

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>ELIGIBILITY, CERTIFICATION, AND REPORTING REQUIREMENTS FOR ELIGIBLE TELECOMMUNICATIONS CARRIERS [199 IAC 39]</p>	<p>DOCKET NO. RMU-06-1</p>
---	----------------------------

ORDER ADOPTING AMENDMENTS AND SCHEDULING WORKSHOPS

(Issued October 6, 2006)

Pursuant to Iowa Code §§ 17A.4 and 476.2 and 47 U.S.C. § 214(e), the Iowa Utilities Board (Board) adopts the amendments attached hereto and incorporated herein by reference. On February 24, 2006, the Board issued an order in Docket No. RMU-06-1, In Re: Eligibility, Certification, and Reporting Requirements for Eligible Telecommunications Carriers [199 IAC 39], "Order Commencing Rule Making." The rule making proposed to amend the Board's rules at 199 IAC 39 to establish new eligibility, certification, and reporting requirements for carriers wanting to be designated as eligible telecommunications carriers (ETCs) for the purpose of receiving funds from the federal universal service fund (USF).¹ Other minor changes were proposed to the Board's rules at 199 IAC 1 and 199 IAC 22 to reflect changes made to 199 IAC 39.

¹ A telecommunications carrier that proposes to receive federal universal service funding must be designated as an ETC. State commissions have the primary responsibility of designating ETCs. See 47 U.S.C. § 214(e)(2). The services supported by the federal universal service fund are listed in existing Board subrule 39.2(1), and include voice grade access; local usage; dual tone multifrequency signaling; single-party service; access to emergency services, operator services, interexchange service, and directory assistance; and toll limitation for qualifying low-income customers.

In 2005, the Federal Communications Commission (FCC) adopted certain recommendations made by the Federal-State Joint Board on Universal Service (Joint Board) regarding minimum eligibility, certification, and reporting requirements for carriers wanting to be designated as ETCs by the FCC,² and encouraged states exercising jurisdiction over ETC designations pursuant to 47 U.S.C. § 214(e)(2) to adopt the same requirements. In this rule making proceeding, the Board proposed to adopt the FCC requirements, with some revisions.

On March 15, 2006, the Board published a "Notice of Intended Action" in the Iowa Administrative Bulletin containing the proposed amendments, see IAB Vol. XXVIII, No. 19 (3/15/2006) p. 1395, as ARC 4977B. Written comments were received from the following companies or associations: Iowa Wireless Services (i wireless), Iowa Telecommunications Association (ITA), Iowa RSA Nos. 7, 8, and 10 (RSAs), Iowa Wireless Coalition (Coalition), Qwest Corporation (Qwest), Rural Iowa Independent Telephone Association (RIITA), Sprint Nextel Corporation (Sprint), T-Mobile Central (T-Mobile), U.S. Cellular Corporation (U.S. Cellular), Verizon Wireless (Verizon), Cingular Wireless PCS, LLC (Cingular), and the Consumer Advocate Division of the Department of Justice (Consumer Advocate).

An oral comment hearing was held on April 26, 2006. Except for Sprint, all of the participants that filed written comments were represented at the hearing.

Based upon a review of the comments, the Board has made certain revisions to the proposed amendments. The Board's analysis of the comments and

² See *In Re: Federal-State Joint Board on Universal Service*, "Report and Order," CC Docket No. 96-45, issued March 17, 2005 (FCC Report and Order).

explanation of any changes to the proposed rules are set out below by topic. Minor revisions and grammatical corrections are not addressed.

1. New eligibility requirements (new paragraphs 39.2(3)"c" through "l")

Required explanation of how carrier will provide supported services (new paragraph 39.2(3)"c")

Proposed paragraph 39.2(3)"c" requires an ETC applicant to submit an explanation of how the carrier will provide each of the supported services listed in 199 IAC 39.2(1). The Board did not receive any comments on this requirement and will adopt the paragraph as proposed.

Required maps (new paragraph 39.2(3)"d")

As originally proposed, paragraph 39.2(3)"d" requires an ETC applicant to submit a description, including a detailed map or maps, of the area or areas for which ETC designation is sought. The proposed requirement for wireless carriers to file maps identifying wireless cell tower site locations prompted several objections. For example, the RSAs stated that tower site information would provide little, if any, useful information for the universal service program and the location of a site does not tell the Board anything about coverage or capacity obtained from that location. Similarly, the Coalition stated that a cell site location map would not provide the Board with any relevant information about a wireless carrier's ability to fulfill its obligations as an ETC and that only a service coverage map contains information about the geographic extent to which a carrier provides service.

The Board has considered the comments regarding the proposal to require tower site location maps and agrees that those maps would not necessarily provide

the Board with information it will need to determine whether a carrier is meeting the goals of universal service. The Board will revise the proposed rule to require wireless carriers to provide signal coverage area maps that depict signal strength.

Network improvement and maintenance plans (new paragraph 39.2(3)"e")

As proposed, paragraph 39.2(3)"e" requires each ETC applicant to submit a network improvement plan describing proposed improvements or upgrades to its network on a wire center basis throughout its proposed designated service area. The Board received several comments on this proposal. RIITA suggested at the oral comment hearing that companies that have already built out their networks do not need a network improvement plan. Several other participants objected to the requirement to report data on the wire center level, suggesting that the requirement is impractical, burdensome, and not competitively neutral. The Coalition suggested that the wire center is an artifact of the wireline telecommunications industry. Likewise, i wireless stated that wireless network investment is not comparable to wire center investment and investment information will be more meaningful and less misleading if wireless carriers are allowed to report on the basis of their own network structure and ETC service area. The ITA stated that many companies do not necessarily maintain investments or expenses on a wire center basis, but can generally identify what wire centers have benefited by specific expenditures. Also, many of the participants urged the Board to modify the proposed rule to recognize that maintenance costs are an appropriate use of universal service funds.

