

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 under Iowa Code Supplement section 476.1D for a communications service or facility.

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 Supplement 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 substantially comply with the form prescribed in 199—subrule 2.2(1), except that references to rule making shall be replaced by references to the service or facility sought to be evaluated. In addition, the petition must 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.

5.2(3) *Notice for proposed service.* A petition under subrule 5.2(1), paragraph “a” or “b,” which relates to a proposed service or facility not yet offered by the utility and not an existing service or facility, may include a request for expedited consideration. The request will be granted if notice is given on or before the date of filing the petition. Notice shall be given by serving or mailing a copy of the petition to all persons reasonably identified as actual or potential competitive providers of the service or facility and to all local and interexchange telephone utilities in Iowa. The notice shall also state the time limitation and responsive filing requirements in subrule 5.3(2).

199—5.3(476) Docketing.

5.3(1) *Order.* If the petitioner has complied with subrule 5.2(2), the board may issue an order docketing the matter as a formal notice and comment proceeding. At any time the board may initiate a formal notice and comment proceeding on its own motion. At any time, the board may also on its own motion initiate evidentiary hearings to develop a reliable record of facts related to the issues raised and to allow discovery to the extent the board deems necessary. The petition will not be deemed to be an application for new or changed rates, charges, schedules or regulations.

5.3(2) *Time for action.* The following schedules shall apply:

a. With regard to petitions filed which relate to an existing service or facility, or to a proposed service or facility for which expedited consideration is not granted, if the board does not issue an order

docketing the matter as a formal proceeding within 60 days after the filing of the petition, the petition will be deemed denied.

b. With regard to petitions filed which relate to a proposed service or facility and for which expedited consideration is granted, the following procedural schedules shall apply:

(1) 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. If the response includes a request to docket the matter as a formal notice and comment proceeding, the response shall state specifically the grounds for the request.

(2) If no timely request to docket the petition stating grounds which raise material issues is filed, the board will issue the findings required in Iowa Code section 476.1D within 60 days of the filing of the petition.

(3) If a timely request to docket is filed stating grounds which raise material issues, the board will issue an order requiring the petitioner to notify the persons on the service list under subrule 5.2(3) and setting a schedule for interested persons to file sworn statements of position, an oral presentation, and briefing as necessary. The board will issue the findings required in Iowa Code section 476.1D within 120 days of the filing of the petition.

(4) The deadlines under subparagraphs (2) and (3) may be extended for good cause.

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.

5.3(4) Oral presentation. When the board issues an order docketing the matter as a formal notice and comment proceeding, the board may set a date, time and place for an oral presentation.

199—5.4(476) Statement of position. All written statements of position shall be sworn.

5.4(1) Statement. Any interested person may file a written statement of position concerning the matter within 30 days after publication of notice of the proceeding. The statement of position should substantially comply with the form prescribed in 199—subrule 2.2(2). Ten copies should be filed with the original. A statement of position may contain data, views, comments or arguments concerning the service or facility. Written statements of position shall be served by the author upon the petitioner at the time of filing.

5.4(2) Counterstatement. The petitioner may file a counterstatement of position with the board in response to written statements of position. The counterstatement of position should substantially comply with the form prescribed in 199—subrule 2.2(3). Ten copies should be filed with the original. A counterstatement may be filed with the board no later than 15 calendar days after the petitioner's receipt of the written statement of position to which the petitioner is responding. The petitioner shall serve a copy of the counterstatement of position upon all authors of written statements of position to which the petitioner is responding.

199—5.5(476) Oral presentation. The rules prescribed in rule 199—3.7(17A,474) shall apply to oral presentations, except that participants in the oral presentation will be required to take an oath and will be subject to cross-examination by the board and by any other persons the board may deem appropriate. All persons filing written statements will be required to have at least one witness available at the oral presentation who may be cross-examined about the subject matter of the written statement.

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.* The board may include in its docketing order a notice of a hearing for the purpose of considering whether the board should issue an order suspending regulatory barriers which prevent providers from offering the specified service or facility to consumers.

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

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