IN THE COURT OF APPEALS OF IOWA

No. 2-741 / 11-1899
Filed February 13, 2013

FARMERS & MERCHANTS MUTUAL TELEPHONE COMPANY OF WAYLAND, IOWA; INTERSTATE 35 TELEPHONE COMPANY; and DIXON TELEPHONE COMPANY,
Petitioner-Appellants,

REASNOR TELEPHONE COMPANY, LLC,
Petitioner-Appellant,
vs.

IOWA UTILITIES BOARD,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge.

Local exchange carriers appeal the district court order affirming the Iowa Utilities Board's rulings requiring carriers to credit or refund access fees. **AFFIRMED.**

David J. Hellstern of Sullivan & Ward, P.C., West Des Moines, and Vickie S. Brandt of The Fein Law Firm, P.C., Dallas, Texas, for appellant Reasnor Telephone Company, LLC.

Robert F. Holz Jr., Steven L. Nelson, and Kris Holub Tilley of Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, for appellants Farmers & Merchants Mutual Telephone Company of Wayland, Iowa; Interstate 35 Telephone Company; and Dixon Telephone Company.

Jennifer L. Smithson and David J. Lynch of Iowa Utilities Board, Des Moines, for appellee Iowa Utilities Board.

Mark R. Schuling of the Office of Consumer Advocate and Alice Hyde of the Iowa Department of Justice, Des Moines, for appellee Office of Consumer Advocate.

Bret A. Dublinske of Gonzalez Saggio & Harlan LLP, West Des Moines, for appellee Sprint Communications Company, L.P.

David S. Sather of Sather Law Firm, Des Moines, and Charles W. Steese and Sandra L. Potter of Steese, Evans & Frankel, P.C., Denver, Colorado, for appellee Qwest Communications Company, LLC d/b/a CenturyLink QCC.

Richard W. Lozier of Belin McCormick, P.C., Des Moines, and Michael J. Hunseder of Sidley Austin LLP, Washington, D.C., for appellee AT&T Communications of the Midwest, Inc, and TCG Omaha.

Heard by, Vogel, P.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.

Four local telephone exchange carriers appeal the district court's ruling on judicial review affirming the Iowa Utilities Board's order that they credit or refund intrastate access fees charged to long distance companies. The Board determined that for the switched access service Iowa Telecommunications Association (ITA) tariff to apply three requirements must exist: (1) calls must be delivered to an "end user"; (2) calls must terminate at the "end user's premises"; and (3) calls must terminate in the certificated local exchange area. Giving the agency's interpretation the deference owed, we do not find this interpretation irrational, illogical, or wholly unjustifiable because it flows from ITA tariff and the terms, conditions, and definitions in the National Exchange Carrier Association's (NECA) access tariff adopted by the ITA tariff. Moreover, the Board's interpretation of the tariff terms is consistent with decisions of other jurisdictions and the Federal Communications Commission (FCC) interpreting the corresponding interstate tariffs. *See Farmers & Merchants Mutual Telephone Co. of Wayland*, *Iowa v. F.C.C.*, 668 F.3d 714, 723 (D.C. Cir. 2011). The Board's findings of fact include that the calls at issue were not delivered to an end user; did not terminate at an end user's premises; and, with respect to some local exchange carriers, did not terminate in the certificated local exchange area. These findings are supported by substantial evidence. The Board concluded that because the services provided to the conferencing calling companies did not qualify as tariffed switched access service, no tariff rates could be charged or collected by the local exchange carriers (LECs). It ordered the LECs to credit or

refund the interexchange carriers (IXCs). Because tariffed services were not at issue, the filed rate doctrine is not applicable. We affirm.

I. Background Facts and Proceedings.

On February 20, 2007, Qwest Communications Corporation filed a complaint with the Iowa Utilities Board (Board) alleging violations of the terms and conditions of intrastate tariffs by several telecommunications carriers. Qwest alleged that LECs[1] engaged in activities including free conference calls, chat rooms, podcasts, voice mail, pornographic calls, and international services to dramatically increase call traffic in the local exchange. This practice is referred to as "traffic pumping."

The LECs are members of the NECA traffic sensitive pool. The NECA pool generally ensures a minimum amount of access revenue, with excess revenue shared among the entire pool. The NECA interstate access tariff applies to interstate traffic, while the ITA tariff applies to intrastate traffic. The ITA tariff generally mirrors the NECA tariff, and incorporates many of the same terms and conditions of the NECA tariff. The LECs may opt out of the NECA pool for a two-year period while maintaining the same rates, keeping all access revenue in the process. After two years, the LEC must re-enter the pool or else provide evidentiary support for its rate.

[1] The LECs charged were Superior Telephone Cooperative; The Farmers Telephone Company of Riceville, Iowa; The Farmers & Merchants Mutual Telephone Company of Wayland, Iowa; Interstate 35 Telephone Company, doing business as Interstate Communications Company; Dixon Telephone Company; Reasnor Telephone Company, LLC; Great Lakes Communications Corp.; and Aventure Communication Technology, LLC.

Traffic pumping occurs when a LEC partners with, or otherwise enters into an arrangement with, a free calling service company (FCSC) providing one or more of the activities described above. The FCSC sends its equipment, such as conference bridges, routers, or chat line computers to the LEC. The LEC then connects the equipment to its network and assigns telephone numbers to the FCSC, often in large blocks. The FCSC then advertises its free calling services to customers. As a result, long distance traffic dramatically increases on the LEC's system.

IXCs such as Qwest; AT&T Communications of the Midwest, Inc. and TCG Omaha (together referred to as AT&T); and Sprint Communications Company, L.P. (Sprint) deliver these long distance calls to the LECs, for which the LECs charged the IXCs intrastate switched access rates of between five and thirteen cents per minute. These rates are generally higher than average because the LECs in questions are rural and traditionally receive low traffic volumes, making switched access service more expensive than an urban carrier with a more geographically dense end-user base. By opting out of the NECA pool, the LECs are able to maintain the higher tariffed rates and keep the excess revenue for themselves for two years rather than sharing it with the rest of the pool. At the end of the two-year opt-out period, the LECs must then either rejoin the pool or accept a switched access rate that would be significantly lower based upon the traffic generated by the FCSC.

The traffic to the LECs under these business arrangements increased dramatically with a resulting increase in access charges—in some instances increasing access revenue charges by 10,000%—at very little cost to the LECs.

In exchange for the increased traffic generated by the FCSC and the consequent increased revenue the LEC provided the FCSC a "marketing fee," a percentage of the switched access fees paid to the LECs by the IXCs.

