

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="padding-left: 40px;">Petitioner,</p> <p style="padding-left: 40px;">v.</p> <p>QWEST CORPORATION d/b/a CENTURYLINK QC</p> <p style="padding-left: 40px;">Respondent.</p>	<p>DOCKET NOS. FCU-2015-0008 (FCU-2015-0012) (C-2015-0064, <i>et al.</i>), WRU-2015-0035-0272</p>
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**ORDER FINDING VIOLATIONS,
REQUIRING RESPONSE, AND GRANTING WAIVER**

(Issued October 12, 2016)

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BACKGROUND

In 2015, the Utilities Board (Board) received multiple informal complaints from customers of Qwest Corporation d/b/a CenturyLink QC (CenturyLink) alleging problems with their landline telephone service, including complaints about static or buzzing on the line; lack of dial tone; extended and recurring outages; crossed lines, where a customer would receive incoming calls intended for another customer; difficulty communicating with overseas call centers when calling to report service problems; and missed repair appointments. As will be discussed in this order, a total of 27 of the informal complaints were docketed for formal proceedings and consolidated with a separate proceeding to consider CenturyLink’s request for a waiver of the Board’s rule at 199 IAC 22.6(3)(a), which provides, in part, the following:

22.6(3) *Service interruption.*

a. Each telephone utility using its facilities to provide primary service shall make all reasonable efforts to prevent interruptions of service. When interruptions are reported or found by the utility to occur, the utility shall reestablish service with the shortest possible delay. Priority shall be given to a residential customer who states that telephone service is essential due to an existing medical emergency of the customer, a member of the customer’s family, or any permanent resident of the premises where service is rendered. All reasonable efforts shall be measured by the following:

(1) Eighty-five percent of all out-of-service trouble reports cleared within 24 hours. Compliance will be measured based on a three-month rolling average.

(2) Ninety-five percent of all out-of-service trouble reports cleared within 48 hours. Compliance will be measured based on a three-month rolling average.

(3) One hundred percent of all out-of-service trouble reports cleared within 72 hours.

Other service quality rules at issue in this proceeding include 199 IAC 22.5(1) and 22.5(2), which provide, in part, the following:

22.5(1) Requirement for good engineering practice. The telephone plant of the utility shall be designed, constructed, installed, maintained and operated subject to the provisions of the Iowa electrical safety code as defined in 199 IAC Chapter 25 and in accordance with accepted good engineering practice in the communication industry to ensure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

22.5(2) Adequacy of service.

a. Each local exchange utility and alternative operator services company shall employ prudent management and engineering practices so that sufficient equipment and adequate personnel are available at all times, including average busy-hour of the busy-season.

* * *

e. The standards within these rules establish the minimum acceptable quality of service under normal operating conditions. They do not establish a level of performance to be achieved during the periods of emergency, catastrophe affecting large numbers of customers, nor do they apply to extraordinary or abnormal conditions of operation, such as those resulting from work stoppage, civil unrest, or other events.

A. Docket Nos. FCU-2015-0008, FCU-2015-0012

The informal complaint identified as File No. C-2015-0064 was from a customer in Atlantic, Iowa, who complained about the length of time it would take for CenturyLink to restore his landline telephone service after an outage. The customer contacted CenturyLink on May 18, 2015, to report that he was experiencing telephone service problems and was told the next available repair appointment was on May 26, 2015. The customer filed the informal complaint with the Board on May 19, 2015, objecting to having to be without telephone service for over a week. Service was restored on May 27, 2015. The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, requested a formal proceeding for further investigation of this complaint.

On September 10, 2015, the Board issued an order granting OCA's request for formal proceeding pursuant to Iowa Code § 476.3(1), which provides that a public utility shall furnish "reasonably adequate service." The Board found that OCA had identified reasonable grounds for further investigation of the matter. The formal proceeding was identified as Docket No. FCU-2015-0008.

File No. C-2015-0082 involved an informal complaint filed with the Board on June 25, 2015, on behalf of a person who lives in a home for persons with disabilities who had been without service since May 12. On September 29, OCA requested a formal proceeding for further investigation of this complaint. OCA's request was identified as Docket No. FCU-2015-0012.

Another customer, Mr. Michael Arndt of Ankeny, Iowa, filed an informal complaint with the Board, identified as File No. C-2015-0118, on September 11, 2015, explaining that he lost telephone service on September 2 and was told by CenturyLink that the earliest date a repair technician could come to his home would be September 9. CenturyLink restored Mr. Arndt's service on September 15. On October 6, Mr. Arndt filed a request for formal proceeding.

On October 12, 2015, the Board granted OCA's request for a formal proceeding in Docket No. FCU-2015-0012. In the October 12 order, the Board also initiated formal proceedings in an additional 25 pending informal complaint files¹ (including Mr. Arndt's complaint) involving similar complaints from CenturyLink customers alleging problems with their service, service interruptions, and the length of time CenturyLink took to restore service. The complaints appeared to present similar questions about CenturyLink's compliance with Board rule 22.6(3) and other service quality rules. Further investigation of the complaints was necessary to establish whether there was a pattern of delayed service restoration, as OCA had suggested in its request for formal proceeding, and the reasons for the delays. The Board consolidated those proceedings with Docket Nos. FCU-2015-0008 and FCU-2015-0012 pursuant to the Board's rule at 199 IAC 7.14(1).

¹ C-2015-0078, C-2015-0079, C-2015-0087, C-2015-0088, C-2015-0089, C-2015-0094, C-2015-0101, C-2015-0108, C-2015-0109, C-2015-0110, C-2015-0111, C-2015-0114, C-2015-0115, C-2015-0116, C-2015-0118, C-2015-0120, C-2015-0125, C-2015-0127, C-2015-0130, C-2015-0132, C-2015-0136, C-2015-0137, C-2015-0141, C-2015-0142, and C-2015-0143.

B. Docket No. WRU-2015-0035-0272

On October 23, 2015, CenturyLink filed a request for a waiver of the Board's rule at 199 IAC 22.6(3)(a)(1) – (3) pursuant to Board rules 22.1(2) and 1.3. The request was identified as Docket No. WRU-2015-0035-0272. CenturyLink asserted that rule 22.6(3)(a) imposes stringent out-of-service repair requirements on CenturyLink and other local exchange utilities. According to CenturyLink, the standards by which a utility's efforts are measured are extremely difficult to meet in light of the requirements of the Federal Communications Commission's (FCC) Connect America Fund II (CAF II) broadband expansion program.² CenturyLink suggested that because CenturyLink, Windstream, and Frontier have accepted CAF II funding for Iowa, there will be competition for resources necessary for carriers to meet the CAF II broadband deployment benchmarks and current operating requirements during the CAF II build-out period. CenturyLink stated it will be difficult to retain outside contractors to supplement its workforce.

CenturyLink asserted its decision to accept \$17 million in annual CAF II funding will speed broadband deployment over the next six years, consistent with the

² The Connect America Fund was established in the FCC's Transformation Order released on November 18, 2011. The CAF's purpose was to bring broadband to unserved areas; support advanced mobile voice and broadband networks in rural, insular and high-cost areas; expand fixed broadband; and facilitate reform of the intercarrier compensation system. Phase II directs funds to price-cap carriers that commit to certain build-out rates and commit to meeting certain voice and broadband performance criteria. Financial support is calculated using a cost model. The build-out obligation is to 40 percent of supported locations by December 31, 2017; to 60 percent by December 31, 2018; and to 100 percent by December 31, 2020.

broadband deployment priorities of the Iowa Governor and the Iowa Economic Development Authority and the Board's statements urging the company to deploy broadband in Iowa.

CenturyLink stated that rule 22.6(3)(a) was adopted over a decade ago in the early days of competition in the local exchange market, when a landline telephone was the primary means of telecommunication. According to CenturyLink, since the rule was adopted, consumer expectations have changed and consumers now demand widespread deployment of broadband and other advanced services, making broadband repairs just as important as landline repairs.

CenturyLink stated that to comply with rule 22.6(3)(a), it is forced to devote more technicians and resources to maintaining its traditional facilities at the expense of maintaining broadband service. CenturyLink argued it needs flexibility to deploy its resources to meet customer demands and comply with its CAF II obligations.

CenturyLink cited Iowa Code § 476.95, which expresses the state's policy that regulatory "flexibility is appropriate when competition provides customers with competitive choices in the variety, quality, and pricing of communications services, and when consistent with consumer protection and other relevant public interests." CenturyLink also points to the statements in Iowa Code § 476.95 directing the Board to "respond with speed and flexibility to changes in the communications industry" and that "[e]conomic development can be fostered by the existence of advanced communications networks."

According to CenturyLink, granting the waiver would not prejudice the substantial legal rights of any person, but would allow the company to better balance the deployment of its technicians and resources to meet customer needs and demands of CAF II. CenturyLink argued it would be safe to waive the rule during the CAF II build-out period because restoring service after outages to its wireline customers will remain a priority; many of its wireline customers are also wireless customers who view the availability of broadband service to be equally or more important than repair of their landline service; and CenturyLink has an incentive to provide quality service and make timely repairs to landline service because customers have competitive choices and can switch to other service providers.

