

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE:</p> <p>COON CREEK TELECOMMUNICATIONS CORP.,</p> <p style="text-align:center">Complainant,</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-06-42</p>
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**FINAL ORDER**

(Issued December 11, 2006)

**BACKGROUND AND PROCEDURAL HISTORY**

On May 4, 2006, Coon Creek Telecommunications Corp. (Coon Creek) filed a complaint and request for permanent relief against Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), pursuant to Iowa Code §§ 476.1D and 476.101(8), among other provisions identified in the complaint.

On May 10, 2006, Coon Creek amended its complaint to specifically allege that Iowa Telecom engaged in predatory pricing, discriminatory behavior, and anti-competitive practices in the Belle Plaine and Marengo, Iowa, exchanges in violation of various provisions of Iowa law. Coon Creek also alleges that Iowa Telecom's

practices directly threaten competition in those exchanges and therefore are contrary to Iowa Code § 476.1D and the public interest.

Specifically, Coon Creek asserts that Iowa Telecom's bundled packages of services offered to business and residential customers in the Belle Plaine and Marengo exchanges constitute "give-aways" that are not offered in regulated exchanges. (Complaint, p. 4). Coon Creek alleges that these bundles are unsustainable in the long term and that Iowa Telecom's pricing, bundling, and marketing practices threaten competition in the Belle Plaine and Marengo exchanges. (Complaint, p. 4). Coon Creek alleges the following violations by Iowa Telecom involving its pricing practices:

- (1) Iowa Telecom is engaging in cross-subsidization in violation of Iowa Code § 476.100(6);
- (2) Iowa Telecom is pricing rates for unbundled network elements (UNEs) higher than it values those services for itself in violation of Iowa Code § 476.100(2);
- (3) Iowa Telecom is discriminating in favor of itself in the provision and pricing of telephone service in violation of Iowa Code § 476.100(7);
- (4) Iowa Telecom is engaging in predatory, anti-competitive, and discriminatory practices and is harmful to competition in violation of Iowa Code § 476.101(9); and
- (5) Iowa Telecom is engaging in a price squeeze and is negatively impacting effective competition in violation of Iowa Code § 476.3(1).

On May 30, 2006, Iowa Telecom filed its answer to Coon Creek's amended petition and also filed a motion to dismiss the complaint. Iowa Telecom asserted that the complaint is substantially based on the same facts alleged in a previous, similar complaint filed by Coon Creek, which was dismissed by the Board on April 17, 2006, for lack of jurisdiction.<sup>1</sup> Iowa Telecom contended that the only difference between the dismissed complaint and Coon Creek's present complaint is the inclusion of a jurisdiction argument and the replacement of allegations of pricing violations with allegations of violations of Iowa Code §§ 476.100 and 476.101.

Iowa Telecom also asserted that because Coon Creek is not a "local exchange utility" as defined in § 476.96 and as that term is used in § 476.55, Coon Creek cannot bring an antitrust complaint before the Board to address claims of anticompetitive behavior in deregulated markets. Iowa Telecom argued that Coon Creek's only remedy in this matter is reregulation pursuant to § 476.1D and then only if it can show that the market is no longer subject to effective competition.

On June 27, 2006, the Board issued an order docketing Coon Creek's petition and denying Iowa Telecom's motion to dismiss. In the June 27 order, the Board stated that it understands Coon Creek's allegations to mean that Coon Creek believes that there is no longer effective competition in the Belle Plaine and Marengo

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<sup>1</sup> See In re: Coon Creek Telecommunications Corp. vs. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, "Order Dismissing Complaint Without Prejudice," Docket No. FCU-06-31 (Issued April 17, 2006). The complaint asserted pricing violations against Iowa Telecom in deregulated exchanges. The Board dismissed the complaint due to lack of jurisdiction over rates in deregulated exchanges.

exchanges and that some degree of regulation should be reimposed pursuant to Iowa Code § 476.1D(6). The Board also stated that while the Board does not have jurisdiction over the pricing allegations against Iowa Telecom under the various provisions of Iowa Code chapter 476 cited by Coon Creek, the Board would accept evidence of those activities as evidence of the lack of effective competition in the Belle Plaine and Marengo exchanges.

A hearing was held on October 3, 2006, for the purpose of receiving testimony and cross-examination of all witnesses. Both parties submitted briefs on October 23, 2006.