Following a series of FCC decisions,[2] many rural LECs entered into the types of business arrangements at issue here. As Farmers writes in its appellate brief,

> In 2005, several conference companies contacted the ILECs [incumbent LECs] (and other LECs in Iowa) with a business opportunity. These companies offered to bring part of their business to the ILECs and become their customers. They would market services which would generate toll traffic to the ILECs exchanges from callers utilizing the companies' conferencing, chat rooms, and international calling services. The ILECs would provide local telephone service, space for the companies' equipment, and sufficient trunking and switching capacity to handle the traffic. In exchange for these marketing services, the ILECs would pay a marketing fee.
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> . . . .
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> The service agreements between the ILECs and the conference companies . . . identified the conference company as the "customer" of the ILEC, provided that the ILEC would provide local telephone service to the conference companies' equipment and provided that the ILEC would pay the company a marketing fee for the traffic generated by the conference company.
>
> The ILECs and conference companies began performing under their contractual agreements in 2005 and 2006. The conference companies marketed the conference calling, chat line calling and international calling to customers via internet, media advertising, and direct sales. The traffic was generated to the ILECs' exchanges where it was switched and delivered to the conference company equipment. The ILECs billed the IXCs for the terminating access charges associated with terminating the toll calls and initially collected those access charges from the IXCs.

[2] These FCC decisions included the *Jefferson Telephone* cases (*AT&T Corp. v. Jefferson Tel. Co.*, 16 FCC Rcd. 16130 (2001); *In re Jefferson Tel. Co.,* Notice of Apparent Liability for Forfeiture & Order to Show Cause, FCC Order No. 96–430 (1996)), which Farmers and Merchants Mutual Telephone Co. of Wayland, Iowa, read to stand for the proposition that "business arrangements inconsistent with a tariff are immaterial so long as the conference calling companies that do business with the tariff holder 'enter [] their names for' the access service covered by the tariff." *See Farmers*, 668 F.3d at 721-22.

> Pursuant to their agreements, the ILECs then paid the marketing fees to the conference companies.

The business arrangement described has generated much litigation. *See generally Northern Valley Commc'ns*, *LLC v*. *Qwest Commc'ns Co*., *L*.*P*., 2012 WL 996999, at *3 (D. S.D. March 23, 2012) (noting several case pending in the District of South Dakota, "some of which have been stayed pending referral of specific issues to the FCC," as well as "similar cases pending in other jurisdictions"); *Sancom*, *Inc*. *v*. *AT&T Corp*., 696 F. Supp. 2d 1030, 1033 (D. S.D. 2010) (listing numerous pending cases in courts and regulatory agencies); *see also Connect Insured Tel*., *Inc*. *v*. *Qwest Long Distance*, *Inc*., 3:10-CV-1897-D, 2012 WL 2995063, at *6-7 (N.D. Tex. July 23, 2012) (dealing with a competitive local exchange carrier (CLEC) charging termination switched access fees to IXC; IXC arguing disputed calls did not involve an "end user" because the two entities that the LEC contends were the end users were not customers of LEC and did not subscribe LEC intrastate services); *Minnesota Indep*. *Equal Access Corp*. *v*. *Sprint Commc'ns Co*., *L*.*P*., CIV. 10-2550 MJD/SER, 2011 WL 3610434, at *3 (D. Minn. Aug. 15, 2011) (noting the Minnesota Public Utilities Commission had taken jurisdiction of traffic pumping complaint against a LEC).[3]

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[3] In *Minnesota Independent Equal Access Corp.*, 2011 WL 3610434, at * 8, the court wrote:

> As the Eighth Circuit held in *Iowa Network Services* [*v. Qwest Corp.*, 466 F.3d 1091, 1095-96 (8th Cir. 2006)], however, it is the categorization of the call that determines whether the tariff applies . . . .
>
> Because the Court concludes that the meaning of "switched access service" and/or "end user" is material to the applicability of MIEAC's tariff and because the FCC is already in the process of examining the overall regulatory scheme for traffic pumping calls, of which this case is a part, the Court will stay this proceeding.

In *Northern Valley Communications, L.L.C. v. Qwest Communications Corp.*, 1:09-CV-01004, 2012 WL 2366236, at * 4 (D. S.D. June 20, 2012), after describing the

Qwest's complaint with the Board invoked Iowa Code[4] sections 476.2, 476.3, and 476.5, and 199 Iowa Administrative Code chapters 4 and 7; and Iowa Administrative Code rule 199-22.14. In the proceeding before the Board,[5] Qwest asserted the alleged traffic pumping was inconsistent with the switched access services language of ITA Tariff No. 1. Qwest alleged that during the period from July 2005 to February 2007, the LECs assessed charges outside of their tariffs because calls to FCSC did not terminate on the LECs' facilities within the meaning of their access tariffs and because the FCSCs were not "end users" as defined by the tariff. AT&T and Sprint intervened in the proceeding. Qwest, AT&T, and Sprint claimed that the LECs' intrastate access service tariffs do not allow the LECs to charge terminating switched access fees for any of the calls, or traffic, to the telephone numbers assigned to the conference calling companies.

As part of its answer, Reasnor Telephone Company, LLC (Reasnor) made certain counterclaims against Qwest, alleging: (1) unlawful self-help, (2) unlawful

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revisions Northern Valley had made to its tariffs to "formalize access stimulation services with a switched access rate assessed against IXCs" in an effort to gain FCC approval, the court noted:

> The FCC began addressing the compensation regime for access stimulation [traffic pumping] in its rulemaking of November 29, 2011. *Connect America Fund; A National Broadband Plan for Our Future* (the Rulemaking), 76 Fed. Reg. 73830, 73832 (to be codified at 47 C.F.R. pts. 0, 1, 20, 36, 51, 54, 61, 64, and 69). In short, the rules require that a LEC must refile their interstate switched access tariffs at lower rates if access stimulation is occurring. The FCC provides two criteria that together indicate that access stimulation exists: (1) a LEC has a revenue sharing agreement and (2) the LEC either has (a) a three-to-one ratio of terminating-to-originating traffic in any month or (b) experiences more than a 100 percent increase in traffic volume in any month measured agains[t] the same month during the previous year. *Id.*

[4] Because no revisions have been made to the pertinent statutory provisions, for ease of reference all citations will be to the 2011 Iowa Code.

[5] In addition to its complaint filed with the Board, Qwest also initiated a federal lawsuit and a formal complaint proceeding before the FCC relating to *inter*state issues arising from the dramatic increase in long distance traffic into several rural Iowa LECs.

discrimination by revenue sharing and service discounts, and (3) unreasonable practices.

The LECs' motions to dismiss the board action and for summary judgment were denied by the Board. During the discovery phase, several issues arose, including disputes over late-filed testimony and an attempt by several LECs to create backdated invoices and contracts for services. The Board held an evidentiary hearing from February 5, 2009, through February 13, 2009. At the hearing, pre-filed testimony was accepted on the record, cross-examination occurred, and redirect was allowed within the scope of cross.

