

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

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| IN RE: 360NETWORKS (USA) INC. | DOCKET NO. TF-06-234 |
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ORDER REJECTING TARIFF

(Issued August 30, 2006)

On May 16, 2006, 360networks (USA) inc. (360networks), filed with the Utilities Board (Board) a proposed intrastate access services tariff identified as TF-06-137. On June 27, 2006, the Board issued an order rejecting the tariff without prejudice. 360networks proposed to tariff only a wholesale interconnection between itself and certain providers of telecommunications services and did not propose to provide retail local exchange service directly to end use customers.

The Board's rules at 199 IAC 22.1(3) define "intrastate access services" as "services of telephone utilities which provide the capability to deliver intrastate telecommunications services which originate from end-users to interexchange utilities and the capability to deliver intrastate telecommunications services from interexchange utilities to end-users." Based on that definition, the Board rejected the tariff because it was not clear how 360networks could expect to assess access charges without serving retail end users directly. The Board stated that 360networks could re-file its tariff with an explanation of the basis for the proposed tariff.

On July 31, 2006, 360networks re-filed its proposed tariff. 360networks asks the Board to allow its proposed tariff to become effective without having to submit a retail local exchange service tariff. The company proposes to provide "a network capable of transporting voice telephony and data exclusively on a wholesale basis to meet the demand of prospective carrier customers, including enhanced service providers and others that provide Voice over Internet Protocol [VoIP] telephony, among other types of data services to their end users." (Cover letter of July 28, 2006, at p. 1.) 360networks proposes to connect local exchange carriers and interexchange carriers, but will not directly serve retail end users. (*Id.* at p. 2.) The company proposes to use a tariff to establish the rates, terms, and conditions for providing wholesale services.

360networks asserts that its proposed exchange access services are consistent with the Board's definition of intrastate access services, but that the end users served are those of its customers. 360networks suggests that the reference in the Board's rules to "end-user" is not specific as to whether the end user must be that of the exchange access service provider or another provider.

360networks argues that to require it to file a retail tariff as a prerequisite for filing an exchange access tariff would effectively require the company to offer retail services it does not intend to, and is not situated to, provide. According to 360networks, such a requirement could result in the submission of a tariff for fictitious local exchange services.

The Board will reject the proposed tariff. Access charges are intended to allow local exchange carriers to charge interexchange carriers for connecting end users to their chosen interexchange carriers. The right to file a tariff for intrastate access charges must be limited to companies that directly serve the retail customers, or end users. Allowing wholesale companies that are in the middle of the transmission chain to file tariffs and collect access charges would have at least two undesirable results. First, it could create a situation in which multiple carriers would claim access charges for the completion of a single call. For example, if the proposed tariff were permitted to become effective and a call were to be carried by 360networks from an interexchange carrier to a local exchange carrier that has its own intrastate access service tariff on file with the Board, then both 360networks and the local exchange carrier would have claims for terminating access charges, based on a single call. This record provides no reason to believe that it is in the public interest to allow multiple carriers to claim access charges for completion of a single call.

Second, if wholesale companies were permitted to file intrastate access charges, then it is possible that the authority to collect access charges could be separated from the regulatory obligations associated with providing local exchange service, including access services, to end users. This could occur if, for example, the proposed tariff were permitted to become effective and 360networks were to then provide wholesale services to an enhanced service provider that uses VoIP to provide voice services. Some VoIP service providers have taken the position that they are not required to obtain a certificate of public convenience and necessity from

the Board, or file local service tariffs with the Board, as required by Iowa Code § 476.29. If a VoIP service provider that refuses to acknowledge the Board's jurisdiction over local exchange voice services were to rely upon 360networks for access services, then a situation would be created in which one carrier (360networks) was benefiting from the Board's regulatory authority (in the form of the filed rate doctrine) while the VoIP carrier was evading the customer service obligations associated with that same regulatory authority. In a worst-case scenario, a wholesale service provider in the position of 360networks would claim a regulatory right to receive access charges for calls that the VoIP provider claims are not subject to the Board's regulatory authority. Again, this record reveals no reason to conclude that this separation of regulatory rights and responsibilities would be in the public interest.

For these reasons, the proper interpretation of the Board's rule is that access charges can only be collected by local exchange carriers that are actually providing service directly to end users, that is, to retail customers. Any other interpretation would be contrary to the public interest and must therefore be rejected.

The Board notes the concern expressed by 360networks that an unscrupulous wholesale carrier might file a fictitious tariff for providing retail local exchange services in an attempt to circumvent the Board's rules. The Board does not see this as a reason to alter its rules. First, pursuant to 199 IAC 22.1(3), a carrier can only collect access charges to the extent it is actually providing service directly to retail customers, so a company that files a fictitious local services tariff would not have any

qualifying calls. Second, the Board has addressed similar concerns regarding alleged "sham" local exchange companies in other contexts by requiring that the company file monthly reports demonstrating that it is actively marketing its local exchange services to retail customers in an effective manner. A failure to satisfy this requirement will result in revocation of a sham carrier's certificate and rejection of its tariffs. The Board can apply the same tools in this situation, if necessary.

If 360networks intends to provide wholesale services to other carriers, it appears a better option would be to enter into carrier-to-carrier agreements with those other carriers. A tariff for access services is not an available option for the services 360networks proposes to provide.

IT IS THEREFORE ORDERED:

The proposed access tariff filed by 360networks (USA) inc. on July 31, 2006, identified as TF-06-234, is rejected.

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 30th day of August, 2006.