Because FCC rules do not appear to exempt any ETCs or applicants from demonstrating how they are using or will use universal service funds, the Board will

not revise the proposed subrule to exempt certain carriers from the requirement of submitting a plan. The Board agrees that maintenance costs can be an appropriate use of universal service funds and will modify the proposed paragraph accordingly.

The Board will also omit the proposed requirement that the information be reported on a wire center basis. The paragraph adopted by the Board requires an ETC applicant to submit a two-year plan describing proposed improvements, upgrades, and maintenance to its network for its designated service area. The Board agrees with Consumer Advocate's comment at hearing that it is important for the Board to be able to see some connection to the expenditures in the area for which the funds are disbursed, and will revise the paragraph to require that the information reported to the Board describe the benefit to specific wire centers, as suggested by the ITA.

Consumer protection standards (new paragraph 39.2(3)"f")

Proposed paragraph 39.2(3)"f" would require ETC applicants to demonstrate compliance with applicable consumer protection standards. Wireline carriers seeking ETC designation must commit to complying with the consumer protection rules included in 199 IAC Chapters 6 and 22. Wireless carriers seeking ETC designation shall commit to complying with minimum consumer protection standards based on the 2006 Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service. The Board proposed to adopt the CTIA Code, modified to include a reference to the Board's complaint procedures. Proposed subparagraph 39.2(3)"f"(9) would require wireless ETCs to inform customers of their right to file a complaint against a wireless ETC with the Board.

This proposal drew many comments. While most participants supported the Board's proposal to require wireless ETCs to comply with the CTIA Code, some participants objected to the Board's imposition of its complaint jurisdiction on wireless ETCs. The Coalition stated that the proposed modification to the CTIA Code exceeds the Board's authority under state and federal law. U.S. Cellular joined in the Coalition's argument that the Board's complaint procedures do not apply to wireless carriers because the Board does not regulate wireless carriers.

The Board has considered these comments and the preemption arguments raised by some of the wireless carriers. The Board does not agree with the Coalition and other wireless participants that it is preempted from enforcing the commitments in the CTIA Code using the Board's complaint procedure. Seeking ETC designation is a voluntary exercise. As the Consumer Advocate observed at the oral comment hearing, no carrier is required to maintain its ETC designation and no carrier is ever required to accept funds from the high-cost fund or any other federal fund. A wireless ETC that applies for and accepts universal service funds must be accountable for the use of those funds and consumer protection issues are necessarily related to the goals of universal service.

Further, it would serve no purpose for the Board to adopt consumer protection standards for wireless ETCs without adopting a means of enforcing those standards. In 47 U.S.C. § 214(e)(2), the federal government delegated authority to state commissions to designate ETCs and that delegated authority necessarily includes the authority to adopt and enforce consumer protection standards that apply to wireless ETCs. In its Report and Order, the FCC contemplates that states "may

either follow the Commission's framework or impose other requirements consistent with federal law to ensure that supported services are offered in a manner that protects consumers." FCC Report and Order, p. 15, ¶ 30. The FCC rejected arguments that consumer protection requirements imposed on wireless carriers as a condition of ETC designation are inconsistent with the prohibition of state regulation of rates and entry of wireless carriers. Under the Report and Order, then, states can "extend generally applicable, competitively neutral requirements that do not regulate rates or entry and that are consistent with sections 214 and 254 of the Act to all ETCs in order to preserve and advance universal service." Id., ¶ 31. The Board concludes that applying its complaint jurisdiction to wireless ETCs is necessary to protect consumers in the ETC context and to further universal service goals.

The Board will adopt the proposed subparagraph with two substantive modifications. As proposed, subparagraph 39.2(3)"f"(9) stated that complaints alleging an unauthorized change in service would be processed by the Board pursuant to 199 IAC 6. An unauthorized change in service can take the form of either a "slam," the unauthorized change of a service provider, or a "cram," an unauthorized charge on a consumer's telephone bill. Based on assurances from wireless carriers that there is no opportunity for slamming in the wireless industry, the Board will omit a reference to slamming complaints. The Board will adopt a statement that cramming complaints, identified in the rules as complaints alleging the addition or deletion of a product or service for which a separate charge is made to a customer account without the verified consent of the customer, will be processed pursuant to 199 IAC 6.

Also, because the Board recognizes that it might receive complaints from customers of a wireless carrier who may reside in an area in which that carrier is not designated as an ETC, the Board will revise the proposed amendment to allow the wireless carrier to submit evidence demonstrating the complainant is located in an area where the carrier is not designated as an ETC. If a sufficient showing is made, the Board will not assert jurisdiction over the complaint.

Service quality standards (new paragraph 39.2(3)"g")

Proposed paragraph 39.2(3)"g" requires ETC applicants to demonstrate compliance with applicable service quality standards. Wireline ETC applicants shall demonstrate that they will comply with applicable service quality standards in 199 IAC 22. All ETC applicants shall demonstrate that they will comply with service quality reporting requirements in 199 IAC 39.5. The Board will adopt this paragraph as proposed.

Backup power (new paragraph 39.2(3)"h")

As proposed, paragraph 39.2(3)"h" requires applicants to demonstrate the ability to maintain a reasonable amount of backup power to ensure functionality without an external power source, to reroute traffic around damaged facilities, and to manage traffic spikes due to emergencies. The proposed paragraph also requires ETCs to certify annually they are able to function in an emergency.

