

CHAPTER 38
LOCAL EXCHANGE COMPETITION

199—38.1(476) General information.

38.1(1) *Application and purpose of rules.* This chapter applies to local utilities. The purpose of these rules is to further the development of competition in the local exchange services market.

38.1(2) *Definitions.* For the administration and interpretation of this chapter, the following words and terms shall have the meaning indicated below, unless the context otherwise requires:

“*Act*” means the Telecommunications Act of 1996.

“*Arbitration*” means the investigative process whereby a dispute is submitted to the board for resolution.

“*Bona fide request*” means a request to a local utility that demonstrates a good faith showing that the requesting party intends to purchase the services requested within six months of the date of the request.

“*Competitive local exchange service provider*” means any person, including a municipal utility, that provides local exchange services, other than a local exchange carrier or a non-rate-regulated wireline provider of local exchange services under an authorized certificate of public convenience and necessity within a specific geographic area described in maps filed with and approved by the board as of September 30, 1992.

“*Local exchange carrier*” means any person that was the incumbent and historical rate-regulated wireline provider of local exchange services or any successor to such person that provides local exchange services under an authorized certificate of public convenience and necessity within a specific geographic area described in maps filed with and approved by the board as of September 30, 1992.

“*Local utility*” means any entity that provides wireline local exchange services, including local exchange carriers, competitive local exchange service providers, and other non-rate-regulated wireline providers of local exchange services.

“*Mediation*” means the process in which a neutral party assists the parties in reaching their own settlement but does not have the authority to make a binding decision.

“*Total service long-run incremental cost*” for a service, or group of services, is equal to the utility’s total cost of producing all of its services including the service or group of services in question, minus the utility’s total cost of producing all of its services excluding the service or group of services in question. [ARC 4120C, IAB 11/7/18, effective 12/12/18; ARC 6035C, IAB 11/17/21, effective 12/22/21]

199—38.2(476) Number portability. Rescinded ARC 4120C, IAB 11/7/18, effective 12/12/18.

199—38.3(476) Interconnection requirements. A local utility that originates local telecommunications traffic and desires to terminate that traffic on the network of another local utility may choose the point(s) of interconnection between the two networks for the exchange of that originating local telecommunications traffic at any technically feasible point within the terminating carrier’s network. Interconnection must be equal in quality to that provided by the local utility to itself, any affiliate, or any other party to which the local utility provides interconnection. Interconnection must be on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

199—38.4(476) Unbundled facilities, services, features, functions, and capabilities.

38.4(1) *Tariff filings.*

a. Filing schedule. Each local exchange carrier shall file tariffs implementing unbundling for the facilities enumerated in paragraph 38.4(1)“*b.*” The obligation to file a tariff shall not apply to a rural telephone company until the conditions specified in 47 U.S.C. Section 251(f)(1) have been met.

b. List of unbundled essential facilities. Each local exchange carrier’s tariff filing shall, at a minimum, unbundle the following essential facilities, services, features, functions, and capabilities: loops, ports, signaling links, signal transfer points, facilities to interconnect unbundled links at the central office, interoffice transmission facilities, listings in the directory assistance database, inbound

operator services including busy-line verification and call interrupt, interconnection to the 911 system, and interconnection to the tandem switch for routing to other carriers.

38.4(2) *Requests for unbundled facilities.* Except as allowed in subrule 38.4(3), requests to unbundle facilities, services, features, functions, and capabilities shall be processed as follows:

a. A competitive local exchange service provider may make a bona fide request of a local exchange carrier to make additional unbundled essential facilities available. After receiving a request for additional unbundled essential facilities, the local exchange carrier shall respond within 30 days of the request either by agreeing to the request or by denying the request. If the local exchange carrier agrees to fulfill the request, the carrier shall file a tariff unbundling the essential facility within 60 days of the initial request.

b. If the local exchange carrier denies the request, a competitive local exchange service provider may petition the board to classify the requested facility as essential, as defined by Iowa Code section 476.100(2), and to require the local exchange carrier to make the requested facility available on an unbundled basis by filing a tariff. In such a petition, the competitive local exchange service provider shall provide information to the board showing how the requested facility meets the definition of essential facility found in Iowa Code section 476.100(2).

The petitioning party under this subrule may state a preference for proceeding by rule making or contested case, but the board will select the process to be used.

38.4(3) *Alternative procedures.* As an alternative to the procedures in subrule 38.4(2), a competitive local exchange service provider may elect the negotiation, mediation, and arbitration procedures available under 47 U.S.C. Section 252, by notifying the local exchange carrier and the board in writing at the time additional unbundled facilities are requested.

