

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

<p>IN RE:</p> <p>MCIMETRO ACCESS TRANSMISSION SERVICES LLC, d/b/a VERIZON ACCESS TRANSMISSION SERVICES, AND MCI COMMUNICATIONS SERVICES, INC., d/b/a VERIZON BUSINESS SERVICES,</p> <p style="text-align:center">Complainants,</p> <p style="text-align:center">vs.</p> <p>IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM; IOWA TELECOM NORTH; IOWA TELECOM SYSTEMS; IOWA TELECOM COMMUNICATIONS, INC.; IT COMMUNICATIONS, LLC; FRONTIER COMMUNICATIONS OF IOWA, INC.; AND CITIZENS MUTUAL TELEPHONE COMPANY,</p> <p style="text-align:center">Respondents.</p>	<p>DOCKET NO. FCU-08-6</p>
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**ORDER REQUESTING BRIEFS AND ESTABLISHING BRIEFING SCHEDULE**

(Issued May 29, 2008)

**I. PROCEDURAL HISTORY**

**A. Verizon's complaint**

On February 20, 2008, MCImetro Access Transmission Services, LLC, d/b/a Verizon Access Transmission Services, and MCI Communications Services, Inc., d/b/a Verizon Business Services (collectively, Verizon), filed with the Utilities Board (Board) a complaint asking the Board to reduce the intrastate switched access rates

of Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, Iowa Telecom North, Iowa Telecom Systems, Iowa Telecom Communications, Inc., and IT Communications, LLC (collectively, Iowa Telecom); Frontier Communications of Iowa, Inc. (Frontier); and Citizens Mutual Telephone Company (Citizens Mutual). Verizon bases its complaint on Iowa Code §§ 476.1, 476.3, 476.11, and 476.101(1), and the Board's rules at 199 IAC chapter 6. Verizon directed its complaint against Iowa Telecom's incumbent local exchange carrier (ILEC) and competitive local exchange carrier (CLEC) operations, along with Frontier and Citizens Mutual.

Based on a comparison of Iowa Telecom and Frontier's average access revenues per minute, Verizon asserts that the switched access rates charged by Iowa Telecom and Frontier exceed the rates charged by Qwest Corporation (Qwest) by as much as 650 percent and are unreasonable and anticompetitive. Verizon identifies disparities between what Iowa Telecom and Frontier charge for specific rate elements, including the carrier common line charge (CCLC) and local end office switching charge, and Qwest's charges for those elements. Verizon claims that, to its knowledge, Iowa Telecom and Frontier have not reduced their switched access rates since 1995.

Verizon asserts Iowa Telecom and Frontier are subject to the Board's rate regulation authority and asks the Board to order Iowa Telecom and Frontier to match Qwest's intrastate switched access rates. In support of the request, Verizon cites Iowa Code § 476.3(1), which provides, in part, that when the Board finds a utility's rates are unjust, unreasonable, or discriminatory, the Board "shall determine just, reasonable, and nondiscriminatory rates." Verizon also cites Iowa Code § 476.11,

which authorizes the Board to resolve complaints alleging a telephone company has failed to provide just, reasonable, and nondiscriminatory interconnection arrangements.

**B. Iowa Telecom's motion to dismiss**

On March 10, 2008, Iowa Telecom filed a motion to dismiss Verizon's complaint. Iowa Telecom argues the complaint should be dismissed because it does not raise a claim for which the Board may lawfully grant Verizon's requested relief. Iowa Telecom explains that its predecessor, GTE Midwest Incorporated (GTE), as a carrier serving fewer than 500,000 access lines in Iowa, elected to be price regulated pursuant to Iowa Code § 476.97(11). According to Iowa Telecom, electing price regulation involved a one-time reduction in intrastate switched access service rates and basic local telephone service rates in four steps, pursuant to § 476.97(11)"e"(6).

Iowa Telecom states that the Board approved a tariff revision in 1995 pursuant to which GTE achieved an initial 25 percent reduction in the difference between GTE's then-current intrastate access rates and GTE's interstate access rates as they were at the end of 1994.<sup>1</sup> Iowa Telecom explains that it acquired the assets of GTE in 2000 and that the Board approved its adoption of GTE's price regulation election and GTE's switched access rates.<sup>2</sup> Iowa Telecom states it has not modified the GTE switched access rates since that time.

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<sup>1</sup> See In re: GTE Midwest Incorporated, Docket No. TF-95-359, "Order Approving Access Services Tariff," issued October 6, 1995.

