

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; AND FRONTIER COMMUNICATIONS OF IOWA, INC.,</p> <p style="text-align:center">Respondents.</p>	<p>DOCKET NO. FCU-08-6</p>
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**ORDER DOCKETING COMPLAINT, ESTABLISHING
PROCEDURAL SCHEDULE, AND DENYING MOTIONS TO DISMISS**

(Issued November 14, 2008)

I. BACKGROUND

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 charged by 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.¹

Based on a comparison of Iowa Telecom and Frontier's average access revenues per minute, Verizon asserts that the intrastate switched access rates charged by Iowa Telecom and Frontier exceed the rates charged by Qwest Corporation (Qwest) for similar services 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 intrastate switched access rates since 1995.

¹ In its March 11, 2008, answer and motion to dismiss, Frontier stated that while Verizon's complaint includes allegations about Citizens Mutual, Frontier's parent company is Citizens Communications Company. Frontier denied it is affiliated with Citizens Mutual. In Verizon's March 26, 2008, opposition to Frontier's motion to dismiss, Verizon explained that because Frontier denied any affiliation with Citizens Mutual, Verizon would withdraw its complaint as to Citizens Mutual.

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. Motions to dismiss

1. Iowa Telecom

On March 10, 2008, Iowa Telecom filed a motion to dismiss, arguing the complaint should be dismissed because it does not raise a claim for which the Board may lawfully grant the requested relief. Iowa Telecom explains that House File 518, enacted in 1995 and codified at Iowa Code § 496.97, allowed ILECs to elect price regulation as an alternative to rate-of-return regulation. Iowa Telecom's predecessor, GTE Midwest Incorporated (GTE), a carrier serving fewer than 500,000 access lines in Iowa, elected to be price regulated pursuant to § 476.97(11). The Board approved GTE's reduction in intrastate switched access rates, subsequent compliance filings,

and, later, Iowa Telecom's adoption of GTE's price regulation election and rates.²

Iowa Telecom has not modified the GTE rates.

Iowa Telecom argues that nothing in § 476.97(11) would allow the Board to order Iowa Telecom to reduce intrastate switched access rates and that even if the Board were allowed to do so, the statute does not specify how to measure the reductions. 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. With respect to Verizon's claim regarding the rates of Iowa Telecom's CLEC operations, Iowa Telecom notes that the complaint does not allege that the Iowa Telecom CLECs' intrastate switched access rates violate the Board's rules governing CLEC access charges at 199 IAC 22.14(2).

2. Frontier

On March 11, 2008, Frontier filed an answer to and motion to dismiss Verizon's complaint, arguing the Board should dismiss the complaint because there is no reasonable basis to investigate the complaint. Frontier explains it operated under a Board-approved price regulation plan pursuant to Iowa Code § 476.97 and reduced its intrastate access rates over a multi-year period as provided in Iowa Code § 476.97(3)"c." Frontier contends there is nothing in § 476.97(3) that would allow the Board to order Frontier to make further reductions in intrastate access service rates.

² See In re: GTE Midwest Incorporated, Docket No. TF-95-359, "Order Approving Access Services Tariff," issued October 6, 1995, and 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.

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 (HF 277).³ 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 allows Frontier to maintain affordable basic service rates. Frontier states that if it were required to match Qwest's rates, it would have to recover lost revenues by raising basic local service rates by an amount that would exceed the cap in § 476.1D.

Frontier disagrees with Verizon's reliance on Qwest's rates as an appropriate benchmark for the rates of other carriers, arguing instead that each carrier's rates must be evaluated by considering the carrier's unique circumstances. Frontier suggests that community population, customer geographic density, and number of access lines are factors that give Qwest a lower average cost structure than Frontier. Frontier claims 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.

³ 2005 Acts, ch. 9, § 1, codified at Iowa Code § 476.1D.

Frontier asks the Board, if it does not dismiss the complaint, to initiate a broader proceeding to consider policy issues relating to access charge rates, establishment of a state universal service fund (USF), and rebalancing local service rates.

C. Verizon's opposition

On March 26, 2008, Verizon filed its opposition to the motions to dismiss, arguing that when evaluating a motion to dismiss, the Board should read the allegations in the light most favorable to the petitioner, disregarding any ambiguity in the pleadings.⁴ Verizon disputes Iowa Telecom's assertions that the Board cannot require further reductions and that Iowa Telecom continues to operate as a price-regulated carrier. According to Verizon, the 2005 amendments to Iowa Code § 476.1D ended the price plan regime.

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 November 15, 2007 (ITA Order), in which the Board reversed its previous conclusion that it lacked jurisdiction over switched access rates of non-rate-regulated carriers. Verizon argues it would be unfair and anticompetitive not to provide Verizon with a forum to review the rates it must pay to Iowa Telecom.

⁴ 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.

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 because 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"⁵ 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.

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 Frontier's rates. Verizon asserts that the fact that the rates were set 14 years ago is

⁵ In re: Intrastate Access Service Charges, Docket No. RMU-03-11, "Order Adopting Amendments," issued March 18, 2004.

reason enough for the Board to consider the complaint. Further, the Board expressed a commitment in a recent order to rationalize switched access rates.⁶

Verizon says 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.