The RSAs urged the Board to revise the proposed paragraph and rely on federal standards for wireless emergency preparedness and cautioned against adopting vague and subjective state standards. The Coalition urged the Board to defer adopting the proposed rule until the FCC adopts objective standards for

purposes of evaluating emergency preparedness. The Coalition faulted the proposed rule for failing to set forth any objective standards by which an ETC applicant's emergency preparedness can be evaluated and stated the Board has not determined what constitutes a "reasonable" amount of backup power or a "traffic spike" for purposes of rerouting traffic.

The Board will delay adopting the requirement that an ETC applicant demonstrate the ability to reroute traffic and manage traffic spikes until objective standards for measuring such abilities have been developed. Regarding backup power in emergency situations, the Board's current rule for wireline carriers at 199 IAC 22.6(5)"b" states that each central office shall contain a minimum of two hours of battery reserve. The Board finds that adopting a similar requirement for wireless carriers is competitively neutral and furthers the goals of universal service. As adopted, the paragraph will require ETCs to certify the ability to maintain a minimum of two hours of backup power to ensure functionality without an external power source.

Comparable local usage (new paragraph 39.2(3)"i")

As proposed, paragraph 39.2(3)"i" would require ETC applicants to demonstrate a commitment to offer a local usage plan comparable to the one offered by the incumbent local exchange carrier (ILEC) in the areas for which the carrier seeks designation, including a commitment to provide Lifeline and Link-Up discounts at rates, terms, and conditions comparable to the Lifeline and Link-Up offerings of the ILEC providing service in the relevant service area.

Several participants opposed the adoption of paragraph 39.2(3)"i." The RSAs and the Coalition, for example, stated this requirement is not competitively neutral and is administratively unenforceable because the term "comparable" defies definition when comparing diverse service offerings from landline and wireless or other competitive carriers. The Coalition argued the Board designates carriers, not service offerings, as eligible for federal support and thus cannot limit an applicant's ETC designation to the provision of any one service offering. The Coalition also urged the Board to omit the provisions of the proposed rule requiring the provision of Lifeline and Link-Up service at rates, terms, and conditions comparable to those of the ILEC, suggesting this requirement is unnecessary and duplicative because all ETCs are obliged to participate in these programs pursuant to 47 C.F.R. § 54.400 and Board rule 39.3.

Sprint suggested that instead of imposing legacy rate structures on wireless carriers by regulation, the Board should encourage competitive carriers to set their own rate structures in ways that appeal to customers. Sprint states that a wireless carrier might satisfy local usage goals by offering innovative packages including bundles of local and long distance minutes without the Board imposing regulatory requirements.

Consistent with the limited direction from the FCC on this subject, the Board will retain the comparability requirement and take a case-by-case approach to evaluate the comparability of local usage plans. The Board will revise the proposed paragraph to omit the reference to a commitment to provide Lifeline and Link-Up discounts comparable to those offered by the ILEC, and will add a provision requiring

ETC applicants to commit to providing Lifeline and Link-Up service consistent with applicable federal regulations.

Equal access (new paragraph 39.2(3)"j")

Proposed paragraph 39.2(3)"j" requires all eligible carriers to file a statement with the Board acknowledging that the eligible carrier shall provide equal access if all other eligible carriers in that service area relinquish their designations. In response to this proposal, the Coalition stated that federal law preempts the Board from imposing an equal access requirement on wireless carriers and cited 47 U.S.C. § 332(c)(8), which provides that the FCC has the sole authority to require a wireless carrier to provide equal access. The Coalition suggests that the Board revise the proposed rule by clarifying that the FCC may require wireless carriers to provide equal access in its ETC designated service area.

While the proposed paragraph is based directly on the FCC's Report and Order, the Board does not object to clarifying that wireless carriers get their directives regarding equal access from the FCC rather than from the Board. The Board will adopt the paragraph with this modification.

Public interest analysis (new paragraph 39.2(3)"k")

As proposed, paragraph 39.2(3)"k" would require all eligible carriers, including those carriers seeking to serve only non-rural areas, to demonstrate to the Board that granting them ETC designation is in the public interest. Sprint urged the Board not to adopt the rule with regard to those ETC applicants in areas served exclusively by non-rural ILECs. Sprint suggests that the Board follow the precedent set by the FCC's Common Carrier Bureau that once a non-rural ETC applicant has

demonstrated that it satisfies the statutory ETC requirements, designation is consistent with the public interest and no additional public interest showing is necessary. Sprint argues the legislative history is clear that in non-rural areas, the role of regulatory review is to determine whether the applicant meets the statutory criteria, and if so, the regulator shall issue the designation. The Board agrees with Sprint's statement regarding the legislative history of the public interest analysis and will modify the proposed rule to clarify that the analysis does not apply to carriers seeking ETC designation in non-rural areas.

Board requests for information (new paragraph 39.2(3)"I")

Proposed paragraph 39.2(3)"I" would require all eligible carriers to respond to Board requests for information relating to the status of local voice service markets or facilities. The RSAs urged the Board not to adopt this paragraph, arguing that compliance with local surveys or information requests of general applicability is not related to the federal ETC requirements. The Coalition objected to the paragraph because it would require an ETC to produce or assemble documentation it may not ordinarily keep, causing the ETC to invest considerable time and resources to produce the data.

Because the Board must have access to a wide range of information in order to properly designate ETCs and verify that federal funds are used for their intended purposes, the Board will adopt the rule as proposed.

2. Application of eligibility requirements to existing ETCs (new subrule 39.2(7))

The Board received several questions about the application of the new eligibility requirements to carriers that have already been designated as ETCs. The ITA asked whether filing a network improvement plan is a one-time requirement. The ITA also asked the Board to clarify how it intends for an existing ETC to comply with the requirement of submitting a network improvement plan.