CenturyLink asserted that the provisions of rule 22.6(3)(a) are not mandated by statute or other provision of Iowa law and that substantially equal protection of public health, safety, and welfare will be afforded by means other than those prescribed in rule 22.6(3)(a).

CenturyLink proposed that the Board waive the rule on the condition that CenturyLink take the following steps to protect the public health, safety, and welfare during the CAF II build-out period:

- (a) CenturyLink will continue to provide repair service, including the use of mandatory overtime, to minimize delays in repair. CenturyLink will direct its focus and resources to minimizing extended outages. CenturyLink will work directly with Board staff as it receives customer complaints and will keep Board staff apprised of its efforts in resolving such complaints. CenturyLink will strive to keep less than one percent of landline customers being impacted by an outage.

(b) CenturyLink will provide the customer of record for primary service that is out-of-service with free remote call forwarding as long as the primary service is out-of-service.

(c) For CenturyLink, the rate of customer trouble reports on the company side of the demarcation point will not exceed a statewide average of 2.5 per 100 access lines per month.

(d) CenturyLink will mark and prioritize the repair of out-of-service trouble reports of primary service lines where the customer reporting the trouble report states that telephone service is essential due to an existing medical emergency of the customer, a member of the customer's family, or any permanent resident of the premises where service is rendered.

CenturyLink also explained that its request for a waiver is limited to the duration of the CAF II build-out period, which the company expects to run through 2020. Finally, CenturyLink committed to providing the Board with annual reports regarding the status of its CAF II build-out efforts as required by 47 C.F.R.

§ 54.313.

On November 6, 2015, OCA filed an objection asking the Board to deny the waiver. OCA's position is that CenturyLink's priority should be to serve its current customers who rely on and pay for landline service. According to OCA, CenturyLink's failure to provide reliable service or make reasonable efforts to restore service after outages is shown by the large number of complaints filed with the Board.

OCA asserted that CenturyLink needs to provide a plan for how it will use reasonable efforts to address its failure to restore service outages in a timely manner before it seeks a waiver that would remove service restoration time requirements.

OCA disputed CenturyLink's claim that a waiver is necessary to allow the company to expand broadband service in Iowa and meet CAF II obligations. OCA asserted that the company should be able to provide reliable service to landline customers while it spends the CAF II money to expand broadband. OCA argued that the waiver request is inconsistent with protection of customers' health and safety and the public interest and emphasized that it would not be appropriate to lower service restoration standards while CenturyLink's record is under investigation.

With respect to CenturyLink's pledge that it will continue to prioritize restoration of service to customers with existing medical emergencies, OCA stated that the need for a phone in case of emergencies is not predictable. Regarding CenturyLink's offer to provide customers call forwarding during outages, OCA observed that the pending complaints demonstrate this is not an adequate alternative because many customers rely on their landline phone because cell phone coverage is not available or is unreliable.

On November 12, 2015, the Board issued an order docketing the waiver request, consolidating it with Docket No. FCU-2015-0008, and modifying the procedural schedule to accommodate the waiver request. Prepared testimony was timely filed by OCA, Mr. Arndt, and CenturyLink. A hearing was held on February 4, 2016. OCA, Mr. Arndt, and CenturyLink submitted initial briefs on March 14, 2016, and reply briefs on March 29, 2016.

SUMMARY OF COMPLAINTS

The most relevant facts and allegations from the individual complaint files can be summarized in table form as follows (the initials “CL” represent CenturyLink):

<u>File No.</u>	<u>Issue(s)</u>	<u>Outage time(s)</u>	<u>Comments</u>
C-2015-0064	Outage	8 days	CL: Heavy rains, staffing shortages
C-2015-0082	Outage	51 days	CL: Storms; bad poles required replacement; bill credits issued
C-2015-0078	Lines crossed/switched	7 days	CL: Next 4 complaints involved a faulty service area cabinet; new cards were installed and the grounding system repaired
C-2015-0079	Lines crossed/switched		(above)
C-2015-0087	Lines crossed/switched		(above)
C-2015-0088	Static, crossed lines, service outage	7 days	(above)
C-2015-0141	Static, outage	6 days	(above)
C-2015-0094	Noise, unreliable service		Customer: Unable to report fatal accident due to outage

C-2015-0143	Service interruptions	6 days and 4 days	CL: Heavy rains, large number of repairs required
C-2015-0111	No dial tone, missed appointments	4+ weeks	CL: Repair required replacement of 625 feet of cable under a river; \$88.50 in credits issued
C-2015-0127	Outage, difficulty understanding customer service reps	7 days and 2 days	Customer: Outage cut off 911 and burglar alarm services CL: Temporary staff shortages
C-2015-0089	Noise on the line		Customer: Medical alert device requires a clear line
C-2015-0116	Outage, missed appointments	32 days	CL: This and next complaint, repair required access to 1500-pair cable in flooded utility hole; had to excavate city streets
C-2015-0108	Outage	10 days	See above; \$6.37 in credits issued
C-2015-0120	Outage	4 days	CL: Heavy rains
C-2015-0109	8 years' poor service on 3 lines; outage	13 days	CL: Repair required rehab of 6 miles of cable; \$341.07 in credits issued

C-2015-0101	Multiple outages	Up to 15 days	CL: Deployed fiber to correct the problem
C-2015-0115	Temp. line installed, never buried; multiple outages	1 day	CL: This and next complaint, requests to contractor to bury the cables "fell out of the system"
C-2015-0142	Fiber line unburied	Months	
C-2015-0118	Delayed response to reported outage; missed appts.; static/buzzing; difficulty communicating with overseas call centers	13 days	CL: Delay due to temporary staffing shortage
C-2015-0110	Outages after it rains	7 days and 21 days	CL: Terminal flooded, could not repair until water subsided; moved to higher location
C-2015-0114	Rotted pole; temp. line installed, not buried; eight outages	Up to 7 days	CL: Credits of \$32.82 issued
C-2015-0130	Four business lines, multiple problems and outages	Various	CL: Primary line restored in two days
C-2015-0132	Multiple outages	3 days and 1 day	
C-2015-0136	Outage	17 days	CL: Customer reported broadband was out, did not treat this as a landline outage

C-2015-0137	Multiple outages	7 days and 4 days	CL: 3 trouble tickets opened in last 2 years, all cleared within 72 hours
C-2015-0125	Fiber plowed through a steel pipe across the road		CL: Complaint does not relate to service quality rules

These summaries do not reflect all of the details of the various complaints, but they present significant facts, specifically the nature of the complaint, the approximate length of any outage(s), and relevant comments from CenturyLink or the customer. Other relevant facts from specific cases will be discussed below.

SUMMARY OF THE PARTIES' POSITIONS

A. Docket Nos. FCU-2015-0008, FCU-2015-0012

1. OCA

OCA's position is that these complaints and aggregate data³ show that CenturyLink has failed to resolve service interruptions in compliance with the Board's rules and has allowed the quality of its service in certain areas to deteriorate, thereby endangering the safety and health of its affected customers. (OCA Reply Brief, pp. 1-2.) OCA contends that the record shows that in 21 of the 27 complaints, CenturyLink failed to restore service within 72 hours.

³ In Docket No. FCU-2015-0008, CenturyLink submitted aggregate data on its compliance with the out-of-service clearance standards in rule 22.6(3)(a). OCA states that the statewide calculations show that the company consistently failed to meet all three clearance standards from April 2014 through October 2015; during this period, the three-month rolling average percentage ranged from 38 percent to 72 percent on the 24-hour 85 percent standard, from 63 percent to 90 percent on the 48-hour standard, and from 77 percent to 96 percent on the 72-hour 100 percent standard. (OCA Initial Brief, p. 11, citing OCA Parker Revised Direct Testimony, pp. 5-6.)

a. Analysis of rule 22.6(3)(a)

OCA interprets rule 22.6(3)(a) as having two distinct requirements: (1) the telephone utility must “make all reasonable efforts to prevent interruptions of service, and (2) when interruptions are reported, the utility must “reestablish service with the shortest possible delay.” OCA’s position is that the only plausible reading of the rule is that companies are required to use all reasonable efforts both to prevent interruptions in service and to reestablish service with the shortest possible delay when interruptions occur. According to OCA, compliance with the requirement to use all reasonable efforts to respond to interruptions in a timely manner is measured by the 85/95/100 percent standards in rule 22.6(3)(a). OCA’s view is that the two requirements are related, even though they are distinct. If a utility neglects to maintain its outside plant, repairs can become more difficult and lengthen the time it takes to restore service.

b. Whether CenturyLink has complied with the statutory requirement to furnish reasonably adequate service and the Board’s service quality rules.

