

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM,</p> <p style="text-align:center">Complainant,</p> <p style="text-align:center">v.</p> <p>SOUTH SLOPE COOPERATIVE TELEPHONE COMPANY,</p> <p style="text-align:center">Respondent.</p>	<p style="text-align:right">DOCKET NOS. DRU-06-1 FCU-06-25</p>
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**ORDER DECLINING TO ISSUE DECLARATORY RULING
AND OPENING COMPLAINT PROCEEDING**

(Issued March 2, 2006)

On February 1, 2006, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), filed a complaint including a request for declaratory order against South Slope Cooperative Telephone Company¹ (South Slope). On February 14, 2006, South Slope submitted a petition for intervention, motion to dismiss the declaratory proceeding, motion to sever the various counts of the complaint, and a motion for an expedited ruling regarding South Slope's obligation to file an answer (in addition to the motion to dismiss that was filed pursuant to 199 IAC 7.9(2)"c").

¹ In its "Petition for Intervention, Motion to Dismiss, Motion to Sever and Motion for Expedited Ruling," it is noted that South Slope Cooperative Communications Company (as named in the complaint) is properly named South Slope Cooperative Telephone Company.

On February 28, 2006, Iowa Telecom filed a motion to amend its initial petition and a resistance to the petition for intervention, motion to dismiss, and motion to sever.

Iowa Telecom filed its initial pleading as a "Complaint (including request for declaratory order)." In Count I of that pleading, Iowa Telecom states that the Board should issue a declaratory order ruling that Iowa Telecom is the sole incumbent local exchange carrier (ILEC) and South Slope is a competitive local exchange carrier (CLEC) in Iowa Telecom's Oxford, Solon, and Tiffin exchanges.

Enumerated as Counts II through V of its initial pleading, Iowa Telecom also states that relief is sought on four other topics. In Count II, Iowa Telecom requests the Board issue an order requiring South Slope to conform its Local Exchange Routing Guide (LERG) entries to associate the numbering resources that it uses to serve customers located in the Oxford, Solon, and Tiffin exchanges with Iowa Telecom's Oxford, Solon, and Tiffin rate centers and that South Slope make all further necessary operational changes to permit Iowa Telecom to serve former South Slope customers in these exchanges who desire to "port" their numbers to Iowa Telecom.

In Count III, Iowa Telecom requests the Board issue an order requiring South Slope to cease charging the carrier common line charge as a part of its access service charge in these three exchanges and provide notice to any interexchange carrier that made any originating or terminating intrastate access charge payment to South Slope in the prior 24 months that refunds are permitted.

In Count IV, Iowa Telecom requests the Board enter an order directing the parties to “restart” the clock related to their efforts to negotiate a new interconnection agreement at day 140 of the timeline established at 47 U.S.C. § 252(a) and (b).

In Count V, Iowa Telecom states an order should be issued commencing an investigation into the issue of whether South Slope has been reporting access lines served in these three exchanges as ILEC lines and receiving universal service support on such basis.

Declaratory Order Request

Iowa Telecom requests the Board address the following question:

Under federal and state law, is Iowa Telecom the sole incumbent local exchange carrier providing local exchange and access services in the Oxford, Solon, and Tiffin exchanges and is South Slope providing such services in such exchanges as a competitive local exchange carrier?

Iowa Telecom states that its predecessor, GTE, operated as an ILEC in the identified exchanges and that no modifications have been made to the applicable certificates issued pursuant to Iowa Code § 476.29. These certificates were issued on September 29, 1992. Iowa Telecom states that South Slope served as the historical rate-regulated ILEC in North Liberty and its environs and was provided a certificate on September 29, 1992, that reflects such. However, Iowa Telecom states that the original certificate did not include the three exchanges of Oxford, Solon, and Tiffin. Requests made by South Slope in 1996 and 1998 to expand into these three exchanges were granted by the Board and both Iowa Telecom and South Slope

provide local exchange service and exchange access in the Oxford, Solon, and Tiffin exchanges.

Iowa Telecom states that federal and state law define the terms “incumbent local exchange carrier” and “competitive local exchange carrier” in slightly different manners but Iowa Telecom believes South Slope is a CLEC in the identified exchanges. Iowa Telecom states Iowa Code § 476.96(3) defines local exchange carrier and Iowa Code 476.96(5) defines competitive local exchange carrier. Based on these definitions, Iowa Telecom states that the Board’s rules create a system where there is only one ILEC in any specific geographic area and that is the carrier that provided service in that area on September 30, 1992.