D. 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 rejects Verizon's assertion that Iowa Telecom's election to have its retail local exchange service rates deregulated under § 476.1D took its intrastate access rates outside of the coverage of § 476.97(11). Iowa Telecom contends that nothing in HF 277 indicates that § 476.97(11) would not continue to apply to all other remaining rate-regulated services, including intrastate access services. Iowa Telecom argues 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.

⁶ Citing In re: South Slope Coop. Tel. Co., Docket No. RPU-07-1, "Final Order," issued February 13, 2008 (South Slope Order).

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

E. Verizon's response

On April 21, 2008, Verizon filed a response to Iowa Telecom's reply, focusing 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 re-asserts that Iowa Telecom's interpretation of the price-cap statute, which would leave Iowa Telecom's current switched access rates in place forever, is contrary to legislative intent.

F. Board order requesting briefs and establishing briefing schedule; Qwest's intervention

On May 29, 2008, the Board issued an order requesting briefs and establishing a briefing schedule. The Board noted that 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. To assist the Board in ruling on the motions to dismiss, the parties were asked to submit briefs analyzing the following issues:

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?

On June 4, 2008, Qwest filed a petition to intervene, asserting that the Board's decision on one or more of the issues identified in the proceeding could affect Qwest's financial and operational interests. No objections to Qwest's intervention were filed, and on June 27, 2008, the Board issued an order granting Qwest's petition to intervene. Qwest did not file a brief responding to the Board's questions.

G. Verizon's initial brief filed July 14, 2008; reply brief filed August 4, 2008

Verizon argues that Iowa Telecom's position that it has elected deregulation for retail services and price regulation for access services is contrary to the language and purpose of the statutes in Iowa Code chapter 476. According to Verizon, the Legislature identified "just, reasonable, and affordable rates" in Iowa Code § 476.95(1) as a principal regulatory objective; required in § 476.95(2) that the Board encourage competition; and sought to eliminate subsidies and move prices to cost, as evident in § 476.95(3). Verizon contends Iowa Telecom and Frontier ignore these

objectives and argues the Board can and should ensure that Iowa Telecom and Frontier have access rates that are appropriate for today, not for 14 years ago.

On the issue of the interaction between Iowa Code § 476.1D and the price regulation provisions of § 476.97, Verizon argues that the provisions present incompatible rules for treating a LEC's communications services. According to Verizon, HF 277 "essentially eliminated price cap regulation."⁷ Verizon contends that a carrier could elect to adopt one regime or the other (deregulation under § 476.1D or price plan regulation), but could not follow both. Deregulation under § 476.1D(1)"c" negated a carrier's ability to comply with price controls and other mandatory features of a price plan under § 476.97. Verizon notes that Frontier acknowledges that its price plan terminated upon its election to opt into deregulation under § 476.1D(1)"c."

According to Verizon, the price regulation provisions of § 476.97 are an integrated whole; nothing in § 476.97 suggests that a carrier can choose to operate under certain aspects and disregard others, nor did the Legislature express in § 476.1D any intent to allow a carrier to maintain particular terms of a price regulation plan. Verizon suggests that the Legislature's silence on how the new deregulation provisions in HF 277 were to interact with existing price plan regulation provisions indicates no interaction was intended.

⁷ Verizon initial brief at 4, quoting from the Board's "Second Statewide Telecommunications Competition Survey for Retail Local Voice Services in Iowa," March 2006, at ii.

Verizon's position is that rates originally set under a price regulation plan are subject to challenge in a complaint proceeding regardless of whether a carrier is or once was price-regulated under § 476.97. Verizon notes that § 476.3 does not constrain the Board's jurisdiction to hear a rate complaint. Verizon also relies on § 476.11, which provides that when a toll connection is made between carriers and they cannot agree on terms for interchange of toll communications, the Board, upon complaint, shall determine the terms.

Verizon argues further that even if Iowa Telecom is found to be a price-regulated carrier, the Board has authority to hear Verizon's complaint because Iowa Telecom and Frontier are not satisfying the purpose of their price regulation plans to produce just and reasonable rates. Verizon argues that § 476.97(6), which provides that any person may file a written complaint pursuant to § 476.3(1) regarding a carrier's implementation, operation under, or satisfaction of the purposes of its price regulation plan, confirms that carriers are not exempt from the Board's complaint jurisdiction just because they are price-regulated. Verizon contends that Iowa Telecom's argument that § 476.97(11) permits only voluntary reductions in access rates violates the rule of statutory construction that statutes must be given their plain meaning. According to Verizon, nothing in § 476.97(11) suggests that access rate reductions must be voluntary. Moreover, § 476.97(11)"i" forbids the Board from construing subsection (11) to prohibit an additional decrease in access rates.

In response to Iowa Telecom's argument that statutory deregulation under § 476.1D is no different from discretionary deregulation under which the Board

deregulated particular services, Verizon suggests that electing complete deregulation of retail services was a fundamental change from previous deregulatory proceedings. Verizon emphasizes that the price regulation provisions allow a carrier to elect to become price-regulated, not to choose which services it would like to be price-regulated.