OCA’s position is that in each of the 27 consolidated customer complaints, CenturyLink failed to comply with the statutory requirement to furnish reasonably adequate service and with the Board’s rules governing service quality, including, but not limited to 22.5(1), 22.5(2), and 22.6(3)(a), (b), (g), and (h) in most complaints. (OCA Initial Brief, p. 9.) According to OCA, in 2011 and 2012, CenturyLink was in substantial compliance with rule 22.6(3), but since has consistently fallen short of compliance. (OCA Initial Brief, p. 4, citing OCA Parker Revised Direct Testimony, pp.

8-9; OCA Exhibit Revised SJP-05, pp. 2-5.) OCA witness Parker testified that CenturyLink's failure to comply with rule 22.6(3) (timely restoration of service) was worsened by its failure to comply with Board rule 22.5(2) (which requires sufficient equipment and personnel) and rule 22.5(1) (which requires well maintained telephone plant). (OCA Initial Brief, p. 4, citing OCA Parker Revised Direct Testimony, pp. 7-9.)

OCA argues that the problem is not just that CenturyLink failed to restore service for 21 complainants within the maximum 72 hours allowed by rule 22.6(3)(a).

OCA asserts there is a

wider, generally declining pattern, over an extended period of time, during which CenturyLink failed in any month to meet any of the three time clearance standards set forth in the rule: From January through October 2015, there were 2,075 CenturyLink customers in Iowa whose out-of-service condition went unrestored for more than 72 hours.

(OCA Reply Brief, p. 6, referring to OCA Parker Revised Direct, pp. 8-9, OCA Ex. Revised SJP-5, pp 2-5.)

OCA alleges violations of Board rule 22.6(3) in 21 of the 27 complaints under consideration.⁴ OCA also alleges a violation of Board rule 22.5(2)(a), regarding availability of adequate personnel in File No. C-2015-0064.

c. Appropriate next steps if the Board finds violations.

OCA urges the Board to take the following steps to address the violations and concerns:

⁴ *Violation of 22.6(3)(a), (b) and (g), regarding timely restoration of service:* File Nos. C-2015-0064, C-2015-0078, C-2015-0079, C-2015-0082, C-2015-0087, C-2015-0088, C-2015-0089, C-2015-0101, C-2015-0108, C-2015-0109, C-2015-0110, C-2015-0111, C-2015-0114, C-2015-0116, C-2015-0118, C-2015-0120, C-2015-0127, C-2015-0130, C-2015-0136, C-2015-0141, and C-2015-0143.

1. Give written notice of the violations pursuant to Iowa Code § 476.51 so that the Board would be able to assess civil monetary penalties for future violations;
2. To help evaluate whether CenturyLink is reversing the downward trend in compliance, require CenturyLink to report the number of out-of-service trouble reports received each month and the percentage cleared within 24 hours, 48 hours, and 72 hours (OCA suggests quarterly reporting with monthly data);
3. Require CenturyLink to commit to acquiring and maintaining an adequate trouble clearance technician workforce, including cable technicians, and to give priority to repairing out-of-service conditions;
4. Conduct a study of CenturyLink's infrastructure to identify areas where investment and upgrade are needed;
5. Require CenturyLink to submit a five-year plan to improve service quality, which should address repair staffing levels, anticipated upgrades, and specific investment commitments;
6. Require automatic credits for periods of outage exceeding 72 hours;
7. Require CenturyLink to provide cell phones in appropriate circumstances; and
8. Continue to conduct informal and formal complaint proceedings.

(OCA Initial Brief, pp. 30-34.)

2. Mr. Arndt
 - a. Analysis of rule 22.6(3)(a).

Mr. Arndt asserts that CenturyLink has not fully complied with rule 22.6(3)(a) for several years and that its failure to clear out-of-service trouble reports on a timely

basis is directly related to reductions in employee levels and its failure to properly maintain and replace aging telephone plant. (Arndt Initial Brief, p. 2.) Mr. Arndt asserts rule 22.6(3)(a) is not ambiguous and is intended to protect Iowa consumers from shoddy service. Mr. Arndt suggests that the “all reasonable efforts” standard proposed by CenturyLink would be impossible to enforce and would harm consumers.

Mr. Arndt refers to the Board’s order approving the settlement between OCA, Qwest Communications International, Inc. (Qwest), and CenturyTel, Inc. (CenturyLink), in the proceeding in which the Board considered the proposed merger of Qwest and CenturyLink. In that proceeding, OCA had identified concerns about Qwest’s aging infrastructure but contemplated that investment in infrastructure could be more likely after the merger because of the merged company’s stronger financial position.⁵ According to Mr. Arndt, CenturyLink’s financial position has deteriorated significantly since acquiring Qwest and the company has cut its workforce by 3,600 employees in less than three years. (Arndt Initial Brief, p. 4.)

In light of the complaints of several customers complaining about constant buzzing and static on their phone lines, Mr. Arndt asserts that CenturyLink has not properly maintained its telephone plant. Mr. Arndt points to CenturyLink’s failure to comply with rule 22.6(3) in September 2014, when only 76.57 percent of trouble reports were cleared within 72 hours, instead of the 100 percent required by the rule.

⁵ Arndt Initial Brief, pp. 3-4, citing *In re: Qwest Communications International, Inc., and CenturyTel, Inc.*, “Order Approving Settlement Agreements, Granting Motions to Withdraw, and Allowing Proposed Reorganization,” p. 18, Docket No. SPU-2010-0006, issued November 19, 2010.

(Arndt Initial Brief, p. 5.) Mr. Arndt contends that CenturyLink's excuses for non-compliance (staffing shortages, excessive rainfall, or demands for broadband installation) are without merit. According to Mr. Arndt, the causes of CenturyLink's failure are long-term, not the result of temporary events.

- b. Whether CenturyLink has complied with the statutory requirement to furnish reasonably adequate service and the Board's service quality rules.

Mr. Arndt alleges CenturyLink has not maintained its telephone plant or retained adequate personnel to ensure continuity of service and service quality. Mr. Arndt warns that CenturyLink's performance with respect to clearing out-of-service trouble reports will only get worse as it continues to reduce workforce and as its plant continues to age. (Arndt Initial Brief, pp. 7-8; Arndt Reply Brief, p. 3.)

Mr. Arndt disputes CenturyLink's assertion that a low statewide trouble report rate demonstrates proper maintenance of telephone plant. Mr. Arndt suggests that a more important factor is how quickly trouble reports are being cleared. Mr. Arndt refers to the customer complaint in File No. C-2015-0116 where an outage of more than 30 days was reported and to his own outage which lasted 13 days. Mr. Arndt argues that if a CenturyLink customer has to wait 13 days or more for service to be restored, service quality is poor regardless of trouble report rates. (Arndt Reply Brief, pp. 6-7.)

- c. Appropriate next steps if the Board finds violations.

Mr. Arndt recommends that the Board issue written notice to CenturyLink that future violations of Board rules 22.6(3) and 22.5(2) will result in civil monetary

penalties. Mr. Arndt also endorses OCA's recommendations and recommends further that the Board should (1) require CenturyLink to file monthly reports detailing the company's monthly expenditures in Iowa for telephone plant infrastructure (such as fiber cable replacement, copper cable replacement, pole replacement), maintenance, number of outside contractors, and number of employees in Iowa; (2) require the company to increase bill credits; (3) require CenturyLink to provide free cell phones and call forwarding to customers who experience outages longer than 72 hours; (4) require CenturyLink to test lines for static and buzzing; and (5) require CenturyLink to notify customers of the option to speak to a service operator located in the United States. (Arndt Initial Brief, pp. 9 – 13.)

With respect to bill credits, Mr. Arndt gives a personal account of what happened in his case and how the credit was not adequate compensation for the hardship resulting from an extended outage. Mr. Arndt's outage lasted 13 days and his bill credit was approximately \$17.05, or \$1.31 per day. He had to make about six calls before his service was restored. Mr. Arndt argues the Board should order the company to pay customers a financial penalty for extraordinary delays in restoring service, suggesting this would give the company a financial incentive to improve its service. Mr. Arndt suggests an additional bill credit of \$20.00 per day for outages exceeding 72 hours. (Arndt Reply Brief, p. 11.)

3. CenturyLink
 - a. Analysis of rule 22.6(3)(a).

CenturyLink argues that Board rule 22.6(3)(a) is ambiguous and can be interpreted in more than one way. According to CenturyLink, the first sentence of the rule establishes an “all reasonable efforts” standard, providing that “[e]ach telephone utility using its facilities to provide primary service shall make all reasonable efforts to *prevent* interruptions in service.” CenturyLink argues that the rule is ambiguous because the measures for “all reasonable efforts to prevent interruptions in service” are measures of how quickly a company responds to service interruptions, not measures of how successfully the company prevents service interruptions.