### **JURISDICTION AND LEGAL STANDARD**

The Board's jurisdiction in this matter rests under Iowa Code § 476.1D and Coon Creek must demonstrate that effective competition no longer exists in the Belle Plaine and Marengo exchanges in order to be successful in its claim. Coon Creek's charges of predatory pricing, price squeezing, and price discrimination against Iowa Telecom will be viewed as categories of evidence in support of an allegation that effective competition does not exist in those exchanges.

Iowa Telecom has argued that this case should be dismissed because, to paraphrase, antitrust claims can be heard by the Board only pursuant to § 476.55(2) and only rate-regulated local exchange carriers and city utilities may file complaints

pursuant to that statute. Coon Creek does not fit within either of these categories and, therefore, cannot bring an antitrust complaint before the Board, according to Iowa Telecom.

The Board agrees with Iowa Telecom that a complaint under § 476.55 is not available to Coon Creek.<sup>2</sup> The Board understands that non-rate-regulated carriers like Coon Creek could have been included in § 476.55, but were not. This does not mean that Coon Creek has no remedy available from the Board, however, if it is able to prove its case. The last sentence of § 476.55 expressly states that the enactment of § 476.55 does not modify, restrict, or limit any person's right to bring a complaint before the Board under any other provision of chapter 476 that may apply. Thus, in this case, the Board understands Coon Creek's petition as one for reregulation of the subject exchanges pursuant to § 476.1D, because that provision is clearly available to Coon Creek and because Coon Creek has not shown that any other provision applies.

The applicable legal standards in this proceeding are the same standards that the Board has applied in the past when determining whether effective competition exists for a service or facility in a particular exchange. These standards include statutory criteria and additional factors set forth by Board rule. The statutory criteria are established in § 476.1D(1) and are as follows:

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<sup>2</sup> If Coon Creek or any other non-rate-regulated local exchange carrier is interested in pursuing an amendment to § 476.55 to broaden its coverage, the Board is willing to consider supporting such an effort, so long as the rights and obligations available to all parties are appropriately balanced.

- (1) Whether a comparable service or facility is available from a supplier other than the telephone utility; and
- (2) Whether the resulting market forces are sufficient to assure just and reasonable rates without regulation, which market forces shall include a consideration of factors including but not limited to the presence or absence of all of the following:
  - a. wireless communications;
  - b. cable telephony;
  - c. Voice Over Internet Protocol (VoIP); and
  - d. Economic barriers to entry of competitors or potential competitors in that market.

In addition to the statutory criteria, Board rule 199 IAC 5.6(1) provides the following additional factors that may be considered by the Board:

- a. The ability or inability of a single provider to determine or control prices;
- b. The ease with which other providers may enter the market;
- c. The likelihood that other providers will enter the market;
- d. The substitutability of one service or facility for another; and
- e. Other relevant considerations.

With respect to Coon Creek's allegations of price predation or price squeezing by Iowa Telecom, the Board may review the evidence supporting or denying these allegations as additional factors when determining whether effective competition exists in the Belle Plaine and Marengo exchanges.

## DISCUSSION

### I. **WHETHER EFFECTIVE COMPETITION EXISTS IN THE BELLE PLAINE AND MARENGO EXCHANGES.**

The parties in this proceeding offered evidence regarding the presence or absence of effective competition in the Belle Plaine and Marengo exchanges, collectively. Therefore, the Board will make a collective determination for both exchanges. Insofar as specific evidence applies to either the Belle Plaine or Marengo exchange, the Board will distinguish such information in this discussion. However, the Board's final decision in this proceeding will answer the above question for both exchanges.

The Board previously determined that each of these exchanges is subject to effective competition and should be deregulated.<sup>3</sup> Coon Creek's witness testified that Coon Creek is not challenging that prior determination; instead, Coon Creek's focus is on what it believes to be changes in the relevant facts since 2005, the primary change being the pricing of Iowa Telecom's services. (Tr. 393). Coon Creek also points to changed circumstances in terms of increased availability of wireless and VoIP services (Tr. 394-96), but "the facts that have changed primarily is the pricing plan of Iowa Telecom. That is the biggest issue." (Tr. 396). In the end, Coon Creek's witness stated that the company is not second-guessing the Board's original deregulation decision (Tr. 399), so the focus in this proceeding is on the allegations of changed facts that require reregulation, the primary one being the change in Iowa

Telecom's prices. However, this order will include discussion of the 2005 Deregulation Order where appropriate.