Verizon's answer to the question of whether the Board has jurisdiction to order a local exchange carrier to reduce its intrastate rates is yes. Verizon points to the Board's decision in In re: FiberComm., L.C., et al. v. AT&T Comm. of the Midwest, Inc., "Final Decision and Order," Docket No. FCU-00-3, October 25, 2001, (FiberComm Order), in which the Board confirmed its § 476.3 jurisdiction over access rate complaints against CLECs because CLECs have market power for access services.

Verizon also relies on the Board's ITA Order, where the Board found it has jurisdiction under § 476.3 to review and set access rates of non-rate-regulated ILECs. Verizon argues that the logic followed by the Board to exercise jurisdiction in the ITA case applies here, quoting the Board's conclusion that because

the LECs have market power over access service to their own customers, they may have the ability to charge rates that exceed their costs, and if that were to occur, it would be unfair and potentially anticompetitive to force IXCs [interexchange carriers] to pay the LEC's rates without offering the IXCs a forum for review.

(Verizon initial brief at 17-18, quoting ITA Order at 8-9.)

Further, Verizon argues that Iowa Code § 476.7 authorizes a public utility or the Board to initiate a formal proceeding to determine the reasonableness of the utility's rates; § 476.8 requires charges for communications services to be reasonable and just; and § 476.11 authorizes the Board to determine terms for interchange of toll communications when the parties cannot agree.

In response to Frontier's arguments that there is no reasonable basis to investigate Verizon's complaint, Verizon restates its position that the age of the existing rates, the Board's policy of rationalizing access rates, and the legislative policy of moving rates closer to cost and removing subsidies are reasons for further investigation. Verizon also argues that just because Frontier does not charge the full amount allowed for the carrier common line charge does not make its access rates reasonable.

In response to the Board's question about the appropriate measure of just, reasonable, and nondiscriminatory rates, Verizon states its position is that the parties may submit cost data, but the Board does not need to undertake a cost case to set reasonable access rates. For example, Verizon asserts the Board did not conduct a cost study when reducing CLECs' and non-rate-regulated carriers' access rates in the FiberComm, Access Charge, or ITA orders.

Verizon states that benchmarking is an efficient, reliable approach to determining reasonable access rates and has been used at the federal level and by the Board in other cases and regulators in other states. According to Verizon, Qwest's rates are an appropriate benchmark as they are subject to the closest

regulatory scrutiny and the strictest economic discipline regarding recovery of revenues from its end users, rather than from other carriers. Verizon contends that from a competitive standpoint, it makes sense to put carriers on an equal footing by moving to a common rate. Further, Verizon suggests that an easy and efficient way to move toward more just and reasonable rates is to phase out Iowa Telecom's and Frontier's CCLC, in keeping with the presumption against the CCLC established in the FiberComm and South Slope orders.

Verizon urges the Board to disregard Iowa Telecom's call to establish an explicit recovery mechanism and asks the Board to reject the assumption that Iowa Telecom is entitled to maintain its existing access revenues, regardless of its earnings and costs. Verizon states that Iowa Telecom's retail services are completely deregulated and it is free to price its services as it likes, recovering its costs in the prices charged for those services.

If the Board decides it must determine Iowa Telecom's and Frontier's costs of providing access services, Verizon recommends that the Board set parameters to assure more costs are not shifted to access providers. Verizon recommends against using the TELRIC (Total Element Long Run Incremental Cost) methodology for any purpose.

Verizon notes that the Board's decision in Docket No. INU-08-1 declining to extend its jurisdiction over rate-regulated carriers' single-line flat-rated residential and business rates beyond July 1, 2008⁸ (Deregulation Order), does not affect resolution of this complaint except to stop Iowa Telecom and Frontier from arguing they lack flexibility to increase retail rates to recover potential lost revenues from reduction in access charges. Verizon contends that Iowa Telecom is wrong in its characterization of the Deregulation Order because (1) Iowa Telecom is not entitled to continue receiving its current level of revenues from access charges forever; (2) the Board did not make a categorical finding that Iowa Telecom and Frontier are practically unable to raise retail local exchange rates; and (3) raising the single-line and business rates that were the subject of the deregulation proceeding are not the only options Iowa Telecom would have to recover costs. Verizon suggests that Iowa Telecom could spread network costs over other telecommunications services, as Qwest does.

H. Iowa Telecom's initial brief filed July 14, 2008; reply brief filed August 4, 2008

Generally, Iowa Telecom's position is that as long as it is in compliance with § 476.97(11), the Board does not have jurisdiction to hear a complaint about Iowa Telecom's intrastate access rates under §§ 476.3, 476.11, or any other provision. Iowa Telecom contends that the Legislature could have created a means by which intrastate switched access rates could be reduced after they reached the 1995

⁸ In re: Possible Extension of Board Jurisdiction Over Single Line Flat-Rated Residential and Business Rates for Local Exchange Carriers, Docket No. INU-08-1, "Final Order," June 27, 2008.

interstate levels, but chose not to. Iowa Telecom points out that larger ILECs are subject to further reductions,⁹ but there is no such provision in § 476.97(11).

