

476.97 Price regulation.

1. Notwithstanding contrary provisions of this chapter relating to rate regulation, the board may approve a plan for price regulation submitted by a rate-regulated local exchange carrier. The plan for price regulation is not effective until the approval by the board of tariffs implementing the unbundling of essential facilities pursuant to section 476.101, subsection 4, except for a local exchange carrier with less than seventy-five thousand access lines whose plan for price regulation will be effective concurrent with the approval of its plan. The board may approve a plan for price regulation prior to the adoption of rules related to the unbundling of essential facilities or concurrent with a rate proceeding under section 476.3, 476.6, or 476.7. During the term of the plan, the board shall regulate the prices of the local exchange carrier's basic and nonbasic communications services pursuant to the requirements of the price regulation plan approved by the board. The local exchange carrier shall not be subject to rate of return regulation during the term of the plan.

2. The board, after notice and opportunity for hearing, may approve, modify, or reject the plan. The board shall approve, modify, or reject the plan by no later than ninety days after the date the plan is filed. The local exchange carrier shall have ten days to accept or reject any board modifications to its plan. If the local exchange carrier rejects a modification to its plan, the board shall reject the plan without prejudice to the local exchange carrier to submit another plan.

3. A price regulation plan, at a minimum, shall include provisions, consistent with the provisions of this section and any rules adopted by the board, for the following:

a. (1) Establishing and changing prices, terms, and conditions for basic communications services. The initial plan for price regulation must include a proposal, which the board shall approve, for reducing the local exchange carrier's average intrastate access service rates to the local exchange carrier's average interstate access service rates in effect as of the last day of the calendar year immediately preceding the date of filing of the plan, as follows:

(a) A local exchange carrier with five hundred thousand or more access lines in this state shall reduce its average intrastate access service rates by at least one hundred percent of the difference between average intrastate access service rates and average interstate access service rates as of the date that the plan becomes effective.

(b) A local exchange carrier with fewer than five hundred thousand but seventy-five thousand or more access lines in this state shall reduce its average intrastate access service rates to its average interstate access service rates in increments of at least twenty-five percent, with the initial reduction to take effect on approval of the plan and equal annual reductions on each anniversary of the approval during the first three years that its plan is in effect.

(c) A local exchange carrier with fewer than seventy-five thousand access lines in this state shall reduce its average intrastate access service rates to its average interstate access service rates with equal annual reductions during a period beginning no more than two years and ending no more than five years from the plan's inception.

(2) The board, during the term of the plan for a local exchange carrier with five hundred thousand or more access lines in this state, may consider further reductions toward economic costs in the local exchange carrier's average intrastate access service rates. The board may consider offsetting such reductions by an explicit subsidy replacement to the extent that such offsets are competitively neutral. In determining economic costs of access service the board shall consider all relevant costs of the service including shared and common costs of the local exchange carrier.

(3) This section shall not be construed to do either of the following:

(a) Prohibit an additional decrease in a carrier's average intrastate access service rate during the term of the plan.

(b) Permit any increase in a carrier's average intrastate access service rates during the term of the plan.

(4) (a) The plan shall also provide that the initial prices for basic communications services shall be three percent less than the rates approved and in effect at the time the local exchange carrier files its plan. A local exchange carrier which elects to reduce its rates by three percent shall not, at a later time, increase its rates for basic communications services as a result of the carrier's compliance with the board's rules relating to unbundling. In lieu

of the three percent reduction, and prior to the adoption of rules relating to unbundling pursuant to section 476.101, subsection 4, paragraph "a", subparagraph (1), the local exchange carrier may request and the board may establish a regulated revenue requirement in a rate proceeding under section 476.3 or 476.6 commenced after July 1, 1995. After the determination of the local exchange carrier's regulated revenue requirement pursuant to the rate proceeding, the local exchange carrier shall not immediately implement rates designed to recover that regulated revenue requirement. Following the adoption of rules relating to unbundling pursuant to section 476.101, subsection 4, paragraph "a", subparagraph (1), the local exchange carrier shall commence a tariff proceeding for the approval of tariffs implementing such unbundling. The board has six months to complete this tariff proceeding and determine the local exchange carrier's final unbundled rates. The local exchange carrier shall carry forward the regulated revenue requirement determined by the board pursuant to the rate proceeding and design rates that comply with the board's rules relating to unbundling that recover the regulated revenue requirement, and that implement the board's approved rate design established in the tariff proceeding.

(b) In lieu of taking the three percent reduction, a local exchange carrier that submits a plan for price regulation after the board adopts rules relating to unbundling may file a rate proceeding under section 476.3 or 476.6 and the board may approve rates designed to comply with those rules which allow the carrier to recover the established regulated revenue requirement and that implement the board's approved rate design established in the tariff proceeding.

(5) The plan shall provide for both increases and decreases in the prices for basic communications services reflecting annual changes in inflation. Initially, the board shall use the gross domestic product price index, as published by the federal government, for an inflation measure. The board by rule may adopt a more current measure of inflation. Any plan in effect as of July 1, 2003, that contains a productivity factor shall strike the productivity factor on a prospective basis.