CenturyLink argues that the repair measures in rule 22.6(3)(a)(1) – (4) make sense only if additional language is read into the rule, i.e., CenturyLink proposes that the rule be read to provide “[w]hen interruptions are reported or found by the utility to occur, the utility shall make all reasonable efforts to reestablish service with the shortest possible delay.” (CenturyLink Initial Br., p. 2.)

CenturyLink argues there is another ambiguity in the rule relating to the repair measures. According to CenturyLink, while OCA regards the measures as mandates, not objectives or targets, the rule does not say that a telephone utility must clear 100 percent of out-of-service trouble reports within 72 hours. Instead, the rule says that “all reasonable efforts” are to be measured by the three repair intervals. CenturyLink argues that the words “measured by” should be interpreted to mean “compared to” so that one factor in determining whether a utility was making “all reasonable efforts” to reestablish service with the shortest possible delay would be

how the utility's response time compares to the 24, 48 and 72 hour repair intervals.
(CenturyLink Initial Br., p. 3.)

CenturyLink acknowledges it is possible to interpret the repair intervals as mandates, and that the Board believed the rules were mandates when they were adopted.⁶ (CenturyLink Reply Brief, p. 3.) According to CenturyLink, the Board did not recognize that interpreting the rules as mandates creates an internal contradiction by creating two different performance standards – the “all reasonable efforts” standard and the requirement that 100 percent of interruptions be cleared within 72 hours. CenturyLink argues this cannot be what the Board intended, describing the logical impossibility of complying with and violating the rule at the same time, where a utility makes all reasonable efforts to restore service as quickly as possible but still fails to restore all interruptions within 72 hours. (CenturyLink Reply Brief, pp. 3-4.)

CenturyLink points out that Board rule 22.6(3)(a) applies only to interruptions in service, not just any trouble report including issues such as noise or static on the line where the customer is not prevented from making or receiving calls, and that the “all reasonable efforts” requirement applies only to primary service, not to secondary lines.

As other limits on the application of rule 22.6(3)(a), CenturyLink points to the Board's statements when it adopted the rules that the rules apply only under normal

⁶ CenturyLink quotes from the Board's “Order Adopting Rules,” issued on January 13, 1998, in Docket No. RMU-95-3, *In re Quality of Service-Telephone*, where the Board explained that in “cases where service is disrupted, on a rolling three month basis paragraph 22.6(3)”a” requires 85 percent of service to be restored within 24 hours, 95 percent of service to be restored within 48 hours and 100 percent of service to be restored within 72 hours.”

operating conditions and that the rules “clarify the responsibility of the local exchange carrier toward the retail customer as competition begins to develop in the local exchange.” (CenturyLink Reply Brief, p. 4, quoting from the Board’s “Order Adopting Rules,” p. 6, issued January 13, 1998, *In re Quality of Service-Telephone*, Docket No. RMU-95-3.) CenturyLink argues that the rules were adopted at a time when telephone utilities were rate-regulated and were thus assured of recovering whatever costs they incurred to meet the repair intervals. CenturyLink concludes it is no longer reasonable to interpret the repair intervals as mandates now that rate regulation no longer applies. (CenturyLink Initial Br., pp. 3-4.)

- b. Whether CenturyLink has complied with the statutory requirement to furnish reasonably adequate service and the Board’s service quality rules.

CenturyLink describes the Board’s service quality rules as requirements which give meaning to the statutory requirement to furnish reasonably adequate service. (CenturyLink Initial Brief, p. 4.) CenturyLink argues it has satisfied its statutory obligation to provide reasonably adequate service. CenturyLink contends that compliance with this general standard should be evaluated by considering its overall performance. CenturyLink describes the standard as a minimum standard that does not require great service or even good service. CenturyLink argues that by focusing only on the metrics that CenturyLink did not meet, OCA does not consider the metrics that CenturyLink exceeded. (CenturyLink Reply Brief, p. 6.)

According to CenturyLink, the most important standard is the company’s trouble report rate. CenturyLink argues its statewide results (on average, about one

report per 100 access lines per month) for this standard are exceptional and the level of out-of-service trouble reports is even lower. (CenturyLink Reply Brief, p. 6, citing CTL Ex. TW-1, p. 5, ll. 8-19; CTL Ex. TW-2; and CTL Ex. TW-3.) CenturyLink acknowledges the Board's standard is four trouble reports per 100 access lines per month per wire center.⁷ CenturyLink explains that the only circumstance where it has not met the standard at the wire center level is for small wire centers where a small number of trouble reports takes the results over four per 100 lines. (CenturyLink Reply Brief, p. 6, note 2.) According to CenturyLink, the difficulty of maintaining less than four trouble reports per 100 access lines for small wire centers is the reason CenturyLink proposes in its waiver request to agree to a statewide standard of 2.5 trouble reports per 100 access lines.

CenturyLink suggests that the trouble report rate is the metric which best demonstrates the company's overall performance in providing service and asserts that the low rate means few customers are experiencing trouble with their service. CenturyLink contends that its low trouble report rate shows the company is doing well at preventing service interruptions. (CenturyLink Initial Brief, p. 5, citing CTL Exhibit TW-1, p. 5.) CenturyLink argues the trouble report rate should be balanced against its performance under the metrics used by OCA in determining whether the company

⁷ Board rule 22.6(3)(h) provides that "[e]ach local exchange utility using its facilities to provide service shall maintain its network to reasonably minimize customer trouble reports. The rate of customer trouble reports on the company side of the demarcation point will not exceed four per 100 access lines per month per wire center."

has met its obligation to provide reasonably adequate service. (CenturyLink Reply Brief, p. 7.)

CenturyLink argues that the fact that its customers report service trouble does not mean the company is not complying with Board rules. CenturyLink contends it has complied with Board rule 22.5(1), which requires the company to use good engineering practice and provides that the company shall maintain its plant to ensure, “as far as reasonably possible,” continuity of service. CenturyLink asserts it “constantly seeks to identify and replace plant in need of replacement” and that trouble reports are one way it identifies outside plant in need of replacement.

(CenturyLink Initial Brief, p. 5, referring to CTL Ex. TW-1, p. 19, l. 19 – p. 20, l. 3.)

CenturyLink asserts it has complied with Board rule 22.5(2)(a), which requires a local exchange utility to “employ prudent management and engineering practices so that sufficient equipment and adequate personnel are available at all times.”

CenturyLink disputes OCA’s assertion that the company failed to comply with Board rule 22.5(2)(a) because it did not have enough technicians to handle a surge in trouble tickets that occurred at the same time as Mr. Christensen’s complaint.

CenturyLink argues that the rule does not require the company to have adequate personnel at all times, but only requires the utility to use prudent management techniques to meet that objective. CenturyLink contends that even if the rule were interpreted more strictly, it would not require the company to have adequate personnel to handle every surge in workload. CenturyLink suggests OCA’s position would require the company to overstaff.

CenturyLink asserts there can be circumstances beyond the company's control that prevent it from having adequate personnel available. As an example, CenturyLink describes its unsuccessful efforts in the fourth quarter of 2014 to recruit 13 installation and repair contractors for the months of June through September 2015. The company was able to retain just five contractors. (CenturyLink Initial Brief, p. 6, referring to CTL Ex. TW-1, p. 15.)

With respect to the surge in trouble tickets that occurred at the time of Mr. Christensen's complaint, CenturyLink argues the fact that there was only one technician available to serve the Atlantic wire center does not mean the company failed to use prudent management and engineering practices. CenturyLink contends the surge in trouble tickets, not the company's personnel practices, caused the delay in restoring Mr. Christensen's service. (CenturyLink Initial Brief, p. 6; CenturyLink Reply Brief, p. 8.)

With respect to the meaning and application of rule 22.6(3)(a), CenturyLink's position is that the most reasonable interpretation of the rule is that it requires "all reasonable efforts" to prevent interruptions in service and to reestablish service when interruptions occur. According to CenturyLink, the company and OCA are in agreement that the rule requires all reasonable efforts to prevent interruptions and to restore service as quickly as possible. CenturyLink acknowledges it has not met the specific clearance measures in rule 22.6(3)(a)(1) – (3) but emphasizes that its failure to do so has been due to factors out of its control. (CenturyLink Reply Brief, p. 8.)

CenturyLink identifies the following steps it has taken to prevent interruptions in service: engaging in efforts to prevent isolation of communities in the event of a fiber cut or cable outage; adopting a proactive approach to identify and address potential service interruptions before they happen; purchasing four excavators; investing in fiber infrastructure; and accepting CAF II funding which will be used to deploy fiber deeper into its network. (CenturyLink Initial Brief, p. 7, referring to CTL Ex. TW-1, p. 6, l. 9 – p. 9, l. 4.) CenturyLink contends that as a result of these prevention efforts, the company has reduced the number of trouble tickets, allowing the company to respond more quickly to tickets it does receive. CenturyLink also states it hired additional employees earlier in 2016 to meet peak load. (CenturyLink Initial Brief, p. 8.)

