

IOWA UTILITIES BOARD

IN RE:

EXECUTIVE ORDER 10 — LOCAL
EXCHANGE COMPETITION RULES
[199 IOWA ADMINISTRATIVE CODE
CHAPTER 38]

DOCKET NO. RMU-2023-0038

ORDER OPENING DOCKET AND SETTING TECHNICAL CONFERENCE AND COMMENT DEADLINE

On January 10, 2023, Gov. Kim Reynolds issued Executive Order Number 10 (Executive Order), which put a moratorium on agency rulemaking and directed agencies, including the Utilities Board (Board), to engage in a comprehensive evaluation of existing rules. The goals of the Executive Order include increasing public input in the rulemaking process, eliminating rules that do not provide substantial benefits to Iowans, reducing the page and word count of the Iowa Administrative Code, and reducing restrictive language. As part of the comprehensive review, agencies are required to repeal each rules chapter and evaluate whether the chapter, or a portion of the chapter, should be re-promulgated. To assist agencies in performing their comprehensive reviews, the Iowa Department of Management developed and published forms and processes. See <https://dom.iowa.gov/red-tape-review> (last accessed on February 27, 2024).

Pursuant to the Executive Order, the Board is conducting comprehensive reviews of each chapter of its administrative rules, and the Board will open the above-captioned docket for purposes of conducting a comprehensive review of chapter 38, which contains the Board's local exchange competition rules. Attached to this order as

DOCKET NO. RMU-2023-0038

PAGE 2

Attachment A is the Board's retrospective analysis (Red Tape Review Rule Report) of chapter 38, which the Board will publish on the Board's website as required by section III.B of the Executive Order. Attached to this order as Attachment B is the Board's draft regulatory analysis of chapter 38, which the Board will submit in the legislative Rules Management System for publication in the Iowa Administrative Bulletin, and which may contain changes from the version attached to this order. Finally, attached to this order as Attachment C is a draft version of chapter 38 that the Board is evaluating whether to re-promulgate. Most of the current proposed changes to chapter 38 center on the removal of unnecessary and restrictive language.

The Board is also scheduling a technical conference for June 11, 2024. The technical conference will be led by Board staff, and participation may occur in person or by webinar. The purpose of the technical conference is to receive comments regarding the draft regulatory analysis and the proposed version of chapter 38 to be re-promulgated. Additionally, the Board will accept written comments concerning the draft regulatory analysis and the proposed re-promulgated version of chapter 38 through June 11, 2024. The Board will use the oral and written comments to prepare a final version of the regulatory analysis, which will be uploaded in this docket and published on the Board's website.

IT IS THEREFORE ORDERED:

1. Docket No. RMU-2023-0038 is opened for the purpose of conducting a comprehensive review of 199 Iowa Administrative Code chapter 38 pursuant to Executive Order Number 10.

DOCKET NO. RMU-2023-0038

PAGE 3

2. A technical conference is set for 9 a.m. June 11, 2024, in the Utilities Board hearing room, located at 1375 East Court Avenue, Des Moines, Iowa. Interested persons may appear in person or by Zoom. Information for attending by Zoom can be found on the Utilities Board's website on the Hearing and Meeting Calendar webpage.

3. Comments regarding the draft Regulatory Analysis or the proposed re-promulgated version of chapter 38 shall be filed by June 11, 2024.

UTILITIES BOARD

Erik M. Helland Date: 2024.04.10
08:37:43 -05'00'

Joshua Byrnes Date: 2024.04.10
08:58:21 -05'00'

ATTEST:

Keetah A Horras Date: 2024.04.10
10:06:24 -05'00'

Sarah Martz Date: 2024.04.09
15:27:04 -05'00'

Dated at Des Moines, Iowa, this 10th day of April, 2024.

**Red Tape Review Rule Report
(Due: September 1, 2025)**

Department Name:	Iowa Utilities Board	Date:	2/27/24	Total Rule Count:	5
IAC #:	199	Chapter/ SubChapter/ Rule(s):	199 IAC 38	Iowa Code Section Authorizing Rule:	476
Contact Name:	Ross Carpenter	Email:	ross.carpenter@iub.iowa.gov	Phone:	515-725-7319

PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE

What is the intended benefit of the rule?

The intended benefit of the chapter is to promote competition in the local exchange service market to ensure the best telecommunications services and costs are available to consumers.

Is the benefit being achieved? Please provide evidence.

Yes, the benefit of the chapter is being achieved because the Board is able to ensure fair competition between local exchange carriers.

What are the costs incurred by the public to comply with the rule?

