INQUIRY INTO THE APPROPRIATE SCOPE OF TELECOMMUNICATIONS REGULATION

A Staff Report to the

Iowa Utilities Board

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I. EXECUTIVE SUMMARY

On January 11, 2013, the Board initiated an inquiry into the appropriate scope of Iowa's regulation of telecommunications services. With the emergence of new technologies and changes in market conditions, the Board found that it would be beneficial to engage in a general review of the existing regulatory framework, with the goal being to eliminate unnecessary statutory and regulatory provisions, target regulations for future review to ensure their relevancy and to maintain compliance with changes in federal laws where necessary, and to identify industry issues that should be closely monitored for possible future action.

In recent years, numerous states have engaged in a similar review of their regulation of telecommunications. Many states, including Iowa, have deregulated retail rates. Some states have altered or eliminated tariff requirements, changed service quality standards, or otherwise acted to reduce regulation. Increased competition in the marketplace appears to be the most common catalyst for these actions, including competition between wireless carriers, Voice over Internet Protocol (VoIP) service providers, and competitive traditional wireline local exchange carriers. The Board saw the need to examine the Board's regulatory approach to VoIP service. To initiate this part of the discussion, the Board asked participants to address whether any technological differences between VoIP and traditional telephone service warranted a difference in regulation.

A wide range of other topics relating to telecommunications regulation were set for discussion, including a carrier's obligation to serve all parts of its exchange, service quality and consumer protection issues, the Board's role in resolving disputes between carriers, market entry requirements (including certification and tariffing requirements), and the Board's role in approving discontinuance of service, carrier reorganizations, and broadband deployment in Iowa.

The Board received written comments from 15 interested parties representing consumers and telecommunications service providers and held a workshop to discuss in an open forum the participants' positions on certain issues.

The Board has been delegated a specific regulatory policy by the Legislature, codified in Iowa Code § 476.95, which charges the Board with ensuring that communications services are available throughout the state at just, reasonable, and affordable rates from a variety of providers; furthering competition in the telecommunications market; and exhibiting regulatory flexibility 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. The following conclusions regarding the appropriate scope of telecommunications regulation were reached with mindful consideration of the furtherance of this policy.

VoIP

A primary focus of this inquiry involved the question of whether the Board should hold VoIP service to a different regulatory standard than traditional local exchange service because of technological differences between VoIP, a service that uses a broadband connection and "Internet Protocol" at some point in its transmission, and traditional telephone service, which is transmitted using circuit-switched technology. Currently, to the extent the Board has treated non-nomadic VoIP service (which can be identified as intrastate) the same as traditional telephone service, the Board has applied a technology-neutral approach to VoIP service. While some participants identified technological differences between VoIP and traditional service, including VoIP's transmission over IP networks and certain features and functions of VoIP, they were unable to explain why the technological differences justified different regulatory treatment. The majority of participants encouraged a technology-neutral approach to regulating these telecommunications services stating that the experience of the customer using VoIP service is similar to that of a traditional local exchange service customer, even if the underlying delivery methods of those services are different. Moreover, if a regulatory approach were to be based on technological differences between the delivery methods of telecommunications services, VoIP providers (or other providers offering technologically different delivery of those services to customers) would have a competitive advantage over those carriers delivering services by more traditional methods.

Ever since the Board deregulated retail rates for telecommunications services, the Board's regulatory role over the provision of local exchange service has evolved into something similar to a market monitor, observing competition in Iowa and resolving intercarrier disputes in an effort to promote fair competition and ensure access to reliable service for Iowa customers. Based on the information reviewed in this inquiry, the Board's current approach to regulation of non-nomadic VoIP should remain unchanged. However, the Board should continue to monitor how its regulatory treatment of VoIP affects the availability of VoIP service in Iowa.

Recommended Statutory Changes

Another purpose of this inquiry was to identify statutory provisions regarding the telecommunications industry that are no longer relevant or necessary. Once identified, proposed changes to the statute to reflect the current regulatory and industry practices may be prepared for consideration by the Legislature. Based on the information reviewed in this inquiry, the following statutory provisions have been identified as appropriate to consider for elimination or modification:

- § 476.1D(1)(c)(1)-(3) identifies the process for deregulating telephone utility rates and services. This statute is outdated since the Board has deregulated retail rates. While the language that retains the Board's jurisdiction over telecommunications services should be preserved, the provisions regarding rate

regulation should be modified to explicitly state that retail rates are not subject to regulation.