Similarly, the Coalition suggested revising the proposed rules to distinguish between initial ETC application requirements and annual certification and reporting obligations for previously designated ETCs. The Coalition stated it is clear that the Board intends to require all carriers with current ETC designations to submit evidence to the Board demonstrating compliance with the FCC's new ETC eligibility requirements, but faulted the proposed rules for failing to specify precisely what information previously designated ETCs will be required to file.

The Board will modify the proposed and existing rules to resolve the confusion noted in the written comments and at the hearing. First, the Board intends that existing ETCs make a one-time filing with the Board demonstrating they are in compliance with certain new ETC eligibility requirements. The Board will adopt new subrule 39.2(7) which will require any carrier that was designated by the Board as an ETC before the effective date of the new rules (November 29, 2006) and which receives high-cost universal support to submit a statement demonstrating compliance with the requirements of subrule 39.2(3), paragraphs "d" through "j" on or before March 1, 2007. Also, as part of this one-time filing, the previously designated ETCs

shall acknowledge they will respond to Board requests for information related to the status of local voice service markets or facilities as required by paragraph 39.2(3)"l." Wireline ETCs that have service area maps on file with the Board do not need to refile the service area maps that otherwise would be required by 39.2(3)"d." After this one-time filing due by March 1, 2007, previously designated ETCs will follow the reporting cycle in rule 39.5 and the annual certification requirement in new rule 39.7.

3. Reporting requirements

Service quality reports (Rule 39.5)

The Board proposed to amend existing rule 39.5, which contains service quality reporting requirements for ETCs, by adding four new items to be included in the annual reports. As proposed, subrule 39.5(5) would require progress updates on the carrier's two-year service quality improvement plan, including maps detailing progress toward meeting plan targets, an explanation of how much universal support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any unfulfilled network improvement targets. The information was to be submitted at the wire center level. As proposed, the amendment did not make any changes to existing criteria listed in 39.5(1) through (4).

The Board received several comments addressing the proposed reporting requirements. Based on the comments, and because the reporting deadline and cycle first proposed is no longer practicable, the Board will modify the proposal by adding a new reporting cycle and deadline that will apply to both the existing subrules 39.5(1) through (4), which contain the current service quality indicators, and three of

the new service quality indicators in new subrules 39.5(5) through (7). The Board will also adopt revisions to existing subrule 39.5(1) explaining what shall be included in a report on local usage.

Outage reports (new subrule 39.5(5))

As proposed, subrule 39.5(6) would require ETCs to submit detailed information on outages in the ETC's network. The RSAs, Coalition, Sprint, and Qwest all stated that this requirement duplicated a federal requirement. The RSAs and the Coalition stated that if the Board decides to adopt an outage reporting requirement, it should simply require ETCs to file copies of their FCC outage reports with the Board, subject to appropriate procedures to protect the confidentiality of the reports.

The Board concludes that it will adopt an outage reporting requirement and that the information provided in outage reports provided to the FCC is sufficient for the Board's purposes. The subrule on outage reports will be adopted at 39.5(5). The Board will adopt the suggestion to require carriers to file copies of all outage reports filed with the FCC and will amend the proposed subrule accordingly. Confidentiality issues are addressed later in this order.

Unfilled customer requests for service (new subrule 39.5(6))

Proposed subrule 39.5(7) would require ETCs to report the number of requests for service from potential customers that were unfilled in the past year. The RSAs urged the Board not to adopt the proposed subrule because it does not correspond with how wireless accounts are activated. The RSAs stated that because wireless carriers may use independent distribution chains, a carrier would have no

way of knowing if a request made through one of those channels was ultimately unfilled. The RSAs also stated that when wireless service is purchased and a customer chooses a phone and service plan, that phone is activated immediately without an ordering or provisioning process. Qwest stated that the Board's rule at 199 IAC 22.6(2) already requires carriers to promptly fill orders for service, making the requirements of the proposed subrule duplicative.

The Board concludes that the information sought by the proposed subrule is worth having because a relatively large number of unfilled orders may indicate a problem with coverage. However, because other Board rules use five days as a target for providing service, the Board will modify the proposed subrule to require ETCs to report the number of requests that are unfilled for over five days. The new subrule on unfilled requests will be adopted at 39.5(6).

Number of complaints per 1,000 handsets or lines (new subrule 39.5(7))

As proposed, subrule 39.5(8) would require ETCs to report the number of complaints per 1,000 handsets or lines. The RSAs and Sprint commented on this proposed rule, stating it duplicated existing federal reporting requirements. RIITA stated that half of its members have fewer than 1,000 access lines and the number of complaints should be reported in absolute numbers rather than on a per-1,000 line basis. The Board concludes that the information generated by this proposed subrule will be relevant to the Board's task in monitoring whether federal funds are used for their intended purposes and will adopt the requirement, but will modify the proposed subrule to provide that carriers serving fewer than 1,000 handsets or access lines

shall report the actual number of complaints. The new subrule on number of complaints will be adopted at 39.5(7).

Extensions of and progress reports on two-year network improvement and maintenance plan (new subrules 39.5(8) and (9))

As proposed, subrule 39.5(5) would require progress updates on the carrier's two-year service quality improvement plan. The Board will revise the proposed amendment by adopting two new subrules 39.5(8) and (9). Subrule 39.5(8) will cover extensions of network improvement and maintenance plans. Subrule 39.5(9) will cover progress reports on the network improvement and maintenance plans.

As adopted, the subrules refer to extensions of and progress reports on network improvement and maintenance plans rather than service quality improvement plans as proposed. The Board concludes that a network improvement and maintenance plan necessarily includes service quality indicators and, thus, will use the more comprehensive term.

Subrule 39.5(8) will require each ETC to file a rolling one-year extension of its network improvement and maintenance plan by May 1 of each year. The first rolling one-year extension shall report improvements and maintenance planned for calendar year 2009 and shall be filed by May 1, 2008.