(6) The plan may provide that price increases for basic communications services which are permitted under this section may be deferred and accumulated for a maximum of three years into a single price increase, provided that a deferred and accumulated price increase under this section shall not at any time exceed six percent. A price decrease for basic communications services shall not be deferred or accumulated, except that price decreases of less than two percent may be deferred by the local exchange carrier for one year. A price decrease required under this section may be offset by a price increase for a basic communications service that would have been permitted under this section in the previous twelve-month period, but which was deferred by the local exchange carrier.

b. Establishing and changing prices, terms, and conditions for nonbasic communications services.

c. Reporting new service offerings to the board.

d. Reflecting in rates any changes in revenues, expenses, and investment due to exogenous factors beyond the control of the local exchange carrier.

e. Providing notice to customers, the board, and the consumer advocate of changes in prices, terms, or conditions for basic and nonbasic communications services.

4. The board shall consider the extent to which a proposed plan complies with the requirements of subsection 3 and achieves the following:

a. Just, nondiscriminatory, and reasonable rates.

b. High quality, universally available communications services.

c. Encouragement of investment in communications infrastructure, efficiency improvements, and technological innovation.

d. The introduction of new communications products and services from a variety of sources.

e. Regulatory efficiency including reduction of regulatory costs and delays. A plan shall not provide for waiver of, release from, or delay in implementing the provisions of this section, section 476.101 or 476.102 or any rules adopted by the board pursuant to those sections.

5. Notwithstanding an approved plan for price regulation, the board shall continue to have regulatory authority over the following:

a. The level, extent, and timing of the unbundling of essential facilities offered by a local exchange carrier.

b. Ensuring against cross-subsidization between nonbasic communications services and basic communications services.

6. Any person, including the consumer advocate, a body politic, or the board on its own motion, may file a written complaint pursuant to section 476.3, subsection 1, regarding a local exchange carrier's implementation, operation under, or satisfaction of the purposes of its price regulation plan.

7. The consumer advocate may represent consumers before the board regarding any rule, order, or proceeding pertaining to price regulation. The consumer advocate may act as attorney for and represent consumers generally before any state or federal court concerning a board rule, order, or proceeding pertaining to price regulation.

8. In implementing price regulation, the board shall consider competitively neutral methods to assist lower-income Iowans to secure and retain telephone services.

9. The board shall determine the duration of any plan. The board shall review a local exchange carrier's operation under its plan, with notice and an opportunity for hearing, within four years of the initiation of the plan and prior to the termination of the plan. The local exchange carrier, consumer advocate, or any person may propose, and the board may approve, any reasonable modifications to a local exchange carrier's plan as a result of the review, except that such modifications shall not require a reduction in the rates for any basic communications service.

10. The board, in determining whether to file a written complaint pursuant to subsection 6 or prior to reviewing a local exchange carrier's operation pursuant to subsection 9, may request that such carrier provide any information which the board deems necessary to make such determination or conduct such review. The carrier shall provide the requested information upon receipt of the request from the board.

11. a. Notwithstanding subsections 1 through 10, a local exchange carrier with fewer than five hundred thousand access lines in this state shall have the option to be regulated pursuant to subsections 1 through 10 or pursuant to this subsection. A local exchange carrier which elects to become price-regulated under this subsection shall also be subject to subsections 5 through 8 and subsection 10 in the same manner as a local exchange carrier which operates under an approved plan of price regulation submitted pursuant to subsection 1.

b. A local exchange carrier which elects to become price-regulated under this subsection shall give written notice to the board of such election not less than thirty days prior to the date such regulation is to commence.

c. Upon election of a local exchange carrier to become price-regulated under this subsection, the carrier shall reduce its rates for basic local telephone service an average of three percent. In lieu of the three percent reduction, the local exchange carrier may establish its rates for basic local telephone service in a rate proceeding under section 476.3 or 476.6 commenced after July 1, 1995.

d. Initial prices for basic communications services, other than basic local telephone service, shall be set at the rates in effect as of the first of July prior to the date such regulation is to commence.

e. (1) A price-regulated local exchange carrier shall not increase its rates for basic communications services for a period of twelve months after electing to become price-regulated. To the extent necessary, rates for basic services may be increased to carry out the purpose of any rules that may be adopted by the board relating to the terms and conditions of unbundled services and interconnection. A price-regulated local exchange carrier may increase its rates for basic communications services following the initial twelve-month period to the extent that the change in its aggregate revenue weighted prices does not exceed the most recent annual change in the gross domestic product price index, as published by the federal government. If application of that formula achieves a negative result, prices shall be reduced so that the cumulative price change for basic services, including prior price reductions in these services, achieves the negative result. The board by rule may adopt different measures of inflation if they are found to be more reflective of the individual price-regulated carriers.