The Board issued its final order on September 21, 2009, granting relief to the IXCs and denying most counterclaims filed by Reasnor. The Board noted all of the LECs' access tariffs adopt the terms, conditions, and definitions in the NECA interstate access tariff with respect to their intrastate switched access service. In order for intrastate access charges to apply, a LEC must carry a long distance call from the IXC to an "end user."

The Board made the following findings:

> 1. The FCSCs did not subscribe to the Respondents' intrastate switched access or local exchange tariffs.
> 2. FCSCs are not end users as defined by the Respondents' tariffs.
> 3. The Respondents did not net, or offset, fees to the FCSCs.
> 4. Certain Respondents [Reasnor, Farmers & Merchants, Dixon, and Interstate] improperly backdated bills and contract amendments to misrepresent transactions with the FCSCs.
> . . . .
> 6. The Respondents and FCSCs acted as business partners.
> 7. The filed tariff doctrine does not apply to the Respondents in this case.

> 8. The sharing of revenues between Respondents and FCSCs is not inherently unreasonable, but may be an indication that a particular service arrangement is unreasonable.
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> . . . .
>
> 10. The intrastate toll traffic did not terminate at the end user's premises.
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> 11. The intrastate toll traffic, including international, calling card, and prerecorded playback calls, did not terminate within the Respondents' certificated local exchange areas and were not subject to intrastate terminating access charges.
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> 12. Some Respondents [Reasnor] engaged in traffic laundering by billing the terminating access rates of one LEC for calls that terminated in a different LECs exchange.
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> . . . .
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> 14. [Qwest] did not engage in unlawful discrimination.
>
> 15. [Qwest] and Sprint withheld payment of access charges, but no remedy is necessary or appropriate.
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> 16. Sprint blocked calls and is notified that it may be assessed a civil penalty for a future infraction.

The Board found that because the conference calling companies did not order, purchase, get billed for, or pay for local exchange service, they were not "end users" as that term is defined in the LECs' access tariffs. In addition, the Board determined that calls to the conference bridges were not terminated at an "end user's premises" as required by the LECs' tariffs. The Board also determined that many of the intrastate calls at issue were "laundered" to make it appear that they were terminating in one LECs exchange, when in fact they were terminated in another exchange where the billing LEC was not authorized to provide service. The Board also found that the LECs failed to comply with the terms and conditions of their own intrastate access tariffs when they engaged in traffic pumping, or access stimulation, and therefore the calls at issue were not

subject to the intrastate switched access charges.[6] Because the calls were not subject to the intrastate tariff, the "filed rate" or "filed tariff" doctrine was not applicable. Moreover, because the calls were not subject to the intrastate tariff, no intrastate switched access service fees could be charged.

The Board concluded it had jurisdiction of the intrastate claims pursuant to Iowa Code chapter 476 and ordered:

> 1. The Board finds that the Respondents named in this complaint violated the terms of their access tariffs when they charged QCC, Sprint, and AT&T for terminating switched access fees for the traffic at issue in this case.
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> 2. The Board directs the Respondents named in this complaint to refund the terminating switched access fees charges associated with the delivery of intrastate interexchange calls to numbers or destinations assigned to or associated with FCSCs and that were paid by QCC, Sprint, or AT&T. The Respondents are also directed to credit QCC, Sprint, and AT&T for any such charges that were billed but not paid.
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> 3. The Board directs QCC, Sprint, and AT&T to file their calculations of the amount of terminating switched access fees for the traffic at issue in this case and eligible for refund or credit within 30 days of the date of this order. QCC, Sprint, and AT&T are authorized to conduct additional discovery to make those calculations if necessary.
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> . . . .
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> 6. Sprint is hereby on notice that it improperly engaged in call blocking in the manner described in this order, in violation of Iowa Code § 476.20, and any subsequent violations of the same statute, rule, or Board order may result in the imposition of civil penalties pursuant to Iowa Code § 476.51.

All of the LECs sought reconsideration, but several LECs filed a petition to review before the district court. The court stayed those petitions and remanded to the Board for its reconsideration decision. The Board issued a detailed ruling denying the motions.

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[6] Farmers contends the Board thus engaged in circular reasoning: the Board found the FCSCs were not end users and thus no tariffed services were provided to the IXCs; but, at the same time the Board states that charging the IXCs was a violation of the tariff.

Following the Board's reconsideration ruling, all of the petitions for judicial review filed by the LECs were consolidated in the district court. On October 12, 2011, the district court concluded the Board properly exercised its jurisdiction; the principles of res judicata and collateral estoppel did not preclude the Board from ruling on the matter; Reasnor's due process rights were not violated by the Board's decision to cancel the continued hearing; substantial evidence supports the findings of the Board regarding the issues surrounding the applicability of the switched access tariffs and the associated remedies to the IXCs; the Board's application of the law to the facts was not irrational, illogical, or wholly unjustifiable; and the Board's order regarding the counterclaims by the LECs against the IXCs was appropriate.

Farmers & Merchants Mutual Telephone Company of Wayland, Interstate 35 Telephone Company, Dixon Telephone Company (collectively these three LECs will be referred to as Farmers), and Reasnor now appeal.

Farmers argues the district court employed the wrong standard of review, the "filed rate" doctrine is applicable, and the district court erred in affirming the Board's "misinterpretation and misapplication" of the terms of the LECs tariffs.

Reasnor contends (1) the Board violated its due process rights when Reasnor was not allowed to present a live witness for cross-examination, (2) the district court erred in giving more deference than permitted to the Board's legal conclusions and findings, (3) the Board did not have jurisdiction to make findings of fact and issue orders regarding Reasnor, (4) the filed rate doctrine applies, (5) the Board exceeded its authority in ordering refund, (6) the Board erred in determining no remedy is necessary or appropriate for the IXCs' withholding of

payments, (7) the Board erred in treating Reasnor like the other LECs, (8); the Board erred in determining Reasnor entered into a revenue sharing agreement, (9) the Board erred in determining Qwest did not engage in unlawful discrimination, and (10) the Board erred in failing to dismiss the claims against Reasnor on grounds of res judicata or collateral estoppel.

II. Scope and Standard of Review.

Judicial review of administrative agency decisions is governed by Iowa Code section 17A.19(10). *NextEra Energy Res*. *LLC v*. *Iowa Utils*. *Bd*., 815 N.W.2d 30, 36 (Iowa 2012). We apply the standards set forth therein to determine whether we reach the same conclusions as the district court. *Westling v*. *Hormel Foods Corp*., 810 N.W.2d 247, 251 (Iowa 2012). If our conclusions are the same, we affirm, but if they are different, we reverse. *Id*.