Subrule 39.5(9) will require each ETC to file a progress report on its network improvement and maintenance plan detailing the prior calendar year's activities. Progress reports shall be filed on May 1 of each year. The first progress report shall be filed by May 1, 2008.

The Board will also modify the proposed amendment to require an explanation of the benefits to specific wire centers, rather than reports on a wire center level. The Board concludes that the new reporting requirements will provide the Board with the information it needs to monitor use of the federal funds. The new reporting deadlines will allow carriers sufficient time to gather the required information and prepare the reports.

4. Content of annual certification (new rule 39.7)

Proposed rule 39.7 replaces existing subrule 22.2(7) and sets forth the required content and form of the annual universal service certification. As adopted, rule 39.7 will require carriers proposing to continue to receive federal high-cost universal support to file an affidavit no later than May 1 of each year. In addition to the certification requirements from existing subrule 22.2(7), the new rule will require the carrier to certify that it will comply with applicable service quality standards and consumer protection rules; the carrier is able to maintain backup power for a minimum of two hours; the carrier is offering a local usage plan comparable to that offered by the ILEC in the relevant service areas; the carrier acknowledges it may be required by the FCC to provide equal access to long distance carriers; and that, as an ETC, it agrees to provide timely responses to Board requests for information related to the status of local voice service markets or facilities. The Board agrees with the suggestion of the RSAs to delete the word "application" from the certification form and will revise the form accordingly. Also, the certification form will require a carrier that does not submit tariffs to the Board to provide the name on the carrier's

initial application for ETC designation and the company's current name, if the name has changed.

5. Confidentiality provisions

As proposed, the amendment added network development information to the list of presumptively confidential materials in paragraph 1.9(5)"c." The Board received several comments supporting this proposed amendment and asking the Board to expand the categories of ETC-related information to be deemed confidential. The Board will modify the proposed amendment to add network improvement and maintenance plans and related extensions and progress reports, wireless coverage area maps, and service outage reports filed with the Board pursuant to 39.5(5) to the list of materials in paragraph 1.9(5)"c." The Board will not add emergency preparedness or disaster recovery plans as suggested by the Coalition because the Board is not asking for the actual plans, just a statement certifying that the carrier is able to maintain a minimum of two hours of backup power.

6. Workshops

Finally, because these proposed rules have prompted many questions from telecommunications carriers about their initial and ongoing obligations under the new rules, the Board will hold three workshops for purposes of discussing with carriers a wide range of issues regarding the new eligibility, certification, and reporting requirements. The Board anticipates that representatives of the telecommunications industry will participate in the workshops, bringing their questions and suggestions regarding reporting deadlines, cycles, and formats. The Board also anticipates discussion about how the Board will evaluate and respond to the information generated by the new rules.

Workshops will be held on October 24, 2006, from 10 a.m. until 12 noon at the headquarters of Western Iowa Networks at 112 E. Main in Breda, Iowa; October 25, 2006, from 2 p.m. until 4 p.m. at the office of the Iowa Utilities Board at 350 Maple Street in Des Moines, Iowa; and on October 26, 2006, from 10 a.m. until 12 noon at the headquarters of South Slope Cooperative Telephone Company at 980 N. Front Street in North Liberty, Iowa.

IT IS THEREFORE ORDERED:

1. The revised rules attached to and incorporated by reference in this order are adopted.

2. The Executive Secretary is directed to submit for publication in the Administrative Bulletin an "Adopted and Filed" notice in the form attached to and incorporated by reference in this order.

3. Workshops are scheduled on October 24, 25, and 26, 2006, as described in this order.

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 6th day of October, 2006.

UTILITIES DIVISION [199]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.4 and 476.2 and 47 U.S.C. Section 214(e), the Utilities Board gives notice that on October 6, 2006, the Board issued an order in Docket No. RMU-06-1, In re: Eligibility, Certification, and Reporting Requirements for Eligible Telecommunications Carriers [199 IAC 39], "Order Adopting Amendments and Scheduling Workshops." The Board adopted amendments to 199 IAC 39 establishing new eligibility, certification, and reporting requirements for telecommunications carriers seeking to be designated as eligible telecommunications carriers (ETCs). The Board also adopted minor changes to its rules at 199 IAC 1 and 199 IAC 22 to reflect changes made to 199 IAC 39.

The order adopted amendments, with revisions, which were published under Notice of Intended Action in IAB Vol. XXVIII, No. 19 (3/15/06) p. 1395, as ARC 4977B. Written comments were submitted to the Board by eleven participants on or before April 4, 2006. On April 20, 2006, the Board accepted comments filed on April 17, 2006, from another carrier. Written comments were received from Iowa Wireless Services, Iowa Telecommunications Association, Iowa RSA Nos. 7, 8, and 10, Iowa Wireless Coalition, Qwest Corporation, Rural Iowa Independent Telephone Association, Sprint Nextel Corporation, T-Mobile Central,

U.S. Cellular Corporation, Verizon Wireless, Cingular Wireless PCS, LLC, and the Consumer Advocate Division of the Department of Justice.

An oral comment hearing was held on April 26, 2006, at which all but one of the participants that filed written comments were represented.

The Board made certain changes to the rules based on the written comments and on comments made at hearing. Major changes include clarifying how the new eligibility, certification, and reporting requirements will apply to previously designated ETCs; omitting a requirement that wireless carriers submit maps showing the location of towers and replacing it with a requirement that wireless carriers submit maps depicting signal strength; requiring reports explaining how expenditures benefit specific wire centers in an ETC's designated service area rather than reports on a wire center basis; adopting new reporting cycles and deadlines to allow ETCs sufficient time to gather and report the required information; acknowledging that maintenance can be an appropriate use of universal service funds; and clarifying what will be required in network improvement and maintenance plans, extensions, and progress reports. The changes are explained in greater detail in the Board's order adopting the amendments, which can be found on the Board's Web site, www.state.ia.us/iub.