- 476.4 requires all public utilities to file tariffs showing the rates and charges for its services. This statute should be amended to clarify that telephone utilities are no longer required to file local exchange tariffs because rates are no longer regulated. It should be noted that by no longer requiring carriers to file local exchange tariffs, the Board is not diminishing its authority over local exchange service quality or intrastate access services and associated tariffs. It should also be noted that by eliminating local exchange service tariff requirements, the Board's rules in 199 IAC Chapter 22 should be reviewed to remove references to the filing of tariff pages for local exchange services.

- 476.4A details specific telecommunications service offerings that are exempt from tariff requirements. Because the identified services (i.e., centron, centrex, intraexchange private line, and multiline variety package) have been deregulated (see 199 IAC 22.1(6)), the references to these services should be eliminated from the statute. Other provisions of the statute should be retained.

- 476.5 relates to the adherence to tariffs for the compensation for services by all public utilities but should be amended to specifically state that retail telecommunications services are not subject to a tariff requirement.

- 476.6(9) should be deleted because it relates to the Board's approval of rate levels for telephone utilities; retail rates for telephone utilities are no longer subject to regulation.

- 476.29(3) addresses the transference of a certificate and indicates that a transfer for a rate-regulated local exchange utility should be handled in the same way as a reorganization. Staff recommends in this report that Iowa Code §§ 476.76 and 476.77 regarding reorganizations be amended to remove these requirements for telecommunications service providers. Because § 476.29(3) references these statutes, this portion of § 476.29(3) should be changed to delete the language that refers to reorganizations under Iowa Code §§ 476.76 and 476.77 and to add a notice requirement and limited review process when a certificate is being transferred pursuant to a reorganization.

- 476.29(6) specifically provides that a certificate and approved tariff are the only authority required for a telephone utility to provide local exchange service. This subsection should be amended to remove the language regarding an approved tariff as it is recommended that those should no longer be required for local exchange carriers.

- 476.29(15) requires the Board to provide a written report describing the status of competition for local telephone service to the Legislature by January 20, 2005. This section was enacted following the deregulation of retail rates for

telecommunications carriers in 2004 and was intended to ensure that the market demonstrated sufficient competition to maintain rate deregulation. This provision is now irrelevant and should be deleted.

- 476.76 – 476.77 provides the Board's review requirements for reorganizations of public utilities, including telecommunications carriers. Based on the information reviewed in this proceeding, it appears that these requirements are contrary to competitive neutrality and should be eliminated for telecommunications carriers. An amendment to § 476.29(3) is also recommended to remove references to these statutes and to add a notice requirement and a limited review process to certificate transfers that occur pursuant to a reorganization. It should be noted that the Board's reorganization rules at 199 IAC 32 should also be eliminated.

- 476.97 – 476.99 should be eliminated because they address price regulation for local exchange carriers and the Board has deregulated these rates.

- 476.101(4)(a) should be removed because it directs the Board to initiate a rule making proceeding prior to September 1, 1995.

- 476.101(5) requires local exchange carriers to file tariffs or price lists to comply with board rules on unbundling of essential facilities and interconnection. This subsection should be amended to reflect deregulation of retail rates and tariffs. Any provisions necessary to reflect continued tariff requirements for intrastate access service should be retained.

- 476.101(6) refers to the Board's enforcement of rules or orders in contested cases that were pending on July 1, 1995. This subsection is outdated and should be removed.

- 476.101(8) is commonly referred to as the "rocket docket" provision and requires the Board to issue a decision in intercarrier disputes brought under Iowa Code §§ 476.96 through 476.100 and 476.102 within 90 days. While the participants supported the Board maintaining jurisdiction over intercarrier disputes such as these, the references to §§ 476.97-476.99 are no longer relevant as they relate to rate regulation. In addition, a modification to the statute to allow a party to increase the review period from 90 days to 120 days, upon good cause shown, is recommended.

Statutes Reviewed But Unchanged

Other statutes reviewed through the course of this inquiry may be eligible for future modifications due to possible changes in FCC policy or could be the subject of an independent inquiry. At this time, however, these provisions should remain unchanged and the industry issues that involve them should be monitored.