The Board's factual findings are binding so long as substantial evidence supports them. *Meyer v*. *IBP*, *Inc*., 710 N.W.2d 213, 218 (Iowa 2006). "Substantial evidence" means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." Iowa Code § 17A.19(10)(f)(1). We make this determination by reviewing "the record as a whole." *Id*. § 17A.19(1)(f). Our focus is not on whether the evidence presented would support an alternative finding than that made by the agency, but whether the evidence supports the findings made. *Broadlawns Med*. *Ctr*. *v*. *Sanders*, 792 N.W.2d 302, 306 (Iowa 2010).

We may reverse an agency action if it is unreasonable, arbitrary, capricious, "or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion." *Equal Access Corp*. *v*. *Utils*. *Bd*., *Utils*. *Div*. *Iowa Dep't of Commerce*, 510 N.W.2d 147, 151–52 (Iowa 1993). We consider an agency action to be arbitrary or capricious when its decision was made with no regard to the law or facts. *Doe v*. *Iowa Bd*. *of Med*. *Exam'rs*, 799 N.W.2d 705, 707 (Iowa 2007).

We grant considerable deference to an agency's expertise, especially when its decision involves "the highly technical area of public utility regulation." *Office of Consumer Advocate v*. *Iowa Utils*. *Bd*., 663 N.W.2d 873, 876 (Iowa 2003). Because of its highly technical subject matter, we typically defer to the Board's informed decision so long as it falls within a "zone of reasonableness." *Equal Access Corp*., 510 N.W.2d at 151–52. Therefore, "the majority of disputes are won or lost at the agency level." *S*.*E*. *Iowa Coop*. *Elec*. *v*. *Iowa Utils*. *Bd*., 633 N.W.2d 814, 818 (Iowa 2001) (internal quotations omitted).

III. Analysis.

***A*. *Standard of review for interpreting the terms of the tariffs*.** The LECs argue that no deference is owed to the Board's interpretation of the tariffs at issue here, arguing the terms "customer", "subscribes," and "premises" need no special expertise. We disagree that no deference is due the Board's interpretation. The terms have unique meaning within the tariffs at issue, which are within the subject matter expertise of the Board.

The legislature vested the Board with the powers to regulate the rates and services of public utilities. *See* Iowa Code § 476.1. The Board regulates the

telecommunications industry through tariffs, or regulations of utility rates and services. *See id*. § 476.4;[7] *Teleconnect Co*. *v*. *US W*. *Commc'ns*, *Inc*., 508 N.W.2d 644, 646 (Iowa 1993). Under this regulatory scheme, every public utility must "file with the Board tariffs showing the rates and charges for its public utility services," and every public utility "shall keep copies of its tariffs open to public inspection under such rules as the board may prescribe." Iowa Code § 476.4. "These tariffs contain the terms of service that the parties would ordinarily put into private contracts." *Teleconnect Co*., 508 N.W.2d at 646.

"The [Board] has clearly been vested with authority to interpret the 'rates and services' provision of section 476.1, and we may therefore overturn its interpretation only if it is 'irrational, illogical, or wholly unjustifiable.'" *City of Coralville*, 750 N.W.2d 523, 527 (Iowa 2008); *cf*. *Iowa Network Servs*. *v*. *Qwest Corp*., 385 F. Supp. 2d 850, 857-60 (S.D. Iowa 2005) (discussing the "complexity of the Telecommunications Act" and the interconnected regulatory framework; and noting the Act necessitated that the FCC create an implementation order,

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[7] The first unnumbered paragraph of Iowa Code section 476.4 states:

> *Every public utility shall file with the board tariffs showing the rates and charges for its public utility services and the rules and regulations under which such services were furnished*, on April 1, 1963, which rates and charges shall be subject to investigation by the board as provided in section 476.3, and upon such investigation the burden of establishing the reasonableness of such rates and charges shall be upon the public utility filing the same. *These filings shall be made under such rules as the board may prescribe within such time and in such form as the board may designate. In prescribing rules and regulations with respect to the form of tariffs, the board shall, in the case of public utilities subject to regulation by any federal agency, give due regard to any corresponding rules and regulations of such federal agenc*y, to the end that unnecessary duplication of effort and expense may be avoided so far as reasonably possible. Each public utility shall keep copies of its tariffs open to public inspection under such rules as the board may prescribe.

(Emphasis added.)

which included definitions, some of which are terms of art); *Renda v*. *Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 12 (Iowa 2010) ("Because the DNR had the authority to establish rules 'relating to the establishment and location of sanitary disposal projects,' we concluded the legislature had clearly vested the authority to define what constituted a 'sanitary disposal project.'" (citations omitted)).

The district court reached the same conclusion in ruling:

> Here, the Board has not been explicitly vested with any interpretative powers by the Legislature. However, the Legislature did give the Board broad powers and rulemaking authority in its enacting statute. Iowa Code § 476.2(1). The Board also has powers to make factual findings in contested cases. *See*, *e.g*., Iowa Code § 476.3(1) (stating that "*when the board*, *after a hearing* . . . *finds*" a violation of any provision of law (emphasis added)). The terms "end user," "customer," "end user's premises," and "terminate calls in the [local exchange area]" in the NECA and ITA tariffs are terms that are not defined by statute yet necessary for the Board to carry out its duties.
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> Taken altogether, the terms "end user," "customer," "end user's premises," and "terminate calls in the [local exchange area]" are substantive terms within the special expertise of the agency, and consequently the interpretation of these specific terms is clearly vested in the discretion of the agency.

We concur in the district court's analysis that the terms as used in the tariffs fall within the special expertise of the Board. We thus give "appropriate deference" to the Board's interpretation of the terms and definitions used in the tariffs here. *See* Iowa Code § 17A.19(11)(c).[8] We will uphold the Board's interpretation unless irrational, illogical, or wholly unjustifiable. *See id*. § 17A.19(10)(*l*).

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[8] In the federal context, deference is given to the FCC's interpretation of tariffs. As recently stated in *Sancom*, 696 F. Supp. 2d at 1036,

> "Ordinarily, the construction of a tariff is a matter of law for the Court, being no different than the construction of any other written document." *United States v. Great N. Ry. Co.,* 337 F.2d 243, 246 (8th Cir. 1964). But where "'words in a tariff are used in a peculiar or technical sense, and where extrinsic evidence is necessary to determine their meaning or proper application,' . . . the issue should first go to the appropriate

B. The Board's interpretation is not irrational, illogical, or wholly unjustifiable. The tariff at issue before the Board was the ITA tariff concerning access service. Section 1.1 of that tariff states:

> [T]he provision of [switched access service] is specifically intended to provide exchange network access to [interexchange carriers delivering intrastate switched access traffic] for their own use or in furnishing their authorized intrastate services to *End Users*, and for operational purposes directly related to the furnishing of their authorized services. Operational purposes include testing and maintenance circuits, demonstration and experimental services and spare services.

