

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: DEREGULATION OF LOCAL EXCHANGE SERVICES	DOCKET NO. INU-2016-0001
---	--------------------------

ORDER DEREGULATING RETAIL LOCAL EXCHANGE SERVICE QUALITY

(Issued August 9, 2017)

SUMMARY¹

In this order, the Board deregulates retail local exchange service quality in Iowa, including nearly all customer service requirements, specific service quality standards, and provisions relating to discontinuation of service. This action is based upon the widespread availability of effective competition for retail local exchange communications services and is taken pursuant to Iowa Code § 476.1D. The Board finds that certain regulations involve essential communications services that meet the test for continued service regulation despite a finding of effective competition, including assessments for the Dual Party Relay Services fund and for Board expenses, and hearing and resolving customer complaints. The Board further finds that certain statutory provisions are unaffected by deregulation, including 911 services, regulation of alternative operator services, unauthorized changes in service, and utility crossings of railroad right-of-way. The Ordering Clauses at the end of this order contain a list of the Board's rules that will no longer be enforced after deregulation.

¹ This summary is provided for the convenience of the reader. It is not the decision of the Board and in no way limits or alters the Board's findings, orders, and other actions set forth in this order.

TABLE OF CONTENTS

INTRODUCTION	3
LEGAL STANDARDS.....	3
ANALYSIS	5
A. Does deregulation pursuant to § 476.1D affect other statutory provisions? ...	5
B. Is there sufficient competition for local exchange services to require service deregulation?	7
C. If deregulation is required, are there some areas that should continue to be regulated?	24
1. Dual Party Relay Service (DPRS)	24
2. 911 Services	26
3. Slamming and Cramming.....	27
4. Customer Complaints.....	29
5. FCC-Delegated Duties	34
6. Railroad Right-Of-Way Crossings	36
7. Alternative Operator Services (AOS)	37
8. Certificates of Public Convenience and Necessity (CPCNs)	38
9. “Carrier of Last Resort”/Obligation to Serve (COLR).....	41
10. Registration.....	44
11. Board Expenses Associated With Remaining Authority	45
CONCLUSION	48
ORDERING CLAUSES	50

INTRODUCTION

On January 4, 2017, the Utilities Board (Board) issued an “Order Initiating Notice and Comment Proceeding” in this docket to consider whether the quality of retail local exchange telecommunications service provided to business and residential customers throughout Iowa is subject to effective competition and should be deregulated. The order was issued pursuant to the authority of Iowa Code § 476.1D and 199 IAC ch. 5. The order established a procedural schedule and identified a number of specific issues for consideration.

On January 9, 2017, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, entered an appearance in the docket and requested a revised procedural schedule to allow OCA time to conduct discovery. On January 18, 2017, the Board issued an order modifying the procedural schedule and tentatively outlining the issues as they appeared at that time.

On February 17, 2017, Qwest Corporation d/b/a CenturyLink QC (CenturyLink), Iowa Communications Alliance (ICA), and OCA filed initial statements of position. On March 30, 2017, NCIC Inmate Telephone Services and Telespan Communications, Inc., filed a joint statement of position. CenturyLink, ICA, and OCA filed reply comments on April 21, 2017. An oral presentation was held on May 23, 2017, and briefs were filed on June 15, 2017.

LEGAL STANDARDS

Iowa Code § 476.1D(1) provides that:

Except as provided in this section, the jurisdiction of the board as to the regulation of communications services is not

applicable to a service or facility that is provided or is proposed to be provided by a telephone utility that is or becomes subject to effective competition, as determined by the board.

Thus, if the Board determines a telephone service or facility is subject to effective competition, the Board's jurisdiction to regulate that service or facility no longer applies (subject to certain exceptions discussed below). Accordingly, if the Board fully deregulates a service or facility, many of the provisions of Iowa Code chapter 476 will no longer apply to that service or facility.

The Board has adopted rules to aid it in determining whether a service is subject to effective competition and must therefore be deregulated. See 199 IAC ch. 5. These rules include a non-exclusive list of criteria the Board may consider in making that determination:

- a. The ability or inability of a single provider to control prices;
- b. The ease with which other providers may enter the market;
- c. The likelihood that others will enter the market;
- d. The substitutability of one service or facility for another; and
- e. Other relevant considerations.

199 IAC 5.6(1). Further, rule 5.6(2) provides a list of criteria the Board may consider when deciding whether to retain service regulation:

- a. The relative universality of customer use of the service or facility;
- b. The degree to which the service or facility is necessary to access the telecommunications network;

- c. The extent to which the public, subsets of the public, or individuals rely on the service or facility;
- d. The potential for harm and its relative impact in the event of inadequate service quality;
- e. Any economic incentives which might discourage reasonable service quality;
- f. The existence of subcategories of services or facilities where the competition is insufficient to ensure reasonable service quality; and
- g. Other relevant considerations.

ANALYSIS

A. Does deregulation pursuant to § 476.1D affect other statutory provisions?

Two commenters, ICA and OCA, assert that many statutory provisions in chapter 476 would continue to apply to telephone utilities after deregulation pursuant to § 476.1D. (ICA Initial at 14, OCA Initial at 18.) For example, both argue that the certification requirements of § 476.29 would continue to apply until the statute is changed. Both argue that the railroad right-of-way crossing provisions would continue to apply, and OCA says that the Board would “continue [to] exercise jurisdiction over railroad crossing disputes involving telecommunications companies....” (ICA Initial at 14, OCA Initial at 20.)

Board Discussion

There are two provisions in chapter 476 that expressly state that they survive deregulation under § 476.1D. First, with respect to alternative operator services

(AOS) companies, § 476.91(2) provides that regulation of AOS companies will continue notwithstanding any deregulation. Second, with respect to slamming and cramming complaints, § 476.103(1) provides, “Notwithstanding the deregulation of a communications service or facility under section 476.1D, the board may adopt rules to protect consumers from unauthorized changes in telecommunications service. Such rules shall not impose undue restrictions upon competition in telecommunications markets.” Thus, deregulation of the service quality of local exchange service will not affect the Board’s jurisdiction over slamming and cramming complaints.

The existence of two statutes that include express exemptions from any deregulation under § 476.1D indicates that at least some other statutes may be affected by deregulation; otherwise, the exemptions would be unnecessary. When interpreting a statute, it should not be interpreted in a manner that renders some of the language mere surplusage. *Star Equipment, Ltd. v. Iowa Dept. of Trans.*, 843 N.W.2d 446, 455 (Iowa 2014). Here, the Board concludes that deregulation can affect the application of statutes in chapter 476 that regulate communications services or facilities that have become subject to effective competition.

This does not mean that deregulation automatically makes all of chapter 476 inapplicable to the deregulated services or facilities. As described above, some statutes have express language to preserve those provisions in the event of deregulation. Further, Iowa Code § 476.1D(5) allows the Board to continue service regulation if a service or facility is an essential communications service or facility and the public interest warrants retention of service regulation. Thus, if the Board decides

to deregulate the service quality of local exchange service, but the Board nonetheless concludes it should retain its statutory jurisdiction with respect to any particular services or facilities because they involve essential services and the public interest will be served thereby, the Board can expressly reserve that jurisdiction.

B. Is there sufficient competition for local exchange services to require service deregulation?

CenturyLink Initial Comments, pp. 1-8, Brief pp. 3-14

CenturyLink asserts that competition from mobile wireless, cable telephone, Voice over Internet Protocol (VoIP), fixed wireless, and other wireline providers is significant in Iowa. The majority of Iowans have multiple communications providers from which to choose. Although there may be small areas where limited choices are available, the pricing structures and service delivery methodologies are consistent across the state. CenturyLink says it is impractical to develop a pricing or service delivery model targeted to narrow and dissimilar pieces of geography, so the presence of competition in most of the state will provide adequate incentive to provide good, competitive service in all parts of the state.