**A. Statutory Analysis**

**1. Whether a comparable service or facility is available from a supplier other than a telephone utility.**

Coon Creek asserts that there are only two facilities-based wireline carriers in the Belle Plaine and Marengo exchanges and there are no cable telephony providers or broadband-over-power-line providers in these exchanges. Coon Creek also argues that wireless service remains a complement to local exchange service rather than a substitute, there is no evidence of any marketing by any satellite providers in these exchanges, and no VoIP providers offer services in these exchanges.

Iowa Telecom asserts that Coon Creek has constructed its own network in the Belle Plaine and Marengo exchanges, which overlaps a significant portion of Iowa Telecom's existing network. Iowa Telecom also claims that Coon Creek has a strong, local presence, has knowledge of the local market conditions, and provides services and facilities comparable to those being offered by Iowa Telecom. Iowa Telecom states that these facts have not changed since the Board reviewed this information in the 2005 Deregulation Order.

At the time of the 2005 Deregulation Order, the Board determined that the Belle Plaine and Marengo exchanges had been overbuilt by a nearby local exchange carrier that had a strong local presence and knowledge of local market conditions

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<sup>3</sup> 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) (hereafter "2005 Deregulation

and that the number of competitive local exchange carriers (CLECs) providing single line flat-rated local exchange service in the Belle Plaine and Marengo exchanges indicated there were comparable services or facilities available from a provider other than the incumbent. While Coon Creek appears to be the only CLEC offering single line flat-rated local exchange service in Belle Plaine and Marengo, the record also demonstrates that there are five wireless providers offering service in the Belle Plaine and Marengo exchanges, plus three providers of broadband service which provides the capability for VoIP. (Tr. 895-97). In addition, the Board's recent ruling in Docket No. FCU-06-49<sup>4</sup> allows Mediacom's local exchange carrier affiliate, MCC Telephony of Iowa, Inc., to offer voice services in all of Iowa Telecom's exchanges, including Belle Plaine and Marengo.

The Board finds that the evidence relating to this statutory criterion has not changed substantially since similar evidence was evaluated at the time of the 2005 Deregulation Order in the Belle Plaine and Marengo exchanges. The standard at issue here does not require that identical services or facilities be offered, only that comparable or substitutable services or facilities be available.<sup>5</sup> The presence of

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Order").

<sup>4</sup> In re: Sprint Communications Company, LP and MCC Telephony of Iowa, Inc. v. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, "Final Decision and Order and Order Allocating Costs," Docket No. FCU-06-49 (issued November 9, 2006).

<sup>5</sup> See Deregulation Order, Docket No. INU-05-2, p. 8 (citing Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, "Order Denying Petition for Deregulation," Docket No. INU-01-1 (issued, April 5, 2002)).

Coon Creek as a CLEC in Belle Plaine and Marengo using its own facilities, the presence of wireless and broadband service in the two exchanges, and the potential entry of MCC Telephony into the voice services market in the Belle Plaine and Marengo exchanges indicate that comparable services or facilities are available in these exchanges from a telecommunications provider other than the incumbent. Therefore, the Board finds that this statutory criterion has been met and continues to be met for both the Belle Plaine and Marengo exchanges.

- 2. Whether market forces are sufficient to assure just and reasonable rates without regulation, which market forces shall include a consideration of factors including but not limited to the presence or absence of all of the following:**
  - a. Wireless communications;**
  - b. Cable telephony;**
  - c. VoIP;**
  - d. Economic barriers to entry of competitors or potential competitors in that market.**

Coon Creek asserts that there has been a significant change in the retail rates offered by Iowa Telecom since the Board's 2005 Deregulation Order. (Tr. 393-96). Coon Creek claims that the rates currently being charged by Iowa Telecom are now likely below cost and encourage cross-subsidization. (Coon Creek brief, p. 26). Coon Creek also asserts that there has been a dramatic change in market share, as Coon Creek claims that it has lost more than 10 percent of all its lines in the Belle Plaine and Marengo exchanges. (*Id.*, at 26).

Iowa Telecom claims that Coon Creek has modern facilities, an established market presence with over 50 percent of the wireline lines in Belle Plaine and Marengo, and offers a comprehensive bundle of voice, data, and cable services.

(Iowa Telecom brief, p. 23). Iowa Telecom asserts that relatively few of Coon Creek's lines are served by UNEs. (Id.) Iowa Telecom claims that the presence of competition from wireless, broadband, and the potential for competition from cable telephony constitutes sufficient market force to assure just and reasonable rates without regulation.