Acknowledging that it has not consistently met the repair intervals in the Board's rule, CenturyLink identifies unusual weather, including intense rains and extensive flooding, as the primary factor affecting its compliance. CenturyLink states that 10 of the 27 complaints at issue involving delays in restoring service involved intense rain. (CenturyLink Reply Brief, p. 9, referring to CTL Ex. TW-1, p. 17, l. 11 – p. 18, l. 17.) According to CenturyLink, it is the intensity of a rain event over a short period of time, not average monthly rainfall totals, that is relevant.

Other factors affecting the company's compliance with the clearance rates include temporary labor shortages, access line loss, having to devote resources to broadband repairs, and switching from a copper based network to fiber. (CenturyLink

Reply Brief, p. 10, referring to CTL Ex. TW-1, p. 12, l. 7- p. 13, l. 10, p. 15 l. 20 – p. 16, l. 22.)

CenturyLink states that as a result of competition, its customer density (how close customers are on average) has decreased over 60 percent. In 2001, the company had 980,000 access lines, or 77.57 access lines per square mile. Today, with 350,000 access lines, the company has 27.70 access lines per square mile of service territory. (CenturyLink Initial Brief, p. 9, citing CTL Ex. TW-1, p. 15, l. 20 – p. 16, l. 9; CTL Ex. TW-11; Glover, Tr. 204, ll. 19-24.) CenturyLink also points to the growth in demand for broadband Internet service, which CenturyLink says consumers often value over voice service, as having an impact on the company's ability to respond to trouble tickets quickly. (CenturyLink Initial Brief, p. 9, citing CTL Ex. TW-1, p. 16, ll. 10-16.) CenturyLink argues OCA ignores these factors in its analysis and fails to acknowledge how the industry has changed since the rules were adopted. (CenturyLink Reply Brief, referring to CTL Ex. TW-1 p. 23, l. 20 – p. 25, l. 4.)

According to CenturyLink, if the repair intervals in rule 22.6(3)(a) are interpreted as mandates that must be met, the company is not in compliance with the rule, but if the rule imposes a standard of "all reasonable efforts," the company is in compliance. CenturyLink acknowledges that with respect to some of the complaints, the time it took for the company to restore service was not satisfactory to the customer or CenturyLink, but emphasizes that the preventative measures identified by Mr. White and the benefits associated with network upgrades associated with CAF

It should reduce or prevent such lengthy outages in the future. (CenturyLink Initial Brief, p. 9.)

c. Appropriate next steps if the Board finds violations.

CenturyLink argues that putting the company on notice of civil penalties is not warranted, observing that the Board is considering changes to the rules in Docket No. RMU-2015-0002. CenturyLink states that the Board has proposed to amend rule 22.6(3)(a) to clarify that the rule imposes an “all reasonable efforts” standard and to delete rule 22.5(2)(a). (CenturyLink Initial Brief, pp. 10-11, referring to *In re: Amendments to Telecommunications Service Regulations [199 IAC 22]*, “Order Seeking Additional Comments,” Docket No. RMU-2015-0002, issued January 29, 2016.) According to CenturyLink, giving notice of violation of rules that are going to be changed would serve no purpose. (CenturyLink Reply Brief, p. 11.)

According to CenturyLink, if the Board finds the company failed to comply with the current versions of Board rules 22.6(3)(a) and 22.5(2)(a), the Board should do two things:

(1) reinstate a reporting requirement for a period of 24 months that requires CenturyLink to report quarterly its results for clearing out-of-service trouble reports.

(2) require bi-annual meetings between CenturyLink and the Board to review repair clearance rates and give the company an opportunity to explain factors affecting the results.

(CenturyLink Initial Brief, p. 11.)

CenturyLink objects to OCA’s proposal that the Board should require CenturyLink to commit to increase the number of technicians it employs, suggesting

that because the company continues to experience loss of access lines, the number of technicians it needs to employ will decrease and that the Board should not be involved in managing the company's workload. CenturyLink also argues it is not necessary for the Board to require the company to conduct a study of the condition of its infrastructure; that the Board should not require a five-year plan to address service quality; that the Board should not require automatic credits for periods of outages; and that the Board should not require CenturyLink to provide cell phones.

CenturyLink suggests that if the Board decides there are situations where customers should get a cell phone in the event of an extended outage, the Board should require only that the company reimburse the customer for basic cell phone service if the customer decides to get a cell phone. Finally, CenturyLink agrees that it is appropriate to continue to use the Board's informal complaint process in these kinds of cases. (CenturyLink Reply Brief, pp. 10-13.)

CenturyLink argues that the Board should not adopt Mr. Arndt's recommendations that the company be required to provide a free cell phone and free call forwarding during outages that exceed 72 hours; that the company be required to give customers calling to report a problem the option to select a call center in the United States; that the company be required to provide bill credits of \$10.00 per day for outages exceeding 72 hours (or \$20.00 per day, as Mr. Arndt later proposed); that the Board adopt rules to ensure that customers benefit from any future mergers and acquisitions; that the company be required to test lines for static and buzzing; or that the company be required to file monthly reports outlining expenditures for

infrastructure and regarding training and hiring of new employees to meet the demands of CAF II. (CenturyLink Initial Brief, pp. 12-14.)

B. Docket No. WRU-2015-0035-0272

1. OCA

OCA contends that CenturyLink has not met the burden of persuasion on the elements of Board rule 1.3 for the requested waiver of 22.6(3)(a) for the duration of the build-out period associated with the company's acceptance of CAF II funding. OCA asserts that if the waiver is granted, CenturyLink would have no obligation to repair an out-of-service customer within any timeframe. (OCA Initial Brief, p. 33.)

OCA argues that application of the rule would not pose an undue hardship on CenturyLink. OCA states that CenturyLink's customers are paying for landline service and they expect timely repair when service goes out. OCA points out that when customers lose landline service, they lose 911 emergency service, are at risk of health, safety and welfare issues, and are unable to reach or be reached by families or medical personnel.

OCA recounts that CenturyLink had substantial compliance with the measurement metrics of 85-95-100 in 2011 and 2012, but its performance has since declined. According to OCA, CenturyLink is requesting a waiver that will result in the same performance, or worse, with no measurement metrics for the next six years. (OCA Initial Brief, p. 35.)

OCA observes that none of the other companies mentioned by CenturyLink as participating in CAF II have experienced the same large number of complaints, nor have those companies requested a waiver. (OCA Reply Brief, pp. 7-8.)

According to OCA, CenturyLink has not met the burden of persuasion by clear and convincing evidence under Iowa Code § 17A.9A(2) that timely repairing interruptions in service would pose an undue hardship on the company. OCA argues that because the timely repair of trouble reports is a vital component of providing reliable service, any asserted hardship in complying with the rule cannot be undue. (OCA Initial Brief, p. 37.)

OCA also argues that granting the waiver would prejudice substantial legal rights and that the provisions of the rule are specifically mandated by statute. OCA contends that CenturyLink's customers have legal rights mandated by statute. Iowa Code §§ 476.3(1), 476.8, and 476.29(9) require CenturyLink to provide reasonably adequate telephone service and facilities. According to OCA, granting the waiver would be inconsistent with the company's statutory obligation to provide adequate telephone service and facilities.

OCA also argues CenturyLink has failed to show that substantially equal protection of public health, safety, and welfare would be afforded by means other than as prescribed in the rule subject to the waiver request, as required by Board rule 1.3(4).

OCA argues that CenturyLink has failed to show how allowing reduced service quality obligations under the requested waiver would benefit customers. With respect

to the maps requested by the Board depicting the location of CAF II eligible areas in Iowa relative to the location of the 27 customers in these proceedings, OCA states that 15 of the 27 customers involved in these proceedings will receive no benefit from CAF II (because they do not reside in a CAF II targeted area or a “halo” area adjacent to the targeted area.) (CenturyLink Reply Brief, p. 8.)

CenturyLink offered, as a condition of the waiver, to prioritize repairs for customers who identify an existing medical emergency but will not affirmatively seek that information. (OCA Initial Brief, p. 29, citing OCA Parker Revised Direct Testimony, p. 4; Tr. 255.) OCA argues in response that this offer does not address unforeseen circumstances, such as a non-preexisting medical emergency (C-2015-0086) or a fatal accident (C-2015-0094).

In response to CenturyLink’s assertion that it has been trying to address timely repairs, OCA argues that the large number of complaints filed and the large number of customers whose service was not reinstated within 72 hours, the company’s offer of more of the same failed efforts is not a solution. OCA discounts CenturyLink’s offer to provide out-of-service customers with free remote call forwarding, stating that the proposal does not help customers who do not have cell phones or who have poor cell phone reception. (OCA Reply Brief, p. 9.)

OCA rebuts CenturyLink’s argument that acceptance of CAF II funds makes a waiver necessary. OCA asserts instead that CAF funds are intended to benefit rural Americans, not to serve as a justification for failing to provide reliable service or to use reasonable efforts to restore service to current customers. (OCA Initial Brief, p.