Assessments

Iowa Code § 476.10 sets forth the manner by which the Board assesses regulated utilities for direct and remainder expenses. With respect to direct assessments, the Board has the authority to directly assess any person bringing a proceeding, or participating in a proceeding, before the Board and has the discretion to adjust those assessments for certain reasons. The Board also has the authority to bill regulated utilities a remainder assessment for those operating expenses that are otherwise not directly assessable. One participant advocated a move toward eliminating remainder assessments but from a practical standpoint, not all of the Board's operating expenses can be attributable to specific dockets or proceedings.

Based on the information reviewed in this docket, broadening the base of providers that are subject to regulatory assessment would further the Board's efforts toward a technology-neutral approach to telecommunications regulation and would make assessments more competitively equal. Currently, § 476.10(1)(b) allows for the calculation of the remainder assessment to be based upon intrastate revenues as they are reported in annual reports to the Board. But not all providers are required to file annual reports at this time. Similarly, § 477C.7, which establishes the funding structure for the Dual Party Relay Service (DPRS), allows for assessments to be charged to a list of certain types of telecommunications service providers. Like § 476.10(1)(b), this section has not kept pace with technology and excludes an entire category of local service providers that are currently providing local exchange service in Iowa. Given the statutory changes recommended as a result of this inquiry, it would be beneficial to engage in a similar inquiry to investigate the way in which the Board assesses its operating costs to the industry and review a more technologically neutral approach to both the Board's remainder assessments and those intended to fund DPRS.

Carrier of Last Resort (COLR)

Iowa Code § 476.29(5) requires each local exchange carrier to serve all eligible customers within its service territory but has been interpreted by the telephone industry in Iowa as imposing a Carrier of Last Resort (COLR) obligation on incumbent local exchange carriers (ILECs). While the Board has applied this requirement to CLECs, in actual practice this statute has been proven to be a weak COLR obligation for competitive carriers. However, Iowa's COLR requirement extends beyond the § 476.29(5) obligation to serve all eligible customers. Section 476.29(11) requires that the Board assure that "all territory in the state" is served by a local exchange utility. The Board's rules implementing this legislative intent have established a regime whereby an ILEC would always be available to serve every exchange area. In order to continue to ensure that all Iowa customers have access to local exchange service, it is recommended that this statutory provision remain unchanged.

Alternative Operator Services

Iowa Code § 476.91 regarding alternative operator services (AOS) should be monitored. AOS companies doing business in Iowa are most often companies that provide service

to inmates at correctional facilities. The FCC recently hosted a workshop to examine policy issues regarding inmate calling services (ICS) such as current rates for inmates and their families and the cost of balancing the needs of consumers and the correctional facilities. The FCC lowered rates for interstate calls from inmates and issued a report seeking comments on reforming rates and practices affecting intrastate calls. The FCC has initiated a follow-up rule making that could impact intrastate rates and practices for these ICS calls. It is important that the FCC's actions regarding intrastate calls from AOS companies providing these types of services continue to be monitored and evaluated before any modifications to § 476.91 are offered. It should be noted that changes to the statue may also necessitate changes to the Board's AOS rules in 199 IAC 22.

Slamming and Cramming Complaints

Iowa Code § 476.3 allows the Board to investigate consumer complaints. Many of the complaints received from Iowa consumers involve "slamming" (unauthorized changes in service providers) or "cramming" (unauthorized charges for services). The Board has been given authorization by the FCC to handle slamming complaints for wireline services and § 476.103 provides the manner by which those complaints are resolved. Based on the information reviewed in this proceeding, this statute does not need to be amended at this time. There does not appear to be enough evidence to show that jurisdiction over wireless cramming should be turned over to the Board. However, 199 IAC 22.23(2) and 199 IAC 6.8, which implement § 476.103, should be reviewed to consider whether to incorporate recent changes to the FCC's slamming and cramming rules as well as the guidelines established by recent Board decisions.

Intercarrier Disputes over Interconnection

Iowa Code § 476.11 gives the Board the authority to hear and resolve intercarrier disputes regarding the terms and conditions of interconnection. The majority of participants support the Board's role in these types of disputes and based on the information reviewed in this inquiry, no changes to this provision are recommended at this time.

Complaints over Service Quality

Iowa Code § 476.3 allows the Board to determine whether a carrier is providing reasonably adequate service, and the complaint process in place allows consumers an avenue through which they can resolve their service quality issues. While some participants claimed that competition in the marketplace had minimized the need for quality-of-service regulation, the information reviewed in this inquiry supports the conclusion that this complaint resolution statute should remain unchanged at this time.