The record available for the 2005 Deregulation Order indicated that Coon Creek possessed over 60 percent of the wireline market in the Belle Plaine exchange and over 50 percent of the wireline market in the Marengo exchange. Information available in this docket demonstrates that as of May 31, 2006, Coon Creek's wireline market share in the Belle Plaine exchange is somewhat reduced, but remains above 60 percent and its market share in the Marengo exchange has dropped only slightly below 50 percent. (Tr. 369-71).

In addition, the record in this docket shows that Coon Creek has a newer, more modern facility than Iowa Telecom that allegedly offers superior services to customers. (Tr. 100, 586). The record indicates that many of Coon Creek's customers continue to purchase service from Coon Creek even after Iowa Telecom's lower-priced, bundled service became available, in part because of the superior quality of service offered by Coon Creek, which is demonstrated by the minimal change in market share. (Tr. 586). The record also indicates that there are five wireless providers offering service in the Belle Plaine and Marengo exchanges, three providers of broadband service, and MCC Telephony may enter these exchanges to provide cable voice services. There is no evidence of a company experiencing

economic barriers to entry in these exchanges due to Iowa Telecom's relatively low-priced service bundle.<sup>6</sup>

For these reasons, the Board finds that similar market forces are in effect today as were in effect at the time this criterion was evaluated in 2005. The Board finds that Iowa Telecom has responded to competition in the Belle Plaine and Marengo exchanges and is attempting to differentiate its product by price. While Coon Creek has experienced some reduction in market share, Coon Creek still has nearly 50 percent of the market share in Marengo and more than 50 percent in Belle Plaine. It appears that consumers in these exchanges look to more than price when choosing a voice service, considering factors such as the quality of Coon Creek's network, products, and customer service. Therefore, the Board finds that there are sufficient market forces in place in these exchanges at this time to ensure just and reasonable rates without regulation.

**B. The criteria of 199 IAC 5.6(1)**

**1. Whether a single provider has the ability to determine or control prices.**

Coon Creek argues that it cannot respond to Iowa Telecom's reduced rate for its bundled service and that this fact demonstrates Iowa Telecom's ability to control prices in the Belle Plaine and Marengo exchanges. (Coon Creek brief, p. 25).

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<sup>6</sup> Iowa Telecom is offering a bundled rate of \$9.95 per month for business and residential customers in the Belle Plaine and Marengo exchanges. (Tr. 1039-41) However, the following additional charges also apply to Iowa Telecom's bundled rate: Subscriber Line Charge (SLC) of \$6.50; E911 charge of \$1.00; Universal Service Fund (USF) charge of \$0.70; and a Local Number Portability (LNP) fee of \$0.38. (Tr. 1039). Coon Creek's base rate for residential customers is \$21.00 per month, which includes the SLC and E-911. (Exhibit 14, Attachment 1). Therefore, the cost to the customer of Iowa

Iowa Telecom asserts that the ability to control prices is linked to a company's ability to charge supracompetitive prices, not prices that are lower than what a competitor may choose to charge. (Tr. 1009-10; Iowa Telecom brief, p. 29<sup>7</sup>). Iowa Telecom also states that prices that are above average total cost are legal *per se*, that prices above average variable costs are presumptively legal, and that the complaining party must show that the overall price structure was predatory, not just selected discount plans. (Iowa Telecom brief, p. 31<sup>8</sup>). Iowa Telecom states that the record shows that its pricing plan is well above its average variable costs and that Coon Creek has not presented contrary cost evidence in this proceeding. (*Id.*)

The Board agrees with Iowa Telecom's assertion that Coon Creek presented inadequate cost evidence to demonstrate that Iowa Telecom's price structure was predatory. Coon Creek did not provide any relevant cost studies to support its allegations and made no realistic effort to meet the legal standards for predatory pricing. Coon Creek was unable to demonstrate that Iowa Telecom possesses the market power necessary to engage in price predation or that Iowa Telecom is pricing below an appropriate and objective measure of its costs. This lack of adequate cost

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Telecom's bundled package is \$18.53 per month, as compared to Coon Creek's \$21.00 per month package for similar, but not identical, services. (Exhibit 14, Attachment 1).

<sup>7</sup> Citing Harrison Aire, Inc. v. Aerostar Intern., Inc., 423 F.3d 374, 380 (3<sup>rd</sup> Cir. 2005).

