

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>COON CREEK TELECOMMUNICATIONS CORP.,</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-06-42</p>
---	-----------------------------

ORDER DENYING OBJECTION TO DIRECT ASSESSMENT

(Issued April 17, 2007)

INTRODUCTION AND SUMMARY

On March 22, 2007, Coon Creek Telecommunications Corporation (Coon Creek) filed with the Utilities Board (Board) a letter of objection to the direct assessment for one-half of the costs of the Board and the Consumer Advocate Division of the Department of Justice (Consumer Advocate) associated with this docket. Coon Creek asserts, pursuant to Iowa Code § 476.10, that the invoiced amount is excessive and unreasonable because Coon Creek "does not have the money to pay this bill." Coon Creek waives any right to a hearing in this matter.

COON CREEK'S OBJECTION

The objection filed by Coon Creek on March 22, 2007, is a response to Board Invoice No. 22493, a direct assessment sent to Coon Creek on February 23, 2007, for one-half the Board and Consumer Advocate costs associated with Docket No. FCU-06-42. The Board charges were \$24,589.74 and the Consumer Advocate charges were \$7,066.04, for a total assessment of \$31,655.78. The rest of the Board and Consumer Advocate costs were assessed to the other party to this case, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom).

On March 1, 2007, Coon Creek's attorney sent a letter to the Board's Executive Secretary that included letters to the Board members stating, "[m]y client does not have the money to pay this bill. At the present time, they have also maximized their credit and loan capabilities and, simply, there are no reserve funds from which to draw." Accordingly, Coon Creek asked that the Board exercise its discretion, void the invoice, and roll the amount due into the remainder fund.

On March 5, 2007, the Board's Executive Secretary responded to the Coon Creek letter, pointing out that Iowa Code § 476.10 sets out a specific procedure for objecting to a Board charge or assessment. That statute requires that any such objection must "set out the grounds upon which the person claims that such charge or assessment is excessive, unreasonable, erroneous, unlawful, or invalid." Coon Creek's letter did not make any allegations that satisfied the statutory requirements, so it could not be treated as an objection. The Executive Secretary's letter pointed

out that Coon Creek had until March 23, 2007, to file an objection if it believed the assessment was "excessive, unreasonable, erroneous, unlawful, or invalid."

On March 21, 2007, Coon Creek sent another letter to the Board's Executive Secretary, enclosing copies of the previous letters, a copy of the invoice, and a letter of objection addressed to the Board members. The letter was received by the Board on March 22, 2007. In the objection letter, Coon Creek objects that the invoice "is excessive and unreasonable for the reasons stated in the March 1st correspondence." Coon Creek "respectfully requests that hearing in this matter be waived in order to conserve time, fees, and expenses." In lieu of a request for a hearing, Coon Creek enclosed seven exhibits, described below:

Exhibit 1: A letter dated March 12, 2007, from the Benton County State Bank saying that Coon Creek Telephone Company (Telco) "has borrowed substantial funds associated with your expansion efforts in Marengo and Belle Plaine. Due to these borrowings, and the loan servicing requirements thereon, your projected cash flow does not appear to allow for repayment of additional debt. Therefore, Benton County State Bank is unable to assist your company at this time."

Exhibit 2: A letter dated March 12, 2007, from Kiesling Associates, LLP, addressed to "Chuck Norris, Chairperson, Iowa State Utilities Board" [sic], saying that as Telco's external CPA, Kiesling is writing "to confirm the challenging financial position of our client." Kiesling states that it currently

has outstanding accounts receivable from Coon Creek for services provided and "these past-due invoices have not been paid timely due to the limited cash flow."

Exhibit 3: A balance sheet for Coon Creek, showing (among other things) negative retained earnings for the "Present Year to Date."

Exhibit 4: A balance sheet for Telco showing positive stockholder's equity, including positive retained earnings for present year to date.

Exhibit 5: An operating statement for Coon Creek showing a net loss, present year to date, of \$50,131.38.

Exhibit 6: An operating statement for Telco showing a net profit, present year to date, of \$17,064.92.

Exhibit 7: A list of customers that Iowa Telecom has allegedly "won back" from Coon Creek since October of 2005. The list identifies the customers by name, number of lines, and lost monthly revenue, along with other, more detailed information. The list shows a total monthly impact from lost customers of \$11,959.41, and an annual impact of \$143,512.92.