The amendments will become effective November 29, 2006.

The amendments are intended to implement Iowa Code section 476.2 and 47 U.S.C. Sections 214(e) and 254.

The following amendments are adopted.

ITEM 1: Amend paragraph **1.9(5)"c"** as follows:

c. Materials exempted pursuant to requests deemed granted by the board. Requests that material or information be withheld from public inspection that contain negotiated transportation rates and prices for natural gas supply, reservation charges for portfolio gas supply contracts, and terms and prices for all hedging activity including both financial hedges and weather-related information included in monthly purchased gas adjustment filings, annual purchase gas adjustment filings, annual purchased gas adjustment reconciliations, periodic filings related to changes in purchased gas adjustment factors, negotiated purchase prices for electric power, fuel, and transportation, customer-specific information, power supply bills in support of energy adjustment clause filings, network improvement and maintenance plans and related extensions and progress reports, wireless coverage area maps, service outage reports filed with the board pursuant to 199 IAC 39.5(5), or the financial records filed by applicants for certificates of convenience and necessity to provide competitive local exchange service shall be deemed granted pursuant to Iowa Code section 22.7(3), as a trade secret, or pursuant to Iowa Code section 22.7(6), as a report to a government agency which, if released, would benefit competitors and would serve no public purpose, or pursuant to both sections, provided that the confidential portions of the filings are identified and segregated and an attorney for the company or a corporate officer avers that those portions satisfy Iowa Code section 22.7(3) or 22.7(6), or both, as interpreted by the Iowa Supreme Court. The information shall be held confidential by the board upon filing and will be subject to the provisions of 199 IAC 1.9(8)"b"(3).

ITEM 2. Rescind subrule **22.2(7)**.

ITEM 3: Amend subrule **39.2(3)** by adding new paragraphs "c" through "l" as follows:

c. Submit an explanation of how the carrier will provide each of the supported services listed in 39.2(1).

d. Submit a description, including detailed map or maps, of the area or areas for which ETC designation is sought. Commercial mobile radio service (CMRS) providers, as defined in 47 CFR Parts 20 and 24, shall file coverage area maps that depict signal strength.

e. Submit a network improvement and maintenance plan associated with the provision of universal supported services. An ETC applicant shall submit a two-year plan specifically describing its proposed network improvements, upgrades, and maintenance for its proposed designated service area. The plan must demonstrate in detail how high-cost support will be used for service improvements or maintenance that would not occur absent support. The plan must demonstrate: (1) how signal quality, coverage, or capacity will improve in the designated area due to receipt of support; (2) the projected start date and completion date for each improvement, including the estimated amount of investment per project funded by high-cost support; (3) the specific geographic areas where improvements will be made; and (4) the estimated population that will be served as a result of the improvements. This information shall identify the benefits to specific wire centers in the carrier's proposed designated service area. Carriers that are not requesting high-cost support shall indicate this in their

applications. Carriers that are not seeking or receiving high-cost support are not required to file network improvement and maintenance plans, nor are they required to file annual extensions and progress reports.

f. Demonstrate compliance with applicable consumer protection standards.

Wireline ETC applicants shall commit to complying with the consumer protection rules set out in 199—Chapters 6 and 22. Wireless ETC applicants shall commit to complying with the following minimum consumer protection standards:

(1) Provide disclosure rates and terms of service to consumers. For each rate plan offered to new consumers, wireless carriers shall make available to consumers in collateral or other disclosures at point of sale and on their Web sites, at a minimum, the following information, as applicable:

1. The calling area for the plan;
2. The monthly access fee or base charge;
3. The number of airtime minutes included in the plan;
4. Any night and weekend minutes included in the plan or other differing charges for different time periods and the time periods when night and weekend minutes or other charges apply;
5. The charges for excess or additional minutes;
6. Per-minute long distance charges or whether long distance is included in other rates;
7. Per-minute roaming or off-network charges;
8. Whether any additional taxes, fees or surcharges apply;

9. The amount or range of any such fees or surcharges that are collected and retained by the carrier;
10. Whether a fixed-term contract is required and, if so, its duration;
11. Any activation or initiation fee; and
12. Any early termination fee that applies and the trial period during which no early termination fee will apply.

(2) Make available maps showing where service is generally available.

Wireless carriers shall make available at point of sale and on their Web sites maps depicting approximate voice service coverage applicable to each of their rate plans currently offered to consumers. To enable consumers to make comparisons among carriers, these maps shall be generated using generally accepted methodologies and standards to depict outdoor coverage. All such maps shall contain an appropriate legend concerning limitations and variations in wireless coverage and map usage, including any geographic limitations on the availability of any services included in the rate plan. Wireless carriers shall periodically update such maps as necessary to keep the maps reasonably current. If necessary to show the extent of service coverage available to customers from carriers' roaming partners, carriers shall request and incorporate roaming partners' coverage maps that are generated using similar industry-accepted criteria or, if such information is not available, incorporate publicly available information regarding roaming partners' coverage areas.

(3) Provide contract terms to customers and confirm changes in service.

When a customer initiates service with a wireless carrier or agrees to a change in

service whereby the customer is bound to a contract extension, the carrier shall provide or confirm the material terms and conditions of service with the customer.

(4) Allow a trial period for new service. When a customer initiates service with a wireless carrier, the customer shall be informed of and given a period of not less than 14 days to try out the service. The carrier shall not impose an early termination fee if the customer cancels service within this period, provided that the customer complies with applicable return and exchange policies. Other charges, including airtime usage, may still apply.

