a.m. Each party must provide a copy of its prepared testimony and exhibits to the court reporter. Persons with disabilities requiring assistive services or devices to observe or participate should

contact the Board at 1-515-281-5256 no later than five business days prior to the hearing to request that appropriate arrangements be made.

5. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record of these proceedings. Pursuant to 199 IAC 7.23(4)"d," the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Board at the earliest possible time.

6. Any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 IAC 7.13. The person must file a petition to intervene on or before 20 days following the date of issuance of this order, unless the petitioner has good cause for the late intervention. 199 IAC 7.13(1).

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 23rd day of January, 2006.