

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<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>BTC INC., d/b/a WESTERN IOWA NETWORKS, OMNITEL COMMUNICATIONS, INC., AND PREMIER COMMUNICATIONS, INC.,</p> <p style="text-align:center">Respondents.</p>	<p>DOCKET NO. FCU-08-11</p>
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**ORDER GRANTING REQUEST FOR DISMISSAL OF OMNITEL,  
SUBJECT TO CONDITIONS, AND GRANTING JOINT  
REQUEST FOR EXTENSION OF TIME**

(Issued August 29, 2008)

**PROCEDURAL HISTORY**

On July 25, 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 dismissal of respondent OmniTel Communications, Inc. (OmniTel), from its complaint. Verizon stated that it resolved its dispute with OmniTel, which was the

subject of this action, and therefore Verizon asked to dismiss OmniTel from the complaint with prejudice.

On August 12, 2008, the Board issued an order holding Verizon's dismissal of OmniTel in abeyance, stating that the dismissal did not comply with the Board's rules regarding settlements by fewer than all of the parties, as stated in 199 IAC 7.18. Specifically, the Board stated that the dismissal, as filed, did not contain a statement adequate to advise the Board and the parties not joining the proposal of the scope and grounds of the settlement. Therefore, the Board held Verizon's dismissal of OmniTel in abeyance pending a supplemental filing that satisfies the requirements of 199 IAC 7.18.

#### **VERIZON'S SUPPLEMENTAL FILING**

On August 21, 2008, Verizon submitted a supplemental filing to the Board regarding the dismissal of OmniTel. Verizon objects to the Board's request for additional information regarding Verizon's settlement with OmniTel, stating that 199 IAC 7.13 does not apply in this proceeding. Verizon states that the Board's rule is applicable to cases where one or more parties contest a proposed settlement agreed to by other parties, but that is not the case here. Without waiving its right to challenge the applicability of 199 IAC 7.18 to Verizon's dismissal of OmniTel, Verizon provided supplemental information.

Verizon states that the non-settling parties, who are represented by the same counsel as OmniTel, are aware of the scope and grounds of the settlement

agreement. Verizon also states that while 199 IAC 7.18 does not require information regarding any requirement that OmniTel file a revised tariff with the Board that complies with the terms of the settlement, Verizon states that under the settlement agreement, OmniTel agrees to make any regulatory or tariff filings that may be necessary to comply with the terms of the agreement.

With regard to the specifics of the settlement, Verizon says that OmniTel has agreed to charge Verizon a single composite rate for originating and terminating intrastate and interstate switched access traffic for the next three years and Verizon has agreed to make a lump-sum payment to OmniTel to settle the alleged past-due amount that OmniTel claims Verizon owes to OmniTel. Verizon says that it settled based on a modification of future access rates in order to reduce OmniTel's incentive to engage in arbitrage.

### **DISCUSSION AND CONDITIONAL APPROVAL**

Verizon argues that this settlement is a private agreement of a bilateral dispute and the Board should approve it in order to encourage parties to settle claims.<sup>1</sup>

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<sup>1</sup> Verizon also argues that the Board previously permitted AT&T to settle its claims against some respondents in another docket without requiring a description of the terms and conditions of the settlement. The Board agrees that AT&T, as an intervenor, filed three joint notices of settlements with the Respondents in Docket No. FCU-07-2; however, the Board has not approved those settlements. Even if it is assumed that the Board approved those settlements without having sufficient information to make the findings required by 199 IAC 7.18 (an assumption that the Board does not accept), an error in that case would not require that the Board continue to repeat that error in all future cases. A settlement proposal cannot be approved unless it is shown, in light of the whole record, that the settlement is reasonable, consistent with law, and in the public interest.

The Board recognizes the efficient resolution of claims as an important policy goal, but it is not the only goal to consider.

The Board's rules on settlements are clear: "[t]he board or presiding officer will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest." 199 IAC 7.18. It is not always sufficient for the parties to inform the Board that they have settled an issue to their satisfaction; they must also provide the Board with enough information about the settlement to satisfy the requirements of rule 7.18. The initial settlement filing in this case did not meet this standard.

The supplemental filing provides additional information about the settlement, from which it appears that OmniTel and Verizon have negotiated an access rate that is different from OmniTel's tariffed rate for access services. Verizon says that it settled, in part, in order to reduce OmniTel's incentive to engage in arbitrage; presumably, that means the negotiated access rate is lower than OmniTel's tariffed rate. Verizon also says that the precise terms of the settlement are subject to confidentiality restrictions, implying that the negotiated access rate is not available to other interexchange carriers.

Approving a settlement with a confidential, lower access rate that is available to only one interexchange carrier could be problematic if that rate is not included in OmniTel's tariff. Iowa Code § 476.4 requires that every public utility file tariffs with the Board showing the rates and charges for the public utility services offered.

Paragraph 22.142)"a" requires telephone utilities that provide intrastate access rates to file tariffs for such services. The parties have not requested a waiver of the rule and the Board cannot waive the statute, so the Board can only approve the settlement upon the condition that OmniTel file the negotiated access rate as a part of its access tariff and make that rate available to all qualifying interexchange carriers.

A tariff filing is required by law. It will also serve the public interest in efficient use of the Board's resources. If the Board were to approve settlements of access charge disputes on a case-by-case basis with the result that only interexchange carriers that file complaints are able to benefit from the resulting reduction in access charges, then every interexchange carrier that pays intrastate access charges in Iowa would have to file its own complaint in order to receive the reduced rates. There are dozens of interexchange carriers using intrastate access services in Iowa and over 100 local exchange carriers offering intrastate access services, so the result could be hundreds of complaint dockets where only a handful, at most, should be required. The result would be wasted resources, which would not be in the public interest.

The Board will approve the proposed settlement, effective upon approval of an amendment to OmniTel's intrastate access services tariff that specifies the revised rate for originating and terminating intrastate switched access services and makes that rate available to all qualifying interexchange carriers. Until that amendment is

filed and approved by operation of law or by Board order, OmniTel continues to be a party to this proceeding.

### **JOINT REQUEST FOR EXTENSION OF TIME**

On August 21, 2008, the Board issued an order granting the Respondents' motion for an extension of time to file a response to Verizon's complaint. Pursuant to the August 21 order, the Respondents were permitted to file a response to Verizon's complaint on or before August 29, 2008.

On August 25, 2008, Verizon and the Respondents filed a joint motion for an extension of time. In support of their motion, the parties ask for an extension until September 16, 2008, so that the parties can continue to explore settlement possibilities.

The Board has reviewed the Parties' request and finds that it is reasonable. The joint motion for extension of time will be granted and the Respondents will be allowed to file a response to Verizon's complaint on or before September 16, 2008.

### **ORDERING CLAUSES**

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

1. The dismissal of respondent OmniTel Communications, Inc., from this action filed by MCImetro Access Transmission Services LLC, d/b/a Verizon Access Transmission Services, and MCI Communications Services, Inc., d/b/a Verizon

Business Services, on July 25, 2008, is conditionally granted as described in this order.

2. The joint motion for extension of time filed by MCImetro Access Transmission Services LLC, d/b/a Verizon Access Transmission Services, and MCI Communications Services, Inc., d/b/a Verizon Business Services, BTC Inc., d/b/a Western Iowa Networks, and Premier Communications, Inc., on August 25, 2008, is granted as described in this order.

**UTILITIES BOARD**

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/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 August, 2008.