IOWA TELECOM'S RESPONSE

On April 2, 2007, Iowa Telecom filed a response to Coon Creek's objection. Iowa Telecom points out that it has been directly assessed, and has paid, the other half of the Board and Consumer Advocate costs associated with Docket No. FCU-06-42. Iowa Telecom also points out that if Coon Creek's request for relief is

granted and the costs directly assessed to Coon Creek are moved to either the telecommunications industry assessment or the general remainder assessment, then Iowa Telecom will be required to pay at least part of the costs originally assessed to Coon Creek, on top of the costs it has already paid. Iowa Telecom asserts that it should not be required to bear its own portion of the costs of Docket No. FCU-06-42 as well as a part of Coon Creek's share of those costs. Accordingly, Iowa Telecom asks that if the Board grants Coon Creek any relief, it should be done in a manner that does not increase Iowa Telecom's assessment.

ANALYSIS

Coon Creek says the invoice is "excessive and unreasonable" because Coon Creek "does not have the money to pay this bill." However, the company's ability to pay really does not have any bearing on whether the Board and Consumer Advocate charges are reasonable or excessive. Moreover, the exhibits Coon Creek has offered do not clearly establish that Coon Creek lacks the money to pay.

Coon Creek has waived its right to a hearing on its objection. The Board agrees that it would not be a useful expenditure of resources to convene a hearing on the objection. For purposes of this ruling, the Board will accept Coon Creek's exhibits at face value. Based on those exhibits, the Board concludes that Coon Creek's objection should be denied for a number of reasons.

First, Coon Creek caused the Board and Consumer Advocate to incur at least part of these expenses. Coon Creek filed the initial complaint against Iowa

Telecom, invoking the Board's jurisdiction, and knew, or should have known, of the Board's statutory cost recovery mechanisms. As the cost-causer, Coon Creek should normally be required to pay its share of the costs.

Second, while Coon Creek's exhibits show that it would be better off if it did not have to pay the Board's invoice, the exhibits do not clearly establish that Coon Creek is unable to pay the invoice. Coon Creek is paying its auditors, albeit slowly; it is paying its marketing expenses (almost \$18,000, present year to date), its "customer operations" expense, which is not explained (over \$33,500, same time period), its "corporate operations" expense, also unexplained (over \$15,000), and its interest expense (over \$6,000). No reason is offered in support of the implicit notion that the Board's invoice is somehow less important or less deserving of payment than any of these other expenses.

Third, there is the question of fairness to the other utilities that would have to bear these costs if Coon Creek's objection is upheld. If Coon Creek were granted relief from this invoice, then it could be argued that fairness requires that Iowa Telecom, the other party to this docket, should also be relieved of responsibility for its one-half of the Board and Consumer Advocate costs associated with this docket. That would mean that the costs of this proceeding would have to be recovered through the telecom industry assessment or through the general remainder assessment. The practical effect would be that other utilities that were not parties to this proceeding would wind up paying the cost of this docket. If the costs are

moved to the telecommunications industry assessment, then telecommunications companies that were not parties to this docket would bear the costs. If the costs are moved to the general remainder assessment (as proposed by Coon Creek), then the largest shares would be paid by electric and gas utilities, which have even less to do with this docket. In the absence of unusual and compelling circumstances, these outcomes are not equitable.

In the end, there is no clear evidence in this record to indicate that Coon Creek is in serious financial peril. There is no claim at all that it is considering bankruptcy or dissolution. Instead, Coon Creek appears to be seeking forgiveness with respect to the Board's invoice because it would rather not pay. If the Board were to grant Coon Creek relief from this direct assessment on this evidence, other utilities would likely seek similar relief from direct assessments associated with dockets that they initiated or from which they benefited and all of the Board and Consumer Advocate expenses would wind up in the remainder assessments. If that were the result the Legislature intended, then Iowa Code § 476.10 would not include the provision for direct assessment of costs associated with a particular case. By including that provision, the Legislature has expressed its preference that the costs of a particular case should be allocated to the cost-causer in most circumstances. In this case, Coon Creek filed the petition and caused at least half of the costs and the direct assessment is therefore reasonable and not excessive. Coon Creek's objection will be denied.

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

The objection to direct assessment filed in this docket on March 22, 2007, by Coon Creek Telecommunications Corporation is denied.

UTILITIES BOARD

/s/ John R. Norris

/s/ Curtis W. Stamp

ATTEST:

/s/ Judi K. Cooper _____
Executive Secretary

Dated at Des Moines, Iowa, this 17th day of April, 2007.