
IOWA UTILITIES BOARD
Telecommunications Section

Docket No.: RMU-2014-0003
Utility: Various
Memo Date: September 19, 2014

TO: The Board

FROM: Michael Balch and Suzanne Smith

SUBJECT: Proposed Rules to Address Senate File 2195, Intrastate Access Service, and Miscellaneous Telephone Issues

I. Background

On May 30, 2014, the Iowa Utilities (Board) issued an information order (Information Order) in Docket No. RMU-2014-0003 to begin the process of amending its administrative rules in order to address the requirements of Senate File 2195. Senate File 2195 amends various sections of Iowa Code chapters 476 and 477 in response to an increasingly competitive telecommunications industry in Iowa. One of the amendments resulting from the enactment of Senate File 2195 is the elimination of retail tariff requirements for local exchange carriers (LECs). The new law, which will be codified in Iowa Code § 476.4(2), took effect on July 1, 2014.

The new law states that LECs will no longer need to file retail tariffs with the Board, but it requires LECs to continue to file wholesale tariffs. Moreover, the law anticipates that LECs will withdraw their retail tariffs previously filed with the Board by January 1, 2015. The Information Order provided instructions to LECs about a process for withdrawing retail tariffs prior to January 1, 2015.

The Information Order noted that the administrative rules addressing telecommunications services contain multiple references to retail tariffs and retail tariff requirements, and that these rules would need to be amended to implement the new provisions of §476.4(2). The Information Order also noted that there are other rules that have become obsolete since the Board's last telecommunications rule making proceeding in Docket No. RMU-2008-0006.

For example, some provisions of the intrastate access rules in 199 IAC 22.14(2) now conflict with the access reform rules announced by the Federal Communications Commission (FCC) in the Transformation Order.¹ Those access reform rules institute a transition to bill-and-keep as opposed to specific

¹ See Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, et al., released November 18, 2011 (Transformation Order)

payments for the exchange of intrastate toll traffic as allowed by the Board's rules. Additionally, the Information Order recognized that there are other rules in Chapter 22 in need of revision due to ongoing changes in the telecommunications industry. The Board requested that all interested parties file responses by June 20, 2014, regarding any necessary or beneficial rule changes to Chapter 22 arising from changes within the telecommunications industry. The Board stated that all information received would be considered when the Board issues a notice of proposed rulemaking at a later date.

Responses were filed by Qwest Corporation d/b/a CenturyLink QC (CenturyLink), the Iowa Communications Alliance (ICA), and the Office of Consumer Advocate (OCA). CenturyLink urged the Board to use a process similar to that used in Docket No. NOI-2013-0001 to garner open debate on changes needed to Chapter 22 to address a changing communications industry. Specifically, CenturyLink states that there is no need to provide provisions in the rules that would be duplicative of the terms and conditions in its catalog or would be binding on certain providers of voice services but not on others. CenturyLink notes that Cable One, a Voice over Internet Protocol (VoIP) provider, offers voice communications in Iowa without a certificate highlighting the apparent inequity between various communications technologies.

ICA notes that LECs could be in technical violation of the existing rules if they withdraw their tariffs prior to the enactment of new Chapter 22 rules, which eliminate retail tariff requirements. ICA also suggests that, during the transition from local service tariffs to customer service agreements, the Board should allow for flexibility. For example, some LECs may prefer to "rebadge" the existing tariffs as customer service agreements. Some LECs may prefer to modify and/or eliminate existing tariff provisions as part of the transition, while other LECs may prefer to adopt catalogs and service agreements.

Regarding the Board's instructions that LECs continue to provide the Board with information regarding rate or service changes, the ICA comments that the Board should receive such rate changes "after the fact" and that the Board would have no authority to review or approve the rate change notices. However, the ICA contends that Senate File 2195 does not address any requirements regarding notice of "service changes" and questions why this instruction was contained in the Information Order.

ICA recommends that the revised rules define or redefine exactly what types of retail relationships are subject to regulation. ICA recommends that Chapter 22 be revised in a comprehensive fashion and that a workshop or other informal process be conducted to identify all relevant topics. ICA suggests that the rule making will require a comment period of more than 30 days. Finally, ICA comments that the rules should address the access tariff concurrence and the definition of service areas and exchanges served by the LEC. Specifically, ICA

recommends that the Board maintain some process or document identifying the areas served by the LEC.

OCA comments that in amending rules that refer to the “tariff” requirement, the Board should be careful to retain relevant standards which should govern the conduct of the LECs’ business. Thus, removal of the word “tariffs” in 199 IAC 22.1(5) should not lessen the obligation “to provide telephone service to the public in its service area in accordance with the rules” adopted by the Board. OCA states that end-user customers need to be able to find and evaluate the terms under which service is offered, and that need is even more important now that the Board will not be reviewing and approving tariffs containing those terms.