CenturyLink says that at the state level, publicly available data demonstrate that Iowans have many communication alternatives. The Federal Communications Commission's (FCC's) then-most-recent report addressing voice subscriptions² (the FCC Report) shows that at the end of 2015, 73 percent of voice subscriptions in Iowa

² *Voice Telephone Services: Status as of December 31, 2015*. Wireline Competition Bureau, Industry Analysis and Technology Division, released Nov. 2016.

were wireless.³ This compares to 27 percent of voice subscriptions that rely on a wireline based service provider. (Br. 5.)

In addition, CenturyLink points out that in the latest release of the Wireless Substitution Report from the Centers for Disease Control and Prevention (CDC),⁴ the state level estimates for 2015 show that 54.5 percent of Iowa households were wireless-only in 2015, 6.9 percent higher than the 2013 estimate. The study further showed that an additional 15.3 percent of households were described as wireless-mostly, and that only 4.6 percent had wireline-only telephone status.

CenturyLink offers a chart at page 3 of its initial comments illustrating the changes to the level of competition since the Board's 2008 finding which deregulated rates. The chart shows that incumbent local exchange carrier (ILEC) line counts have declined by 40 percent while wireless and non-ILEC voice subscriptions have grown.

CenturyLink states that these national or regional trends are similar for its service areas in Iowa. CenturyLink's total access lines (residential plus business) have declined 56 percent since 2008. CenturyLink says the data demonstrate that competition for voice communication service in Iowa is effective and ubiquitous.

CenturyLink filed exhibits with its initial response intended to show the services available in each of its Iowa wire centers by type of provider: mobile

³ A new report showing 2016 information has been issued, but the data are "materially the same." (Tr. 101-02.)

⁴ This report is published by the National Center for Health Statistics within the Centers for Disease Control and Prevention.

wireless, satellite, fixed wireless, and wireline (Exhibits 4, 5, and 6). Exhibit 7 is a summary of all providers in each wire center.

ICA Initial Comments pp. 3-14, Brief pp. 4-8

ICA says the Board should now act to deregulate the remaining retail local exchange telecommunications services in order to establish regulatory parity between traditional ILECs and competitive local exchange carriers (CLECs) and their IP-based competitors.

ICA says that Iowa consumers enjoy a wide and growing range of choices for voice and broadband services in all of Iowa. The public switched telephone network (PSTN) is no longer a monopoly platform for the delivery of voice communication service. As of the end of 2015, as shown by the FCC Report, the PSTN serves only 19 percent of the traditional time-division multiplexing (TDM) voice communication service connections in Iowa.⁵ Iowans may now choose service from ILECs, CLECs, wireless carriers, VoIP providers, cable companies, and others. The FCC Report also shows there were 54 mobile, 185 local exchange carrier (LEC), and 132 VoIP providers of voice communication service in Iowa.

ICA points to the FCC Voice Telephone Services Reports from 2013 to 2015 which show that nationally, interconnected VoIP subscriptions increased 12 percent, mobile voice increased 3 percent, and LEC voice lines declined 12 percent per year. ICA also cites the CDC report referenced by CenturyLink, stating that report also affirms there is robust competition in Iowa for voice communication service.

⁵ *Voice Telephone Services*, Supplemental Table 1, Voice Subscriptions by State; data as of 12/31/15, released Nov. 2016.

ICA argues the Board no longer needs to maintain retail service regulation for those customers who may not have access to multiple service providers. ICA says that carriers generally do not price their services on a customer-specific basis but rather on a broad geographic area. Thus, those customers will benefit from the carrier's pricing levels which are established on the existence of competition elsewhere in their service territory.

According to ICA, the only force causing local exchange rate increases is the FCC's new rate floor, pursuant to which eligible telecommunications carriers (ETCs) are required to maintain minimum voice rates or lose high cost support.

OCA Initial Comments, pp. 2-18, Brief pp. 5-17

OCA says that local exchange service is an essential communications service and the public interest warrants retention of service quality regulation. According to OCA, market forces are not sufficient to ensure reliable voice communication service in all parts of the state.

OCA says that the use of broadband and wireless communications services does not provide adequate incentives for all competitors to provide reasonable service quality in all parts of the state. To determine whether there are areas within Iowa where individual customers do not have access to service providers other than their local landline provider, OCA suggests that the Board conduct a study similar to the one it conducted in Docket No. NOI-07-03 to assemble more detailed data regarding the geographic availability of competitive choice. Alternatively, OCA says, it may be sufficient to study only particular areas that are known to be problematic, such as those with high repeat trouble report rates.

OCA maintains that wireless service cannot currently be considered an economic substitute for wireline service. (Br. 11-16.) Those that have not “cut the cord” have not found wireless service to provide a reasonably comparable substitute for wireline service, according to OCA. The reliability and quality of wireless service also differs significantly from that of wireline service.

OCA contends that VoIP service provided by cable companies is not a viable economic alternative to landline voice communication service for those who do not wish to purchase a “triple play” of voice, Internet access, and video services. (Br. 8-11.) VoIP also does not provide the reliability of copper-based voice communication service during prolonged power outages.

OCA says that reliable broadband and wireless services are not available in all parts of the state. Complaints establish that wireless reception is non-existent or spotty in parts of the state. The broadband map on the website linked in the Board order initiating this docket shows broadband availability but at very low speeds. Although these low speeds can support voice communication service (Tr. 90-91),⁶ broadband providers must supply Internet access at speeds customers actually seek in order to attract them to subscribe to VoIP services. Further, these types of broadband maps have limitations and may show availability more broadly than actually exist – there may be only a small number of residents who can actually subscribe within a given area.

⁶ Transcript of hearing held May 23, 2017, at pages 90-91, hereinafter referred to as “Tr. [page number(s)].”

According to OCA, there are two primary reasons why market forces do not consistently secure reliable voice communication service of adequate quality. The first is “cherry-picking” and the related failure of companies to adequately maintain infrastructure and to adequately staff technicians to clear outages in unprofitable areas. As recently observed by the Board in formal complaint proceedings, there are areas of the state that suffer from chronically poor service. As further evidenced by OCA witness Parker’s testimony that describes CenturyLink’s service quality deterioration over time, existing market forces did not prevent this deterioration. Ms. Parker also addresses similar complaints and difficulties with Windstream Iowa Communications, LLC (Windstream). Further, the reliability of the 911 network is dependent upon the reliability of the voice communication service network.

OCA submits that market forces will not bring cable companies to less profitable areas. For example, Mediacom Communications Corp.’s (Mediacom’s) founder, chairman, and CEO was quoted in the media as saying his company is not responsible for improving rural access and cannot financially justify expanding service to the most sparsely populated areas.

The second reason offered by OCA for the lack of sufficient market forces to ensure service quality is the new complexity and vulnerability presented by the multitude of providers and technologies, as illustrated by the recent intraLATA call completion failures, particularly in rural destinations. OCA contends these failures threaten the public safety and health, and the economic well-being, of rural communities. Companies involved in these cases took corrective action not because of competitive pressures but because of regulatory intervention, according to OCA.

OCA points out that the FCC has also noted concerns over the reliability of VoIP networks caused by software malfunctions, database failures, and errors in conversion from legacy to IP-based network protocols. OCA believes that the public safety, health, and well-being depend upon continued action by the Board.

CenturyLink Reply, pp. 2-13

Contrary to OCA's position and based on data provided by CenturyLink and the ICA, CenturyLink says the Board should find that no method of providing voice communication service can be singled out as an essential communication service or facility under Iowa Code § 476.1D and that disparate service quality regulation of ILECs should cease. This is especially true given that ILECs now have only a minority market share.

OCA witness Baldwin questioned the use of broadband availability for predicting voice communication service availability and also whether the mere presence of a competitor determined at the census block level indicates the capacity to serve all locations within the census block. CenturyLink notes that the FCC consistently relies on underlying broadband availability data as a reliable predictor of availability of voice communication service where broadband service of at least 3 Mbps/768 Kbps is available. Further, CenturyLink states it is very unlikely that a provider who provides service to a census block is not able or willing to serve all locations in that census block.