Iowa Telecom states that federal law is somewhat different, as 47 U.S.C. § 251(h)(1) allows for a successor entity, and possibly for others, to become an ILEC. However, Iowa Telecom states, it does not believe that the Federal Communications Commission (FCC) has ever granted such a request. Iowa Telecom also states that South Slope acknowledges it is a CLEC in these exchanges as it has petitioned the FCC to be treated as the ILEC in these exchanges.² Iowa Telecom states that the Board’s comments filed at the FCC regarding South Slope’s petition affirm Iowa Telecom’s position that South Slope is a CLEC in these exchanges.

² South Slope filed its “Petition for Order Declaring South Slope Incumbent Local Exchange Carrier in Iowa Exchanges of Oxford, Tiffin, and Solon” with the FCC on Aug. 24, 2004. It has been designated WC Docket No. 04-347 and the Board filed comments in that docket to which Iowa Telecom refers. To date, the FCC has not acted on South Slope’s petition.

Iowa Telecom states that a declaratory ruling stating that Iowa Telecom is the ILEC and South Slope is the CLEC is a prerequisite to the grant of any relief requested by Iowa Telecom in its four additional requests.

In response to the first count of Iowa Telecom's pleading, South Slope filed a motion to intervene and a motion to dismiss on February 14, 2006. South Slope requested that all counts of the initial pleading that are more appropriately complaints be severed from any declaratory ruling proceeding.

Noting that each of the factual allegations in the initial pleading are made directly against South Slope, South Slope requests to be identified as an intervenor in this proceeding.

South Slope states it is currently a party to an FCC proceeding, WC Docket No. 04-347, where South Slope has petitioned to be declared an incumbent local exchange carrier under federal law in the three identified exchanges. The comment cycle is complete but the FCC has not yet acted on the petition. South Slope states it is contemplating refreshing the record in hopes of expediting a determination. South Slope states that Iowa Telecom is trying to usurp FCC authority.

South Slope asks that the Board dismiss Docket No. DRU-06-1 pursuant to 199 IAC 7.9(2)(c). South Slope states that Iowa Telecom's request does not show grounds for relief as the questions presented are overbroad; that requisite "specified circumstances" pursuant to 199 IAC 4.1 are absent because Iowa Telecom's factual allegations are false and inflammatory; and that relief regarding the conforming of

LERG entries is beyond the Board's jurisdiction, as the FCC has exclusive jurisdiction over those portions of the North American Numbering Plan.

South Slope states that Iowa Telecom requests the Board to address a question framed under federal as well as state law and thus the request is not within the Board's jurisdiction and is overbroad. (Iowa Code § 17A9(1); 199 IAC 4.1(17A).)

South Slope further states that the false allegations in Iowa Telecom's overbroad submittal allow the Board to refuse to issue a declaratory order. (199 IAC 4.9(1)(6)).

Pursuant to 199 IAC 4.1, a petition may be filed for a declaratory order as to the "applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the utilities board...." However, 199 IAC 4.9(1) lists a variety of reasons that the Board may decline to issue a declaratory order including

4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.

5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

Here it appears Iowa Telecom's petition for declaratory order should be denied because it raises fact issue that have not been resolved and that are more appropriately resolved in a different type of proceeding.

As South Slope has pointed out in its motion to sever, Counts II, III, IV, and V are more properly considered as requests for formal contested case proceedings. In fact, Iowa Telecom filed the initial pleading as a Complaint. The fact that the underlying factual determination in each of the four separate counts is the same makes it reasonable to hear all of the counts in one complaint proceeding. The issues associated with Count I can also be considered in that context.

Therefore, the Board will docket one complaint proceeding and order South Slope to file an answer to the complaint filed on February 1, 2006 and to the amendment and resistance filed by Iowa Telecom on February 28, 2006. The answer should be filed on or before March 10, 2006. After receipt and review of the answer by South Slope, the Board may address some of the issues raised in Iowa Telecom's amendment.

IT IS THEREFORE ORDERED:

1. The request for a declaratory order, filed February 1, 2006, by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, is denied.
2. Docket No. FCU-06-25 is opened to proceed with the complaints filed by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom.

3. On or before March 10, 2006, South Slope Cooperative Telephone Company is directed to file an answer to the complaint filed by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, on February 1, 2006 and to the amendment and resistance filed on February 28, 2006.

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 2nd day of March, 2006.