<sup>2</sup> See In re: Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, Docket Nos. TF-00-132, TF-00-133, TF-00-166, WRU-00-47-3424 (SPU-99-29), "Order Approving Tariffs, Granting Waiver, Approving Maps, Consolidating and Transferring Certificates, and Approving Discontinuance of Service," issued July 31, 2000.

Iowa Telecom argues that § 476.97(11) has no provision that would allow the Board to order a carrier the size of Iowa Telecom to reduce switched access rates. Iowa Telecom states the statute does not specify how to measure any reductions the Board would order if it were authorized to do so. Iowa Telecom notes that the law treats larger carriers differently, pointing to Iowa Code § 476.97(3)"a"(2), which provides that carriers with 500,000 or more access lines may be subject to "further reductions toward economic costs in the local exchange carrier's average intrastate access service rates."

Iowa Telecom argues that Iowa Code § 476.97(11)"i" allows a local exchange carrier (LEC) to voluntarily reduce its rates, but does not authorize the Board to require reductions. Further, Iowa Telecom contends the price regulation statutes do not require utilities to reduce the CCLC.

With respect to Verizon's claim regarding the rates of Iowa Telecom's CLEC operations, Iowa Telecom notes that Verizon's complaint does not allege that the Iowa Telecom CLECs' switched access rates violate the Board's rules governing CLEC access charges at 199 IAC 22.14(2). Further, Iowa Telecom argues Verizon fails to explain how the Board can lawfully regulate Iowa Telecom CLEC rates differently than the rates of other Iowa CLECs.

**C. Frontier's motion to dismiss**

On March 11, 2008, Frontier filed an answer and motion to dismiss Verizon's complaint. Frontier asks the Board to dismiss the complaint pursuant to Iowa Code § 476.3, stating there is no reasonable basis to investigate the complaint. Frontier explains that it operated under a Board-approved price regulation plan pursuant to

Iowa Code § 476.97 from December 31, 1995, until July 1, 2005.<sup>3</sup> Frontier states it reduced its intrastate access rates over a multi-year period as provided in Iowa Code § 476.97(3)"c," in accordance with its initial price regulation plan in effect until December 30, 2000. Frontier states that as part of its renewed price regulation plan, it made the final intrastate access service rate reduction. Frontier contends that there is nothing in § 476.97(3) that would allow the Board to order further reductions in its intrastate access service rates.

Frontier states it is not currently operating under a price regulation plan, explaining that on May 31, 2005, it opted into deregulation under House File 277,<sup>4</sup> pursuant to requirements adopted in Board Docket No. RMU-05-6. Frontier explains that since its renewed price regulation plan ended on July 1, 2005, its retail local exchange services (other than single line flat-rated residential and business services) have not been subject to regulation, pursuant to Iowa Code § 476.1D(1)"c."

Frontier notes that Verizon's complaint does not address the Board's rule at 199 IAC 22.14(2)"d"(2), which prohibits carriers from assessing an intrastate subscriber line charge. According to Frontier, access charges are an important source of revenue that allow Frontier to maintain affordable basic service rates. Frontier states that if it were required to mirror Qwest's rates, it would have to recover lost revenues by raising its basic local service rates by an amount that would exceed the cap in § 476.1D.

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<sup>3</sup> Frontier states its price regulation plan was approved by the Board in Docket Nos. RPU-95-12 and RPU-00-4.

<sup>4</sup> It appears Frontier is referring to 2005 Acts, ch. 9, § 1, codified at Iowa Code § 476.1D.

Frontier disagrees with Verizon's position that Qwest's rates are an appropriate benchmark to which the rates of other carriers should move. Frontier argues that each carrier's rates must be evaluated by considering the carrier's unique circumstances. Frontier suggests that community population, customer density, and number of access lines are factors that give Qwest a lower average cost structure than Frontier. Frontier argues that the mere fact that its access service rates are higher than Qwest's does not give the Board sufficient reason to investigate Verizon's complaint.

If the Board does not dismiss Verizon's complaint, Frontier asks that the Board initiate a broader proceeding to consider policy issues relating to access charge rates, establishment of a state universal service fund, and rebalancing local service rates.

Frontier states its parent company is Citizens Communications Company. Frontier notes that Verizon's complaint includes allegations about Citizens Mutual. Frontier denies that Citizens Mutual is affiliated with Frontier. Frontier states that because Citizens Mutual is not a subsidiary of or otherwise owned or affiliated with Citizens Communications Company, Frontier cannot respond to, and therefore denies, Verizon's allegations about Citizens Mutual.