CenturyLink argues that the high percentage of Iowans who had chosen to receive their voice communication service solely over mobile wireless (over 54 percent) answers the arguments about substitutability between wireless and wireline,

and also addresses OCA's concerns about a potential duopoly in wireline voice provision (between a LEC and a cable provider). Further, any claims about the lack of substitutability of other wireline or wireless voice communication service since they are mostly bundled with other services are not persuasive. CenturyLink's own experience shows the rate of loss of standalone voice customers continues to exceed both that of CenturyLink's total customer base and the portion of that base that purchases bundles of services.

According to CenturyLink, there is no evidence to support OCA's claim that wireless coverage is spotty or that it impacts a significant part of the state. Instead, CenturyLink's substantial loss of market share in every exchange it serves indicates wireless coverage is acceptable to a substantial majority of customers.

CenturyLink says OCA's assertion that fixed wireless and satellite providers of voice communication service should not qualify as competitive options should be rejected, as no evidence was presented demonstrating consumers find these services to be an unacceptable option.

CenturyLink contends that OCA's service quality evidence from the CenturyLink complaint case does not justify continued local exchange service regulation and that given the presence of effective competition, OCA must demonstrate that local exchange service is an essential communication service. CenturyLink asserts that OCA has failed to show that customers do not have alternatives to local exchange service and that OCA has failed to show that the service quality for local exchange service substitutes is inadequate, as the only evidence presented is for service provided by wireline carriers which only account for

about five percent of the market. Further, the evidence presented is not representative of the level of overall local exchange service quality.

CenturyLink maintains that the two reasons OCA presents to support why market forces will not secure reliable voice communication service – “cherry-picking” and complexities presented by the multitude of providers and technologies – are faulty. OCA’s claim that providers will not maintain infrastructure in unprofitable areas does not apply to wireless or satellite services where providers have a strong incentive to have extensive coverage to make their services more attractive. Also, the rural call completion docket referenced by OCA to support its second reason involved issues related to the completion of long distance calls and not the quality of local exchange service or substitutes for local exchange service.

CenturyLink concludes that incentives are adequate to meet the service quality needs of their customers, supported by the fact that over half of Iowans choose unregulated wireless service as their sole source of voice communication service and that 70 percent receive their voice communication service from someone other than the ILEC.

Regarding the Board’s questions as to whether there are known areas where individual customers do not have access to service providers other than their existing local landline provider, CenturyLink states that while there may be isolated instances where service is not available, these rare exceptions should not drive the Board’s decision. Previous Board orders did not require 100 percent availability. The Board can address situations where a customer does not have access to multiple providers through its complaint process on a case by case basis.

According to CenturyLink, OCA's claim that wireless, cable telephony, and interconnected VoIP are not economic substitutes for wireline service is refuted by the actions that lowans are taking of switching providers, which demonstrate that these services are substitutes for traditional wireline local exchange service.

ICA Reply Comments, pp. 1-2, 4-8

ICA concurs with CenturyLink's statement that competition from mobile wireless, cable telephony, VoIP, fixed wireless, and other wireline providers is even more robust in Iowa today, nine years after the Board's 2008 competitive findings in Docket No. INU-2008-0001.

Similar to CenturyLink, ICA disputes OCA's assertion that wireline local exchange service is an essential communication service. The traditional delivery of retail voice communication service is no longer deemed essential by consumers, and the Board should no longer regulate traditional wireline providers of local exchange service. If TDM copper network service continued to be defined as an essential service, then the Board would need to require all providers to maintain legacy networks in parallel with newer IP networks. ICA does not believe that to be in the public interest.

As evidenced by statistics shared in ICA's initial comments, most lowans do not rely solely on landline local exchange service for communication. There are many alternative voice providers available to almost all lowans; there is no monopoly bottleneck that formerly necessitated public interest regulation.

ICA asserts the public interest will continue to be protected by federal regulation and the Board's continuing authority over local interconnection and

competition. (The Board notes that, pursuant to Iowa Code § 476.1D(7), the Board retains its authority to re-impose regulation should effective competition later prove to be insufficient. Pursuant to 199 IAC 5.2(1)(d), any interested person may petition the Board to consider re-regulation, and the Board can initiate a proceeding for that purpose on its own motion pursuant to 199 IAC 5.3(1).)

ICA agrees with CenturyLink's view that the Board only needs to find effective competition under § 476.1D and not that every single resident has competitive options in every corner of the state. A geographic analysis of the availability and reliability of alternative services is not necessary.

ICA claims OCA's evidence of customer complaints against some providers merely means that there are different levels of competition in different areas. This creates opportunities for competitors to fill the service voids in such markets which in the long term show that competition works, supported by the data showing competition is increasing in Iowa.

The call completion complaints discussed by OCA are of particular concern to ICA members, as many of their customers fail to receive calls. However, these issues have been caused by interexchange carriers and their business partners, not local exchange carriers. Deregulation of retail services should not make this problem worse.

ICA maintains that market forces contradict any claim that wireless service cannot currently be considered an economic substitute for wireline service.

ICA believes OCA misses the point when it argues that the Iowa broadband map was designed to simply show broadband coverage and not competition among

providers. Broadband availability does show competition in an “over-the-top” (OTT) market.

OCA Reply, pp. 1-10

OCA contends neither CenturyLink nor ICA provides adequate information to generate a map that identifies those parts of the state where market forces are sufficient to ensure reliable, quality voice communication service. Further, OCA was unable to fill the gap with discovery responses received from several companies.

OCA claims that the record includes no market share information for the territories of local exchange carriers other than CenturyLink. The wire center figures provided by CenturyLink mask the absence of effective competition in smaller areas within a wire center.

OCA says that if market forces were sufficient to meet the needs and desires of consumers in all geographic areas, the federal government would not need to spend billions of dollars to bring broadband buildout to underserved areas.

OCA says that as observed by CenturyLink and corroborated by Windstream in a discovery response, CLECs commonly do not cover an entire exchange. CLECs often depend upon ILECs for the delivery of services and as a result, CLEC presence may not provide market discipline for ILEC service quality.

In response to an OCA data request, Mediacom did not deny that it cannot justify expanding to sparsely populated areas in the state. OCA says Mediacom did not provide sufficiently detailed information to show the scope of its presence in the state, and its pricing for stand-alone voice communication service is \$49.95 per month, which is more than double the comparable rates for CenturyLink,

Windstream, and others. This suggests that the companies' marketing objectives differ and that the products are not substitutes for each other. Regarding other cable providers in Iowa, one provides service in only three exchanges and another does not market a retail local exchange service in Iowa.

ICA's assertion that anyone with a broadband connection can receive OTT VoIP service does not demonstrate that mere availability makes OTT service a reasonable substitute, according to OCA. FCC figures show that in Iowa, only 11,000 of 587,000 VoIP and switched access lines are OTT VoIP lines. This small portion of consumer demand is compelling evidence that consumers have not found it to be an acceptable alternative, according to OCA. No one provider is responsible for the quality of the OTT service. Further, the OTT provider depends upon the broadband provider, so it will exert no competitive force on the broadband provider to upgrade poor infrastructure in unprofitable areas.

CenturyLink and ICA presented wireless carriers' coverage maps as evidence of ubiquitous wireless service coverage. OCA argues maps purporting to show that wireless service blankets the state do not explain the repeated consumer complaints that wireless reception is unavailable, poor, or spotty in some areas. OCA presents contract statements from four large wireless carriers in Iowa that include disclaimers about coverage areas shown on their coverage maps.

The FCC Mobility Fund directs almost five billion dollars over the next decade to improve the mobile network in rural areas. OCA asserts the size of this fund highlights the fact that gaps persist in rural wireless infrastructure.

Although CenturyLink and ICA claim consumers may choose a satellite provider, OCA maintains the quality and reliability of these providers is inferior to that of landline service. Weather conditions often interfere with signals. Also, FCC data show that only two percent of broadband Internet customers nationally have selected satellite-based Internet service and many may not use it for voice communication service. This indicates that consumers do not consider this to be a reasonably comparable substitute, according to OCA.

