

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 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.

“*Interim number portability*” means one or more mechanisms, such as remote call forwarding or route indexing, by which a local exchange customer at a particular location may change the customer’s local service provider without any change in the customer’s telephone number, while experiencing as little loss of functionality as is feasible using available technology.

“*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.

“*Provider number portability*” means the capability of a local exchange customer to change the customer’s local service provider at the customer’s same location without any change in the customer’s telephone number, while preserving the full range of functionality that the customer currently experiences. Provider number portability includes the equal availability of information concerning the local service provider serving a telephone number to all carriers and the ability to deliver traffic directly to that provider without having first to route traffic to the local exchange carrier or otherwise use the services, facilities, or capabilities of the local exchange carrier to complete the call and without the dialing of additional digits or access codes.

“*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.

199—38.2(476) Number portability.**38.2(1) Interim number portability.**

a. *Requests.* Each local exchange carrier shall make interim number portability available upon bona fide request of a local utility. Once a local utility uses a local exchange carrier's interim number portability, it must, in turn, make interim number portability available upon approval of its tariff to all other local utilities upon bona fide request.

b. *Terms and conditions.* After interim number portability has been requested pursuant to paragraph "a," a local exchange carrier with no tariff to provide the service shall file a tariff, within 60 days of the request, making interim number portability available. The local exchange carrier's tariff will make interim number portability available to all local utilities on the same terms and conditions.

Each local utility using the local exchange carrier's interim number portability must file tariffs within 60 days of receiving the service. For telephone numbers initially routed to the local utility, the tariffs must make interim number portability available to all other local utilities on the same terms and conditions. A local utility's tariff for interim number portability will be presumed to be reasonable and non-discriminatory if the terms and conditions are the same as those contained in the local exchange carrier's tariff for the same geographic area and the prices charged for interim number portability are not greater than those charged by the local exchange carrier. Otherwise, the tariff filing will require cost support information.

c. *Technical features.* Each local utility offering interim number portability shall make good faith efforts to ensure that the calls routed or forwarded to other local utilities meet industry standards and retain the technical characteristics and functionality of calls delivered to its own customers. Calls routed or forwarded to other local utilities shall experience as little loss of functionality as is feasible using available technology.

d. *Cost recovery mechanism.* To recover the costs of interim number portability, a local exchange carrier must make a sufficient showing to justify inclusion of the interim number portability charge in its tariff. The amount of the charge may be adjusted to reflect the indirect benefits of interim number portability to all local service customers. The recovery of both recurring and nonrecurring costs of interim number portability must be in the form of a one-time charge to the requesting local utility for each customer retaining its number.

e. *Terminating access charges.* When an interim number portability arrangement is being used to route or forward a terminating intrastate long distance call to a customer's telephone number, the local utility routing or forwarding the call shall bill the interexchange carrier the access charge the local utility would bill if it provided local exchange service to the terminating number. The access charge revenue shall be divided as follows:

- (1) The carrier common line charge shall flow through to the local utility that serves the customer; and
- (2) The switching and transport charges shall be divided equally between the local utility that serves the customer and the local utility that routed or forwarded the call.

38.2(2) Provider number portability.

a. *Trials.* A local utility may petition the board at any time with a proposal to conduct a trial of a database architecture for provider number portability involving all local utilities in a local calling area. The petitioning local utility shall provide the board with information about the likely costs of conducting a trial, how and from whom these costs will be recovered, the proposed duration of the trial, and a complete description of what is intended to be learned from the trial, especially considering the trials already planned, underway, or complete in other areas of the country. The board will provide notice and an opportunity for a hearing to allow interested persons to provide information about the advisability of conducting a trial.

b. Requests. A local utility may petition the board at any time with a proposal that all local utilities in a local calling area implement a database architecture for provider number portability that would furnish equivalent service quality and equal feature characteristics to all carriers. The petitioning local utility shall supply the board with sufficient information to establish that the proposed database architecture for provider number portability is economically and technically feasible. In particular, the petitioning local utility shall show how calls could continue to be handled reliably, how call setup times would be affected, how much the proposed database architecture would cost to install and operate, who would install and operate the database, and how the costs of installing and operating the database would be recovered. The filing must contain a reasonable and nondiscriminatory mechanism for the recovery of all recurring and nonrecurring costs of provider number portability. The board will provide notice and an opportunity for a hearing to allow others to provide information as to whether the proposed database architecture is economically and technically feasible.