Iowa Telecom explains that there are four ways its intrastate switched access rates could change. Three of the means are involuntary: the relevant statutes could be amended either (1) at the state or (2) federal level; (3) the Federal Communications Commission (FCC) could take action; or (4) Iowa Telecom could voluntarily reduce its rates. Iowa Telecom suggests that the most likely scenario in which it would voluntarily reduce its rates would be if the Board conditions receipt of funding from a state USF on a voluntary reduction in intrastate access rates. Iowa Telecom states it is likely to accept such an offer given its limited opportunities to recover network costs through per-minute rates for intrastate switched access. Iowa Telecom suggests it might also make a voluntary reduction if the FCC were to permit elections for the creation of a unified rate for interstate and intrastate access services.

Iowa Telecom also argues Verizon is mistaken in asserting that removing implicit subsidies is the "be-all-end-all" of Iowa telecommunications and economic policy. Iowa Telecom points to the Board's conclusion in Docket No. NOI-99-1, the proceeding in which the Board first considered whether to establish a state USF, that a state fund was not required at the time as evidence that the Board was satisfied with the 1995 level of implicit subsidies in interstate access charges (which were

⁹ Iowa Code § 476.97(3)"a"(2) 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."

mirrored in intrastate charges) and the levels of cross-subsidy built into those rates. Iowa Telecom also argues that the Board's recent conclusion in the Deregulation Order to allow retail local exchange service regulation to sunset demonstrates that the goal of competition has been achieved even with the current level of subsidies inherent in Iowa Telecom's intrastate access charges.

Iowa Telecom asks what competitive interest Verizon seeks to protect by reducing Iowa Telecom's intrastate access rates. Iowa Telecom states there is no circumstance in which Iowa Telecom could undercharge its own facilities-based intrastate toll operations for access charges while charging higher rates to competing intrastate toll providers.

Iowa Telecom also suggests that § 476.95 is not the only source of legislative intent. Iowa Telecom argues that by enacting § 476.95 simultaneously with § 476.102 (which required the Board to initiate a proceeding to preserve universal service in Iowa), the Legislature was setting a policy that subsidies cannot be removed if a means for replacing the subsidy has not been established.

Iowa Telecom also argues that there is no public policy reason for the Board to allow Verizon's complaint to proceed. Iowa Telecom acknowledges the need to reform the intercarrier compensation and universal service systems and states that Verizon's complaint raises issues relating to universal service that should be considered in a rule making proceeding.

In response to the Board's question regarding the interaction between § 476.1D and the price regulation provisions of § 476.97, Iowa Telecom argues that

Verizon's assertion that HF 277 created a "binary choice" between discretionary and statutory deregulation is inaccurate. Iowa Telecom's view is that § 476.1D removes certain services from the price regulation provisions of § 476.97 and such removal does not affect elections previously made for services which remain price regulated. Iowa Telecom asserts that even though certain services (including intraLATA 1+ equal access, several interexchange services, and voice messaging) were deregulated, GTE and the Board recognized that § 476.97(11) continued to apply to all other services.

Iowa Telecom argues that if an election under § 476.1D invalidated an election under § 476.97(11) for other services, affected carriers would have no means for cost recovery. Iowa Telecom suggests that if Verizon's claims about the effect of an election under § 476.1D were correct, Verizon could have challenged Iowa Telecom's intrastate access rates on January 1, 2006, and, assuming the Board ordered Iowa Telecom to match Qwest's intrastate rates, the required reductions in intrastate access charges would have exceeded the amount by which a carrier was allowed to increase residential rates. Iowa Telecom argues this was not an intended result.

Iowa Telecom's position is that intrastate access service rates established pursuant to a price regulation plan under § 476.97 are not subject to challenge in a complaint proceeding brought under §§ 476.3 and 476.11. According to Iowa Telecom, § 476.97(11)"e"(6) authorizes Iowa Telecom to charge its current access rates and that specific provision cannot be controlled by the general complaint provisions. Citing the provision in § 476.3(2) which precludes the Consumer

Advocate Division of the Department of Justice (Consumer Advocate) from challenging a LEC's rates as excessive while the carrier operates under price regulation, Iowa Telecom argues that if Consumer Advocate cannot bring a complaint, then neither can any member of the public. Iowa Telecom reads § 476.97(11)"i" as permitting a LEC to voluntarily decrease its rates, but not authorizing the Board to require reductions. Iowa Telecom suggests that reading § 476.97(11)"i" to allow the Board to hear Verizon's complaint would render § 476.3(2) meaningless.

Iowa Telecom states that the Legislature created in § 476.97(11)"h" a process by which a carrier's operation under its § 476.97(11) compliance plan could be reviewed after the required reductions were implemented. In § 476.97(11)"h"(1), however, the Legislature forbade the Board from interpreting § 476.97(11)"h" to serve as a means of ordering a reduction in basic communications service rates, which include intrastate access rates.