ICA argues that carriers price their services for a broad geographic area, not on a customer-specific basis and thus, customers benefit from pricing levels that are based upon the existence of competition elsewhere in the service territory. However, OCA asserts that service quality, unlike price, is not a constant over a broad geographic area. In areas that are more sparsely populated or are otherwise not economically desirable to serve, the company may be willing to lose the customer rather than to provide resources necessary to provide quality, reliable service.

According to OCA, the record in CenturyLink's recent complaints regarding extended service outages provide evidence that adequate service delivery methodologies and attributes were lacking in many parts of the state as shown by the number of repeat trouble reports.

OCA maintains that the service quality deficiencies which have occurred can only be explained by the reality that there are areas within the state where competition is not sufficient to secure good quality service. The solutions to problems in those areas, when they occur, have resulted from the Board's regulatory oversight and not from marketplace solutions.

Board Discussion

As the Board said in its order initiating these proceedings, a review of broadband availability in Iowa indicates that approximately 97 percent of households in Iowa can be served by some form of non-mobile broadband service that is sufficient to support OTT VoIP or voice communication service. In that respect, this docket is not like prior deregulation dockets. Detailed geographic analysis of the options in each exchange, or each part of each census block, will not change the fact that the vast majority of Iowans have a choice of local exchange service providers.⁷

Further, the evidence in this record shows that the majority of Iowans consider wireless service to be an adequate, and even preferable, alternative to landline local exchange service, as some 54 percent have cut the cord and have only wireless service, while only 4.6 percent are wireline only. (Tr. 50.) VoIP and other alternatives have also made significant inroads on ILEC market shares (Tr. 61); viewing the market statewide, there can be no question that local exchange voice communication service is generally subject to effective competition.

However, there are some areas where competition is not so robust. These areas are often rural locations, where widely-distributed customers tend to mean that potential revenues from serving the area are less likely to justify the cost of constructing (or maintaining) the necessary facilities. OCA expresses a concern that in that situation, the market may not provide the ILEC with adequate incentive to

⁷ In this respect, the Board disagrees with OCA's service-by-service analysis of the extent of competition. The relevant question involves the marketplace as a whole, with all of its variety and choice. Cable, wireless, and OTT VoIP should all be considered together. However, satellite service may be in a different category in terms of price and reliability, as discussed below, and the Board will not consider it as part of this analysis at this time.

maintain its facilities, it may not provide other wireline providers with adequate incentive to construct new facilities, and it is possible that wireless coverage in the area may also be inadequate.⁸ The Board understands that there are likely to be such areas in Iowa, but these isolated areas of lesser competition do not, by themselves, justify continuation of service quality regulation on a statewide basis. Even OCA acknowledges it is not necessary that 100 percent of customers must have competitive choice to justify deregulation (Tr. 108, 136, and 151), particularly if there are other ways to address the situation.

The concerns for these isolated rural areas appear to be two-fold. First, if the Board relinquishes its service quality jurisdiction, there is a concern that no carrier will extend service to a location that currently lacks service if the projected revenues do not offset the cost constructing the extended facilities. This concern appears to be misplaced, as deregulation of service quality will not significantly change the existing circumstances. During the time when LECs filed retail tariffs, many, if not most, LECs adopted tariff provisions that allowed the LEC to charge the prospective customer for at least some portion of the cost of extending facilities to an unserved location. This was permitted under former rule 199 IAC 22.23(6), which required each local exchange utility to develop and file a plan for extension of facilities in excess of those included in regular rates, for which the requesting customer would be required to pay all or part of the excess cost. Following de-tariffing and rescission of

⁸ Even in these areas, it is likely that satellite service will provide an alternative for most customers. However, the evidence in the record indicates that the degree to which satellite service is a satisfactory alternative may vary by customer, by location, and by price, so the Board does not rely on satellite service as a universally-available alternative that is, by itself, sufficient to justify deregulation of local exchange service quality.

that rule, those provisions can continue in the LECs' service catalogs; customers seeking wireline service at an unserved location may be required to pay at least part of the cost of constructing facilities to provide service at that location.

In a competitive marketplace, it is reasonable to expect that many competitors will be willing to extend their facilities to new customers on similar terms as they have in the past, as CenturyLink's witness testified. (Tr. 32.) Thus, the Board concludes that any deregulation of local exchange service quality will not significantly change the existing situation with respect to unserved locations.

Second, there is a concern that an ILEC with existing facilities to serve a remote location may not have the financial incentive to make sufficient investment in maintenance and improvement of the system, ultimately resulting in inadequate quality of service. OCA identifies the recent service outage complaints against CenturyLink and Windstream as examples of this problem. However, as CenturyLink points out, the Board may be able to address these situations through its complaint process; the Board will address that proposal later in this order.

In the end, the Board finds that for the vast majority of Iowans, local exchange voice wireline service is subject to effective competition and should be deregulated pursuant to Iowa Code § 476.1D. Customers have a choice of service providers, such that no single provider can control prices. Providers may enter (and exit) the market with relative ease, as demonstrated by the number of providers offering service in Iowa. While service offerings and prices may vary somewhat among the providers, in terms of overall voice communication service the offerings are viable substitutes for one another. Each of these criteria supports the finding of effective

competition that is sufficient to justify further deregulation. Rates have already been deregulated, so the Board will deregulate local exchange voice wireline service with respect to retail service quality. The next question is whether there are elements of that service that are essential communications services such that the public interest warrants retention of service quality regulation or if there are other considerations that require continued regulation in certain areas.

C. If deregulation is required, are there some areas that should continue to be regulated?

1. Dual Party Relay Service (DPRS)

DPRS is a communication service that provides communication-impaired persons with access to the system in a manner that is functionally equivalent to the access available to persons who are not communication-impaired. See Iowa Code ch. 477C. The Board asked commenters to address the following questions: If a provider of retail local exchange service is no longer required to submit an annual report, how should the Board assess for funding of DPRS? Would statutory amendments be required?

CenturyLink Initial, pp. 9-10; Reply, p. 14

CenturyLink suggests that pursuant to Iowa Code § 476.1D, the Board can reasonably conclude that the DPRS is an essential communications service and may continue to require the submission of annual reports for the collection of assessments.

ICA Initial, p. 16

ICA states that in the absence of information contained on an annual report, the current statute (Iowa Code § 477C.7) gives the Board the authority to gather the required information, perhaps via an online portal. The Board must ensure that assessments are equitable among carriers, regardless of technology.

OCA Initial, p. 21

OCA says that while deregulation may remove the obligation to file annual reports, the Board will need to collect the relevant information on an annual basis in order to collect the DPRS assessments pursuant to Iowa Code § 477C.7. OCA supports broadening the base of providers subject to the assessment on a technology-neutral basis, which would likely require statutory amendments.

Board Discussion

DPRS is required by Iowa Code ch. 477C and that requirement is not affected by deregulation pursuant to § 476.1D. Further, all parties agree that DPRS is an essential communications service and the public interest would be served by continuing some degree of regulatory involvement to administer, collect, and disburse the necessary assessments. Pursuant to chapter 477C, DPRS is currently funded by annual assessments on all telecommunications carriers in Iowa. Each wireless service provider pays three cents per month for each telephone number it serves in

Iowa. The remainder of the cost of the program is allocated one-half to LECs⁹ and one-half to a group consisting of interexchange carriers (IXCs), centralized equal access providers (CEAPs), and AOS companies. Those assessments are allocated proportionally based upon each company's revenues from all intrastate regulated, deregulated, and exempt telephone services, see § 477C.7. The Board calculates the individual assessments for wireline carriers based upon information provided in the annual reports filed pursuant to 199 IAC 23.3.