Railroad Rights-of-Way

Iowa Code § 476.27 gives the Board the authority to adopt rules prescribing the terms and conditions for the construction, operation, repair, or maintenance of facilities across a railroad right-of-way. None of the commenters suggested altering the Board's

jurisdiction and based on the information reviewed in this inquiry, this subsection should remain unchanged.

Prohibited Acts by LECs

Iowa Code § 476.100 prohibits local exchange carriers from doing certain prescribed acts. None of these prohibitions have been superseded by the FCC and their existence promotes competition in the marketplace. Most of the participants agreed that these prohibitions remain vital to the telecommunications market and based on the information reviewed in this inquiry, this subsection should remain unchanged.

Discontinuance of Service

Iowa Code § 476.20 prohibits a utility from discontinuing service to a community (or part of a community) without permission by the Board, unless there is an emergency or the discontinuance is due to nonpayment of account or violation of rules. In the event of a discontinuance of service by an ILEC, § 476.29(11) gives the Board the authority to assign the service territory of a failed ILEC to another carrier. Board rules in 199 IAC 22.16 implement procedures for discontinuance of service. Both §§ 476.20 and 476.29(11) should remain unchanged as they give the Board the authority to review requests for certain disconnections and maintain the public interest. Any changes in the procedures for discontinuing service of one carrier by another carrier should be reviewed in a rule making.

Universal Service

Iowa Code § 476.102 gives the Board the authority to establish a plan (or fund) to preserve universal service in Iowa and to ensure that state support exists for high-cost services. While the state of competition in Iowa has not previously necessitated the establishment of a state universal service fund (USF), there are initiatives to increase access to telecommunications and broadband services that are being implemented throughout Iowa and which may call upon the Board's authority to create such a fund. Based on the information reviewed in this proceeding, it is recommended that this statute remain unchanged.

Potential Rule Makings

One of the outcomes of the extensive review given to the Board's statutory authority over telecommunications services is the awareness that some of the Board's rules implementing that authority may benefit from a review for possible modification. A list of potential rule making proceedings is as follows:

Slamming and Cramming Rules

199 IAC 22.23(2) and 199 IAC 6.8 implement the Board's procedures for reviewing slamming and cramming complaints. Recent changes to the FCC's rules regarding slamming and cramming may necessitate changes to the Board's rules as well. In addition, the Board has issued several orders resolving slamming and cramming

disputes and the inclusion of some of the consistencies in those orders may be of a benefit to carriers.

Customer Relations

199 IAC 22.4(1)“b” provides for annual bill inserts to assist customers in the resolution of complaints. These rules should be reviewed and possibly amended to assist customers wishing to gain access to a company’s deregulated catalog as well as to the rates and services that were previously included in a company’s tariff.

Telegraph and Telephone Utilities

199 IAC 23.2(3) and 23.2(4) indicate annual report requirements for rate-regulated telegraph and telephone utilities. Since the Board no longer regulates the retail rates for telegraph or telephone utilities, these rules should be reviewed to determine what changes may be necessary. Also 199 IAC 17.4(7) provides a reference to Iowa Code § 476.97 – Rate Regulation, which has been recommended for removal. If § 476.97 is removed because the Board no longer regulates the retail rates of telecommunications carriers, 199 IAC 17.4(7) should be reviewed to determine whether it is necessary.

Alternative Operator Services

199 IAC 22.12 addresses the rates that should be reflected in the tariffs filed by AOS carriers. 199 IAC 22.19 identifies the rules that guide AOS companies in their provision of service in Iowa. The FCC appears to be in the process of reviewing its interstate policies regarding the provision of AOS and once final action is taken by the Commission, the Board should review these rules to ensure that they are in compliance with any policies adopted by the FCC.

Discontinuance of Service

199 IAC 22.16 implements the Board’s procedures that should be followed when a carrier discontinues a service to customers or to other carriers. Based on the information reviewed in this proceeding, an assessment of these procedures in regard to discontinuance by one telecommunications carrier to another should be further explored.

Quality of Service

199 IAC 22.5 and 22.6 provide quality of service metrics for local exchange carriers. Most of the participants in this proceeding agreed that these metrics should be reviewed to determine their applicability to the technological changes in the way some carriers provide local exchange service in Iowa. However, it is recommended that the Board defer any changes to these rules until the Board’s call completion dockets are completed.