OCA states that elimination of the current requirements addressing the content of tariffs in 199 IAC 22.2(3) does not relieve the LECs of keeping its terms of service current, unambiguous, and available to customers either through a Web site or by mail upon request. Although the specific format of a tariff may no longer be required, the underlying purpose of informing customers about the terms and conditions of service, allowing them to make an informed decision and minimizing misinterpretation and disputes, remains a valid and important objective.

OCA also recommends that the Board work to adopt minimum service standards that are as technology-neutral as possible because the technology and engineering differences between various types of voice services are transparent to customers. OCA urges the Board to adopt standards that could apply to wireline, VoIP, cable VoIP, and other types of services that would remain applicable after the eventual transition to an all-Internet Protocol (IP) network.

Another issue to address is the tracking of the LECs’ approved service territories after their tariffs are withdrawn. OCA states that it is important for the Board to create a procedure to encourage the expansion of competition, which would permit the Board to approve the list of exchanges where a LEC claims to provide service.

The OCA also notes that the FCC’s preemption of most aspects of terminating switched access charges on intrastate interexchange traffic has recently been affirmed by the Tenth Circuit. Thus, the Board will need to review and amend its current intrastate access rules to bring them into compliance with federal requirements.

Finally, the OCA noted that Chapter 22 covers a far-ranging list of subjects, many of which may require review at this time. OCA states that the Board may wish to consider convening informal meetings or workshops on individual topics as an efficient way to seek input prior to the initiation of a formal rule making.

II. Staff Analysis and Comment

Staff has drafted proposed rules that address most, but not all of the objectives, noted in the responses to the Information Order. The principal issue not addressed in the proposed rules relates to VoIP services. CenturyLink complains that there are VoIP providers such as Cable One operating in Iowa without a certificate, and this creates an inequity between various communications technologies. ICA states that, from a retail standpoint, the regulated service is local voice telephony service - whether times division multiplexing (TDM) or IP. OCA states that the Board needs to adopt technology neutral standards applicable to wireline, VoIP, cable VoIP, and other types of services that would remain applicable after the eventual transition to an all-IP network.

The three parties filing responses suggest workshops to aid the Board in amending its telephone rules in a comprehensive fashion. Staff agrees and recommends that the issue of VoIP be reserved for a follow-up rule making so there would be more time to conduct industry workshops. As noted above, Senate File 2195 contemplates that the detariffing of retail local exchange services be realized by January 1, 2015. In addition to VoIP, there are three other areas of telephone regulation that may need to be addressed in a follow-up rule making and workshops. These include alternative operator services, rural call termination, and slamming/cramming. Staff did not address these three areas of regulation in the attached Proposed Notice of Intended Action.

III. Proposed Notice of Intended Action

Staff has prepared the attached Notice of Intended Action proposing revisions to five categories of Chapter 22 that require the most immediate attention. These are identified as Items 1 - 4. In addition, there is an Item 5 which addresses the telephone rate change notices contained in Chapter 26.

Item 1: The Notice of Intended Action proposes rule changes to address the detariffing of retail services. Item 1 contains amendments to numerous rules throughout Chapter 22 striking retail tariff requirements for local exchange utilities. Additionally, rule 22.1 has been amended to clarify that the provisions of Chapter 22 address three distinct types of telephone utilities: local exchange utilities; interexchange utilities; and alternative operator service companies. Accordingly, there are amendments to various sections of Chapter 22 to better clarify which of the three types of telephone utilities are subject to a particular rule provision.

Under 22.1(3) definitions for “retail services” and “wholesale services” have been added to define the tariffing requirements for both services. Additionally, the

current definition of “tariff” has been amended to clarify that wholesale tariffs remain applicable to local exchange utilities while retail tariffs remain applicable to alternative operator service companies. Subrule 22.1(6) contains a listing of all the deregulation actions involving telephone utilities since 1982. Under this subrule, staff has added an explanation of the retail detariffing requirements of Senate File 2195.

Subrule 22.2(3) addressing “tariff requirements” has been amended to strike the requirement that tariffs must be made available at the telephone utility’s business office. Because many telephone utilities have distant business offices, staff proposes that tariffs should be made available upon request. In subrule 22.2(5) a number of requirements pertaining specifically to local exchange tariffs have been stricken.