The Board finds that DPRS is an essential communications service and the public interest requires that it continue to be regulated to the extent necessary to provide funding as described above. In order to calculate the individual company assessments, the Board will continue to require the revenue information described above for each LEC, IXC, CEAP, and AOS company. At present, that information is collected through annual reports; the Board will continue that requirement while it investigates more efficient alternatives for collecting the necessary information, such as an online portal.

2. 911 Services

The Board asked commenters to address the following question: Would deregulation of retail local exchange service impact the assessment for 911 service or emergency services under Iowa Code chapters 34 and 34A?

⁹ It should be noted that the FCC's regulations require every carrier providing interstate communications services to contribute to the FCC's telecommunications relay service fund, specifically including interconnected and non-interconnected VoIP services providers. (See 47 C.F.R. § 64.604(c)(5)(iii)(A).) Similarly, every carrier providing intrastate communications services should contribute to DPRS funding.

CenturyLink Initial, p. 11; Reply, p. 15

CenturyLink states it is reasonable for the Board to conclude that 911 service and emergency services are essential communications services pursuant to Iowa Code § 476.1D(5). Thus, deregulation need not impact the assessment for such services.

ICA Initial, p. 18

ICA concludes that retail deregulation of local exchange carriers will not impact the authority of either the wireline or wireless 911 funds to continue to make assessments and distribute the funds.

OCA Initial, p. 21

OCA believes that the Board has no jurisdiction over 911 services and plays no role in assessments for those services. Those services may be subject to very limited jurisdiction of the Board in the instances where the underlying services are subject to non-discrimination requirements in Iowa Code §§ 476.100 and 476.101. Deregulation of local exchange service should have no effect on 911 or emergency services, except to the extent inadequate service facilities make it unavailable.

Board Discussion

All parties are agreed that 911 and emergency services will not be affected by deregulation of wireline voice local exchange service pursuant to Iowa Code § 476.1D. The Board agrees.

3. Slamming and Cramming

The Board asked commenters to address the following question: In a deregulated environment, should the Board preserve its jurisdiction over slamming

and cramming violations, particularly unauthorized charges that may appear on customer's telephone bills?

ICA Initial, p. 15; Reply, pp. 2-3

While ICA applauds the Board's success in cracking down on slamming and cramming, ICA believes that slamming and cramming violations are now uncommon. ICA argues that with the retail VoIP deregulation in the Chapter 22 rule making, the Board's slamming and cramming rules will not apply to VoIP providers. ICA maintains that the Board should relinquish jurisdiction over other slamming and cramming complaints in order to preserve competitive neutrality.

CenturyLink Initial, pp. 8 -9, Reply pp. 13-14

CenturyLink says that the Board should retain its jurisdiction over slamming and cramming complaints. CenturyLink contends that the Board's regulation in this area can be considered separate and distinct from the retail local exchange service that would be deregulated under Iowa Code § 476.1D.

In its reply comments, CenturyLink disagrees with ICA's claim that as a result of the Chapter 22 rule making, the Board's slamming and cramming rules will not apply to VoIP providers. CenturyLink argues that the Board's slamming and cramming rules apply to all providers and the Board should retain jurisdiction over slamming and cramming complaints.

OCA Initial, p. 19

OCA believes that the requirements of Iowa Code § 476.103 pertaining to slamming and cramming are mandatory, regardless of any deregulatory action the Board has taken in the past or might take in the future pursuant to Iowa Code

§ 476.1D. The OCA noted that the Legislature made that point by explicitly stating "Notwithstanding the deregulation of a communication service or facility under section 476.1D" Iowa Code § 476.103(1).

Board Discussion

As OCA points out, Iowa Code § 476.103 makes it clear that the Board's jurisdiction over slamming and cramming complaints against any person providing local exchange or long distance telephone service (other than commercial mobile radio service) is not affected by deregulation pursuant to Iowa Code § 476.1D.

4. Customer Complaints

The Board asked the commenters to address the following question: Should the Board retain authority to address customer complaints in a deregulated retail local exchange service environment?

ICA Initial, pp. 17-18; ICA Reply, p. 3

According to ICA, the Board's recent rule-making proceeding for Chapter 22 of the Board's rules formally eliminated the Board's authority to investigate customer complaints for local exchange service provided by means of VoIP. ICA suggests that the deregulation of retail communication service will preempt any Board authority to address customer complaints. ICA believes the competitive marketplace and federal regulations give service providers adequate incentive to treat consumers fairly and to resolve customer complaints without resorting to legal or regulatory process. ICA suggests that to be competitively neutral, this docket must also eliminate the Board authority to formally investigate consumer complaints for all types of local exchange service, regardless of technology. ICA also suggests the Board continue to receive

communications from consumers and assist in forwarding consumer complaints to providers, as public utility commissions in other deregulated states have done.

CenturyLink Initial, p. 10, Reply pp. 14-15

CenturyLink says that the Board plays an important role in resolving customer complaints, and it should continue to perform that function in a deregulated retail local exchange service environment. The ability of a customer to have complaints heard and addressed are enhanced by the ability of the Board staff to assist the customer in getting the customer complaint information to the provider and this process encourages providers to respond to customers in an effective and timely manner to retain the customer affected.

OCA Initial, p. 21; Reply, pp. 11-14

OCA contends that elimination of Board rules on service quality metrics will not remove the statutory obligation to provide reasonably adequate service, nor will it remove the statutory right of customers to file complaints about service quality as mandated by Iowa Code § 476.3. OCA disagrees with ICA's position that the marketplace and federal regulations will give providers adequate incentive to treat customers fairly and to resolve customer complaints without resorting to legal or regulatory measures. OCA argues that the complaints themselves validate the need for the complaint process.

OCA also disagrees with ICA's position that the Board can rely on the FCC in this area because federal law does not give the FCC full jurisdiction. It grants the FCC the authority to regulate interstate and foreign commerce in wire and radio communication, while denying the FCC jurisdiction over intrastate communication

service. OCA says the Board is closer to the Iowa complainants and has a more focused interest in ensuring solutions are found for Iowa and Iowans.

OCA disagrees with ICA's recommendation that to be competitively neutral, the Board must eliminate its own authority to investigate consumer complaints pertaining to all types of local exchange service. OCA states that the argument leads to the complete surrender of the Board's jurisdiction to regulate telecommunications services, which Iowa Code § 476.1D does not permit in the absence of a finding of effective competition. OCA argues that the record does not support a finding of effective competition in all parts of the state.

OCA believes the Board would continue to have authority to address complaints after deregulation. Iowa Code § 476.3 allows any person to file a written complaint with the Board; OCA argues that ICA does not address that statutory provision. ICA argues that the Board can continue to receive communications from consumers and could assist in forwarding complaints to providers, but according to OCA, ICA has not provided any support for this statement.

OCA provides testimony supporting its position that the Board should retain its authority to address customer complaints because the Board continues to receive customer complaints pertaining to service quality. OCA concludes that over the past two years some customers have experienced recurring service quality issues that sometimes take multiple repairs to resolve the issues. OCA believes if service quality is deregulated, companies may be unwilling to invest in areas that are not profitable to serve or lack a competitive provider.

Board Discussion

As discussed in the section on effective competition, above, OCA has expressed a concern that existing wireline service providers may not adequately maintain their facilities in areas that are uneconomic to serve, and new wireline service providers may be unlikely to build new facilities in those areas. This could leave some segment of the public at risk of receiving unreliable or otherwise inadequate service while having no viable wireline alternatives. To the extent that these uneconomic geographic areas also suffer from spotty or unreliable wireless coverage, and in the absence of satisfactory satellite service, the customers would be at risk of having no reliable service at all in a deregulated environment.

Reliable access to at least one communication service provider is an essential communication service; it is the basis of all other services. In this respect, the Board disagrees with CenturyLink's and ICA's argument that legacy local exchange service is no longer an essential communication service because there are competitive alternatives in many places. (ICA Br. at 6, CenturyLink Br. at 2.) The determination of whether a service is an essential communication service does not depend upon whether most customers have a choice; it depends upon whether the service is required by customers such that continued service regulation is appropriate to serve the public interest. A customer must have reliable access from at least one provider in order to use the system.