(Emphasis added.)

"End user" is not specifically defined in the ITA tariff; however, the Board observed that the tariff adopts the terms, conditions, and definitions in the NECA interstate access tariff with respect to intrastate switched access service. The Board thus looked to the NECA access tariff for guidance, in which all the LECs had concurred.

NECA tariff No. 5 states in relevant part:

> 1. Application of Tariff
>
> 1.1 This tariff contains regulations, rates and charges applicable to the provision of *End User* Access, Switched Access, ... These services are provided to *customers* by the Issuing Carriers of this tariff, hereinafter the Telephone Company. . . .
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> . . . .
>
> 2. General Regulations

> administrative agency." *Access Telecommc'ns* [*v. Southwestern Bell Tel. Co.*,] 137 F.3d [605,] 609 [(8th Cir. 1998)] (quoting [*United States v.*] *Western Pac. R.R. Co.*, 352 U.S. [59, 66 (1956)]. "The reason is plainly set forth: such a 'determination is reached ordinarily upon voluminous and conflicting evidence, for the adequate appreciation of which acquaintance with many intricate facts of [the regulated area] is indispensable, and such acquaintance is commonly to be found only in a body of experts.'" *Western Pac.,* 352 U.S. at 66 (quoting *Great N. Ry. Co. v. Merchants' Elevator Co.,* 259 U.S. 285, 291 (1922)).

Cf. MCI Telecommc'ns Corp. v. Garden State Investment Corp., 981 F.2d 385, 387 (8th Cir. 1998) (stating "federal tariffs are the law, not mere contracts").

2.6 Definitions. . .

End User

The term *"End User" means any customer* of an interstate or foreign telecommunications service that is not a carrier, except that a carrier other than a telephone company shall be deemed to be an "end user" when such carrier uses a telecommunications service for administrative purposes, and a person or entity that offers telecommunications service exclusively as a reseller shall be deemed to be an "end user" if all resale transmissions offered by such reseller originate on the premises of such reseller.

. . . .

4. End User Access Service

The Telephone Company will provide End User Access Service (End User Access) to end users who obtain local exchange service from the Telephone Company under its general and/or local exchange tariffs.

. . . .

6. Switched Access Service

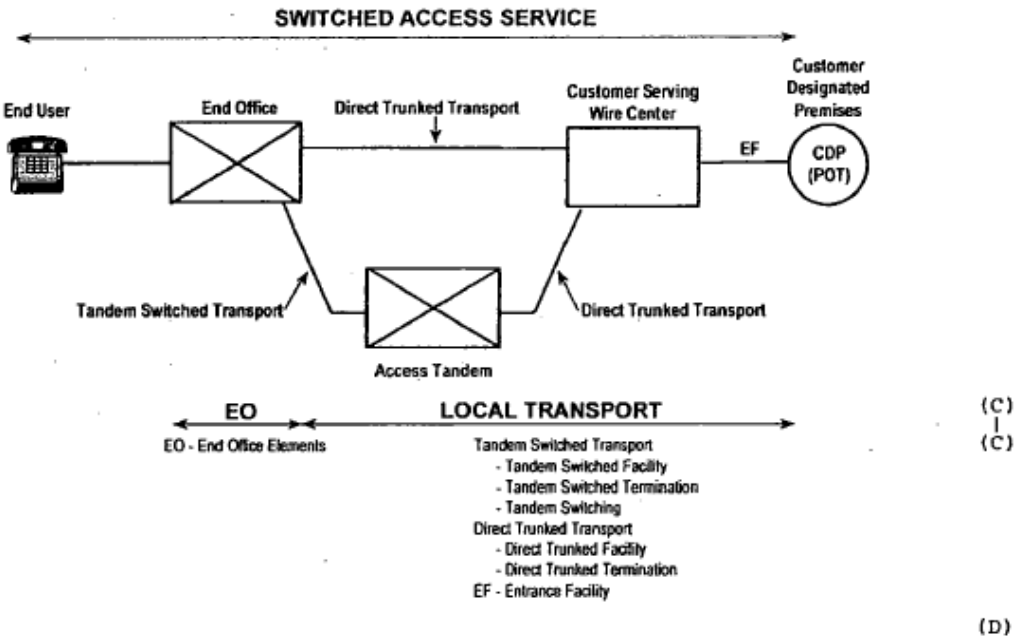
6.1 General

Switched Access Service, which is available to customers for their use in furnishing their services to end users, provides a two-point communications path between a customer designated premises *and an end user's premises*. It provides for the use of common terminating, switching, and trunking facilities and for the use of common subscriber plant of the Telephone Company. *Switched Access Service provides for the ability* to originate calls from an end user's premises to a customer designated premises, and *to terminate calls from a customer designated premises to an end user's premises in the [local access transport area] LATA where it is provided*. Specific references to material describing the elements of Switched Access Service are provided in 6.1.3 and 6.5 through 6.9 following.

. . . .

6.1.3. Rate Categories (cont'd)

The following diagram depicts a generic view of the components of Switched Access Service and the manner in which the components are combined to provide a complete Access Service.



(Emphasis added.)

The Board determined that for the switched access service ITA tariff to apply three requirements must exist: (1) calls must be delivered to an "end user"; (2) calls must terminate at the "end user's premises"; and (3) calls must terminate in the certificated local exchange area. We do not find this interpretation irrational, illogical, or wholly unjustifiable because it flows from ITA tariff and the terms, conditions, and definitions in the NECA access tariff adopted by the ITA tariff.

