

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>COMMUNITY CABLE TELEVISION AGENCY OF O'BRIEN COUNTY, d/b/a THE COMMUNITY AGENCY AND TCA,</p> <p style="text-align:center">Complainant,</p> <p style="text-align:center">v.</p> <p>IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM,</p> <p style="text-align:center">Respondent.</p>	<p>DOCKET NO. FCU-06-48</p>
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ORDER REOPENING RECORD AND ADMITTING EXHIBITS

(Issued February 8, 2007)

On January 8 and 9, 2007, the Utilities Board (Board) conducted a hearing in this docket regarding the complaint brought by the Community Cable Television Agency of O'Brien County, d/b/a The Community Agency and TCA (TCA), against Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom).

On January 19, 2007, TCA filed a motion to reopen the record, asking the Board to allow TCA to file an additional exhibit, identified by TCA as Exhibit 31. The motion to reopen the record relates to an issue raised at hearing regarding whether TCA could purchase a competitive bundle of services from Iowa Telecom at a discounted rate. At the hearing, a TCA witness referred to an e-mail sent by Iowa Telecom to TCA in which Iowa Telecom stated TCA could not purchase the bundle at

a discount. TCA explains that at the hearing on January 8, 2007, counsel for Iowa Telecom stated the e-mail refusing to allow TCA to purchase the bundle at a discounted price was in error. TCA also explains that counsel for Iowa Telecom stated that Iowa Telecom would send another e-mail to TCA confirming TCA could purchase the bundle at a discount pursuant to its interconnection agreement with Iowa Telecom. TCA explains that Exhibit 31 contains the subsequent e-mail messages which, according to TCA, show that as of January 8, 2007, Iowa Telecom does not have terms, conditions, or management approval to allow TCA to purchase the competitive bundle at a discount and does not have lines available for such purpose. TCA asserts that the exhibit shows that Iowa Telecom continues to apply a price squeeze to TCA in rural areas.

On January 29, 2007, Iowa Telecom filed a conditional resistance to TCA's motion. Iowa Telecom states it does not object to TCA's motion on the condition that the Board also allow what Iowa Telecom identifies as Exhibit 120 to be admitted into the record. Iowa Telecom explains that Exhibit 120 is an affidavit by Mr. David N. Porter, Iowa Telecom's Director of Industry Relations, in which Mr. Porter states Iowa Telecom's intent to make the competitive bundle at issue (identified by Iowa Telecom as its \$5.95 Freedom Select – Traditional package) and another higher-priced bundled offering available to TCA for resale. Iowa Telecom states that Exhibit 120 provides a firm commitment regarding wholesale pricing of the packages.

Iowa Telecom characterizes the issue regarding the availability of the bundle for resale as tangential and disputes the relevance of the issue, noting that it relates

only to a question asked by Iowa Telecom at the hearing and that TCA's amended complaint does not refer to Iowa Telecom's wholesale rates or ask the Board to take any action regarding those rates. Iowa Telecom suggests that the relevance of TCA's Exhibit 31 would be to try to show that Iowa Telecom reneged on its offer to make the \$5.95 bundle available for resale or is at least delaying such availability. Iowa Telecom states it followed through on the commitment it made at the hearing and that the e-mail messages included in Exhibit 120 show that making a bundled offering available for resale is a complicated process. Iowa Telecom also states that TCA has not followed the process of escalation or alternative dispute resolution provided in the parties' negotiated interconnection agreement, but instead erroneously seeks to make the issue about the availability of the bundle for resale a part of this proceeding.

Rule 7.24 provides that, upon motion of a party or its own motion, the Board may reopen the record to receive further evidence and that, where the record was made before the Board, such a motion may be filed at any time prior to the issuance of a final decision. TCA's motion to reopen the record is timely, as is Iowa Telecom's conditional resistance. The evidence the parties seek to admit consists of e-mail messages relating to the availability of Iowa Telecom's competitive bundle at a wholesale rate for resale by TCA. At this time, the Board does not find that the evidence should be excluded pursuant to Iowa Code § 17A.14(1) for being irrelevant, immaterial, or unduly repetitious, although the Board notes it has not yet determined the relevance of the evidence regarding the availability of the competitive bundle to

the claims TCA makes in its amended complaint. Moreover, the Board finds that in these unique circumstances the evidence is not untimely even though it was not included in prefiled testimony or introduced at the hearing. The Board will grant TCA's request to reopen the record and admit Exhibit 31 into the record. Also, as requested by Iowa Telecom, the Board will admit Iowa Telecom's Exhibit 120 into the record.

IT IS THEREFORE ORDERED:

1. The motion to reopen the record in Docket No. FCU-06-48 filed by the Community Cable Television Agency of O'Brien County, d/b/a The Community Agency and TCA, on January 19, 2007, is granted.
2. The exhibit filed by TCA on January 19, 2007, and identified as Exhibit 31, is admitted into the record.
3. The exhibit filed by Iowa Telecom on January 29, 2007, and identified as Exhibit 120, is admitted into the record.

UTILITIES BOARD

/s/ John R. Norris

/s/ Curtis W. Stamp

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 8th day of February, 2007.