Iowa Telecom disputes Verizon's claim that its complaint is permissible under § 476.97(6), which allows complaints about a LEC's implementation, operation under, or satisfaction of the purposes of its price regulation plan. Iowa Telecom emphasizes that the Board's jurisdiction over access rates charged by price regulated carriers is limited to ensuring that the carrier has complied with the provisions of § 476.97. If the complaint is about whether the required reductions were implemented, Iowa Telecom asserts there is nothing for the Board to consider, given that the Board has approved the relevant tariff filings and Iowa Telecom's adoption of GTE's price regulation

election and plan. Further, Iowa Telecom suggests that the only "purpose" of its price regulation plan was to reduce average intrastate access charges to the 1995 interstate levels. Iowa Telecom suggests that a complaint regarding satisfaction of this purpose might relate to whether the proper rate elements were selected for reductions. A complaint about satisfaction of the purpose of a plan, though, could not seek a reduction in average intrastate switched access rates because § 476.97(6) would then contradict § 476.3(2), which was enacted at the same time and provides that Consumer Advocate shall not file a petition alleging that a LEC's rates are excessive while the carrier is operating under a Board-approved price regulation plan.

Iowa Telecom appears to defend the validity of the unaltered GTE rates by noting that the rates frozen by an election under § 476.97 were "at least" based on the federal price cap formulae using actual carrier data as inputs. In contrast, Iowa Telecom states that most non-rate-regulated Iowa ILECs are "average schedule companies who, at the federal level, rely on the National Exchange Carrier Association tariff that hardly purports to derive a measure of such carriers' costs." (Iowa Telecom initial brief at 11-12.)

On the issue of what is the appropriate measure of just, reasonable, and nondiscriminatory rates, Iowa Telecom insists that if universal service subsidies are removed from switched access charges, the Board must create another cost recovery mechanism. Iowa Telecom cautions that by eliminating the subsidy without creating a replacement, the Board would risk violating the United States Constitution by taking property without due process of law.

Iowa Telecom asserts that, given the existence of competitive offerings as recognized in Docket No. INU-08-1, the market will not bear a significant shift of cost recovery from switched access charges to retail local exchange rates. Iowa Telecom also points out that the Board filed comments with the FCC in CC Docket # 01-92 on October 25, 2006, stating that "further burdening of consumers is not the correct path."

Iowa Telecom believes its costs should be measured using forward-looking costs, such as TELRIC. Iowa Telecom claims that because it is modernizing its network, the most suitable framework for its switched access pricing is the future-oriented, efficient network analysis provided by TELRIC methodology. Iowa Telecom claims that the FCC allowed it to use a company-specific TSLRIC cost (Total Service Long Run Incremental Cost) to justify its federal switched access rates. Further, Iowa Telecom asserts that the FCC used a TELRIC-based formula to distribute Interstate Access Support (IAS) to price cap carriers such as Iowa Telecom. The IAS was established to replace certain universal service subsidies that were being eliminated from interstate access charges.

With respect to the effect of the Deregulation Order, Iowa Telecom states that the Board's factual findings in that decision pertain to this proceeding. Iowa Telecom contends that the Board concluded Iowa Telecom has no practical ability to raise rates, regardless of its legal authority to do so. Consequently, retail local exchange rates do not provide a means of recovering any revenue lost through reductions that might be ordered in this proceeding.

I. Frontier's initial brief filed July 14, 2008; reply brief filed August 4, 2008

Generally, Frontier disputes Verizon's assertion that the Board must review Frontier's intrastate access rates because they are alleged to be unreasonable. Frontier objects to Verizon's claim that the Board can reform intrastate access rates without considering Frontier's costs of providing intrastate access. Frontier urges the Board to consider whether the benefit to Verizon shareholders of any reductions in access rates the Board might order would outweigh the ultimate harm to Iowa consumers.

Frontier suggests that the Board should first determine if there really is a problem and then determine if the proposed remedy will fix the problem without causing more significant problems. Frontier argues Verizon has not clearly demonstrated the need for reform. With respect to the proposed solution, Frontier argues the reductions proposed by Verizon would benefit Verizon in the form of lower expenses but would force consumers to pay higher rates for local service. Further, Frontier argues that in light of the fact that the Board has limited or no ability to force long distance companies like Verizon to reduce long distance rates, the Board should not try to force lower long distance rates by mandating access charge reductions when competitive options are available to consumers.

Frontier asserts that a reduction in its intrastate access rates is not necessary or appropriate, but counsels the Board to observe the following four principles if it does decide to modify the rates. First, the Board should recognize that mandating Frontier to reduce intrastate access rates will result in local service rate increases.

Second, if the intrastate access revenues of Frontier and other carriers are reduced, the Board should consider whether an intrastate USF is necessary. Third, interexchange carriers (IXCs) like Verizon must continue to pay local service providers for the use of their facilities, including the cost of loop facilities. Fourth, Frontier cautions the Board that any changes adopted by the FCC with respect to intercarrier compensation could undermine decisions of state commissions. Frontier notes that its customers could be doubly impacted by intrastate access reform and interstate access reform, resulting in higher local service charges.