40.) According to OCA, if the waiver is granted, customers can expect more of the same poor performance for the next six years, and reduced protection of public health, safety, and welfare.

If the Board decides to grant the waiver, OCA argues the Board should condition the waiver on reasonable conditions appropriate to achieve the objectives of 22.6(3)(a). OCA argues that to grant the waiver without conditions would be to reward CenturyLink's poor performance in recent years which OCA documented in OCA Exhibit Revised SJP-5, pp. 2-5. (OCA Initial Brief, p. 41.) Before considering the waiver request, OCA argues the Board should require the company to provide a remedial plan addressing how it will correct its failure to restore service outages in order to protect public health, safety, and welfare. OCA suggests the following specific conditions:

1. Requiring the company to reestablish substantial compliance with the Board's metrics;
2. Requiring the company to provide cellphones to customers without service for more than 72 hours who do not have cell phones or reliable cell service from their homes;
3. For the extent of the CAF II build-out, require the company to comply with a 48-hour metric of 48 percent and a 72-hour metric of 97 percent (OCA Initial Brief, p. 42, citing CenturyLink's comments filed February 29, 2016, in Docket No. RMU-2015-0002); and

4. Provide semi-annual reports to the Board on how CenturyLink is performing under the temporary metrics.

OCA's position is that a waiver is not warranted under Board rule 22.1(2) because CenturyLink has not established unreasonable hardship. OCA contends that accepting \$107.4 million from the customer-financed CAF II program to enable build-out is not a hardship to the company and should not affect service to existing customers.

In response to the Board's question in its briefing order about whether the rule-making proceeding in which the Board is considering changes to 199 IAC 22, OCA indicated that the rule-making proceeding has no effect on CenturyLink's request for a waiver. OCA observes that the waiver request concerned Board rules as they existed at the time of the request. The rule-making proceeding is not yet completed and its results are not known and are not determinative of the waiver request. (OCA Initial Brief, p. 43.)

2. Mr. Arndt

Mr. Arndt urges the Board to deny CenturyLink's request for a waiver. According to Mr. Arndt, CenturyLink's urban and rural customers are forced to make involuntary payments to the federal Universal Service Fund and the company will receive \$17,893,887 from that fund per year for six years, for a total of \$107,363,322, to install broadband in rural Iowa. Mr. Arndt suggests that the company will use these payments to maximize profits while the quality of its landline service continues to deteriorate. Mr. Arndt argues that instead of granting the waiver, the Board should

require CenturyLink to hire and train new employees in rural Iowa to install broadband to stimulate the rural economy. (Arndt Initial Brief, pp. 13-14.)

3. CenturyLink

CenturyLink contends it has met the burden of persuasion under each of the elements of rule 1.3. CenturyLink states that rule 22.6(3)(a) was adopted over a decade ago in the early days of competition in the local exchange market, when a landline telephone was the primary means of telecommunication. CenturyLink asserts that since the rule was adopted, consumer expectations and methods have changed, and consumers now demand widespread deployment of broadband and other advanced services.

CenturyLink asserts that to comply with rule 22.6(3)(a), it is forced to devote more technicians and resources to maintaining its traditional facilities at the expense of maintaining broadband service. CenturyLink explains a waiver of the out-of-service repair intervals in rule 22.6(3)(a) is necessary in light of the shortage of contractors that will make it difficult for the company to meet existing repair demands and the CAF II build-out requirements. CenturyLink's position is that application of the rule creates an undue hardship in light of the contractor shortage. According to CenturyLink, the CAF II deployments will increase the need for contractors to perform the work associated with the program. CenturyLink states each recipient of CAF II support must complete deployment to 40 percent of supported locations by December 31, 2017; to 60 percent by December 31, 2018; to 80 percent by December 31, 2019; and to 100 percent by December 31, 2020. CenturyLink argues

this schedule creates an increase in work load, which will occur primarily during the company's peak season from June to September, primarily in rural areas where contractors are in limited supply. (CenturyLink Initial Brief, pp. 16-17, citing 47 C.F.R. § 54.310 and CTL Ex. TW-1, p. 29, ll. 1-13.)

CenturyLink argues that in resisting the waiver, OCA overemphasizes the importance of the clearance intervals in rule 22.6(3)(a). CenturyLink points out that only 4.8 percent of Iowa households are landline only and even those customers without cell phones can find ways to place calls. (CenturyLink Reply Brief, p. 14.)

CenturyLink contends that granting the waiver would not prejudice the substantial legal rights of any person in that none of the requirements in rule 22.6(3)(a) are substantial legal rights. Alternatively, CenturyLink argues that if reasonably adequate service is treated as a substantial legal right, granting the waiver would actually enhance that right by ensuring an overall improvement in service quality in the build-out areas and in the "halo effect" areas (described by CenturyLink as the areas surrounding the CAF II build-out areas that will benefit by the infrastructure improvements that will be necessary for deployment under the program). (CenturyLink Initial Brief, pp.17- 18.)

CenturyLink contends that the provisions of rule 22.6(3)(a) are not mandated by statute or other provision of law. CenturyLink disputes OCA's argument that rule 22.6(3)(a) is mandated by statute, arguing instead that there is nothing in the statutory requirement that a utility provide reasonably adequate service that requires clearance of out-of-service trouble reports in any particular time period. CenturyLink

also emphasizes that because it already has a strong incentive to restore service after an outage because of competition from other service providers, there is a question as to whether Board rules specifying clearance rates are even necessary. (CenturyLink Reply Brief, p. 14.)

CenturyLink argues that it has demonstrated that substantially equal protection of public health, safety and welfare can be afforded by means other than as prescribed in rule 22.6(3). According to CenturyLink, OCA is primarily concerned with restoring service to customers with health issues. As a condition of the waiver, CenturyLink has offered to prioritize repairs to households where a customer explains service is necessary due to an existing medical emergency. CenturyLink discounts OCA's examples involving medical emergencies and a fatal accident, stating that the company does not challenge customers who say they have a medical need for prompt restoration and that needing landline service to call emergency personnel is unlikely when most people have a cell phone. (CenturyLink Reply Brief, p. 15.)

Generally, CenturyLink argues that OCA's objection to the waiver request ignores the long term benefits for consumers that will result from CenturyLink's ability to meet its CAF II build-out requirements. (CenturyLink Reply Brief, p. 15.) CenturyLink urges the Board not to adopt OCA's proposed conditions on granting the waiver.

CenturyLink asserts the waiver is also warranted under the provisions of Board rule 22.1(2). According to CenturyLink, rule 22.1(2) is less restrictive than rule 1.3, and CenturyLink has met its sole requirement of showing unreasonable

hardship. Again, CenturyLink argues it will face the unreasonable hardship of having to comply with CAF II build-out deadlines and the repair intervals in Board rule 22.6(3)(a).

CenturyLink disputes the arguments presented by Mr. Arndt, particularly his argument that the company's reduction in employee headcount has resulted in the missed out-of-service deadlines. CenturyLink states its technician headcount in Iowa has remained stable. (CenturyLink Reply Brief, p. 18.)

BOARD DISCUSSION

A. Docket Nos. FCU-2015-0008, FCU-2015-0012

The Board reads rule 22.6(3) to mean that a telephone utility must make all reasonable efforts to prevent interruptions of service and, if an interruption occurs, must reestablish service with the shortest possible delay. The rule requires compliance with the out-of-service trouble report clearance rates, i.e., the trouble report clearance rates are requirements, not soft targets companies should strive to meet. Paragraph (a) of subrule 22.6(3) provides, in part, that “[e]ach telephone utility using its facilities to provide primary service *shall make all reasonable efforts to prevent interruptions in service.*” The use of the word “shall” is the mandate; the required action is to make all reasonable efforts to prevent interruptions in service.

The phrase “all reasonable efforts” appears again later in paragraph (a) in the sentence stating that “All reasonable efforts shall be measured by the following:” preceding the out-of-service trouble report clearance rates. Thus, the clearance

rates demonstrate what it means for a utility to make all reasonable efforts to prevent interruptions in service, i.e., to prevent interruptions in service of the duration specified in rule 22.6(3)(a)(1) – (3).

The out-of-service trouble report clearance rate mandates must be read in the context of other rules which show an intent to allow some flexibility in applying the standards. The Board adopted graduated clearance measures that are measured on a rolling three-month basis. The absolute standard identified in the rule is that 100 percent of out-of-service trouble reports must be cleared within 72 hours. When it adopted the rule, the Board observed that it “is not reasonable . . . for any customer to wait more than 72 hours to have service restored *under normal operating conditions.*” *In re: Quality of Service – Telephone*, Docket No. RMU-95-3, “Order Adopting Rules,” p. 6, issued January 13, 1998 (*emphasis added*). Board rule 22.5(2)(e), found in the subrule on under the heading of “Adequacy of Service,” provides that

e. The standards within these rules establish the minimum acceptable quality of service under normal operating conditions. They do not establish a level of performance to be achieved during the periods of emergency, catastrophe affecting large numbers of customers, nor do they apply to extraordinary or abnormal conditions of operation, such as those resulting from work stoppage, civil unrest, or other events.

