

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: IOWA TELECOMMUNICATIONS ASSOCIATION	DOCKET NOS. TF-07-125 WRU-07-22-293
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**ORDER APPROVING TARIFF, GRANTING WAIVER,
AND ESTABLISHING BRIEFING SCHEDULE**

(Issued August 30, 2007)

PROCEDURAL HISTORY

On June 29, 2007, the Iowa Telecommunications Association (ITA) filed with the Utilities Board (Board) proposed tariff changes to its Access Service Tariff No. 1 (ITA No. 1), identified as TF-07-125. ITA says the changes it proposes mirror changes made in the National Exchange Carrier Association (NECA) tariff, which is the interstate access service tariff used by Iowa local exchange companies that also concur in the intrastate ITA No. 1. One of the changes proposes to increase switched access charges by 16.8 percent.

On July 16, 2007, Sprint Communications Company L.P. (Sprint) and Verizon Business (Verizon) each filed a motion to accept their late-filed resistances to ITA's tariff and a resistance to ITA's proposed tariff changes. In support of their resistances, Sprint and Verizon assert that ITA did not provide proper service of the proposed tariff pursuant to 199 IAC 22.14(4), and that the Board should not approve

a significant increase in access rates without a substantial review of the entire access regime in Iowa.

On July 30, 2007, the Board issued an order granting Sprint's and Verizon's motions to accept their late-filed resistances to ITA's proposed tariff and suspending ITA's proposed tariff changes pending further order of the Board while it investigated the service and notice issues raised by Sprint and Verizon. Also as part of the July 30 order, the Board requested ITA file a response to Sprint's and Verizon's resistances on or before August 3, 2007.

On August 3, 2007, ITA filed its response. ITA states that it followed the requirements of 199 IAC 22.14(4)"b," which provides that an interexchange utility wanting to receive notice of new or changed access service tariffs must register with the Board. ITA states that neither Sprint nor Verizon are registered interexchange carriers (IXCs) pursuant to this rule. Moreover, ITA states that neither Sprint nor Verizon sent a copy of their resistances to all telephone utilities filing or concurring in the proposed tariff, as required by 199 IAC 22.14(5)"a." Rather, ITA asserts that service was made only upon ITA and the Consumer Advocate Division of the Department of Justice (Consumer Advocate) and that the concurring telephone utilities were not independently notified.

ITA also states that there is no objection raised by Sprint or Verizon that supports suspension and investigation of its proposed tariff. ITA states that in compliance with 199 IAC 22.14(2)"b"(1), it filed an intrastate access service tariff and that most of the non-rate regulated local exchange utilities in Iowa concur in ITA

No. 1. ITA states that the terms of the tariff mirror the provisions of the NECA tariff, identified as Exchange Carrier Association Tariff No. 5 (NECA No. 5) and that when changes are made to NECA No. 5 at the Federal Communications Commission (FCC), the same changes are filed for approval with the Board. ITA states that ITA No. 1 incorporates the revisions to NECA No. 5, which were filed with the FCC on June 15, 2007, and approved on June 28, 2007.

Finally, ITA states that Sprint's and Verizon's desire to review the entire access regime in Iowa is not a ground for objection to ITA's tariff.

On August 9, 2007, Sprint filed a reply in support of its objection to ITA's proposed tariff revisions. Sprint responds to ITA's assertion that it has not strictly followed the requirements of 199 IAC 22.14(5)"a," which requires service on all carriers who choose to concur in the ITA tariff. Sprint states that it made a diligent, good faith effort to determine who should be served pursuant to 199 IAC 22.14 and that neither the Board Web site nor the ITA Web site provided any service lists. Sprint states that to determine which of the local exchange carriers (LECs) in Iowa concur with the ITA tariff would be unduly burdensome. In addition, Sprint argues that since the independent LECs simplify their filings by concurring in an association tariff, then an IXC should also be allowed to benefit from the existence of the association and be required to only serve the ITA rather than all independent LECs. As such, Sprint requests a waiver of 199 IAC 22.14(5)"a," identified as Docket No. WRU-07-22-293.

Sprint also states that while the FCC approved NECA No. 5 for purposes of interstate traffic, the Board can take different, local considerations into account as it reviews ITA No. 1 for purposes of intrastate traffic. Sprint asserts that the Board is within its authority to investigate this intrastate tariff before approving it and asks the Board to either reject the tariff and docket it for investigation or initiate an investigation proceeding to globally review Iowa's access regime.

On August 15, 2007, ITA filed a rebuttal to Sprint's reply. ITA asserts that Sprint does not meet the requirements for a waiver of 199 IAC 22.14(5)"a" and that a waiver is not intended to cure Sprint's filing deficiencies. In addition, ITA asserts that Sprint has not identified any objection that would support a determination that ITA No. 1 is unreasonable or unlawful.

DISCUSSION

The parties raise two broad issues for the Board to address at this time. The first issue is concerned with proper service of notice regarding the proposed changes to ITA No. 1 and the objection thereto; the second issue involves the Board's jurisdiction to determine whether the 16.8 percent increase to ITA's switched access charges is appropriate.