On the question of whether intrastate access rates determined according to a price regulation plan are subject to challenge in a complaint proceeding under §§ 476.3 and 476.11, Frontier argues the price regulation provisions supersede the complaint procedures in § 476.3 and 476.11.

On the issue of whether the Board has jurisdiction to order a LEC to reduce its intrastate access rates, Frontier emphasizes that § 476.3 authorizes the Board to dismiss a complaint if it concludes there is no reasonable basis to investigate the complaint. According to Frontier, the essence of Verizon's complaint is that Qwest has lower intrastate access rates than Frontier and therefore Frontier's rates are unreasonably high and should be reduced. Frontier argues that Verizon fails to provide any further factual basis for the complaint; fails to identify any requirement for Frontier to reduce intrastate access rates; fails to consider that Frontier's intrastate rates were reduced in accordance with Board-approved plans; fails to acknowledge that Frontier charges a lower CCLC than is allowed by Board rules; and fails to

address Board rules that limit the imposition of an end user access charge. Frontier asserts that Verizon's complaint is not legally or factually supported and should be dismissed because there is no reasonable basis for investigation.

Regarding the appropriate measure of just, reasonable, and nondiscriminatory rates, Frontier states there is not a single method to best measure switched access rates for all carriers. Frontier maintains that Qwest's intrastate access rates are not an appropriate benchmark for Frontier due to major differences in Frontier's and Qwest's size, network, and customer base. Frontier asserts that the FCC rules to determine interstate access costs can be used to evaluate the cost of providing intrastate access services, with some modifications.

J. Consumer Advocate's initial brief filed July 14, 2008

In response to the Board's question about the interaction between Iowa Code § 476.1D and the price regulation provisions of § 476.97, Consumer Advocate contends the two provisions do not interact. Instead, they offer alternate and mutually exclusive methods which can be elected by a LEC for setting retail rates in Iowa. Consumer Advocate explains the history of price regulation legislation, noting that § 476.97(1) provided that during the term of a price regulation plan, the Board shall regulate the prices of the LEC's basic and non-basic communications services pursuant to the requirements of the plan approved by the Board. Consumer Advocate explains that switched access was included in the list of "basic communications services" even though it was not an end-user customer retail service

because the rates for switched access services had been set in the traditional rate base, rate of return framework.

Frontier's written plan had to include provisions for reducing intrastate switched access rates. The switched access provisions in the law were not to be construed as prohibiting any additional decrease or permitting any increase in Frontier's average intrastate access service rate "during the term of the plan." § 476.97(3)"a"(3)"a"- "b." With respect to Iowa Telecom's election under § 476.97(11), Consumer Advocate notes a written plan was not required. The statute required reductions in switched access rates and provided that the statute was not to be construed to prohibit an additional decrease or to permit an increase in average intrastate access rates.

Consumer Advocate explains that as long as Frontier and Iowa Telecom's price-regulation elections were in place, neither was subject to traditional rate regulation and both were immune from complaints under § 476.3(1) unless the complaint addressed implementation, operation under, or satisfaction of the purposes of the price regulation plan. Consumer Advocate contends that by filing elections for regulation under § 476.1D, Frontier and Iowa Telecom terminated their § 476.97 elections. Consumer Advocate notes that Frontier's election specifically states, "[b]y opting into the new requirements, Frontier's Price Regulation Plan is null and void as of July 1, 2005."¹⁰ According to Consumer Advocate, the provisions of § 476.97 no

¹⁰ See Consumer Advocate initial brief at 6 and Attachment A to Consumer Advocate's initial brief, which includes Frontier's May 31, 2005, election under HF 277, in which Frontier states, "By opting into the new requirements, Frontier's Price Regulation Plan is null and void as of July 1, 2005."

longer apply to Frontier and Iowa Telecom. Consumer Advocate asserts that both Iowa Telecom and Frontier elected to be regulated under § 476.1D(1)(c) knowing that because switched access rates are not retail rates, they would not be deregulated in 2008.

Consumer Advocate contends that intrastate access service rates determined according to a price regulation plan under § 476.97 are subject to challenge in a complaint proceeding brought under §§ 476.3 and 476.11. According to Consumer Advocate, switched access rates established under § 476.97 remain in place today only because no carrier has challenged them. Consumer Advocate explains that throughout the tenure of price regulation, § 476.11 has been in effect and authorizes the Board, upon complaint, to determine the terms and conditions of interconnections between local and toll carriers absent agreement between the carriers. Consumer Advocate asserts the Board has broad, general, and comprehensive authority under § 476.11.

Consumer Advocate's position is that the Board has jurisdiction to order a LEC to reduce its intrastate access rates. Consumer Advocate notes that the Board has decided in other cases (the FiberComm and ITA decisions) that it has jurisdiction over the access rates of CLECs and LECs that are normally exempt from rate regulation when the LEC or CLEC has market power. Consumer Advocate argues that the Board's reasoning in those cases should apply equally to Frontier and Iowa Telecom's switched access rates, as both LECs have monopoly power in providing switched access service to any IXC that originates or terminates a call to the LEC's

customer. Consumer Advocate suggests it would make no sense for the Board to find that smaller LECs and CLECs in Iowa are subject to the Board's complaint resolution of toll connection disputes, but not to allow a forum to address complaints against two of the largest LECs.

