

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>COON CREEK TELECOMMUNICATIONS CORP.,</p> <p style="text-align:center">Petitioner,</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-06-31</p>
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ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

(Issued April 17, 2006)

On March 24, 2006, Coon Creek Telecommunications Corp. (Coon Creek) filed with the Utilities Board (Board) a complaint against Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), pursuant to Iowa Code § 476.101(8), among other provisions. Coon Creek alleges that Iowa Telecom is engaging in predatory pricing and discriminatory and anti-competitive behavior in violation of various provisions of Iowa law.

Specifically, Coon Creek alleges that Iowa Telecom is offering its services in the Belle Plaine and Marengo, Iowa, exchanges at prices substantially below those Iowa Telecom offers in regulated areas, in violation of Iowa Code § 476.1D, and is improperly subsidizing its deregulated services with revenue from its regulated

services in violation of Iowa Code §§ 476.97(5) and 476.100(6). In addition, Coon Creek asserts that Iowa Telecom is pricing unbundled network elements sold to competitors at rates higher than it values those services for itself, in violation of Iowa Code §§ 476.100(2) and 476.100(7). Finally, Coon Creek alleges that Iowa Telecom's predatory, anti-competitive, and discriminatory practices disadvantage Coon Creek's customers in violation of Iowa Code § 476.101(9).

On April 3, 2006, Iowa Telecom filed its response to Coon Creek's complaint. Iowa Telecom denies all of Coon Creek's allegations and states that the pricing alleged by Coon Creek was put into place on a deregulated basis under authority granted by Iowa Code § 476.1D(1)(c) and the Board's "Final Decision and Order" in Docket No. INU-05-2.¹

As part of its response, Iowa Telecom requests the Board dismiss Coon Creek's petition on grounds that the complaint fails to state a cause of action, that the services subject to the complaint are not subject to rate regulation by the Board, that the exchanges subject to the complaint have been found to be subject to effective competition, that the complaint fails to allege an antitrust injury, that Coon Creek does not have standing, that the complaint fails to allege harm to competition, and that the subject of the complaint was a legitimate business decision made in a competitive market.

¹ See *In re: Deregulation of Single Line Flat-Rate Local Exchange Services in Competitive Markets*, "Final Decision and Order," Docket No. INU-05-2, issued December 5, 2005.

The Board finds that the allegations of violations raised in Coon Creek's petition are based entirely on Iowa Telecom's pricing in the Belle Plaine and Marengo exchanges. However, Iowa Telecom's prices in these particular exchanges have been deregulated pursuant to the Board's "Final Decision and Order" in Docket No. INU-05-2. As such, the price-regulation sections of the Iowa Code, including those sections raised as part of Coon Creek's petition, are not applicable to Iowa Telecom in these exchanges at this time.² Therefore, the Board agrees with Iowa Telecom that the prices that are the subject of Coon Creek's complaint are not subject to regulation by the Board at this time.

While the Board has some jurisdiction in deregulated exchanges pursuant to Iowa Code § 476.1D, Coon Creek's complaint has failed to state a cause of action under § 476.1D upon which the requested relief can be granted. Coon Creek asserts that Iowa Telecom is engaging in "predatory pricing and discriminatory and anti-competitive behavior in violation of Iowa Code § 476.1D."³ Iowa Code § 476.1D(6)

² This interpretation is supported by Iowa Code § 476.55(2), which specifically preserves Board jurisdiction over certain antitrust complaints, notwithstanding deregulation pursuant to § 476.1D. (Coon Creek is not included in the class of local exchange carriers that are eligible to file complaints pursuant to § 476.55.) It is true that the final unnumbered paragraph of § 476.55(2) says that this subsection shall not be construed to modify, restrict, or limit the rights of a person to bring a complaint under any other provision of chapter 476, but § 476.55(2) is still relevant to interpreting the effect of deregulation under § 476.1D on the application of the rest of chapter 476. Clearly, the Legislature concluded it was necessary to include the language saying "notwithstanding section 476.1D" in order to preserve the Board's § 476.55(2) jurisdiction after deregulation. The absence of that language in other sections of chapter 476, including the sections cited in the complaint, indicates the price regulation provisions of those sections do not apply after price deregulation under § 476.1D.

³ See, *In re: Coon Creek Telecommunications Corp. v. Iowa Telecom*, "Complaint and Request for Emergency Relief," p. 5 (filed March 27, 2006).

gives the Board the authority to "reimpose rate regulation on a deregulated service" only if it determines the service "is no longer subject to effective competition." Coon Creek's complaint does not indicate whether local exchange service in Belle Plaine and Marengo is no longer subject to effective competition for purposes of re-regulation and does not appear to allege harm to competition as a whole, as opposed to harm to a competitor. In addition, Iowa Code § 476.1D(8) provides that the reinstatement of rate regulation pursuant to § 476.1D(6) "shall apply to all providers of the service." It is not clear from Coon Creek's complaint whether it contemplates such a widespread level of relief.

The Board understands that many factors can make it difficult to file a complaint that is a model of specificity. A predatory pricing case would be a case of first impression, for the Board and for the parties. Coon Creek has not yet had the benefit of discovery, so it is unlikely to have access to all the relevant facts. Still, it would be unwise and unreasonable to proceed on the basis of inapplicable statutes and unclear allegations, especially under the abbreviated time requirements of Iowa Code § 476.101(8).

The Board will dismiss Coon Creek's petition for failure to state a cause of action upon which relief can be granted. The petition is dismissed without prejudice to refiling in a form and manner consistent with this order.

IT IS THEREFORE ORDERED:

The "Complaint and Request for Emergency Relief" filed by Coon Creek Telecommunications Corp., on March 27, 2006, is dismissed without prejudice.

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 17th day of April, 2006.