With respect to the service issue, it is apparent that ITA served notice on all parties to whom it was required to serve pursuant to 199 IAC 22.14(4)"b." Neither Sprint nor Verizon appear on the Board's registered IXC service list. Therefore, the Board finds that the proposed tariff revision is appropriately on file.

This leaves the question of Sprint's and Verizon's service efforts. Sprint says it made a diligent, good faith effort to determine who should be served pursuant to 199 IAC 22.14 and that it should be allowed to benefit from the existence of the ITA and serve the ITA rather than all (or nearly all) independent LECs, as required by Board rule. To that end, Sprint requests a waiver.

To grant Sprint a waiver of 199 IAC 22.14(5)"a," the Board must find, based upon clear and convincing evidence, that the request meets the four criteria in 199 IAC 1.3. The four criteria are: 1) the application of the rule would cause undue hardship, 2) the waiver would not prejudice the substantial legal rights of any person, 3) the provisions of the rule are not specifically mandated by statute, and 4) substantially equal protection of public health, safety, and welfare will be afforded by a means other than prescribed by the rule.

The Board finds that a waiver of 199 IAC 22.14(5)"a" should be granted, based on the information provided by Sprint. The Board finds that it would be an undue hardship for Sprint to determine which LECs concur with the ITA tariff, as this could only be done by reviewing each LEC's tariff separately to assemble a service list. This would require a review of over 200 separate tariffs. The Board also finds that the waiver will not affect the substantial legal rights of any person and that equal protection of the public health, safety, and welfare have all been afforded since the LECs that concur in the ITA tariff must monitor what is happening to it so that they can implement the rate increases and other changes once they are effective. Therefore, the Board will grant Sprint's request for waiver and require Sprint and

Verizon to serve only those entities that appear in, and become parties to, this docket.

With respect to the second major issue, the proposed switched access increase, the extent of the Board's jurisdiction to approve or deny the proposed increase and the reasons the Board might do so are not entirely certain. Sprint and Verizon object to the 16.8 percent increase in the rate for intrastate access services. However, previous Board rulings bring into question the extent of the Board's jurisdiction regarding the appropriateness of intrastate access charges.

In Fibercomm, L.C., et al., v. AT&T Communications of the Midwest, Inc.,¹ the Board determined that it has limited jurisdiction over the access service rates of competitive local exchange carriers (CLECs), to the extent that it finds, after notice and opportunity for hearing, that those CLECs have market power in the relevant markets. This jurisdiction appears to be limited to CLECs, pursuant to the terms of Iowa Code § 476.101(1).

In Interstate 35 Telephone Company, et al.,² the Board determined that Iowa Code § 476.1 left the Board without jurisdiction over the access rates of incumbent local exchange carriers (ILECs) that are not subject to rate regulation. Given the Board's determinations in these two dockets and the jurisdictional limitations that they

¹ See Fibercomm, L.C., et al. vs. AT&T Communications of the Midwest, Inc., "Final Decision and Order," Docket No. FCU-00-3, pp. 15-17 (issued Oct. 25, 2001).

² See Interstate 35 Telephone Company, d/b/a Interstate Communications and Southwest Telephone Exchange, Inc., d/b/a Interstate Communications, "Declaratory Order," Docket No. DRU-02-4, p. 3 (issued October 18, 2002).

appear to impose on the Board, it is unclear whether the Board has the authority to review, approve, or deny ITA's proposed increase in intrastate access charges.

Therefore, the Board requests a review by the parties of the jurisdiction issue before taking any further action in this docket. The Board will establish a briefing schedule and requests the parties brief the jurisdiction issue, including, but not limited to, analysis of the following issues:

1. What jurisdiction does the Board have with respect to the proposed change of rates in ITA No. 1? What about the Board's jurisdiction over the services in the tariff?
2. If the Board has rate jurisdiction, how should it be exercised, i.e., through a contested case proceeding, a rule making, or other docket?
3. If the Board has rate jurisdiction, what standards should it apply to the rates?
4. If the Board does not have rate jurisdiction, should access rates be included in ITA No. 1?
5. Should the filed rate doctrine apply to those rates if the Board lacks authority to review and approve them in a meaningful manner?

Because there are questions about the Board's jurisdiction in this matter, the Board finds that it is inappropriate to suspend ITA No. 1 pending the completion of this investigation. Therefore, the Board will allow ITA No. 1 to become effective as of September 1, 2007, subject to investigation in this docket, to the extent the Board determines it has jurisdiction.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The proposed tariff filed by the Iowa Telecommunications Association on June 29, 2007, and identified as TF-07-125, is approved, effective September 1, 2007, as described in this order.

2. The request for waiver filed by Sprint Communications Company L.P. on August 9, 2007, identified as Docket No. WRU-07-22-293, is granted as described in this order.

3. The following briefing schedule is established:

a. Any party wanting to file an initial brief addressing the issues described in this order shall do so on or before September 17, 2007.

b. Any party wanting to file a reply brief shall do so on or before October 1, 2007.

UTILITIES BOARD

/s/ John R. Norris

/s/ Curtis W. Stamp

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Krista K. Tanner

Dated at Des Moines, Iowa, this 30th day of August, 2007.