Reorganization Requirements

To coincide with the recommendation to modify the applicable statutes regarding reorganizations, the corresponding rules related to reorganizations, 199 IAC 32, could be eliminated.

ETC Reporting Requirements

The Board's rules in Chapter 39 will need to be re-written to reflect changes to the FCC's universal service rules as a result of the *Transformation Order* and *Lifeline Reform Order*. In addition, the FCC has issued orders recently that have added multiple reporting requirements for carriers that have been designated as eligible telecommunications carriers (ETCs) for the purpose of receiving federal universal service funds. These reports are filed with both the FCC and state commissions, many of which contain confidential information. In order to improve efficiency in the processing of these reports, revisions should be made to 199 IAC 1.9 to make certain reports confidential by rule.

Industry Issues

In addition to receiving comments regarding the current applicability of the Board's statutes and rules regulating telecommunications service, the Board also received comments regarding pertinent issues that are facing the industry. Based on the Board's review of the information received in this inquiry, no changes to statutes or rules are recommended, but these issues should continue to be monitored.

Broadband Deployment

In its order initiating this inquiry, the Board asked for comment regarding whether the Board should undertake a role in promoting broadband deployment in Iowa. Currently, the Board plays an indirect role in broadband deployment when fulfilling its obligations designating an eligible telecommunications carrier for federal USF. Nearly all participants in this inquiry recommended a "hands-off" approach by the Board for broadband deployment activities outside of the Board's ETC-related duties. That approach may change as new initiatives designed to increase broadband deployment may eventually require Board involvement.

Access Stimulation (Traffic Pumping / Mileage Pumping)

Some participants raised the issues of access stimulation (traffic pumping) and mileage pumping and the relationship that Iowa Network Services (INS) has with each. These participants identify INS as being a conduit for the transportation of long distance calls to LECs in Iowa that are involved in these arbitrage schemes. The Board and the FCC have addressed these issues in some contested case proceedings, but some participants ask that the Board initiate a rule making to revise the procedures governing interconnection and payments to INS. Based on the information received in this inquiry, it does not appear this warrants immediate attention but could be a subject of a rule making if specific language were to be proposed by industry.

II. INTRODUCTION

On January 11, 2013, the Board opened this inquiry docket for the purpose of receiving public comment regarding the appropriate scope of regulation of telecommunications services in Iowa. In that order, the Board noted that it appears the existing regulatory statutes (primarily Iowa Code chapter 476) contain outdated provisions and may benefit from a general review with the goal being an update of the Board's regulatory approach to reflect new technology and new market conditions. A copy of the order is attached (see Attachment 1).

The Board also noted that since 2010, at least 22 different states have taken steps to update their approach to regulating the telecommunications industry. Many states, including Iowa, deregulated retail rates. Other states have altered or eliminated tariff requirements, changed their service quality standards, changed their carrier of last resort (COLR) requirements, or otherwise acted to reduce regulation. Increased competition in the telecommunications marketplace appears to be the most common justification for these actions, including competition between wireless carriers and Voice over Internet Protocol (VoIP) service providers, in addition to the traditional wireline local exchange carriers (LEC).

To the extent the market is becoming increasingly competitive, it may be appropriate to re-evaluate the need for the existing system of intrastate telecommunications regulation. While some level of regulation will continue to be necessary to protect the public interest, the extent and nature of that regulation deserves discussion in this docket. In the order opening this docket, the Board identified a number of topics for discussion. In particular, the Board expressed interest in hearing public comment regarding the technological difference between VoIP technology and traditional telecommunications service that would justify disparate regulatory treatment.

Additionally, the Board sought comment on the appropriate scope of regulation for the telecommunications services in today's market, and offered the following topics as subjects of the inquiry:

1. Carrier of last resort obligations
2. Consumer protection and complaint resolution
3. Fees assessed to telecommunications carriers
4. Federally-delegated regulatory authority
5. State authority to hear and resolve intercarrier disputes
6. Quality of service regulations
7. Management of public right-of-way (including joint use of utility poles)
8. Railroad crossings by telecommunications utilities
9. Alternative operator services companies
10. Tariff requirements
11. Monitoring and protection of the competitive marketplace
12. Certificates of public convenience and necessity, pursuant to § 476.29

13. Reorganizations for some carriers, pursuant to § 476.77
14. Discontinuance of service, pursuant to § 476.20
15. Universal Service provisions, pursuant to § 476.102
16. Broadband Deployment