(5) Provide specific disclosure in advertising. In advertising of prices for wireless service or devices, wireless carriers shall disclose material charges and conditions related to the advertised prices, including if applicable and to the extent the advertising medium reasonably allows:

1. Activation or initiation fees;
2. Monthly access fees or base charges;
3. Any required contract term;
4. Early termination fees;
5. The terms and conditions related to receiving a product or service for "free";
6. The times of any peak and off-peak calling periods;
7. Whether different or additional charges apply for calls outside the carrier's network or outside designated calling areas;
8. For any rate plan advertised as "nationwide" (or using a similar term), the carrier shall have available substantiation for this claim;

9. Whether prices or benefits apply only for a limited time or promotional period and, if so, any different fees or charges to be paid for the remainder of the contract term;

10. Whether any additional taxes, fees, or surcharges apply; and

11. The amount or range of any such fees or surcharges collected and retained by the carrier.

(6) Separately identify carrier charges from taxes on billing statements. On customers' bills, the carrier shall distinguish monthly charges for service and features and other charges collected and retained by the carrier from taxes, fees, and other charges collected by the carrier and remitted to federal, state, or local governments. Carriers shall not label cost recovery fees or charges as taxes.

(7) Provide customers the right to terminate service for changes to contract terms. Carriers shall not modify the material terms of their subscribers' contracts in a manner that is materially adverse to subscribers without providing a reasonable advance notice of a proposed modification and allowing subscribers a time period of not less than 14 days to cancel their contracts with no early termination fee.

(8) Provide ready access to customer service. Customers shall be provided a toll-free telephone number to access a carrier's customer service during normal business hours. Customer service contact information shall be provided to customers on line and on billing statements. Each wireless carrier shall provide information about how customers may contact the carrier in writing, by toll-free telephone number, via the Internet, or otherwise with any inquiries or complaints,

and this information shall be included, at a minimum, on all billing statements, in written responses to customer inquiries, and on carriers' Web sites. Each carrier shall also make such contact information available, upon request, to any customer calling the carrier's customer service department.

(9) Promptly respond to consumer inquiries and complaints received from government agencies. Inquiries for information or complaints to a wireless ETC shall be resolved promptly and courteously. If a wireless ETC cannot resolve a dispute with the applicant or customer, the wireless ETC shall inform the applicant or customer of the right to file a complaint with the board. The wireless ETC shall provide the following board address and toll-free telephone number: Iowa Utilities Board, Customer Service, 350 Maple Street, Des Moines, Iowa 50319-0069; 1-877-565-4450. When the board receives a complaint, the procedures set out in 199—Chapter 6, "Complaint Procedures," shall be followed to enforce the minimum consumer protection standards in this paragraph. When the board receives a complaint alleging the addition or deletion of a product or service for which a separate charge is made to a customer account without the verified consent of the customer, the complaint shall be processed by the board pursuant to 199 Chapter 6.

In any complaint proceeding pursuant to this subparagraph, if the wireless ETC asserts that the complainant is located in an area where the wireless ETC is not designated as an ETC, the wireless ETC must submit evidence in support of its assertion.

(10) Abide by policies for protection of customer privacy. Each wireless ETC shall abide by a policy regarding the privacy of customer information in accordance with applicable federal and state laws and shall make available to the public its privacy policy concerning information collected on line.

g. Demonstrate compliance with applicable service quality standards. Wireline ETC applicants shall demonstrate that they will comply with applicable service quality standards set forth in 199—Chapter 22. All ETC applicants shall commit to complying with the service quality reporting requirements set forth in 199—39.5(476).

h. Certify it is able to maintain a minimum of two hours of backup power to ensure functionality without an external power source.

i. Demonstrate a commitment to offer a local usage plan comparable to the one offered by the incumbent local exchange carrier in the areas for which the carrier seeks designation. ETC applicants shall commit to providing Lifeline and Link-Up consistent with 47 CFR 54.401 and 47 CFR 54.411.

j. File a statement that the carrier acknowledges that the FCC may require it to provide equal access if all other eligible carriers in its ETC designated service area relinquish their designations pursuant to Section 214(e) of the Telecommunications Act of 1996.

k. Where the ETC applicant seeks to provide service in a rural area, demonstrate that granting ETC designation is in the public interest. The public interest analysis shall include discussion of the benefits of increased consumer choice and, if relevant, of the benefits of providing consumer choices on service

offerings in rural and high-cost areas. The public interest analysis shall also include discussion of the particular advantages and disadvantages of the applicant's offering. For example, the analysis may discuss the potential benefits of mobility that wireless carriers provide in geographically isolated areas, the potential impact on toll charges to affected consumers, and the potential for consumers to obtain services such as voicemail, numeric paging, call forwarding, three-way calling, call waiting, and other premium services comparable to those provided in urban areas. The analysis shall also address the disadvantages of dropped-call rates and poor coverage.

I. Respond to board requests for information related to the status of local voice service markets or facilities. Board requests may include requests for surveys on the number of customers using specific services, facilities, or service packages and explanations of services or service packages, pricing on services offered, carrier advertising efforts, and market trends.

ITEM 4: Amend rule 39.2 by adding **new** subrule 39.2(7) as follows:

39.2(7) Previously designated ETCs. Any carrier that was designated by the board as an ETC before November 29, 2006, and that receives high-cost universal service support pursuant to applicable federal regulations governing high-cost support shall file a statement demonstrating compliance with the requirements in 39.2(3)"d" through "j" on or before March 1, 2007. As part of this filing, each ETC shall file a network improvement and maintenance plan for a reporting period of January 1, 2007, through December 31, 2008. Each carrier shall also acknowledge it will respond to board requests for information related to

the status of local voice service markets or facilities as required by 39.2(3)"l." A wireline ETC that has service area maps on file with the board, or that adopts such maps before November 29, 2006, does not need to refile the service area maps as would otherwise be required by 39.2(3)"d."