We note that the Board's interpretation of the tariff terms is consistent with decisions of the FCC interpreting the corresponding interstate tariffs. In *Farmers & Merchants Mutual Telephone Co. of Wayland*, *Iowa v. F.C.C.*, 668 F.3d 714, 723 (D.C. Cir. 2011), the federal appellate court upheld the FCC's determination that a LEC's contractual arrangements with conference calling companies were

inconsistent with the subscriber relationship required by its filed federal tariff. That court explained:

> The merits question is whether the Commission properly determined that Farmers was not entitled to bill Qwest for access service under Farmers' tariff because Farmers had not provided interstate "switched access service" as that term is defined in Farmers' federal access tariff. In matters of tariff interpretation, the court applies a deferential standard of review and will uphold the Commission's interpretation where it is "reasonable [and] based upon factors within the Commission's expertise." *Global NAPs*, *Inc*. *v*. *FCC*, 247 F.3d 252, 258 (D.C. Cir. 2001) (internal citation omitted).
>
> The Commission relied on three key provisions in Farmers' tariff in concluding that the tariff allowed Farmers to provide (and bill for) switched access service only when it delivers a call to an end user, i.e., a person or entity that subscribes to Farmers' service under the tariff. At the relevant time, Farmers was operating under the Kiesling Associates LLP FCC Number 1 Tariff ("Kiesling Tariff"), which incorporates provisions of the National Exchange Carrier Association FCC Tariff Number 5 ("NECA Tariff"), *e*.*g*., Kiesling Tariff §§ 2, 6. Under Farmers' tariff: (1) "switched access" means a service that allows an IXC "to terminate calls from a customer designated premises to an *end user's* premises." NECA Tariff § 6.1 (emphasis added). (2) The term "end user" means "any *customer* . . . . that is not a carrier." *Id*. § 2.6 (emphasis added). (3) "Customer" means an entity that "*subscribes* to the services offered under th[e] tariff." *Id*. (emphasis added). The Commission therefore determined that Farmers may provide and bill for switched access service only when it delivers a call to an entity that "subscribes" to that service under its tariff. Whether the conference calling companies subscribed to switched access service under Farmers' tariff turns on the nature of Farmers' relationship with the companies, a subject demonstrably within the Commission's expertise.
>
> The Commission found that "in numerous respects," [*Qwest Commc'ns Corp*. *v*. *Farmers & Merchants Mut*. *Tel*. *Co*. ("*Farmer's III*"), 25 FCC Rcd. 3422, 3426 (2010)], the conference calling contracts did not establish a subscriber relationship under Farmers' tariff. The evidence showed that the conference calling companies never paid subscriber line charges or made any other payments to Farmers, and that Farmers never expected to be paid. *See id*. The Commission also found, for several reasons, that Farmers and the conference calling companies did not structure their relationship in a manner consistent with Farmers' tariff as evidenced by the contract terms and Farmers' conduct. . . . Farmers' challenges to

> the Commissions' interpretation of the tariff fail to show the Commission was unreasonable or considered factors outside of its expertise such that deference would not be appropriate . . . . Based on these findings, which Farmers does not challenge, the Commission concluded that Farmers never intended to treat the conference calling companies as customers of any of Farmers' tariffed services. Its findings demonstrate, moreover, that the Commission's decision in [*Qwest Communications Corp*. *v*. *Farmers & Merchants Mutual Telelephone Co*. ("*Farmer's II*"), 24 FCC Rcd. 14801 (2009),] did not hinge upon the single issue of whether the conference calling companies were required to make payments to Farmers in order to be considered subscribers of Farmers' services. *Farmers III*, 25 FCC Rcd. at 3426.

Farmers, 668 F.3d at 719-20.

C. The Board's factual findings are supported by substantial evidence. Under the terms of tariff, an end user must be a customer who subscribes to the local exchange service in order for the tariff to be applicable. The LECs assert an end user is defined as a customer and their contracts with the FCSCs designate the FCSC as a customer. The Board rejected the designation, relying instead on the actual relationship between the LECs and the FCSCs and—for several reasons—found the FCSCs were not "end users."

The Board found, in part:

> Based on the evidence in the record, the Board finds that the FCSCs did not subscribe to the services in the Respondents' access and local exchange tariffs and therefore are not end users of the Respondents. Typically, when an end user customer obtains local exchange service, that service includes subscription to the access tariffs. This is because the access tariffs include charges that are billed on the local exchange invoice, including an end user common line (EUCL) charge and a federal USF charge. Therefore, when a customer pays a LECs invoice, the customer proves that it has obtained local exchange service and that it has subscribed for access service. As long as that customer is not a carrier, that customer would be considered an end user under the access tariff.
>
> The Board finds that the lack of timely, legitimate billing for tariffed services by the Respondents demonstrates that the FCSCs did not actually subscribe to a billable tariffed service. Moreover,

> there is convincing evidence in the record that the Respondents did not intend to bill the FCSCs for any services under their tariffs, as required in order for intrastate access charges to apply. Specifically, the Respondents did not comply with the billing requirements of their tariffs when they did not send the FCSCs monthly local exchange invoices (Exhibit 1355), they did not bill the FCSCs the EUCL on any invoices (Exhibit 1355), they did not bill the FCSCs a federal USF charge on any invoices (Exhibit 1355), and they did not bill the FCSCs for ISDN Line Ports, ISDN BRI arrangements, or ISDN PRI arrangements on any invoices (Exhibit 1355).

(Footnotes omitted.) In addition to a lack of billing, the Board found some of the LECs created backdated invoices and contractual amendments after the filing of the complaint with the Board, which "were created to conceal truths from the FCC and this Board, calling into question the credibility of all of the testimony and supporting documents attributed to those Respondents."

With respect to Reasnor, the Board also made findings that the alleged intrastate toll calls did not terminate in Reasnor's certificated local exchange areas, but were nonetheless assessed intrastate access rates.

The Board's findings of fact are supported by substantial evidence. Because the Board's application of law to fact is not arbitrary or capricious, we affirm.[9] *See id.* at 720 (making similar findings with respect to the interstate tariff).

The Board concluded that because the services provided to the FCSCs did not qualify as tariffed switched access service, no tariff rates could be charged or collected by the LECs. It ordered the LECs to credit or refund the IXCs.

[9] The FCC has made findings similar to the Board with respect to the interstate tariff.

D. The "filed rate" doctrine. All the LECs contend the filed rate doctrine shelters them from the Board's ruling. "The filed tariff doctrine [also known as the filed rate doctrine] conclusively presumes that both a utility and its customers know the contents and effects of published tariffs." *Teleconnect Co*., 508 N.W.2d at 647. Consequently, "any contract or agreement to provide a tariffed service on terms other than those set forth in the tariff is void." *Id*. Under this doctrine, the LECs contend that the IXCs received access services and thus must pay.

The prerequisite for the filed tariff doctrine to apply is that a tariffed service was provided. *See id*. The Board concluded that no tariffed services were at issue because the FCSC were not "end users," as that term is used in the tariff; the calls at issue did not terminate on the "end user's premises," as that term is used in the tariff; and further, that in the case of some respondents, including Reasnor, the FCSCs did not terminate calls within the LECs' certificated local exchange areas. Because no tariffed services were provided by the LECs, the filed rate doctrine was inapplicable.