<sup>8</sup> Citing International Travel Arrangers v. NWA, Inc., 991 F.2d 1389, 1394 (8<sup>th</sup> Cir. 1993).

information, coupled with the previous discussion regarding the presence of sufficient market forces in Belle Plaine and Marengo to ensure just and reasonable rates, indicates that no single provider has the ability to determine or control prices in these exchanges.

**2. Whether other providers are likely to enter the market.**

Coon Creek asserts that entry into the Belle Plaine and Marengo exchanges is difficult due to Iowa Telecom's low-cost service bundle.

Iowa Telecom claims that various wireless and broadband providers are currently providing service or may provide service in these exchanges and that these alternatives have seen some growth and will continue to grow. Iowa Telecom also states that there is no evidence in the record of economic barriers to entry being experienced by any of these competitors. (Iowa Telecom brief, p. 25).

The Board agrees with Iowa Telecom that wireless providers as well as cable television providers and municipal utility companies all serve as additional sources of potential competitive entry. (Tr. 913-16). Given the current number and varied types of services available in the Belle Plaine and Marengo exchanges, consumers in those exchanges may see new competitors for voice service as high-speed data services evolve to offer greater speed, bandwidth increases, and additional services become available. Therefore, the Board finds that it is reasonably likely that other providers will enter these exchanges over time.

**3. Whether there is substitutability of one service or facility for another.**

This issue was addressed in the discussion regarding the availability of comparable services, above.

**4. Other relevant considerations.**

In its initial complaint, Coon Creek alleges that Iowa Telecom violates several provisions of the Iowa Code as a result of Iowa Telecom's pricing practices. The Board previously ruled that these ancillary claims cannot comprise separate causes of action in this case because the Belle Plaine and Marengo exchanges have been deregulated and these provisions of § 476 no longer apply to Iowa Telecom in these exchanges. Nevertheless, the Board stated that it would consider Coon Creek's evidence on these issues as relevant to the issue of whether there is effective competition in these exchanges. If it is shown that effective competition no longer exists, as could be demonstrated by a company's ability to engage in activities that would be prohibited if those statutes applied, then the relevant market can be reregulated and the relevant statutes would apply.

The Board notes that under § 476.1D, the Board's authority to review complaints by CLECs regarding pricing in deregulated exchanges is limited, at least when it comes to cost data. Specifically, § 476.1D(9) provides:

The board may investigate and obtain information from providers of deregulated services or facilities to determine whether the services or facilities are subject to effective competition or whether the service or facility is an essential communications service or facility and the public interest warrants service regulation. However, the board shall not,

for purposes of this subsection, request or obtain information related to the provider's costs or earnings.

It is not entirely clear how this section should be applied in a proceeding of this nature. It appears to limit the Board's ability to require the submission of carrier-specific cost data for reregulation proceedings, unless the carrier in question chooses to offer that information. However, it leaves open the possibility of considering more general cost data, or any other relevant evidence the parties may offer, which may prompt a carrier to submit its specific cost information on a voluntary basis.

**a. Whether Iowa Telecom is engaging in cross-subsidization in violation of Iowa Code § 476.100(6).**

Coon Creek alleges that Iowa Telecom is offering bundles of services in the Belle Plaine and Marengo exchanges at retail rates that are well below market rates and below cost and as a result, Iowa Telecom is cross-subsidizing these services in these exchanges in violation of § 476.100(6).

However, Coon Creek did not offer tangible evidence to prove that Iowa Telecom is engaging in cross-subsidization. Coon Creek did not provide any relevant cost studies to support its allegations and was unable to demonstrate that Iowa Telecom's retail prices are below an appropriate measure of cost or that Iowa Telecom is subsidizing its bundled offering in Belle Plaine and Marengo with revenues from other exchanges.

**b. Whether Iowa Telecom is pricing UNE rates higher than what it values those services for itself, in violation of Iowa Code § 476.100(2).**

Coon Creek alleges that by pricing UNEs at rates higher than it values those services for itself, Iowa Telecom is violating § 476.100(2). Coon Creek has overbuilt the urban areas in the Belle Plaine and Marengo exchanges, allowing it to utilize its own facilities for the provision of service. However, Coon Creek serves the rural areas of the exchanges with UNE loops it leases from Iowa Telecom. Coon Creek argues that it pays Iowa Telecom the wholesale rate of \$38.71 for a UNE loop, whereas Iowa Telecom charges its customers the single line rate of \$32.98 for business and \$16.98 for residential service in addition to the low cost bundle offering in those exchanges.