ITEM 5: Amend rule 199—39.5(476) as follows and by adding **new** subrules 39.5(5) through (9) :

199—39.5(476) Quality of service reporting by eligible telecommunications

carriers. Carriers designated by the utilities board as eligible to receive high-cost universal service support pursuant to 47 U.S.C. § 214(e) and that receive such support must measure and report to the board the quality of service

performance for the criteria listed below. ~~Quality of service reporting shall be provided annually in a format determined by the board.~~ The first service quality reports on the criteria in subrules 39.5(1) through (7) shall be filed by August 1, 2007, and shall cover a reporting period of January 1 through June 30, 2007.

The next service quality reports shall be filed by May 1, 2008, and shall cover a reporting period of July 1 through December 31, 2007. Beginning with the reports due on May 1, 2009, and for subsequent reports due on May 1 of each year, the reporting period shall cover the preceding calendar year.

1. Local usage. The amount of minutes of service provided each month, without any additional charge, as part of the ETC-eligible service. Each ETC shall include a description of its rate plans; a definition of the calling area associated with the plans; an explanation of bundling of local and long distance

services; an explanation of free calls to government agencies or other entities;
and an explanation of other issues related to the rates and terms of the plans.

2. No change.

3. Answer time. The average wait time ~~that each customer~~ experienced by
customers ~~is left on hold~~ when calling an eligible carrier's ETC's customer service
center, regardless of the ~~location~~ locations from which the ~~customer~~ customers ~~is~~
were calling.

4. No change.

5. FCC outage reports. Each ETC shall file copies of all FCC outage reports
it filed with the FCC. The copies will be filed as confidential pursuant to the
provisions of 199—1.9(5)"c."

6. The number of requests for service from potential customers that were
unfilled for over five days during the past year.

7. The number of complaints per 1000 handsets or lines. ETCs serving
fewer than 1000 handsets or access lines shall report the actual number of
complaints.

8. Extensions of network improvement and maintenance plans. On or before
May 1 of each year, each ETC shall file a rolling one-year extension of its
network improvement and maintenance plan. The initial rolling one-year
extension shall report improvements and maintenance planned for calendar year
2009 and shall be filed by May 1, 2008.

9. Progress reports on network improvement and maintenance plans. On or
before May 1, 2008, and each May 1 thereafter, each ETC shall file a progress

report on its network improvement and maintenance plan detailing the prior calendar year's activities. The progress report shall include coverage area maps detailing progress toward plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity. If support was used for something other than improving signal quality, coverage, or capacity, the report shall include an explanation of how the support was used. The report shall identify any network improvement targets that have not been met and shall include an explanation of why targets were not met. The report shall indicate if there have not been any changes to the ETC's coverage area and shall include an explanation of why no changes were made. Any reporting of expense and investment information shall include an explanation of how the expenses and investments benefited specific wire centers in the ETC's designated service area. For purposes of this subrule, "wire center" shall be defined as determined by the North American Numbering Plan Administrator.

ITEM 6: Add **new** rule 199—39.6 (476) as follows:

199—39.6(476) Universal service certification.

39.6(1) Certification to be filed with the board. Any carrier desiring to continue to receive federal high-cost universal service support shall file with the board no later than May 1 of each year an original and two copies of an affidavit and shall file one copy with the consumer advocate division of the department of justice.

39.6(2) Content of certification. Each affidavit shall be titled “Certification of [Company Name].” The company name shall be the same name shown on the carrier’s tariff as filed with the board. If the ETC does not file tariffs with the board, the ETC shall provide the name used on its initial application for ETC designation and its current name, if its name has changed. The affidavit shall include the study area code (SAC) number associated with the company. The affidavit shall be sworn and notarized and shall be executed by an authorized corporate officer. The affidavit shall certify that the carrier will use the support the carrier receives pursuant to FCC regulations or successor regulations concerning high-cost universal service support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. In addition, the affidavit shall certify that the carrier will comply with applicable service quality standards and consumer protection rules, certify that the carrier is able to maintain backup power for a minimum of two hours to ensure functionality without an external power source, certify that the carrier is offering a local usage plan comparable to that offered by the ILEC in the relevant service areas, and certify that the carrier acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other eligible carrier is providing equal access within the ETC's designated service area. The affidavit shall also certify to the following: As an eligible telecommunications carrier, the carrier agrees to provide timely responses to board requests for information related to the status of local voice service markets or facilities.

39.6(3) Certifications subject to complaint or investigation. Any certification filed by a carrier shall be subject to complaint or investigation or both by the board.

CERTIFICATION OF [COMPANY NAME]

STATE OF IOWA

COUNTY OF _____

I, [authorized corporate officer], [office], [company name], being of lawful age and duly sworn, depose and state:

[Company name], [SAC number], will use the support [company name] received pursuant to 47 CFR §§ 54.301, 54.305, or 54.307, or Part 36, Subpart F, of FCC regulations or successor regulations concerning high-cost universal service support, only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. In addition, [company name] certifies that it will comply with applicable service quality standards and consumer protection rules, certifies that it is able to maintain a minimum of two hours of backup power to ensure functionality without an external power source, certifies that it is offering a local usage plan comparable to that offered by the ILEC in the relevant service areas, and certifies that it acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other eligible carrier is providing equal access within its ETC designated service area. As an eligible telecommunications carrier, [company name] agrees to provide timely responses to Board requests for information related to the status of local voice service markets or facilities.

I further state that I am authorized by [company name] to make this statement.

[authorized officer]

Subscribed and sworn to before me this ____ day of _____, _____.

Notary Public

October 6, 2006

/s/ John R. Norris

John R. Norris

Chairman