38.4(4) *Reclassifying essential facilities.* A local exchange carrier may, at any time, petition the board with a request that a facility classified as essential, either by the terms of subrule 38.4(1) or pursuant to a subsequent request of a competitive local exchange service provider, be removed from that classification and no longer be required to be provided on an unbundled basis. With its petition, the local exchange carrier shall provide information to the board showing why the facility no longer meets the definition of essential found in Iowa Code section 476.100(2). The board will determine the procedure to be used in reviewing the petition.

38.4(5) *Interconnection to essential facilities.*

a. Nondiscriminatory access. All competitive local exchange service providers shall have access to a local exchange carrier's unbundled facilities on the same nondiscriminatory terms and conditions. Such terms and conditions shall be specified in the local exchange carrier's tariff for unbundled facilities.

b. Reasonable equal access. The terms and conditions under which competitive local exchange service providers shall be able to interconnect with a local exchange carrier's unbundled facilities shall be technically and economically equivalent to those under which the local exchange carrier provides those facilities to itself or its affiliates. If it believes such terms and conditions are not technically or economically feasible, the local exchange carrier may petition the board for a waiver of this provision.

[ARC 4120C, IAB 11/7/18, effective 12/12/18]

199—38.5(476) Cost standards.

38.5(1) *Incremental cost standard.* In general, each local exchange carrier shall price each of its services above the total service long-run incremental cost of providing each service.

38.5(2) *Competitive local exchange service providers.* Cost support will generally not be required for the tariff filings from competitive local exchange service providers.

[ARC 4120C, IAB 11/7/18, effective 12/12/18]

199—38.6(476) Terminating access charge complaints. No local utility shall deliver traffic to another local utility as local service or extended area service terminating traffic if the terminating traffic is long distance or some other type of traffic for which terminating switched access charges would otherwise have been payable. Any local utility may bring a complaint to the board if another local utility has violated this requirement or taken insufficient measures to determine whether switched access charges would otherwise have been payable. The board may order payment or refund of compensation withheld

from or received by a local utility in violation of this rule, with appropriate interest or tariffed late payment penalties.

[ARC 4120C, IAB 11/7/18, effective 12/12/18]

199—38.7(476) Mediation and arbitration. This rule shall apply to all local utilities, except for rural telephone companies as defined in Section 3(47) of the Telecommunications Act of 1996. The board may make all or part of this rule applicable to a rural telephone company or companies in proceedings relating to Section 251(f) of the Act.

38.7(1) Voluntary negotiations.

a. Initiation of negotiations. A telecommunications carrier initiates the negotiation process by requesting interconnection, services, or network elements as defined in the Act from an incumbent local utility pursuant to Section 252(a)(1) of the Act. The day the request is received by the local utility is day one of the schedule set for resolution of all issues. Within five days of receipt of the request, the local utility shall file with the board using the board's electronic filing system a copy of the request and a statement of the date the request was received.

b. Duty to negotiate. The requesting telecommunications carrier and the local utility have the obligation to negotiate in good faith the terms and conditions for the provision of the requested interconnection, services, or network elements. Good faith negotiations require that the parties meet and confer at reasonable times and places, remain open to the arguments and proposals, and work toward the goal of reaching agreement on terms and conditions for the requested interconnections and services. Refusal of any party to give information about its costs or other pertinent data upon request of another party may be considered by the board as a failure to negotiate in good faith.

38.7(2) Mediation.

a. Initiation of mediation. At any time during the negotiations, any party to the negotiations may request mediation. The request shall be filed with the board using the board's electronic filing system and simultaneously served on the other parties. Alternatively, parties may file a joint request for mediation with the board. A request for mediation shall contain a brief statement of the nature of the dispute and the names, addresses, and telephone and fax numbers of the parties or their representatives.

b. Appointment of mediator. The board may appoint any competent, impartial person of character and ability to act as mediator. The board will immediately convene a meeting of the parties to discuss appointment of a mutually acceptable mediator.

c. Role and duties of the mediator. The role of the mediator is to encourage voluntary settlement by the parties. The mediator may not compel a settlement. The mediator shall schedule meetings of the parties, direct the parties to prepare for those meetings, hold private caucuses with each party in an attempt to bring disputants closer together, attempt to achieve a resolution, and assist the parties in preparing a written agreement.

The mediator does not provide legal advice to the parties, nor are any of the mediator's statements as to law and policy binding unless later adopted by the board. The mediation process will be treated as confidential to the extent permitted by law. No stenographic record will be kept.

After completion of at least one mediation session, the mediator may terminate the mediation process if it appears that the likelihood of agreement is remote or if a party is not participating in good faith, or for other good cause.

d. Parties. Only parties to the negotiations will be permitted to participate as parties to the mediation.

e. Assessment of costs. The cost of mediation shall be shared equally by the parties and paid directly to the mediator.