There are no costs incurred by the public directly to comply with the rules, except for the costs to local exchange providers in arbitration or mediation proceedings, which could affect customer rates.

What are the costs to the agency or any other agency to implement/enforce the rule?

Chapter 38 does not impose any additional costs to the agency beyond the salary of the employees who work on ensuring compliance.

Do the costs justify the benefits achieved? Please explain.

Yes. It is necessary that the local exchange service market promotes fair competition in order to benefit Iowa customers.

**Are there less restrictive alternatives to accomplish the benefit? YES NO
If YES, please list alternative(s) and provide analysis of less restrictive alternatives from other states, if applicable. If NO, please explain.**

No, the Board believes there are no less restrictive alternatives that would provide the same benefits to the local exchange service market and customers.

Does this chapter/rule(s) contain language that is obsolete, outdated, inconsistent, redundant, or un-necessary language, including instances where rule language is duplicative of statutory language? [list chapter/rule number(s) that fall under any of the above categories]

PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE

The agency intends to remove unnecessary, outdated, duplicative, or restrictive language in current rules 38.1, 38.3, 38.4, 38.5, 38.6, and 38.7.

RULES PROPOSED FOR REPEAL (list rule number[s]):

The Board is not proposing to repeal any rule.

RULES PROPOSED FOR RE-PROMULGATION (list rule number[s] or include rule text if available):

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 have the meaning indicated below, unless the context indicates otherwise:

“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.

199—38.2(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—38.3(476) Unbundled facilities, services, features, functions, and capabilities.

38.3(1) Tariff filings.

a. Filing schedule. Each local exchange carrier shall file tariffs implementing unbundling for the facilities enumerated in paragraph 38.3(1) "b." The obligation to file a tariff does 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.

38.3(2) Requests for unbundled facilities. Except as allowed in subrule 38.3(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 rulemaking or contested case, but the board will select the process to be used.

38.3(3) Alternative procedures. As an alternative to the procedures in subrule 38.3(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.

38.3(4) Reclassifying essential facilities. A local exchange carrier may, at any time, petition the board with a request to reclassify a facility classified as essential. 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.

38.3(5) Interconnection to essential facilities. 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—38.4(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.

199—38.5(476) Mediation and arbitration. This rule applies 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.

38.5(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 a copy of the request and a statement of the date the request was received.

b. Duty to negotiate. All negotiations shall be made in good faith for 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.

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

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

38.5(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. 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.

f. Arbitration schedule and procedures. Within 15 days of the receipt of the petition for arbitration, the board will schedule a conference in order to plan an arbitration hearing date, clarify the issues to be resolved,

ATTACHMENT A

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.

g. 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 10 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.

38.5(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, or, in the case of negotiated agreements, after the execution of the agreement.

b. Comments on arbitrated agreements. Within 10 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 the board does not issue a decision 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 38.5(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.

***For rules being re-promulgated with changes, you may attach a document with suggested changes.**

METRICS

Total number of rules repealed:	0
Proposed word count reduction after repeal and/or re-promulgation	563
Proposed number of restrictive terms eliminated after repeal and/or re-promulgation	14

ARE THERE ANY STATUTORY CHANGES YOU WOULD RECOMMEND INCLUDING CODIFYING ANY RULES?

No.

DRAFT REGULATORY ANALYSIS

TEXT BOXES WILL EXPAND AS YOU TYPEAgency Name Iowa Utilities Board Rule # 199.38Iowa Code Section Authorizing Rule 476State or Federal Law(s) Implemented by the Rule 47 U.S. Code §§ 251, 252**Public Hearing**

A public hearing at which persons may present their views orally or in writing will be held as follows:

Date/Time: 06/ 11/2024 9:00 a.m.Location: Board Hearing Room, 1375 East Court Avenue, Des Moines, Iowa

Any interested person may submit written comments concerning this regulatory analysis. Written comments in response to this regulatory analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Contact Name

IT Support

Address

Iowa Utilities Board

Email and/or phone number

Phone: 515.725.7300 Email: ITsupport@iub.iowa.gov**Purpose and summary of proposed rule:**To further the development of competition in the local exchange services market.**Analysis of Impact of Proposed Rule**

1. Persons affected by the proposed rule

- Classes of persons that will bear the costs of the proposed rule:

Telecommunications utilities.

- Classes of persons that will benefit from the proposed rule:

Customers of telecommunications utilities.

DRAFT REGULATORY ANALYSIS

2. Impact of the proposed rule, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred

- Quantitative description of impact:

Benefit to the public by ensuring that the telecommunication utilities market maintains effective competition.