The public interest will best be served if the Board retains jurisdiction to hear and address customer complaints regarding the quality and availability of local exchange services. This does not mean that the Board must maintain all of its

existing service quality rules, which establish standards for measures like outage response times, service line extensions, and others, all enforced by the possibility of civil penalties. Instead, the Board can continue to hear and investigate customer complaints alleging inadequate service quality, considering the specific facts and circumstances of each such situation, with the goal of ensuring that either the customer has a choice of providers or that the only available service provider offers reliable access to service. Accordingly, the Board will retain rules relating to the processing of customer complaints, including but not limited to, rule 199 IAC 22.4(1)(b), which requires that customers must be informed, at least annually, of their option to file complaints with the Board.

This decision means that the Board will continue to receive and process complaints regarding service quality from wireline customers with the primary goal of ensuring each customer has access to at least one reliable service provider. This action will continue the current situation, in which wireline customer complaints are heard by the Board but complaints regarding wireless, satellite, broadband, and other services must be transferred to the Attorney General's office. Some might argue that consumers would be better served by having a single place to take their complaints regarding communication service, but chapter 476 does not provide the Board with that option; for example, the Board's jurisdiction to hear slamming complaints expressly excludes wireless service providers. See Iowa Code § 476.103(2)(f). In this respect, the Board can only maintain the jurisdiction it has.

5. FCC-Delegated Duties

The Board asked commenters to address the following question: How should the Board's duties that are delegated to the state by the Federal Communications Commission (FCC) be addressed? (Specifically including, but not limited to, the Board's designation of eligible telecommunications carriers, monitoring of Universal Service Fund (USF) spending, resolution of intercarrier disputes brought under Federal law, exchange boundary mapping, and monitoring of telephone numbering resources.)

ICA Initial pp. 3, 13-16; Reply p. 1

ICA states that the elimination of retail service regulation under § 476.1D does not revoke the Board's delegated authority under any federal statute, rule, or order. The Board should continue to designate ETCs for federal USF purposes and monitor their public interest obligations. ETCs have investment and public interest requirements associated with their Connect America Fund (CAF) support and the Board should continue to monitor these activities. The new CAF support and the associated network buildout requirements will allow for a more comprehensive rural telecommunications infrastructure with improved broadband, voice, and VoIP services. In addition, the Board should maintain its current role regarding carrier interconnection duties, LEC exchange boundary maps, and monitoring numbering resources.

CenturyLink Initial pp. 8-10; Reply p. 14

CenturyLink states that the Board should continue to perform the duties delegated to the state by the FCC. CenturyLink asserts that the Board has the

authority pursuant to Iowa Code § 476.1D to deregulate retail local exchange service and still continue to designate ETC status, monitor USF support, resolve intercarrier disputes brought under Federal law, map exchange boundaries, and monitor telephone numbering resources. CenturyLink contends that none of these duties should be regarded as the regulation of retail local exchange service. CenturyLink states that the Board has an important role in resolving disputes between telephone utilities and should continue to perform this function. CenturyLink restates this position in its reply comments and notes that all parties agree that the Board should continue to perform the duties delegated by the FCC.

OCA, Initial pp. 4 and 19; Reply pp. 4-5

OCA states that the Board should continue to carry out the responsibilities delegated by the FCC, to the benefit of Iowa's telecommunications consumers. OCA states that the NARUC Report¹⁰ indicates that federal law envisions collaboration between the FCC and the states and looks to the states to ensure that comparable service is available to all consumers regardless of location. States have specific expertise in many areas, particularly those requiring investigation and adjudication. OCA contends that the Board is in the best position to perform the duties delegated by the FCC. The Board has a continuing relationship with Iowa's telecommunications industry and stakeholders and is familiar with Iowa's telecommunications market, local geography and wire centers. The Board can investigate potential sources of difficulty and threats to consumers and provide timely solutions. OCA restates this

¹⁰ See National Association of Regulatory Utility Commissioners (NARUC), *Federalism Task Force: Cooperative Federalism and Telecom in the 21st Century* ("NARUC Report"), Nov. 2013.

position in its responsive testimony and notes that all parties agree that the Board should continue to perform the duties delegated by the FCC.

Board Discussion

It appears all parties agree that the Board should continue to perform the duties delegated to the Board by the FCC, as these are necessary to providing essential communication service and the public interest will be advanced by continued Board involvement. The Board agrees, and notes that this will include any new duties delegated to the states by the FCC in the future.

6. Railroad Right-Of-Way Crossings

The Board asked the commenters to address the following question: In a deregulated environment, will telecommunications companies still have the right to cross railroad right-of-way at reasonable rates pursuant to Iowa Code § 476.27?

ICA Initial p. 16; Reply p. 1

ICA says that regardless of the Board's action in this proceeding, telecommunications carriers will continue to be "public utilities" that furnish "communications" services defined in §§ 476.27 and 476.1 and will continue to have statutory rights to cross rail right-of-ways.

CenturyLink Initial p. 9; Reply p. 14

CenturyLink states the Board's authority under Iowa Code § 476.27 over railroad right-of-way is distinct from the regulation of retail local exchange service. The right of telecommunications companies to cross railroad right-of-way is a right related to the deployment of facilities. Under Iowa Code § 476.1D(1), the Board's jurisdiction encompasses service, facilities, or both. If the Board determines that

retail local exchange service is subject to effective competition, it should reaffirm that it is not making a determination more broadly applicable to the deployment of facilities used to provide telecommunications service generally or to the access to rights-of-way.

OCA Initial p. 20; Hibbert Reply p. 5

OCA states that regardless of any past or future action taken by the Board pursuant to Iowa Code § 476.1D, telecommunications providers will still meet the statutory definition of a public utility in Iowa Code 476.1. All parties agree that telecommunications companies still have the right to cross right-of-way at reasonable rates. The Board's jurisdiction over railroad right-of-way crossings is independent of the issue of deregulation since deregulation does not change the public utility status of telecommunications providers.

Board Discussion

All parties agree that deregulation of retail service quality will not affect the ability of telecommunications providers to make use of the railroad crossing provisions of § 476.27. The Board agrees.

7. Alternative Operator Services (AOS)

The Board asked the commenters to respond to the following question: How would deregulation of retail local exchange service impact AOS providers as defined in Iowa Code § 476.91?

CenturyLink Initial p. 11; Reply p. 15

CenturyLink states that a statutory obligation remains for the Board to continue jurisdiction over AOS. The specific code sections are Iowa Code §§ 476.91(2) and

(4). Section 476.91(2) provides that “notwithstanding any finding by the board that a service or facility is subject to competition and should be deregulated pursuant to section 476.1 [sic], all intrastate telecommunications services provided by alternative operator services companies ... are subject to the jurisdiction of the board and shall be rendered pursuant to tariffs approved by the board.” Section 476.91(4) makes similar provision for billing by local exchange utilities.

OCA Initial p. 22

OCA points to the same statute and concurs with CenturyLink that the Board continue its oversight. Legislative action would be required to change this requirement.

ICA Initial p. 20

ICA presented a chart of its interpretation of the Board's intent regarding AOS. The chart showed that requirements concerning AOS would continue.

Board Discussion

All parties agree that deregulation of retail service quality will not affect the jurisdiction of the Board with respect to alternative operator services pursuant to § 476.91. The Board agrees.

8. Certificates of Public Convenience and Necessity (CPCNs)

The Board asked the commenters to address the following question: Are the certification requirements of Iowa Code § 476.29(2) and the other provisions of § 476.29 required in a deregulated environment?

ICA Initial, pp. 14-15; Reply p. 4

ICA states that the Board's duty to review and grant applications for CPCNs will continue to be necessary as this is a statutory duty that would require legislation to change or repeal.

ICA states the CPCNs establish a telecommunications company's right to interconnection under the federal Telecommunications Act of 1996, form the foundation for filing exchange boundary maps, and are important to E911 service integrity, universal service funding, establishing a right to public right-of-way, numbering administration, and more.