In its ruling on reconsideration, the Board stated:

> The Respondents argue that the traffic sent to the FCSCs was governed by the LECs' intrastate tariffs and therefore the filed rate doctrine provides them some refuge. "The purpose of the filed rate doctrine is to prevent unreasonable and unjust discrimination among similarly-situated customers of a particular common carrier's service, and to ensure that carriers impose like charges for like services." However, the facts of this case show a purposeful deviation from the tariffs' terms through the creation of special contract arrangements that allowed FCSCs to reap benefits offered only to them by sharing in access revenues while paying nothing for the alleged services they were offered. The facts support a finding that the Respondents and the FCSCs never established a customer relationship recognizable under the tariff and, therefore, the filed rate doctrine cannot offer the Respondents refuge from their decision to circumvent the tariff.

(Footnotes omitted.)

The LECs disagree with the Board's findings that no tariffed services were offered. However, giving appropriate deference to the Board's interpretation and fact findings, we find the Board's ruling reasonable that the LECs did not provide tariffed services to the FCSCs and, consequently, the filed tariff doctrine does not apply. *See Equal Access Corp*., 510 N.W.2d at 151–52 (noting courts defer to the Board's informed decision so long as it falls within a "zone of reasonableness").

E. Due process does not require live witnesses when no cross examination is sought. Reasnor expends much effort complaining that the Board's cancellation of the continued hearing to allow the IXCs to cross-examine Reasnor's substituted witness violated *Reasnor's* due process rights. "Due process requires that parties to an administrative hearing be given notice and the opportunity to defend." *Alfredo v*. *Iowa Racing & Gaming Comm'n*, 555 N.W.2d 827, 833 (Iowa 1996). The due process claim was rejected by the Board in its reconsideration ruling:

> Reasnor's Due Process rights were not violated when the Board granted the motion to cancel the continuation of the hearing. All of the adverse parties in this proceeding waived their right to cross examine Mr. Zingaretti or the substitute witness. Mr. Zingaretti's pre-filed testimony was then entered into the record as if given live, at hearing. Reasnor had every opportunity to engage in discovery, to prepare and present its case by direct testimony, and to cross-examine each of the adverse witnesses.

We agree.[10]

[10] We note that 199 Iowa Administrative Code rule 7.10(1) provides that "[t]he use of prefiled testimony is the standard method for providing testimony in board contested case proceedings."

Had the continued hearing been cancelled and the *IXCs* been denied the right to cross-examine the witness, they might have complained legitimately of a deprivation of rights. *See Jack v*. *P & A Farms*, *Ltd*., 822 N.W.2d 511, 520 (Iowa 2012) (“‘While the scope of cross-examination is discretionary, the right to do so is absolute. It is a right essential to a fair trial.’” (citation omitted)). But the IXCs waived cross-examination and the continued hearing was unnecessary.

Reasnor offers no legal support for its complaint, which is based upon its purported right to redirect its witness. Where no cross-examination has occurred, a party is not denied a fair hearing by the denial of an opportunity to redirect that witness. *Cf*. *id*. (noting that cross-examination is limited to matters testified to in chief and “[a] party is not denied a fair trial by the denial of the opportunity to cross-examine a witness who does not give any testimony”). Reasnor was given a fair hearing.

***F. Board’s jurisdiction*.** Reasnor argues the Board engaged in improper rate-making and “overstepped its authority by making findings on the reasonableness of rates. The Board’s jurisdiction is preempted by federal statute.” Reasnor contends the vast majority of its calls are interstate calls within the exclusive jurisdiction of the FCC.

Reasnor’s attempt to characterize this proceeding as one that determined the reasonableness of rates fails. The question before the Board was not whether the switched access rates were reasonable, but whether the tariffed switched access rates were applicable due to the nature of the service rendered and the relationship between the LECs and the FCSCs.

lowa Code section 476.11 states, in relevant part, that

> [w]henever toll connection between the lines or facilities of two or more telephone companies has been made, or is demanded under the statutes of this state and the companies concerned cannot agree as to the terms and procedures under which toll communications shall be interchanged, the board upon complaint in writing, after hearing had upon reasonable notice, shall determine such terms and procedures.

The IXCs complaint invoked the Board's authority under 476.11 to determine the terms and procedures under which toll communications are interchanged. *See Northwestern Bell Tel*. *Co*. *v*. *Hawkeye State Tel*. *Co*., 165 N.W .2d 771, 775 (lowa 1969) (holding that the Board's authority over "terms and procedures" pursuant to § [476].11 includes financial matters).

The Board ruled:

> Moreover, pursuant to Iowa Code § 476.3(1), the Board has the statutory authority to review a public utility's activities, interpret the language of the tariff, and apply that language to the facts to determine whether the utility has complied with the terms and conditions of its tariff. Specifically, the last sentence of that section provides:
>
> > When the board, after a hearing held after reasonable notice, finds a public utility's rates, charges, schedules, service, or regulations are unjust, unreasonable, discriminatory, or otherwise in violation of any provision of law, the board shall determine just, reasonable, and nondiscriminatory rates, charges, schedules, service, or regulations to be observed and enforced.[footnote omitted]
>
> Accordingly, the Board finds that the Respondents are public utilities subject to rate regulation, pursuant to § 476.11, and as such are required to comply with the terms and conditions of their tariffs, pursuant to § 476.5. The Board also finds that it has the jurisdiction and authority to assess the Respondents' interconnections with the IXCs, pursuant to § 476.11, interpret their tariffs, apply the terms of their tariffs to the facts in this case, as found by the Board after notice and hearing, and to order refunds, if appropriate, pursuant to § 476.3, and act to ensure fair competition in the public interest, pursuant to 199 IAC 22.1(1).

In its reconsideration ruling, the Board stated:

> Specifically, the Board found that it had the authority to interpret the Respondents' intrastate access service tariffs, apply those terms to the facts of this case, and to order relief in the form of refunds, if appropriate. The Board based its conclusion on the language of lowa Code § 476.5, which requires public utilities to comply with the terms and conditions of their tariffs, and § 476.11, which gives the Board complaint authority to determine the terms and procedures under which toll communications are interchanged. The Board concluded that since one of the terms of interconnection is the rate charged for certain interconnection services, such as access services, the Board has the authority to review the application of those rates.
>
> . . . .
>
> While these Respondents raise arguments in their applications regarding the Board's ability to regulate their access rates, the Board notes that this case has not focused on whether the Respondents' access rates are just and reasonable, nor has it focused on the setting of those rates. The Board has not ruled on the reasonableness of the Respondents' intrastate access rates in this case. Rather; the focus of this case has been on the Respondents' failure to provide services pursuant to their tariffs, making the tariffed rates, whatever they may be, inapplicable.

(Footnotes omitted.) Finding no error, we affirm.