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) Initial tariff filings.

a. Filing schedule. Each local exchange carrier shall file initial tariffs implementing unbundling for the facilities enumerated in paragraph "b" within 90 days of the board's final order adopting these rules, except for local exchange carriers with fewer than 75,000 access lines which must file initial unbundling tariffs on or before July 1, 1997.

b. Initial list of unbundled essential facilities. Each local exchange carrier's initial 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, directory listings in white pages, directory listings in yellow pages, 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) Subsequent 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. Subsequent to the initial tariff filings provided for in subrule 38.4(1) above, 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 by either agreeing to the request or by denying the request. If the local exchange carrier agrees to fulfill the request, it 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 it 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.

199—38.5(476) Cost standards.

38.5(1) *Existing standards.* In addition to the standards in this rule, the cost support requirements of rules 199—22.12(476) and 22.13(476) shall apply to all of a local exchange carrier's rate proceedings prior to the implementation of price regulation.

38.5(2) *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. However, this incremental cost standard shall not be construed to require any increase in the rate for any service prior to the implementation of price regulation, nor to require any price increase that is greater than allowed under a price regulation plan or under Iowa Code section 476.97(11).

38.5(3) *Imputation test.* In general, prices for each retail service offered by a local exchange carrier should equal or exceed the sum of an allocation of the tariffed prices for all unbundled essential facilities used to provide the service and the incremental costs of all other facilities or services that are components of the retail service. However, this imputation test shall not be construed to require any increase in the rate for any service prior to the implementation of price regulation, nor to require any price increase that is greater than allowed under a price regulation plan or under Iowa Code section 476.97(11).

38.5(4) *Reporting requirements.* A local exchange carrier shall provide current information to the board showing that the conditions of the incremental cost standard described in subrule 38.5(2) and the imputation test described in subrule 38.5(3) continue to be met whenever it proposes to lower the price of a retail service, it proposes the initial price of an unbundled essential facility, it proposes to raise the price of an unbundled essential facility, or it offers a new service.

38.5(5) *Competitive local exchange service providers.* Cost support will generally not be required for the tariff filings from competitive local exchange service providers, with the exception of 38.2(1)“b.”

199—38.6(476) Compensation for termination of telecommunications services.

38.6(1) *Mutual exchange of traffic.* Until the board approves monetary compensation and until tariffs for the compensation are in effect, each local utility shall terminate local and extended area service calls on a mutual exchange of traffic basis, at no charge to the originating provider. As an alternative, a local utility may elect the negotiation, mediation, and arbitration procedures available under 47 U.S.C. Section 252, by notifying the other affected local utility and the board in writing.

38.6(2) *Requests to end mutual exchange of traffic.* A facilities-based local utility may file a cost-based tariff for monetary compensation for terminating local access service, provided its filing includes a showing that in six consecutive calendar months of mutual traffic exchange between it and another facilities-based local utility the total terminating to originating traffic for the entire six-month period was unbalanced by a ratio of at least 55 percent terminating to 45 percent originating. The tariff filing must include appropriate cost support information. The terms and conditions listed in the tariff shall be applicable to all local utilities operating within the local utility’s service territory or within a service territory with extended area service to the local utility’s service territory. On the date the tariff becomes effective, compensation on a mutual exchange basis will end.

38.6(3) *Monetary compensation requirements for other utilities.* Within 60 days of board approval of a tariff for monetary compensation for terminating local access service, each other local utility operating within the service territory of the local utility or within a service territory with extended area service to the local utility must file a tariff for monetary compensation for terminating local access service. The tariff filing must include sufficient evidentiary support to allow the board to determine that the compensation will be reciprocal. The terms and conditions listed in the tariff shall be applicable to all local utilities operating within the local utility’s service territory or within a service territory with extended area service to the local utility’s service territory. Until a local utility has an approved tariff in effect, it must charge the rates for terminating local access service in the approved tariff of the local utility with which it exchanges traffic.

38.6(4) *Terminating access charge complaints.* No local utility shall deliver traffic to another local utility as local service or extended area service terminating traffic, to which mutual exchange or monetary compensation would apply under this rule, 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 appropriate refunds with interest of compensation received by a local utility in violation of this rule.

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 ten copies of the request and a statement of the date the request was received with the board.

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 made in writing to the board and copies of the mediation request shall be simultaneously served on the other parties. Alternatively, parties may jointly submit their request in writing to the board. A request for mediation shall contain a brief statement of the nature of the dispute and the names, addresses, 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. An original and three copies shall be filed.

b. *Notice of negotiated agreements, amendments, and adoption of agreements.* Notice of the filing of a negotiated interconnection agreement, an amendment to an agreement, or adoption of an agreement will be posted within five working days after the filing date, on the board's Web site, <http://www.state.ia.us/iub>.

c. *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.

d. *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.

e. *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) "d."

f. *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.

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

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