

CHAPTER 5
PROCEDURE FOR DETERMINING THE COMPETITIVENESS
OF A COMMUNICATIONS SERVICE OR FACILITY

[Prior to 10/8/86, Commerce Commission[250]]

199—5.1(476) Purpose. These rules govern the procedure for investigating and determining the applicable level of regulation for a communications service or facility pursuant to Iowa Code section 476.1D.

[ARC 4414C, IAB 4/24/19, effective 5/29/19]

199—5.2(476) Petition.

5.2(1) *Petitioner.* Any interested person may petition the board for a determination of the following under Iowa Code section 476.1D.

a. Whether a communications service or facility provided or proposed to be provided by a telephone utility in Iowa is subject to effective competition;

b. Whether a communications service or facility provided or proposed to be provided by a telephone utility in Iowa, which is subject to effective competition, is an essential communications service or facility and the public interest warrants service regulation;

c. Whether a communications service or facility, which previously has been deregulated, is no longer subject to effective competition and rate and service regulation should be reimposed; or

d. Whether a communications service or facility, which previously has been deregulated and which continues to be subject to effective competition, is an essential communications service and the public interest warrants service regulation, and service regulation only should be reimposed.

5.2(2) *Contents of petition.* A petition for a determination under subrule 5.2(1) shall contain or be submitted with the following information:

a. The specific service or facility which the petitioner is asking the board to consider;

b. Data sufficient to support a prima facie finding that the service or facility is or is no longer subject to effective competition or is an essential communications service or facility and the public interest warrants service regulation;

c. In a petition for determination of whether a communications service or facility is subject to effective competition, an identification of all persons or parties who are actual or potential competitive providers of the service or facility.

[ARC 4414C, IAB 4/24/19, effective 5/29/19]

199—5.3(476) Docketing.

5.3(1) *Order.* If the petitioner has complied with subrule 5.2(2), the board shall issue an order docketing the matter and setting a procedural schedule.

5.3(2) *Responses.* Any person, including the consumer advocate, wanting to file a response to a petition must do so within 30 days of the filing of the petition or as otherwise directed by the board in its order docketing the matter.

5.3(3) *Notice.* Upon docketing, the board will cause notice of the proceeding to be published in the Iowa Administrative Bulletin. The board may also require specific notice to persons identified as competitors.

[ARC 4414C, IAB 4/24/19, effective 5/29/19]

199—5.4(476) Comments. All comments shall be sworn and shall be filed within 30 days after publication of notice of the proceeding in the Iowa Administrative Bulletin unless otherwise directed by the board. Reply comments may be allowed at the discretion of the board. Comments shall be filed electronically unless otherwise allowed by the board.

[ARC 4414C, IAB 4/24/19, effective 5/29/19]

199—5.5(476) Formal proceeding. The board may schedule an oral argument, evidentiary hearing, or other formal proceeding as appropriate to allow all interested persons the opportunity to address the issues raised in the petition and any comments filed with the board. All persons filing comments will be

required to appear at any formal proceeding that may be held. If the board holds an evidentiary hearing, all persons filing comments shall have at least one witness available who may be cross-examined about the subject matter of the comments.

[ARC 4414C, IAB 4/24/19, effective 5/29/19]

199—5.6(476) Decision.

5.6(1) *Criteria for effective competition.* In determining whether a service or facility is subject to effective competition, the board will consider whether a comparable service or facility is available from a supplier other than the telephone utility and whether market forces are sufficient to ensure just and reasonable rates without regulation. In addition, the board may consider the following criteria:

- a. The ability or inability of a single provider to determine or control prices;
- b. The ease with which other providers may enter the market;
- c. The likelihood that other providers will enter the market;
- d. The substitutability of one service or facility for another; and
- e. Other relevant considerations.

5.6(2) *Criteria to retain service regulation.* In determining whether a service or facility is an essential communications service or facility and the public interest warrants retention of service regulation under Iowa Code subsection 476.1D(5) or 476.1D(7), the board may consider all or part of the following criteria:

- a. Relative universality of customer use of the service or facility;
- b. Degree to which the service or facility is necessary to access the telecommunications network;
- c. Extent to which the public, subsets of the public, or individuals rely on the service or facility;
- d. Potential for harm and its relative impact in the event of inadequate service quality;
- e. Any economic incentives which might discourage reasonable service quality;
- f. Existence of subcategories within a category of generally competitive services or facilities where the competition is ineffective to ensure reasonable service quality for the subcategory; and
- g. Other relevant considerations.

5.6(3) *Findings.* After the completion of formal proceedings, the board may issue findings.

199—5.7(476) Extent of deregulation. Notwithstanding the presence of effective competition, if the board determines a service or facility is an essential communications service or facility and the public interest warrants retention of service regulation, the board will deregulate rates and may continue service regulation.

No provider of the service or facility will be subject to greater or lesser regulatory control because of its alleged market share or market power.

Any deregulation under these rules, whether deregulation of rates and service or deregulation of rates only, will involve separation of the accounts of the deregulated competitive service or facility from the accounts of the telephone utility's regulated operation.

Deregulation of a service or facility for a utility is effective only after all of the following:

- a. A finding of effective competition by the board;
- b. Election by a utility providing the service or facility to file a deregulation accounting plan;
- c. Approval of a utility's deregulation accounting plan by the board.

199—5.8(476) Hearing and order. Rescinded IAB 4/24/19, effective 5/29/19.

These rules are intended to implement Iowa Code chapter 476 and Iowa Code section 546.7.

[Filed 6/14/85, Notice 4/24/85—published 7/3/85, effective 8/7/85]

[Filed emergency 9/18/86—published 10/8/86, effective 9/18/86]

[Filed 3/27/92, Notice 8/21/91—published 4/15/92, effective 5/20/92]

[Filed 1/29/93, Notice 9/30/92—published 2/17/93, effective 3/24/93]

[Filed ARC 4414C (Notice ARC 4283C, IAB 2/13/19), IAB 4/24/19, effective 5/29/19]