ICA continues by saying Iowa Code § 476.29(3) provides that CPCNs are transferable, subject to Board approval, and the Board should act now to streamline the process making it consistent with the process used to transfer Domestic 214 interstate telecommunications authority by the FCC. ICA says that rules could be amended or merged, including timelines, to allow for streamlined approval for transfers that do not raise special public interest concerns.

CenturyLink Initial p.13; Reply p. 16

CenturyLink states the Board should require registrations in lieu of issuing CPCNs.

OCA Initial, p. 18

OCA states that it understands the certification requirements of Iowa Code § 476.29(2) and the related provisions of Iowa Code § 476.29 to be mandatory, regardless of any deregulatory action the Board has taken in the past or future

pursuant to Iowa Code § 476.1D, and any action to remove or alter these requirements would require legislation.

OCA says the relevant public policy addressed in Iowa Code § 476.29(2), the need for providers of telecommunications service to demonstrate technical, financial, and managerial competence, is applicable in any market, regardless of the state of competition.

Board Discussion

Initially, the Board notes that § 476.29 was automatically repealed effective July 1, 2017, pursuant to 92 Acts, ch. 1058, § 3, and 2007 Acts, ch. 4., § 2. Thus, the potential impact of deregulation on certificates of public convenience and necessity may appear to be moot. However, ICA makes a persuasive argument that some form of certificate is important, and even essential, to certain tasks required to offer local exchange communications services to the public and the public interest requires that they continue in some form. This does not necessarily mean that the full § 476.29 process for issuing CPCNs must be maintained in a deregulated environment. In a fully competitive marketplace, entry by new service providers should face a minimum of regulatory burdens; easy entry will promote innovation and change. (Tr. 96.) Accordingly, and in recognition of the value the industry attaches to certification, the Board will offer the industry the option to continue to use the historical CPCN process on a voluntary basis at this time, but will investigate and implement alternative processes that will fulfill the identified needs while reducing the regulatory burden on market entry.

9. “Carrier of Last Resort”/Obligation to Serve (COLR)

The Board asked the commenters to address the following question: Could a COLR obligation (or something similar) be implemented in an environment where retail local exchange service is deregulated?

OCA Initial p. 22; Reply pp. 14-15

OCA states that Iowa Code §§ 476.29(5) and (11) concerning COLR obligations are mandatory. OCA says Board staff agreed with the necessity of maintaining this requirement in its 2013 Staff Report.¹¹ There is also linkage between §§ 476.29 and 476.20 regarding the discontinuation of services.

In its reply comments, OCA says that while competition has changed some of the economic conditions for ILEC service, the wireline network was built with the guarantee of cost recovery from the ratepayer when monopolies existed. In addition, OCA states that the ILECs benefit from the unique access to rights-of-way throughout their territories. OCA also argues that changing conditions have not changed the fact that a discontinuance of service can have a negative impact on consumers. This is especially true given that the competitive options available vary widely between communities.

OCA states that no ILEC should be allowed to discontinue service until an evaluation is conducted that would include an assessment of remaining services and any impact on competition, price, reliability, and advanced service capabilities. No ILEC should be allowed to discontinue service unless the Board would decide that the discontinuance would be in the public interest.

¹¹ IUB Docket No. NOI-2013-0001.

CenturyLink Initial p. 12; Reply pp. 15-16

CenturyLink states that the need for a COLR is not present. There are options for customers. However, if there is to be a COLR obligation, it should be placed on ETCs under federal law, which receive federal financial assistance to promote universal service. These ETC carriers commit to offering service to all customers in a specified area in return for that funding and should be held to that commitment.

In its reply comments, CenturyLink states that it disagrees with OCA's interpretation of §§ 476.29(5) and 476.29(11). Since both involve a question of jurisdiction, a finding of effective competition would eliminate the Board's authority to impose a COLR obligation. The company reiterates its position that competitive alternatives to traditional local exchange exist and therefore no COLR obligation should be imposed.

CenturyLink also states that Iowa does not have a state universal service mechanism to assist the incumbent carrier in providing service in areas where the cost of providing the service exceeds the revenue that the company can recover from residential customers. The COLR obligation made more sense in the past when competition did not exist and the monopoly service provider could use revenues from low-cost customers in high-density areas to subsidize service to high-cost rural customers. Now, with competitors choosing to provide service only in the areas of low-cost customers, the ILECs do not have the ability to use those revenues to subsidize the high cost areas.

ICA Initial p. 18; Reply p. 3

ICA states that the Board's role concerning COLR should be eliminated. Customers have access to more than one voice carrier. COLR obligations extend from the federal USF/CAF program. The federal requirements under these programs negate any state COLR obligation. The Board will continue to have oversight and influence through the designation of ETCs.

In its reply comments ICA states that with the Board's decision to deregulate VoIP, it will be increasingly difficult to define the service areas in which service must be provided and that the Board should defer to the FCC requirements within the FCC framework.

Board Discussion

As previously noted, § 476.29 has been repealed, so to the extent the parties rely upon that statute as the source of a COLR requirement, that reliance is misplaced. Further, the Board has determined, based on the evidence in this record, that the vast majority of Iowa telecommunications customers are served in telecommunications markets with effective competition. A general COLR obligation that applied in those geographic areas would be inconsistent with that finding.

The Board has also recognized that some limited geographic areas may not offer adequate, reliable alternative service providers and is retaining jurisdiction over customer complaints to address specific situations as they may arise. This mechanism, combined with the federal obligations assumed by carriers that have applied for and received ETC status, will provide sufficient consumer protection and make a formal COLR obligation unnecessary.

10. Registration

The Board asked the commenters to address the following question: Should the Board continue to require all telecommunications carriers to file a registration with the Board pursuant to 199 IAC 22.23 in an environment where retail local exchange service is deregulated?

ICA Initial, p. 19; Reply p. 9

The Board's existing statutory authority to issue CPCNs under Iowa Code § 476.29 should be maintained. Therefore, no registration requirement is necessary under 199 IAC 22.23(3).

ICA understands that the "non-telecommunications providers" (e.g., mainly VoIP providers) have the option of filing for a registration or a CPCN, while telecommunication providers must file for and receive CPCNs. ICA requests a clarification on whether any providers would be required to register under the Board's revised rules.

CenturyLink Initial p.13; Reply p. 16

CenturyLink says all parties agree the Board should continue to require telecommunications carriers to file a registration with the Board. CenturyLink further states the Board should require registration in lieu of issuing CPCNs.

OCA Initial p. 23; Hibbert Reply p. 8

OCA states that the deregulation of local exchange service will not remove all the Board's jurisdiction over telecommunications service providers. Registration forms filed by telecommunications service providers ensure that the Board has current contact information on each company doing business in Iowa in the event a

complaint is filed or an assessment needs to be filed. All parties responses indicate that they believe the Board should continue to require all communications carriers to file some form of documentation with the Board, even in an environment where retail local exchange service is deregulated, as required by Iowa Code Section 476.29(1).

Board Discussion

The existing registration form, required pursuant to 199 IAC 22.23, is a short form primarily intended to ensure that the Board has current contact and business information for communications service providers. Contact information may be required in emergencies, to process customer complaints, to obtain input on current issues, or for other purposes. The Board finds that some mechanism for ensuring the agency has up-to-date information is essential to providing telecommunications services in Iowa, serves the public interest, and should continue despite deregulation of retail service quality. However, the issue is related to certification, annual reports, assessments, and other issues and the Board will therefore continue requiring registration, but only while it investigates and implements more streamlined and efficient alternative mechanisms.

11. Board Expenses Associated With Remaining Authority

The Board asked commenters to address the following question: If a provider of retail local exchange service is no longer required to submit an annual report, how should the Board assess its own expenses associated with its remaining regulatory duties?

CenturyLink Initial, p. 10

CenturyLink holds that the submission of annual reports is not a regulation of service. The Board can deregulate retail local exchange service while retaining certain reporting requirements.