On the issue of how to measure just, reasonable, and nondiscriminatory rates, Consumer Advocate states that the default method for setting rates for toll connections is through negotiation. In this case, though, § 476.11 was invoked, indicating an agreement had not been reached. Consumer Advocate suggests the Legislature's policy statements in Iowa Code § 476.95 provide guidance; one objective is to further the development of competition for local exchange services as well as toll services. Consumer Advocate believes the Board should attempt to move switched access charges toward the cost of providing the service and eliminate subsidies. Consumer Advocate states that the Board could review the cost of switched access services to determine just and reasonable rates, mirror interstate access rates, or compare to a relevant benchmark.

II. DISCUSSION

The Board begins its consideration of Verizon's complaint by noting that Frontier has acknowledged that its price regulation status ended upon its election to deregulate retail services. Frontier's resistance to Verizon's complaint focuses on whether there are reasonable grounds for further investigation of the complaint. Most of the following discussion relates to Iowa Telecom's arguments that the Board does not have jurisdiction to hear Verizon's complaint.

The statutes relevant to the Board's consideration of Verizon's complaint are potentially conflicting and require careful reading. Certain provisions in the price regulation statutes regarding the Board's ability to hear complaints about a price-regulated carrier's operation under price regulation are not entirely clear. Iowa Telecom disputes Verizon's assertion that its complaint is permissible under § 476.97(6), which provides that any person, including Consumer Advocate or the Board on its own motion, may file a written complaint pursuant to § 476.3(1) regarding a local exchange carrier's implementation, operation under, or satisfaction of the purposes of its price regulation plan. Iowa Telecom points to § 476.3(2), which provides that Consumer Advocate shall not file a petition alleging that a LEC's rates are excessive while the LEC is participating in a price regulation plan approved by the Board pursuant to § 476.97. Iowa Telecom argues that if Consumer Advocate is permitted to bring a complaint under § 476.97(6) regarding satisfaction of the purposes of a price regulation plan but cannot file a petition demanding reduction in a carrier's rates, then "satisfaction of the purposes" of a price regulation plan cannot mean that the intrastate access rates set pursuant to the price regulation plan are too high.¹¹

¹¹ Verizon disputes Iowa Telecom's argument that because § 476.3(2) precludes Consumer Advocate from filing a petition alleging that a price-regulated carrier's rates are excessive, no one else can file such a petition. Verizon notes that the statute only limits Consumer Advocate and the Board cannot permissibly read further limitations into the statute.

The Board has evaluated these statutes and arguments and concludes that it should deny the motions to dismiss and conduct a hearing regarding Iowa Telecom's and Frontier's rates for intrastate access services. The Board finds more support in the statutes for an interpretation that allows the Board to consider Verizon's complaint than for Iowa Telecom's interpretation that the Board does not have jurisdiction to consider the complaint.

The Board agrees with Consumer Advocate and Verizon that a price regulation election was not meant to apply to individual services chosen at the discretion of the carrier, and that once a carrier opts for its retail services to be deregulated pursuant to § 476.1D, that carrier's previous price-regulated status is no longer in effect. In other words, a carrier cannot opt into price regulation for access services only while choosing deregulation under § 476.1D for its retail rates. Because Iowa Telecom's and Frontier's price regulation status ended when they elected deregulation under § 476.1D, their intrastate switched access rates are subject to review in a complaint proceeding under § 476.11, which authorizes the Board, upon complaint and hearing, to determine terms for toll connection between lines or facilities of two or more telephone companies. Section 476.11 provides that whenever

toll connection between the lines or facilities of two or more telephone companies has been made, or is demanded under the statutes of this state, and the companies concerned cannot agree as to the terms and procedures under which toll communications shall be interchanged, the board upon complaint in writing, after hearing had upon reasonable notice, shall determine such terms and procedures.

Even if the Board found that Iowa Telecom retains its price regulation status for intrastate access rates only, the Board would have jurisdiction pursuant to the provision in § 476.97(11)"i" that the subsection "shall not be construed to prohibit an additional decrease" in a LEC's average intrastate access rates during the term of the price regulation plan. The Board does not agree with Iowa Telecom that this provision precludes anything other than a voluntary reduction in rates. Instead, the Board agrees with Verizon that nothing in § 476.97(11)"i" suggests that rate reductions must be voluntary and that to read such a condition into the provision would violate the requirement that the plain meaning of the statute be given effect.

Nor does the Board agree with Iowa Telecom's interpretation of § 476.97(11)"h," which provides that the Board could review a LEC's operation under § 476.97(11) after four years of the LEC's price-regulation election. Iowa Telecom argues that a § 476.97(11)"h" proceeding was the mechanism the Legislature established for the Board to review a LEC's operation under price regulation and the Legislature specifically precluded the Board from using such a proceeding as a means of ordering reductions in rates for basic communications services, which include switched access. However, § 476.97(11)"h" is better read to mean that the prohibition in § 476.97(11)"h"(1) applies only to subsection "h" proceedings. The fact that the Legislature needed to restrict the use of a § 476.97(11)"h" proceeding to order further reductions in access rates, combined with the immediately following provision that permits decreases in access rates, indicates that the Legislature

recognized and intended that the Board has the option to order reductions in access rates in other proceedings.