(2) Price increases for basic communications services which are permitted under this subsection may be deferred and accumulated for a maximum of three years into a single price increase, provided that a deferred and accumulated price increase under this subsection shall not at any time exceed six percent. A price decrease for basic communications services shall not be deferred or accumulated, except that price decreases of less than two percent may be deferred by the local exchange carrier for one year. A price decrease required under this section may be offset by a price increase for a basic communications service that would have been permitted under this section in the previous twelve-month period, but which was deferred by the local exchange carrier. A rate change pursuant to this subsection may take effect thirty days after the notification of the board and consumers.

(3) A price-regulated local exchange carrier shall not increase its aggregate revenue weighted prices for nonbasic communications services more than six percent in any twelve-month period.

(4) A price-regulated local exchange carrier may reduce the price for any basic communications service, to an amount not less than the total service long-run incremental cost for such service on one day's notice filed with the board. For purposes of this subsection, "*total service long-run incremental costs*" means the difference between the company's total cost and the total cost of the company less the applicable service, feature, or function.

(5) A price-regulated local exchange carrier may offer new service alternatives for any basic communications services on thirty days prior notice to the board, provided that the preexisting basic communications service rate structure continues to be offered to customers. New telecommunications services shall be considered nonbasic communications services as defined in section 476.96, subsection 6.

(6) A price-regulated local exchange carrier must reduce the average intrastate access service rates to the carrier's average interstate access service rates. Such carrier shall reduce the average intrastate access service rates by at least twenty-five percent of the difference of such rates within ninety days of the election to be price-regulated and twenty-five percent each of the next three years.

f. A local exchange carrier shall notify customers of a rate change under this subsection at least thirty days prior to the effective date of the rate change.

g. A local exchange carrier which elects to become price-regulated under this subsection shall also be subject to the following:

(1) The local exchange carrier shall not be subject to rate-of-return regulation while operating under price regulation.

(2) All regulated services shall be provided pursuant to board-approved tariffs.

(3) All new regulated service offerings shall be reported to the board.

(4) Rates may be adjusted by the board to reflect any changes in revenues, expenses, and investment due to exogenous factors beyond the control of the local exchange carrier, including, but not limited to, the effects of local competition. The board shall have one hundred eighty days to consider rate changes proposed under this subparagraph, but for good cause may grant one extension of sixty days, not to exceed a total of two hundred forty days.

h. (1) The board may review a local exchange carrier's operation under this subsection, with notice and an opportunity for hearing, after four years of the carrier's election to be price-regulated. The local exchange carrier, consumer advocate, or any person may propose, and the board may approve, any reasonable modifications to the price regulation requirements in this subsection as a result of the specific carrier review, with the following limitations:

(a) Such modifications shall not require a reduction in the rates for any basic communications service or a return to rate-base, rate-of-return regulation.

(b) Such proposals for modifications under this paragraph "h" are limited to no more than one every three years.

(2) The board shall approve, or approve subject to modification, a proposal for modification within one hundred eighty days of filing, but for good cause may grant one extension of sixty days, not to exceed a total of two hundred forty days. Reasonable modifications may include increases without offsetting decreases in any rate for basic and

nonbasic communications service of the carrier. In reviewing the carrier's proposal, the board shall consider, but not be limited to, potential rate consolidations, the impact of competition or other external factors since election of price regulation, the impact of the proposal on the carrier's ability to attract capital, and the impact of the proposal on the ability of the carrier to deploy advanced telecommunications services.

i. This subsection 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.

j. (1) Upon the request of a local exchange carrier, the board shall, when required by this subsection, grant the carrier temporary authority to place in effect seventy-five percent, or such lesser amount as the carrier may request, of the requested increases in rates, charges, schedules, or regulations by filing with the board a bond conditioned upon the refund in a manner to be prescribed by the board of any amounts collected from any customer class in excess of the amounts which would have been collected under rates, charges, schedules, or regulations finally approved by the board. The board shall approve a request for temporary authority within thirty days after the date of filing of the request. The decision shall be effective immediately.

(2) The board shall determine the rate of interest to be paid by a public utility to persons receiving refunds. The interest rate to be applied to refunds of moneys collected subject to refund under this subsection is one percent per annum plus the average quarterly interest rate at commercial banks for twenty-four-month loans for personal expenditures, as determined by the board, compounded annually. The board shall consider federal reserve statistical release G.19 or its equivalent when determining interest to be paid under this subsection.

k. The board and the consumer advocate may employ additional temporary staff, or may contract for professional services with persons who are not state employees, as the board and consumer advocate deem necessary to review a local exchange carrier's operations, proposal for modifications, rate change proposal, or proposed changes in aggregate revenue weighted prices pursuant to this subsection. Beginning July 1, 2002, there is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary to enable the board to hire additional staff and contract for services under this subsection. The costs of the additional staff and services shall be assessed to the local exchange carrier pursuant to the procedures in sections 475A.6 and 476.10.

95 Acts, ch 199, §8; 98 Acts, ch 1151, §1 - 3; 2002 Acts, ch 1060, §1 - 5; 2002 Acts, ch 1175, §36; 2003 Acts, ch 126, §5, 6; 2005 Acts, ch 9, §3; 2011 Acts, ch 25, §143

[T] Code editor directive applied