**D. Verizon's opposition**

On March 26, 2008, Verizon filed its opposition to the motions to dismiss. Verizon explains that because Frontier denied any affiliation with Citizens Mutual, Verizon withdraws its complaint as to Citizens Mutual. Accordingly, in subsequent

orders in this proceeding, the Board will remove Citizens Mutual from the list of companies named in the caption.

Verizon restates its position that the Board has jurisdiction to reduce the access charges of Iowa Telecom and Frontier and asserts it has shown reasonable grounds to investigate the charges. Verizon argues that when evaluating a motion to dismiss, the Board reads the allegations in the light most favorable to the petitioner, disregarding any ambiguity in the pleadings.<sup>5</sup>

With respect to Iowa Telecom's motion to dismiss, Verizon disputes Iowa Telecom's assertions that (1) because Iowa Telecom decreased its access rates to 1994 interstate levels under price regulation, the Board cannot require further reductions, and (2) Iowa Telecom continues to operate as a price-regulated carrier. According to Verizon, Iowa Telecom elected to operate under Iowa Code § 476.1D and that legislation ended the price plan regime. Verizon argues that Iowa Telecom's position that it is still a price-cap carrier (but only for switched access services) is contrary to Iowa Code § 476.97. Verizon asserts that the price cap plan was meant to be taken as a whole and does not give a carrier the option of selecting certain obligations and disregarding others.

As support for its position that the Board has jurisdiction to consider a challenge to a company's switched access rates, Verizon cites the Board's decision in In re: Iowa Telecommunications Association, "Order Setting Procedural Schedule and Setting Date for Hearing," Docket Nos. TF-07-125 and TF-07-139, issued

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<sup>5</sup> Citing In re: Coon Creek Telecommunications Corp. v. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, Docket No. FCU-06-42, "Order Docketing Complaint, Denying Motion to Dismiss, and Setting Procedural Schedule," issued June 27, 2006.

November 15, 2007. As described by Verizon, in that case the Board reversed its previous interpretation that it lacked jurisdiction over switched access rates of non-rate-regulated carriers. Verizon argues that it would be unfair and anticompetitive not to provide Verizon with a forum to review the rates it must pay to Iowa Telecom.

Verizon's position is that the price regulation provisions of § 476.97(11) no longer apply to Iowa Telecom and that the appropriate standard for evaluating access rates is whether they are just, reasonable, and nondiscriminatory, as provided in §§ 476.3 and 476.11. Verizon suggests that even if Iowa Telecom were still a price-regulated carrier, if only for access services, the Board would have jurisdiction over Iowa Telecom's access rates pursuant to § 476.97(11)"i" which provides that § 476.97(11) "shall not be construed to prohibit an additional decrease or to permit any increase in a local exchange carrier's average intrastate access service rates during the term of the local exchange carrier's operation under price regulation."

With respect to its complaint against Iowa Telecom's CLECs, Verizon asserts it was not necessary to allege a violation of the Board's rules at 199 IAC 22.14. According to Verizon, Iowa Code § 476.101 allows the Board to apply any provision of chapter 476 to a CLEC once the Board finds that the CLEC has market power. Verizon states that the Board determined in its 2004 "Access Charge Order"<sup>6</sup> that it has jurisdiction over CLEC access charges, having found that CLECs possess market power in the provision of access services to their end users.

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<sup>6</sup> In re: Intrastate Access Service Charges, Docket No. RMU-03-11, "Order Adopting Amendments," issued March 18, 2004.

Verizon counters Frontier's motion to dismiss by stating that its complaint, viewed in the light most favorable to Verizon, is sufficient to warrant investigation into the rates charged by Frontier. In Verizon's view, the fact that the rates in question were set 14 years ago is reason enough for the Board to consider the complaint. Further, Verizon states the Board expressed a commitment in a recent order to rationalize switched access rates.<sup>7</sup>

Verizon explains that it would not oppose the Board opening a generic proceeding to examine a cap on CLEC rates and other issues suggested by Frontier. However, Verizon asserts that because there are no limits on the Board's ability to consider the rates of an individual CLEC in a complaint proceeding, the Board should deny Iowa Telecom's motion to dismiss Verizon's complaint against the Iowa Telecom CLECs.