Support for the Board's jurisdiction can also be found by considering Verizon's complaint as a review for price plan modification under § 476.97(11)"h." While subpart "h"(1) says that the plan modifications cannot require a reduction in rates for any basic communications service, § 476.97(11)"i" states that subsection (11) does not prohibit decreases in intrastate access service rates. The specific reference to intrastate access service rates in the section that *allows* reductions (§ 476.97(11)"i") outweighs the reference to basic communications services in general that *prohibits* reductions (§ 476.97(11)"h"(1)).

Allowing Verizon's complaint to go forward will be consistent with previous decisions in which the Board asserted jurisdiction over the access rates charged by RLECs and CLECs. It would be an absurd result to read the price regulation statutes to mean that of all local exchange carriers in Iowa, only Iowa Telecom's access rates are not subject to review by the Board. Allowing Iowa Telecom to avoid Board review and possible modification of its intrastate access rates while other carriers have been subject to that review might raise equal protection issues. On this point, the Board concludes that the better course is to read the statutes in a manner that avoids Constitutional issues.

If the allegations in Verizon's complaint are read in the light most favorable to Verizon, the Board concludes that Verizon has sufficiently identified a basis for considering the complaint under § 476.11. If the complaint is examined under

§ 476.3, which requires reasonable grounds for further investigation, Verizon has identified reasonable grounds for investigation of the reasonableness of Iowa Telecom's and Frontier's intrastate access rates, which were established 14 years ago by reference to interstate rates that have since been reduced.

Finally, the statutes contain sufficient direction from the Legislature to guide the Board in resolving any competing interpretations of the price regulation and complaint statutes. In § 476.95, the Legislature instructed that communications services should be available throughout the state at just, reasonable, and affordable rates from a variety of providers; that the Board must consider the effect of its decisions on competition; and that the Board should address issues relating to the movement of prices toward cost and the removal of subsidies in ILEC price structures. These policy statements support the Board's consideration of Verizon's complaint regarding the reasonableness of the Iowa Telecom and Frontier intrastate access charges. The Board will deny the motions to dismiss and docket Verizon's complaint for formal proceeding.

The Board will not prevent the parties from presenting any relevant information regarding the cost of providing intrastate switched access service. As examples of the type of evidence the Board will consider, the Board offers the following non-exhaustive list: reasonable proxies, historical cost, a comparison of interstate and intrastate switched access rates, and TELRIC studies.

III. ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The complaint filed on February 20, 2008, by MCImetro Access Transmission Services LLC, d/b/a Verizon Access Transmission Services, and MCI Communications Services, Inc., d/b/a Verizon Business Services, is docketed for investigation of the matters asserted in the complaint and such other issues as may develop during the course of the proceedings.

2. The following procedural schedule is established for this proceeding:

a. Verizon and any intervenors aligned with Verizon shall file prepared direct testimony, with supporting exhibits and workpapers, on or before December 15, 2008.

b. Iowa Telecom and Frontier and any intervenors aligned with Iowa Telecom and Frontier shall file rebuttal testimony, with supporting exhibits and workpapers, on or before January 12, 2009.

c. Verizon and any intervenors aligned with Verizon shall file reply testimony, with supporting exhibits and workpapers, on or before February 9, 2009.

d. A hearing for the purpose of receiving testimony and cross-examination of all testimony will commence at 9 a.m. on Monday, March 30, 2009, in the Board's hearing room at 350 Maple Street, Des Moines, Iowa. Parties shall appear at the hearing one-half hour prior to the time of hearing to mark exhibits. Persons with disabilities requiring assistive services or devices

to observe or participate should contact the Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made. The parties are advised that the Board has reserved five days for the hearing in this matter.

e. Any party desiring to file a post-hearing brief may do so on or before April 24, 2009.

f. Any party desiring to file a post-hearing reply brief may do so on or before May 15, 2009.

3. In the absence of objection, all workpapers shall become a part of the evidentiary record at the time the related testimony and exhibits are entered in the record.

4. In the absence of objection, all data requests and responses referred to in oral testimony or cross-examination, which have not previously been filed with the Board, shall become a part of the evidentiary record. The party making reference to the data request or response shall file an original and six copies at the earliest possible time.

5. In the absence of objection, if the Board calls for further evidence on any issue and that evidence is filed after the close of hearing, the evidentiary record shall be reopened and the evidence will become a part of the evidentiary record three days after filing. All evidence filed pursuant to this paragraph shall be filed no later than five days after the close of hearing.

6. The motion to dismiss filed by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, on March 10, 2008, is denied.

7. The motion to dismiss filed by Frontier Communications of Iowa, Inc., on March 11, 2008, is denied.

UTILITIES BOARD

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

Dated at Des Moines, Iowa, this 14th day of November, 2008.