Thus, when considering whether CenturyLink complied with Board rule 22.6(3) in these cases, the Board considers whether the conditions at the time of the service interruptions constituted “normal operating conditions” or, instead, were abnormal conditions which could possibly explain CenturyLink’s failure to restore service according to the out-of-service trouble report measures specified in rule 22.6(3)(a).

The Board finds no violations in File Nos. C-2015-0079 (Golka), C-2015-0141 (Wilson), C-2015-0116 (LaVille), C-2015-0108 (Maddux), and C-2015-0111 (Letsche). In these cases, CenturyLink established that abnormal operating conditions prevented the company from restoring service within the timeframes specified by rule 22.6(3)(a). These cases involved conditions such as extreme rain preceding the outage or flooding which caused an increase in the number of trouble tickets needing attention, or failure on a large scale of specialized equipment that needed to be ordered and replaced before service could be restored by making a complicated repair. The Board does not intend to minimize the inconvenience experienced by these customers and believes the company should have better communicated with its customers during these outages, but finds no violation in these circumstances.

With respect to the cases involving noise, buzzing, or static on the line or cross-talk, File Nos. C-2015-0078 (Overton), C-2015-0087 (Carlson), C-2015-0088 (Salz), and C-2015-0089 (Hoth), the Board observes that such conditions can be so severe that they effectively amount to an out-of-service condition, as in the case of Mr. Hoth who testified that buzzing on the line impaired his communications with his medical alert provider. However, in the cases before the Board, the record was either insufficient to find that the conditions amounted to an outage or there were conflicting accounts of the nature of the problem. The Board does not find violations of Board rule 22.6(3)(a) in these cases but observes that CenturyLink should have

been more prompt in its response to the recurring problems experienced by these customers.

In certain other cases, the Board finds that CenturyLink established either that service was restored within the timeframes in Board rule 22.6(3)(a) or the record was not sufficiently developed to support a finding that reported noise on the line was disruptive enough to constitute an out-of-service condition. For these reasons, the Board finds no violation in File Nos. C-2015-0094 (Anderson), C-2015-0132 (Thomas), and C-2015-0137 (Rohlf).

In File No. C-2015-0130 (Landrum), CenturyLink's records show that service to the primary line was restored within 72 hours of the date the trouble was reported. The customer disagrees with that account. Because of this conflicting information, the Board cannot determine whether CenturyLink violated Board rule 22.6(3)(a). The Board observes, however, that the customer's complaint and testimony reflects the level of frustration customers reported in these cases when describing their efforts to secure appointment repair dates.

File Nos. C-2015-0115 (Davis) and C-2015-0142 (Uliano) involved CenturyLink's extended delay in burying a service drop after repeatedly repairing the temporary cable or burying a fiber optics line the company had installed. Because service was restored in compliance with Board rule 22.6(3) in the Davis case and there were no outages reported in the Uliano case, the Board does not find that CenturyLink violated Board rule 22.6(3)(a) in these cases. However, these cases

indicate a need for the company to pay more attention to completion of projects assigned to contractors.

The Board finds no violation in File No. C-2015-0125 (Junge). This case did not involve facts which would be covered by Board rule 22.6(3)(a).

The Board concludes that CenturyLink violated Board rule 22.6(3) in the following eleven cases: File No. C-2015-0064 (Christensen, which involved an outage lasting 8 days), File No. C-2015-0082 (Hansen, which involved an outage lasting 51 days), File No. C-2015-0143 (Zimmerman, which involved one outage lasting 6 days and another lasting 4 days), File No. C-2015-0127 (Konefes, which involved an outage of 7 days), File No. C-2015-0120 (Ogilvie, which involved an outage of 4 days), File No. C-2015-0101 (Hom, which involved multiple outages, one lasting 9 days and another 15 days), File No C-2015-0118 (Arndt, which involved an outage lasting 13 days), File No. C-2015-0110 (Reinholdt, which involved multiple outages, two lasting 7 days and one lasting 21 days),⁸ File No. C-2015-0114 (Hyett, which involved an outage lasting 7 days), File No. C-2015-0109 (Beach, which involved an outage lasting 13 days), and File No. C-2015-0136 (Leaming, which involved an outage that lasted 17 days after the customer reported the problem). In these cases, the Board does not agree that weather events, staffing shortages, the need to replace what should be standard equipment, or problems with contractors

⁸ In the Reinholdt case, the company asserts that the terminal that serves the residence was subject to flooding in 2015; the company stated it could not make the necessary repairs to restore service until flooding subsided. CenturyLink stated it solved the problem by raising the terminal above the ground and has plans to move it to even higher ground. While flooding may have been a condition that prevented the company from making a repair to restore service in the 2015 outage, the record does not support a finding that abnormal conditions were present in the two outages that occurred in 2014.

identified by CenturyLink as cause for the delays in restoring service amounted to abnormal conditions of operation which would have excused CenturyLink's failure to comply with Board rule 22.6(3)(a).

OCA alleges that CenturyLink violated rule 22.5(2)(a) in File No. C-2015-0064 by not having adequate personnel available to respond to the out-of-service condition reported by the customer. OCA contends that there was only one service technician available to serve the Atlantic wire center at the time of the outage. CenturyLink disputes that assertion, explaining that backup technicians from other areas were available. The Board finds that the record is not sufficiently developed on this issue to make a finding that CenturyLink failed to comply with rule 22.5(2)(a).

Having found that CenturyLink violated rule 22.6(3)(a) in eleven of the complaint files, the Board will next address the appropriate response to those violations. The Board does not believe that putting CenturyLink on notice of potential civil penalties, pursuant to Iowa Code § 476.51, for future violations of Board rule 22.6(3)(a) would be the most effective means of ensuring that CenturyLink meets its obligation under Iowa Code § 476.3(1) to provide reasonably adequate service. Instead, the Board concludes that the response to these violations that would better serve customers who rely on CenturyLink's landline telephone service would be to require CenturyLink to provide assurance about what it will do to prevent the type of service problems identified in these cases and, with respect to situations where a customer loses dial tone completely, what it intends to do to assist its customers until service is restored. The Board will require CenturyLink to provide a response in

which it commits to providing better customer service and more reliable service throughout its Iowa service territory.

With respect to the types of chronic service problems identified in these cases, including buzzing or static on the line or crossed lines, CenturyLink should address what steps it can take to improve service in areas known to have such chronic service problems.

With respect to outages, the Board expects CenturyLink to explain how it will improve its response to outages that do occur. A particular concern is how CenturyLink will respond to outages affecting customers with medical conditions who depend on landline telephone service.

CenturyLink has described the “halo effect” associated with the company’s decision to accept CAF II funding to deploy broadband in Iowa. The Board anticipates that this deployment will benefit many of CenturyLink’s customers in Iowa. However, based on the maps CenturyLink submitted showing the areas surrounding the build-out areas that will benefit by the CAF II infrastructure improvements, it appears that many of the complainants in these proceedings do not live in an area targeted for CAF II projects or in a surrounding halo area. In responding to this order, CenturyLink should address how it plans to improve infrastructure and staffing levels that will serve areas in Iowa that are not targeted for improvements under CAF II.

Later in this order, the Board will discuss the commitments CenturyLink made in its waiver request. One of those commitments was to provide the customer of record for primary service that is out-of-service with free remote call forwarding for

the duration of the outage. CenturyLink also stated that if the Board decides there are situations where customers should get a cell phone in the event of an extended outage, the Board should require only that the company reimburse the customer for basic cell phone service if the customer decides to get a cell phone. (CenturyLink Reply Brief, pp. 12-13.) The Board agrees with CenturyLink that one option would be reimbursing customers who request to have basic wireless service provided during an outage that is expected to last 72 hours or longer, rather than requiring CenturyLink to actually provide the service. There may be other options that CenturyLink could offer customers in this situation. CenturyLink will be required to file a list of options it will offer customers and the length of the outages that will trigger each option.

In its response, CenturyLink should address how it will inform customers of their options and how it will reimburse customers who choose a particular option. If CenturyLink has alternative solutions to propose for customers experiencing extended outages, other than reimbursing customers for basic wireless service, those should be included in the response.

The Board acknowledges that reimbursing customers for basic wireless service will not necessarily mitigate the effect of an outage for a customer who lives in an area with poor cell phone coverage. To the extent CenturyLink has alternatives to propose for these customers, they should be included in the response.

CenturyLink shall file in this docket a response addressing the issues discussed above within 90 days of the date of this order. The Board will allow OCA and Mr. Arndt an opportunity to reply to the response, if they so choose.