Subrule 22.4(1) has been amended to provide customers access to information that was previously contained in retail tariffs. Specifically, a rule has been added to require telephone utilities to make schedules of their retail rates available to customers upon request. Additionally, a rule has been added to require local exchange utilities to develop a service guide or catalog listing procedures for addressing residential customer service provisions. The service guide must also be made available upon request. Finally, the Board’s bill insert rules currently require local exchange utilities to notify customers, at least annually, of the Board’s complaint resolution process. The bill insert rule has been amended so that utilities would also notify customers that rate information and the residential service guide are also available upon request.

Item 2: The Notice of Intended Action proposes rule changes to address two aspects of the Board’s intrastate access rules in need of amendment. The first aspect concerns the changes announced by the FCC in the Transformation Order and recently affirmed by the Tenth Circuit. These changes eliminate, over time, the per-minute terminating access rates and transition them to a system of bill-and-keep. Accordingly, staff has proposed new definitions under 22.1(3) for “bill-and-keep” and “transitional intrastate access service.” The rules under 22.14(2) govern the rules for the filing of intrastate access tariffs. Staff has proposed amendments to reflect FCC rules requiring LECs to file revised intrastate access tariffs by July 1 of each year until terminating rates are reduced to bill-and-keep. Additionally, the current rules allow a carrier common line charge of up to three cents per minute on both originating and terminating access service. The rule has been amended to eliminate the carrier common line charge for terminating access service.

Second, staff has proposed a new rule to help address the dispute resolution aspects of intrastate access service. Proposed rule 22.14(7) cross-references the billing dispute provisions outlined in 22.4(5)“h”(3) in order to clarify that the Board’s retail customer billing dispute process also applies to wholesale customer intrastate access billing disputes. Specifically, the retail customer rule

typically requires customers to pay the undisputed amount of a bill. Paying the undisputed amount prevents disconnection for specified periods while the parties work to resolve the billing issue. The retail rule also extends the period before disconnection if a written complaint is filed with the Board.

Additionally, proposed rule 22.14(7) cross-references the discontinuance of service rule under 22.16. However, the discontinuance of service rule has been amended to clarify that the only situation where intrastate access service may be disconnected without providing notice to the Board and OCA would be in a case of emergency. In cases involving intrastate access billing disputes, the amended rule requires the utility provide the Board and OCA at least two business days' notice before disconnecting intrastate access service.

Item 3: The Notice of Intended Action proposes several changes to the rules under 22.20, which govern service territories and certificates. First, the "map specification" rule under 22.20(3)"a" has been amended to allow flexibility on the prescribed map scale when a boundary map is filed electronically with the Board.

Second, the "subsequent certificates" rule under 22.20(4) has been updated and renamed "certificate modifications." The first paragraph of the updated rule addresses the transfer of service territories and customers between local exchange utilities. The second paragraph of the updated rule addresses the process for expanding a local exchange utility's service territory into additional competitive exchanges after the detariffing of local exchange service. The proposed process requires local exchange utilities to file a notice with the Board that lists the exchanges where the utility currently provides ILEC services and CLEC services as well as the names of the exchanges where the utility proposes to expand its provision of competitive local exchange carrier (CLEC) service.² The notice process will allow the Board and utilities to continue tracking the expansion of local exchange competition in Iowa.

Item 4: The Notice of Intended Action proposes changes to a number of miscellaneous rules that no longer appear relevant. For example, several definitions such as "base rate area," "message rate service," "rate zone," and others are proposed to be stricken. Provisions applicable to rates and pricing of pay telephone services and facilities under 22.3(5) are proposed to be stricken. Finally, the "willful violation" rule under 22.15(3) is proposed to be stricken because it references a rule rescinded in 1988.

Item 5: The Notice of Intended Action proposes changes to the customer notification procedures for rate changes under 26.5(1). The existing rules prescribe specific forms, procedures, and timing when notifying customers of rate changes. However, Senate File 2195 simply requires local exchange utilities to continue to notify customers of rate changes. Thus 26.5(1) has been amended

² ILEC means incumbent local exchange carrier. CLEC means competitive local exchange carrier. Complete definitions are provided under 199 IAC 22.1(3).

to require the local exchange utilities exempt from filing tariffs only to file copies of their rate change notices with the Board. The purpose of these filings is to enable the Board to respond adequately to consumers who contact the Board about local exchange utility rate changes.

IV. Recommendation

Staff recommends that the Board sign the attached order that commences a rule making as described in this memo and directs the Executive Secretary to have the attached Notice of Intended Action published in the Iowa Administrative Bulletin. The Notice of Intended Action will be sent to the Governor's office for review before the order can be drafted.

Attached: Notice of Intended Action