ICA Initial, p. 17

ICA states that retail LEC deregulation will not impact the Board's ability to directly assess its costs to affected utilities. The ICA awaits the implementation of the Board's new billing system that should reduce the amount of expenses placed into the remainder assessment.

OCA Initial, p. 21

OCA explains that as discussed in DPRS funding, the base of providers subject to assessments for the Board's expenses should be broadened on a technology-neutral basis. This would likely require statutory amendments to §§ 477C.7 and 476.10.

Board Discussion

As seen above, while the Board is deregulating retail local exchange service quality, the Board will continue to perform certain regulatory duties relating to telecommunications service. This means that the agency will continue to incur expenses associated with the performance of those duties. Iowa Code § 476.10 provides for the recovery of those expenses using a three-tiered system.

Iowa Code § 476.10 sets out the Board's general authority to assess its (and OCA's) expenses to the utilities the Board regulates. It establishes a three-layered assessment mechanism. First, expenses that can be attributed to a particular entity

can be directly charged to that entity. See § 476.10(1)(a). Thus, the Board and OCA expenses associated with a specific case are often assessed to the utility (or utilities) involved.

Second, § 476.10(1)(b) establishes both an industry-specific assessment and a remainder assessment to recover all Board and OCA expenses that are not directly-assessed. Once the direct assessments and other reimbursements (like the federal natural gas pipeline safety inspection grant) are subtracted from the total expenses, the Board can then assess industry-specific expenses (for example, the expenses of a rule making that only affects electric utilities can be assessed to electric utilities only).

The remainder assessment is then used to recover all other Board and OCA expenses. The industry-specific assessment and the remainder assessment are generally allocated among the utilities based upon the gross operating revenues from intrastate operations during the last calendar year, as reported on the annual reports filed with the Board. Thus, bigger utilities with more reported revenue are assessed a bigger portion of the industry-specific and remainder assessments.

The language of Iowa Code § 476.10 does not provide for changing assessment methodologies as telecommunications services and facilities are deregulated pursuant to § 476.1D. Instead, it merely provides that directly-attributable expenses should be directly assessed and the amount remaining should be assessed “to all persons providing service over which the board has jurisdiction in proportion to the respective gross operating revenues of such persons from intrastate operations during the last calendar year over which the

board has jurisdiction.” Thus, even after deregulation the Board will still have some jurisdiction over landline voice communication service in Iowa, including (for example) slamming and cramming complaints and alternative operator service providers. Further, the Board will still have jurisdiction over inter-carrier disputes and issuance of certificates of public convenience and necessity or some equivalent form of registration. While this jurisdiction may not be as extensive as the jurisdiction the Board formerly exercised, it is still jurisdiction, and § 476.10 does not provide for any reduction in assessments based on deregulation.

It is clear that the parties want the Board to continue to perform certain regulatory duties as set forth above and it appears they generally prefer that the associated expenses be directly assessed to the cost-causer when possible. The Board agrees. However, it is likely that some expenses will remain to be recovered, so the industry-specific assessment and the general remainder assessment will continue to be necessary. Like the DPRS assessments discussed above, these remainder assessments require annual information regarding gross intrastate operating revenues, which has been reported by means of the annual report in 199 IAC 23. Accordingly, the Board will retain the annual report requirement at this time while it investigates a more efficient alternative.

CONCLUSION

The rates for retail local exchange communications services in Iowa have been deregulated for a number of years, but service quality regulation continued. With this order, the Board takes the next step and deregulates the service quality of

retail local exchange communications services, subject to certain exceptions. The Board finds that regulation relating to the following subjects has met the test in Iowa Code § 476.1D for continued regulation:

- a. Assessments for DPRS;
- b. Duties and authority delegated to the Board by the FCC;
- c. Telecommunications carrier registration requirements;
- d. Board assessments for expenses related to continuing regulatory activities; and
- e. Customer complaints regarding service quality or lack of service.

The Board further finds that the following statutory obligations are unaffected by deregulation pursuant to § 476.1D:

- a. 911 services, see Iowa Code ch. 34 and 34A;
- b. Slamming and cramming complaints, see § 476.103;
- c. Utility crossing of railroad right-of-way, see § 476.27; and
- d. Regulation of alternative operator services providers, see § 476.91.

As indicated previously in this order, the Board will be investigating and implementing a more efficient mechanism for handling certification, registration, and assessments.

While that alternative is being identified and implemented, carriers must continue to comply with the existing requirements relating to registration and assessments.

Further, carriers may, on a voluntary basis, choose to apply for certificates using the same process as before. When the alternative mechanism is identified, it may be implemented through rule making, order, or by announcement on the Board's Web site, as appropriate.

This deregulation means that certain Board rules relating to retail local exchange service are no longer enforceable. A list of those rules, based upon the record made in this proceeding, is set forth in the Ordering Clauses below. The Board will initiate a rule-making proceeding to update its rules regarding this action; if any interested person believes that a rule identified below should, in fact, be retained and enforced, or that some rule that is being retained should be eliminated, that person may submit appropriate comments in the rule-making proceeding.

Finally, the Board notes that this deregulation only applies to retail local exchange voice communication service. It does not affect the Board's continuing jurisdiction over intrastate access services and other wholesale services, alternative operator services, service territories, and other wholesale matters.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Pursuant to Iowa Code § 476.1D, the service quality of wireline voice local communications service is deregulated. The following rules are no longer in effect and will no longer be enforced:
 - a. Rule 22.2(1), Evaluation of records.
 - b. Rule 22.3, General service requirements.
 - c. Rule 22.4, Customer relations, except to the extent necessary to process customer complaints, including but not limited to, 22.4(1)(a)(1), 22.4(1)(a)(4), 22.4(1)(a)(5), 22.4(1)(b), 22.4(1)(c), 22.4(3)(a), 22.4(3)(c), 22.4(4), 22.4(5), and 22.4(6).

- d. Rule 22.6, Standards of quality of service.
- e. Rule 22.7, Protective measures.
- f. Rule 22.16, Discontinuance of service.
- g. Rule 22.17, Resale of service.

The following rules are still in effect as they impose no significant regulatory burdens and are still useful:

- a. Rule 22.1, General information (waivers, definitions, and past deregulation actions).
- b. Rule 22.2 (other than 22.2(1)), (relating to form of tariffs, among other things, and necessary for intrastate access tariffs and Alternative Operator Services tariffs).
- c. Rule 22.12, Content of wholesale tariff filings proposing rate changes.
- d. Rule 22.14, Intrastate access charge application, tariff procedures, and rates.
- e. Rule 22.15, Interexchange utility service and access.
- f. Rule 22.19, Alternative operator services.
- g. Rule 22.20, Service territories (linked to certificates of public convenience and necessity).
- h. Rule 22.23, Unauthorized changes in telephone service (i.e., slamming and cramming) and carrier registration.
- i. Rule 22.24, Applications for numbering resources.

2. Pursuant to Iowa Code § 476.1D, the following services or service elements are essential communications services where continued regulatory authority will serve the public interest, such that the Utilities Board will retain limited service regulation jurisdiction:

- a. Dual Party Relay Service pursuant to Iowa Code ch. 477C.
- b. All duties and authority delegated by the Federal

Communications Commission and assumed by the Utilities Board.

- c. Utilities Board assessments pursuant to Iowa Code ch. 476.10.

3. Local exchange carriers seeking a certificate of public convenience and necessity may voluntarily apply for a certificate by filing a petition meeting the requirements of Iowa Code § 476.29 (repealed effective July 1, 2017). The Utilities Board will review the applications pursuant to those standards until an alternative mechanism is implemented.

UTILITIES BOARD

/s/ Geri D. Huser

/s/ Nick Wagner

ATTEST:

/s/ Cecil I. Wright
Executive Secretary

/s/ Richard W. Lozier Jr.

Dated at Des Moines, Iowa, this 9th day of August 2017.