Finally, CenturyLink suggested that if the Board found that the company violated the Board's service quality rules, the Board should require bi-annual meetings between CenturyLink and the Board to review repair clearance rates and to give the company an opportunity to explain factors affecting the results. As this time, the Board will schedule one meeting following CenturyLink's submission of its response to this order. The Board will determine after the initial meeting if further meetings would be beneficial.

B. Docket No. WRU-2015-0034-0272

CenturyLink requests a waiver of Board rule 22.6(3)(a)(1) – (3) for the estimated six years of the company's build-out under the FCC's CAF II program. CenturyLink contends it has met the burden of persuasion under Board rule 1.3 and also that the waiver is justified under Board rule 22.1(2). CenturyLink states that a change to rule 22.6(3) proposed by the Board in Docket No. RMU-2015-0002

to some extent lessens CenturyLink's need for a waiver because it provides CenturyLink with some flexibility to address the contractor shortage . . . so long as the Board takes into account such factors as contractor availability and weather in evaluating whether CenturyLink made "all reasonable efforts" to achieve the repair intervals in the new rule.

(CenturyLink Initial Brief, p. 22.) The proposed revision to rule 22.6(3) to which CenturyLink refers was included in the Board's "Order Seeking Additional Comments," issued January 29, 2016, in Docket No. RMU-2015-0002.⁹

Because no final action has been taken on any proposal to change Board rule 22.6(3)(a) and because the company has not withdrawn its request for a waiver, the Board will address the request. The rule remains in effect as it was when CenturyLink requested the waiver.

In order to grant a waiver request the Board must find, based upon clear and convincing evidence, that the request meets the four criteria in 199 IAC 1.3. The criteria are: 1) the application of the rule would cause undue hardship, 2) the waiver would not prejudice the substantial legal rights of any person, 3) the provisions of the rule are not specifically mandated by statute, and 4) substantially equal protection of public health, safety, and welfare will be afforded by a means other than prescribed

⁹ That proposal would amend rule 22.6(3)(a) as follows:

22.6(3) Service interruption.

a. Each telephone utility using its facilities to provide primary voice service shall keep records on repair intervals for out-of-service trouble reports. make all reasonable efforts to prevent interruptions of service. Such reports shall be maintained by the utility for two years. When interruptions are reported or found by the utility to in service occur, ~~the utility shall reestablish service with the shortest possible delay. P~~ service restoration priority shall be given to a residential customer who states that telephone service is essential due to an existing medical emergency of the customer, a member of the customer's family, or any permanent resident of at the premises where service is rendered. All reasonable efforts shall be measured by made to achieve the following repair intervals:

- (1) Eighty-five percent of all out-of-service trouble reports cleared within 24 hours. ~~Compliance will be as~~ measured based on a three-month rolling average.
- (2) Ninety-five percent of all out-of-service trouble reports cleared within 48 hours. ~~Compliance will be as~~ measured based on a three-month rolling average.
- (3) ~~One hundred Ninety-nine~~ percent of all out-of-service trouble reports cleared within 72 hours as measured on a three-month rolling average.

by the rule. Based upon the information provided by CenturyLink, the Board finds that waiver of the rule, subject to certain conditions specified below, should be granted.

CenturyLink testified that it was not able to hire as many contractors as it planned in 2015, despite significant effort. The Board finds that CenturyLink has sufficiently demonstrated that having to meet both CAF II deployment obligations and maintain existing infrastructure, while facing a limited supply of contractors, would create an undue hardship if the out-of-service clearance rates continue to apply. This finding also supports a conclusion that CenturyLink's waiver is warranted under Board rule 22.1(2).

With respect to the second factor in rule 1.3, the Board concludes that CenturyLink has demonstrated that granting the waiver will not prejudice the substantial legal rights of any persons. The complaints in this proceeding have demonstrated that customers continue to rely on landline telephone service with its associated protections of health, safety, and welfare. CenturyLink has an obligation under Iowa Code § 476.3(1) to provide reasonably adequate service to its customers. To the extent that § 476.3(1) creates substantial legal rights for those customers, CenturyLink has provided sufficient evidence to demonstrate that the infrastructure improvements that will be necessary for CAF II deployment should enhance, not impair, the company's ability to provide reliable service to its customers.

The Board agrees with CenturyLink that the specific repair intervals in rule 22.6(3)(a) are not mandated by statute or another provision of law. The intervals

were adopted by the Board as one measure of whether a company is providing reasonably adequate service but are not themselves required by Iowa Code § 476.3(1). Other means of evaluating whether the company is providing reasonably adequate service remain in place. As one example, the company acknowledges it has a strong incentive to restore service after an outage because of competition from other providers.

Finally, the Board concludes that CenturyLink has demonstrated that substantially equal protection of public health, safety, and welfare will be afforded by means other than continued application of rule 22.6(3)(a). CenturyLink's commitments, discussed below, and additional commitments the Board will impose as conditions of granting the waiver will achieve substantially equal protection of public health, safety, and welfare.

The Board will grant CenturyLink's request for a waiver of Board rule 22.6(3)(a) subject to the following limitations and conditions:

1. The waiver will be effective for one year after the issuance of this order, not for the full six-year CAF II build-out period requested by CenturyLink. Limiting the waiver to a one-year period will give the Board, CenturyLink, OCA, and others the opportunity to assess the effect of the waiver on the quality of service CenturyLink provides to its customers.
2. At the end of the one-year period, CenturyLink may file for an extension of the waiver.

3. CenturyLink pledges that it will continue to provide repair service, to work directly with Board staff in response to customer complaints, and to keep Board staff apprised of the company's efforts to resolve complaints. The company also pledges to strive to keep less than one percent of landline customers from being affected by an outage. The waiver will be granted subject to these commitments.

4. CenturyLink offers to provide free remote call forwarding to the customer of record while primary service is out-of-service. From the record in this case, it appears that CenturyLink is already offering this option in response to outages. The Board adopts this as a condition to granting the waiver. The Board will also require as a condition of the waiver that CenturyLink commit to providing its customers with alternative service during outages that exceed 72 hours in the form of a reimbursement for basic cell phone service purchased by the customer, as discussed above in this order.

5. CenturyLink commits that the rate of customer trouble reports on the company side of the demarcation point will not exceed a statewide average of 2.5 per 100 access lines per month. The Board will adopt this as a condition of granting the waiver and will require CenturyLink to file quarterly reports throughout the waiver period demonstrating its results under this standard.

6. CenturyLink agrees to mark and prioritize the repair of out-of-service trouble reports involving primary service lines where the customer reporting the outage explains that telephone service is essential due to an existing medical condition of the customer, a member of the customer's family, or any permanent resident of the

premises. This requirement is found in rule 22.6(3)(a) and thus is not waived. The Board observes that CenturyLink witness Glover testified at hearing that the company does not challenge a customer's assertion of a medical necessity for service. (Tr. 255, ll. 20 – 25 – Tr. 256, ll. 1-10.) The waiver is subject to CenturyLink continuing that practice.

7. CenturyLink commits to providing the Board with annual reports regarding the status of its CAF II build-out efforts as required by 47 C.F.R. § 54.313. The Board adopts this commitment as a condition of granting the waiver.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. As discussed in the body of this order, the Board finds that Qwest Corporation d/b/a CenturyLink QC violated the Board's rule at 199 IAC 22.6(3)(a) in File Nos. C-2015-0064, File No. C-2015-0082, File No. C-2015-0143, File No. C-2015-0127, File No. C-2015-0120, File No. C-2015-0101, File No. C-2015-0118, File No. C-2015-0110, File No. C-2015-0114, File No. C-2015-0109, and File No. C-2015-0136.

2. Within 90 days of the date of this order, Qwest Corporation d/b/a CenturyLink QC shall file a response to this order providing the information discussed in the body of this order.

3. The Office of Consumer Advocate and Mr. Michael Arndt may file a reply to CenturyLink's response within 30 days of the date of the response.

4. The Board will schedule a meeting with CenturyLink and other interested parties to review CenturyLink's response and CenturyLink's trouble report clearance rates. The meeting will be scheduled within approximately 30 days of receiving any replies to CenturyLink's response.

5. The request for a waiver filed by Qwest Corporation d/b/a CenturyLink QC filed on October 23, 2015, identified as Docket No. WRU-2015-0035-0272, is granted for a one-year period subject to the conditions specified in the body of this order.

6. Beginning on January 1, 2017, CenturyLink shall file quarterly reports in Docket No. WRU-2015-0035-0272 demonstrating compliance with its commitment that the rate of customer trouble reports on the company side of the demarcation point will not exceed a statewide average of 2.5 per 100 access lines per month. This reporting requirement shall be in effect throughout the one-year period of the waiver.

UTILITIES BOARD

/s/ Geri D. Huser

/s/ Elizabeth S. Jacobs

ATTEST:

/s/ Trisha M. Quijano
Executive Secretary, Designee

/s/ Nick Wagner

Dated at Des Moines, Iowa, this 12th day of October 2016.