The price differential of which Coon Creek complains is an anomaly of the interaction between federal and state law. The Federal Communications Commission (FCC) requires that wholesale rates for UNEs be set using established Total Element Long-Run Incremental Cost (TELRIC) pricing methodologies. (47 C.F.R. §§ 51.503, 51.505, 51.511). As such, Iowa Telecom's UNE rates are basically set by application of a model or a formula approved by the FCC. The result is based on the estimated cost of building a replacement for Iowa Telecom's existing system. Because the TELRIC methodology uses hypothetical current cost data, it tends to produce a higher result in an area like that served by Iowa Telecom, where the existing network is both rural and older (and therefore substantially paid for).

Thus, Iowa Telecom is able to justify lower retail prices based on its actual network, while the hypothetical network used by TELRIC produces higher UNE rates.

While the UNE rates being charged to Coon Creek may appear to be prohibitive when compared to Iowa Telecom's retail rates, Coon Creek has other avenues through which it may provide service without paying Iowa Telecom's wholesale UNE rate. For example, Coon Creek may purchase the retail service being offered by Iowa Telecom at a discounted rate and resell it to its own customers pursuant to 47 U.S.C. § 251 or its interconnection agreement with Iowa Telecom. Because Coon Creek has alternatives to purchasing the UNE loops from Iowa Telecom at the TELRIC rate, the Board finds that Iowa Telecom is not in violation of § 476.100(2) (if it even applied).

**c. Whether Iowa Telecom is discriminating in favor of itself in the provision and pricing of telephone service in violation of Iowa Code § 476.100(7).**

This issue was addressed in the preceding discussion regarding whether Iowa Telecom is pricing UNE rates higher than it values those services for itself.

**d. Whether Iowa Telecom is engaging in predatory, anti-competitive and discriminatory practices, and is harmful to competition in violation of Iowa Code § 476.101(9).**

Coon Creek alleges that effective competition is threatened because Iowa Telecom is engaging in predatory pricing. However, Coon Creek has not demonstrated that Iowa Telecom has market power in these exchanges. (See previous discussion regarding market shares and availability of alternate services.) Coon Creek was also unable to prove that the prices of which it is complaining are

below an appropriate and objective measure of Iowa Telecom's costs or that Iowa Telecom's overall price structure is predatory. Moreover, Coon Creek has not shown that Iowa Telecom has a probability of recouping its investment in the alleged below-cost prices at some point in the future. Thus, Coon Creek has not proven that Iowa Telecom is engaged in predatory pricing, anti-competitive activities, or discriminatory practices that are harmful to competition (as opposed to competitors).

**e. Whether Iowa Telecom is engaging in a price squeeze and is negatively impacting effective competition in violation of Iowa Code § 476.3(1).**

Coon Creek alleges that Iowa Telecom has violated § 476.3(1) by engaging in a price squeeze and has disadvantaged Coon Creek customers in violation of § 476.101(9). However, Coon Creek has not shown that Iowa Telecom's retail prices are below an appropriate measure of cost. Moreover, Coon Creek has not proven that Iowa Telecom has sufficient market power in the Belle Plaine and Marengo exchanges so as to have the ability to engage in a price squeeze.

### **CONCLUSION**

In the end, Coon Creek's case can be summarized as follows: Coon Creek overbuilt parts of the Belle Plaine and Marengo exchanges in order to compete with Iowa Telecom. In recognition of that competition, the Board deregulated Iowa Telecom in those exchanges. In response to Coon Creek, Iowa Telecom reduced its rates by more than Coon Creek had expected. Coon Creek responded by filing its complaint, but Coon Creek has not offered persuasive evidence of unfair pricing

practices, antitrust activities, or other unfair, illegal, or anticompetitive actions by Iowa Telecom. Instead, based on the record before the Board, this appears to be an example of the type of local exchange competition that is favored by public policy, with consumers benefiting from lower prices and a choice of service providers. On this record, the Board will not reregulate these exchanges.

### **ORDERING CLAUSES**

#### **IT IS THEREFORE ORDERED:**

The Board finds that there is sufficient evidence in the record to support a finding of continued effective competition in the Belle Plaine and Marengo exchanges. The request by Coon Creek Telecommunications Corp. on May 4, 2006, and amended on May 10, 2006, for reregulation of the Belle Plaine and Marengo exchanges is denied, as discussed 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 11<sup>th</sup> day of December, 2006.