- Qualitative description of impact:

This chapter ensures the public will not bear undue costs related to noncompetitive practices.

3. Costs to the state

- Implementation and enforcement costs borne by the agency or any other agency:

There are no additional costs to any agency other than the normal every day costs of operation of the Board.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues.

4. Comparison of the costs and benefits of the proposed rule to the costs and benefits of inaction

The costs of action do not differ significantly from the costs of inaction, but the benefits would promote future efficiency.

5. Determination if less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule

The Board does not believe there are any less costly methods of addressing the purpose of this rule.

6. Alternative methods considered by the agency

- Description of any alternative methods that were seriously considered by the agency:

The Board considered inaction.

- Reasons why they were rejected in favor of the proposed rule:

The alternative method was rejected because the proposed rules removed duplicative text and restrictive terms, which better aligns the rules with current state policy.

Small Business Impact

If the rule will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rule on small business:

DRAFT REGULATORY ANALYSIS

- Establish less stringent compliance or reporting requirements in the rule for small business.
- Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business.
- Consolidate or simplify the rule’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rule for small business.
- Exempt small business from any or all requirements of the rule.

If legal and feasible, how does the rule use a method discussed above to reduce the substantial impact on small business?

The chapter reduces the impact on small business by consolidating and simplifying the chapter’s compliance requirements.

Text of Proposed Rule:

CHAPTER 38
LOCAL EXCHANGE COMPETITION

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DRAFT REGULATORY ANALYSIS

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—38.3(476) Unbundled facilities, services, features, functions, and capabilities.

38.3(1) *Tariff filings.*

a. Filing schedule. Each local exchange carrier shall file tariffs implementing unbundling for the facilities enumerated in paragraph 38.3(1) "b." The obligation to file a tariff does 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.

38.3(2) *Requests for unbundled facilities.* Except as allowed in subrule 38.3(3), requests to unbundle facilities, services, features, functions, and capabilities shall be processed as follows:

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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 rulemaking or contested case, but the board will select the process to be used.

38.3(3) *Alternative procedures.* As an alternative to the procedures in subrule 38.3(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.

38.3(4) *Reclassifying essential facilities.* A local exchange carrier may, at any time, petition the board with a request to reclassify a facility classified as essential. 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.

38.3(5) *Interconnection to essential facilities.* 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—38.4(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.

DRAFT REGULATORY ANALYSIS

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.

199—38.5(476) Mediation and arbitration. This rule applies 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.

38.5(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 a copy of the request and a statement of the date the request was received.

b. Duty to negotiate. All negotiations shall be made in good faith for 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.

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

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

38.5(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.

DRAFT REGULATORY ANALYSIS

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. 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.

f. Arbitration schedule and procedures. Within 15 days of the receipt of the petition for arbitration, the board will schedule a conference in order 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.

g. 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 10 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.

38.5(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, or, in the case of negotiated agreements, after the execution of the agreement.

b. Comments on arbitrated agreements. Within 10 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 the board does not issue a decision 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 38.5(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.

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 have the meaning indicated below, unless the context indicates otherwise:

“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.

199—38.2(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—38.3(476) Unbundled facilities, services, features, functions, and capabilities.

38.3(1) Tariff filings.

a. Filing schedule. Each local exchange carrier shall file tariffs implementing unbundling for the facilities enumerated in paragraph 38.3(1)“b.” The obligation to file a tariff does 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.

38.3(2) Requests for unbundled facilities. Except as allowed in subrule 38.3(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 rulemaking or contested case, but the board will select the process to be used.

38.3(3) *Alternative procedures.* As an alternative to the procedures in subrule 38.3(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.

38.3(4) *Reclassifying essential facilities.* A local exchange carrier may, at any time, petition the board with a request to reclassify a facility classified as essential. 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.

38.3(5) *Interconnection to essential facilities.* 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—38.4(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.

199—38.5(476) Mediation and arbitration. This rule applies 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.

38.5(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 a copy of the request and a statement of the date the request was received.

b. *Duty to negotiate.* All negotiations shall be made in good faith for 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.

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

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

38.5(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. 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.

f. Arbitration schedule and procedures. Within 15 days of the receipt of the petition for arbitration, the board will schedule a conference in order 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.

g. 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 10 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.

38.5(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, or, in the case of negotiated agreements, after the execution of the agreement.

b. Comments on arbitrated agreements. Within 10 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 the board does not issue a decision within 90 days after the filing date, the agreement or amendment shall be deemed approved.

ATTACHMENT C

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 38.5(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.