38.7(3) Arbitration.

a. Initiation of arbitration. Any party to the negotiation may petition the board to arbitrate all open issues. The petition requesting arbitration must be filed during the period from the 135th day through the 160th day after the date on which the request for negotiation was received by the local utility. Simultaneously with filing the petition with the board, the petitioning party shall provide a copy of the petition and accompanying documentation to the other parties.

b. Supporting documentation. On the same day of the filing of the request for arbitration, the petitioning party shall provide to the board the date upon which the request for negotiation for the interconnection, services, or network elements in dispute was made to the local utility, a list of unresolved issues, the position of each party on each of the unresolved issues, how the parties' positions meet or fail to meet the requirements of Section 251 of the Act or other regulations, any supporting documents for positions taken by the parties on unresolved issues including all relevant cost studies where prices are in dispute, whether a hearing is requested, a list of issues discussed and resolved prior to the petition for arbitration, any requests for confidentiality, and any other documents relevant to the dispute.

c. Response to the request for arbitration. A nonpetitioning party to the negotiation may respond to the petitioning party's position and provide additional information within 25 days after the petition for arbitration was received by the board.

d. Parties. Only parties to the negotiations will be permitted to participate as parties to the arbitration, unless the board consolidates proceedings. However, the office of consumer advocate will also be considered a party to the arbitration proceeding.

e. Assessment of costs. Costs shall be directly and equally assessed to the parties involved in the arbitration to the extent provided for by Iowa Code section 476.10.

f. Docketing of the arbitration request. Upon receipt of a timely and complete petition for arbitration, the board shall docket the request for consideration by the board.

g. Arbitration schedule and procedures. Within 15 days of the receipt of the petition for arbitration, the board will schedule a conference to be held within 40 days of receipt of the petition. The purpose of the conference is to plan an arbitration hearing date, clarify the issues to be resolved, identify additional information needed to reach a decision on the issues, schedule production of documents and other information, discuss or rule on any other procedural matters, and consider any other matters that will expedite the arbitration process.

h. Hearing. An arbitration hearing shall commence no later than 60 days following receipt of the petition for arbitration.

i. Consolidation. Nothing in these rules precludes consolidation of proceedings in order to reduce administrative burdens on local utilities, other parties to the proceedings, and the board.

j. Decision. Following the hearing, the board will issue its preliminary written decision on the unresolved issues. All exceptions to the decision must be filed by the parties within ten days of issuance of the preliminary decisions. All replies to exceptions shall be filed within five days of the filing of the exceptions. A final written decision regarding all issues offered in arbitration shall be issued by the board within the nine-month deadline in the Act.

38.7(4) Board review of agreements.

a. Filing of agreements. All interconnection agreements shall be filed with the board for approval within 15 days after the issuance of a final decision on the arbitrated issues in the case of arbitrated agreements, or, in the case of negotiated agreements, after the execution of the agreement.

b. Comments on arbitrated agreements. Within ten days following the filing of the arbitrated agreement with the board for review, the parties involved in the arbitration, and any other interested party, may submit written comments to the board supporting either approval or rejection of the agreement. If the board does not approve or reject the agreement within 30 days after submission by the parties of an agreement adopted by arbitration, the agreement shall be deemed approved.

c. Comments on negotiated agreements and amendments to agreements. Within 30 days of the filing date of the negotiated agreement or amendment, the parties involved in the negotiations and any other interested party may submit written comments with the board supporting either acceptance or rejection of the agreement or amendment. If no comments are filed and no issues are generated by the internal board review, the agreement or amendment shall be deemed approved 41 days after the filing date. If comments opposing approval are filed or the internal board review recommends investigation, the agreement or amendment shall be docketed. The docketing order shall be issued within 40 days after the filing date. If the board does not issue a decision on a docketed filing within 90 days after the filing date, the agreement or amendment shall be deemed approved.

d. Comments on adoption of agreements. No board approval is necessary when there is an adoption of the terms, conditions, and rates from an approved interconnection agreement. The adoption is effective upon filing. If there are terms, conditions, or rates in the filing that are not from an adopted agreement, then the filing is subject to the provisions of paragraph 38.7(4)“c.”

e. Indefinite terms, conditions, or rates. When the agreement or amendment contains terms, conditions, or rates that are not yet agreed to, the parties shall file an amendment to the agreement once they have reached agreement on the terms, conditions, or rates.

[ARC 4120C, IAB 11/7/18, effective 12/12/18]

199—38.8(476) Universal service. Rescinded IAB 12/31/97, effective 1/1/98.

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