**E. Iowa Telecom's reply**

On April 9, 2008, Iowa Telecom filed a reply to Verizon's opposition to Iowa Telecom's motion to dismiss. Iowa Telecom states that Verizon offers no valid argument to disprove Iowa Telecom's position that § 476.97(11) governs Iowa Telecom's intrastate switched access rates. Iowa Telecom's position is that § 476.97(11) applies to services that are price-regulated by the Board and continues to apply to services that have not been deregulated by the Board or by statute. Iowa Telecom rejects Verizon's assertion that Iowa Telecom's election to have its retail local exchange service rates deregulated under § 476.1D took Iowa Telecom's

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<sup>7</sup> Citing In re: South Slope Coop. Tel. Co., Docket No. RPU-07-1, "Final Order," issued February 13, 2008.

intrastate access rates outside of the coverage of § 476.97(11). Iowa Telecom contends that nothing in House File 277 indicates that § 476.97(11) does not continue to apply to all other remaining rate-regulated services, including intrastate access services. Iowa Telecom argues further that if it were true that an election under § 476.1D invalidated an election under § 476.97(11) for other services, affected carriers would have no way to recover costs.

Iowa Telecom argues that Verizon fails to explain why the Iowa Telecom CLECs should be singled out for access rate reduction when there are other, larger CLECs charging the same rates, based on concurrence in the tariff of the Iowa Telecommunications Association.

**F. Verizon's response**

On April 21, 2008, Verizon filed a response to Iowa Telecom's reply. The reply focuses on Iowa Telecom's assertion that Verizon ignored § 476.97(11) in its complaint. Verizon states that § 476.97(11) is not relevant because Verizon asserts the Board has jurisdiction under §§ 476.3 and 476.11. Verizon argues that Iowa Telecom cannot rebut Verizon's point that Iowa Telecom's interpretation of the price-cap statute, which would leave Iowa Telecom's switched access rates in place forever, is contrary to legislative intent.

**II. DISCUSSION**

Verizon's complaint raises the question of whether the Board has the authority in a complaint proceeding to order the respondent companies to reduce their intrastate access service rates. Verizon contends that the rates of both Iowa

Iowa Telecom and Frontier are subject to the Board's rate regulation authority, pursuant to Iowa Code §§ 476.3 and 476.11, and that the Board may investigate whether those rates are just, reasonable, and nondiscriminatory, and order reductions if appropriate. Iowa Telecom and Frontier ask the Board to dismiss Verizon's complaint, each claiming the Board does not have statutory authority to order reductions in intrastate access service rates that were determined in accordance with price regulation plans. Iowa Telecom and Frontier also raise concerns about the fairness of ordering only a select few local exchange carriers to reduce those rates and the effect on basic service rates if the Board were to order reductions in intrastate access service rates.

The issue of the Board's authority in this proceeding has not been sufficiently developed in the pleadings submitted this far. The question of the extent of the Board's authority to order certain local exchange carriers to reduce access rates in the context of a complaint proceeding raises other issues. For example, the effect of a carrier's election to deregulate retail local exchange service rates pursuant to Iowa Code § 476.1D on that carrier's intrastate access service rates that were previously determined according to the various price regulation plan provisions of Iowa Code § 476.97 is not entirely clear. This raises questions of legislative intent and statutory interpretation, such as whether rates established pursuant to price regulation plans were meant to stay in place notwithstanding a carrier's subsequent election to deregulate certain services pursuant to Iowa Code § 476.1D. More broadly, did the Legislature intend that the Board's authority to investigate the reasonableness of rates pursuant to §§ 476.3 and 476.11 would reach access service rates established pursuant to § 476.97 price regulation plans?

Therefore, before ruling on the motions to dismiss, the Board requests that the parties submit briefs analyzing the following issues according to the briefing schedule provided below:

1. What is the interaction between Iowa Code § 476.1D and the price regulation provisions of Iowa Code § 476.97?
2. Are intrastate access service rates determined according to a price regulation plan under Iowa Code § 476.97 subject to challenge in a complaint proceeding brought pursuant to Iowa Code §§ 476.3 and 476.11?
3. Does the Board have jurisdiction to order a local exchange carrier to reduce its intrastate access rates and, if so, under what statutory provision? How does the answer to that question change for different local exchange carriers (rate regulated or not, incumbent or competitor, different price regulation plans, and whatever other factors the parties believe to be significant)?
4. If the Board has jurisdiction to order a local exchange carrier to reduce its intrastate access rates, what is the appropriate measure of just, reasonable, and nondiscriminatory rates?
5. How would any of the possible outcomes of the Board's proceeding in Docket No. INU-08-1, In re: Possible Extension of Board Jurisdiction Over Single Line Flat-Rated Residential and Business Rates for Local Exchange Carriers, affect the resolution of Verizon's complaint?

**III. ORDERING CLAUSE**

**IT IS THEREFORE ORDERED:**

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 July 14, 2008.
- b. Any party wanting to file a reply brief shall do so on or before August 4, 2008.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 29<sup>th</sup> day of May, 2008.