As for Reasnor's claim that the Board's action was preempted by the FCC, the Communications Act explicitly exempts intrastate communication service from the FCC's reach. 47 U.S.C. § 152(b) (stating, in part, that "nothing in this chapter shall be construed to apply or to give the [FCC] jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier"); see *Louisiana Pub*. *Serv*. *Comm'n*. *v*. *FCC*, 476 U.S. 355, 374 (1986) (stating "a federal agency may pre-empt state law only when and if it is acting within the scope of its congressionally delegated authority"). The Board repeatedly recognized the limits of authority and its decision was limited to claims involving intrastate toll traffic.

G. Authority to order refund. The Board ruled because the FCSCs were not end users, the calls did not terminate at the end user's premises, and in some cases did not end at all. "Respondents named in this complaint violated the terms of their access tariffs when they charged QCC, Sprint, and AT&T for terminating switched access fees for the traffic at issue in this case."

The Board ordered the named LECs

> to refund the terminating switched access fees charges associated with the delivery of intrastate interexchange calls to numbers or destinations assigned to or associated with FCSCs and that were paid by QCC, Sprint, or AT&T. The Respondents are also directed to credit QCC, Sprint, and AT&T for any such charges that were billed but not paid.

Reasnor argues the Board cannot order the refund because the IXCs must pay for access service according to the tariff, and the order constitutes a retroactive rate decision. As we observed above, this argument mischaracterizes the Board's actions as improper rate-making rather than a determination as to whether the tariff applied. The Board found that the services provided to the FCSCs were not covered by the tariff and the calls at issue were not subject to the intrastate switched access charges. Consequently, the charges by the LECs were improper.

In *Mid-Iowa Community Action v. Iowa State Commerce Commission*, 421 N.W.2d 899, 901 (Iowa 1988), the court stated, "Iowa Code section 476.3(1) authorizes the board to investigate complaints concerning the reasonableness of a utility's regulated activities." The *Mid-Iowa Community Action* court noted a 1981 amendment to the statutory provision and concluded,

> To suggest that the board has the authority to regulate the imposition of fees but is powerless to order refunds for fees

> unlawfully charged is untenable. Equally illogical is the suggestion that the board may determine the amount of refund due but the aggrieved customer must pursue a separate court action to effect recovery. We choose not to read such impractical results into chapter 476.

Mid-Iowa Cmty. *Action*, *Inc*., 421 N.W.2d at 901; *see also Equal Access Corp*. *v*. *Utilities Bd*., *Utilities Division*, *Iowa Dep't of Commerce*, 510 N.W.2d 147, 150 (Iowa 1993).

***H. IXC's withholding of payments*.** Reasnor counterclaimed in the Board proceeding that Qwest and Sprint improperly engaged in self-help, that is, that they improperly withheld payments of disputed access charges.

The Board wrote:

> With respect to the first form of self-help [QCC's and Sprint's actions in withholding payment of disputed access charges], the Board finds that unilaterally withholding payment is not a preferred form of dispute resolution in economic disputes between carriers unless it is clearly contemplated under the applicable dispute resolution provisions, which it was not in this case. However, based on the rulings the Board has made regarding the tariff compliance issues, specifically that terminating intrastate access charges were improperly assessed to the IXCs in this case, no money within the Board's jurisdiction is owed by QCC or Sprint to Reasnor or to any other Respondent and there is no need for any remedy in this case.

Reasnor contends the FCC has declared that communication carriers may not resort to self-help remedies and the Board's ruling contrarily "condoned" the withholding of required payments. We disagree. The Board disapproved of the withholding of payment, but determined that in light of its finding that the charges were improper, "no money within the Board's jurisdiction is owed." We find no error in the Board's ruling. And, as a practical matter, to order the IXCs to pay the improperly billed charges, only to order a refund makes little sense. As the

district court concluded, "It would be a waste of everyone's resources to award such remedies."

I. Did the Board err in determining Qwest did not engage in unlawful discrimination? Reasnor rather summarily argues the Board's determination that Qwest did not engage in unlawful discrimination is not supported by substantial evidence. The district court rejected this contention, as do we.

> As the Board noted throughout its order, however, the marketing fees by themselves do not create the problems which arise in this case. Instead it is the overarching series of issues which led the Board to determine that the dealings between the FCSCs and the LECs were not covered under the tariff for all of the reasons set forth above. With regards to Qwest's marketing fees and sales commission programs, the record does not contain enough information to support a finding that Qwest went beyond mere marketing fees. Consequently, the Board correctly determined that Qwest did not engage in improper discrimination simply by sharing marketing fees and sales commissions.

J. Claims against Reasnor were not barred by res judicata or collateral estoppel. Finally, Reasnor contends that as to it, the claims before the Board were barred by principles of res judicata and collateral estoppel. Reasnor was the subject of an FCC "Order Designating Issues for Investigation, 22 F.C.C. Rcd. 2126 (2007), in which the FCC determined it would investigate the reasonableness of Reasnor's tariffed rates for switched access services. This claim was not raised before the Board. *See KFC Corp*. *v*. *Iowa Dep't of Revenue*, 792 N.W.2d 308, 329 (Iowa 2010) ("Our respect for agency processes in administrative proceedings is comparable to that afforded to district courts in ordinary civil proceedings. Just as we do not entertain issues that were not ruled upon by the district court and that were not brought to the district court's attention through a proper posttrial motion [citation omitted], we decline to entertain issues

not ruled upon by an agency when the aggrieved party failed to follow available procedures to alert the agency of the issue.").

In any event, whether under the NECA tariff Reasnor's access service tariff rates were just and reasonable in light of the traffic experienced by Reasnor due to conference calls, is a different question than the matter before the Board. The Board was investigating the applicability of the intrastate tariff. Consequently, neither res judicata nor collateral estoppel barred the Board's action with respect to Reasnor. *See Winnebago Indus*., *Inc*. *v*. *Haverly*, 727 N.W.2d 567, 572 (Iowa 2006) (noting issue and claim preclusion require that the issue determined in the prior action must be identical to the present issue).

IV. Conclusion.

The Board determined that for the switched access service ITA tariff to apply to the calls at issue, three requirements must exist: (1) calls must be delivered to an "end user"; (2) calls must terminate at the "end user's premises"; and (3) calls must terminate in the certificated local exchange area. Giving the agency's interpretation the deference owed, we do not find this interpretation irrational, illogical, or wholly unjustifiable because it flows from ITA tariff and the terms, conditions, and definitions in the NECA access tariff adopted by the ITA tariff. The Board's findings of fact—that the calls at issue were not delivered to an end user; did not terminate at an end user's premises; and, with respect to some local exchange carriers, did not terminate in the certificated local exchange area—are supported by substantial evidence. The Board concluded that because the services provided to the conferencing calling companies did not qualify as tariffed switched access service, no tariff rates could be charged or

collected by the LECs and ordered the LECs to credit or refund the IXCs. We affirm.

AFFIRMED.