Initial comments were filed on or before May 1, 2013, by:

- Voice on the Net Coalition (VON);
- Iowa Association of Municipal Utilities (IAMU);
- MCI Communication Services, Inc., d/b/a Verizon Business Services, MCIMetro Access Transmission Services, LLC, d/b/a Verizon Access Transmission Services (Verizon);
- Windstream Iowa Communications, Inc., Windstream Iowa-Comm, Inc., Windstream IT-Comm., LLC, Windstream KDL, Inc., Windstream Montezuma, Inc., Windstream Nebraska, Inc., Windstream Norlight, Inc., Windstream NTI, Inc., Windstream of the Midwest, Inc., PAETEC Communications, Inc., and McLeodUSA US Telecommunications Services, LLC, d/b/a PAETEC Business Services (Windstream);
- Consumer Advocate Division of the Iowa Department of Justice (OCA);
- Qwest Corporation, d/b/a CenturyLink QC (CenturyLink);
- Cox Iowa Telecom, LLC (Cox);
- Securus Technologies, Inc. (Securus);
- Sprint Communications Company, L.P. (Sprint);
- AT&T Corp, Teleport Communications America, LLC (AT&T);
- Rural Iowa Independent Telephone Association (RIITA);
- T-Mobile Central, L.L.C. (T-Mobile); and
- Iowa Telecommunications Association (ITA).

Reply comments were filed on or before July 1, 2013, by:

- Securus;
- OCA;
- Verizon;
- Cox;
- AT&T;
- Sprint;
- Windstream;
- CTIA – The Wireless Association (CTIA);
- T-Mobile;
- CenturyLink;
- ITA; and
- RIITA.

On August 20, 2013, the Board issued an Order Scheduling Workshop, which scheduled a workshop to be held on September 10, 2013. The Board stated that based

on staff review of the written comments from the interested parties, a discussion of the parties' positions on certain issues in a workshop setting would be useful. To encourage discussion at the workshop, the Board included in the order a list of questions based on the comments received thus far and a list of questions relating to potential amendments to certain Iowa Code provisions. The order also allowed participants in the workshop to file written comments memorializing their position on issues discussed at the workshop, respond to new issues raised at the workshop, or respond to the positions of other parties expressed at the workshop. A copy of the order is attached (see Attachment 2).

Post-workshop written comments were filed on September 18, 2013, by:

- OCA;
- Verizon;
- Sprint and tw telecom (jointly);
- T-Mobile;
- CenturyLink; and
- ITA.

This report summarizes and analyzes the comments and in some instances includes recommendations regarding the need for legislative changes, new rule makings, and other changes that may be appropriate.

III. TOPICS FOR INQUIRY

A. VoIP

Is there a fundamental difference between VoIP technology and traditional technology that justifies a disparate regulatory approach? Would the continued regulation of VoIP impede or promote the public interest?

One of the Board's primary reasons for initiating this inquiry was to gather information about whether there is a fundamental difference between voice calls made using VoIP technology and calls made using traditional technology that warrants treating VoIP calls differently than traditional calls for regulatory purposes. The Board posed that question in the Order Initiating Inquiry and raised other questions about VoIP in the Order Scheduling Workshop.

Before addressing the various comments regarding the technological, policy, and legal reasons for and against the Board's regulation of intrastate VoIP service, staff addresses two preliminary matters. First, in response to the question asked at the workshop for participants to describe the extent to which VoIP technology is used in both retail and wholesale service in Iowa, staff notes that there were several references in the comments and at the workshop to the Federal Communications Commission's (FCC) January 2013 Local Competition report to indicate the extent to which VoIP

service is used or available in Iowa. VON, for example, cited the report to note that at the end of 2011,

> there were more than 186,000 interconnected VoIP subscriber lines in Iowa, receiving service from 70 VoIP providers. Of these, 137,000 are residential subscriber lines and 49,000 are business lines. Nationally, there were more than 36 million VoIP subscriber lines . . ., an increase of more than 15 percent from the prior year.[1]

Sprint and tw telcom, though, point out that discussion at the workshop revealed that the use of Internet Protocol (IP) in Iowa's telecommunications market is "neither new nor radical – and growth of IP has happened under the existing regulatory regime."[2]

Second, workshop participant AT&T encouraged everyone to be clear in defining terms, asking what the Board sought to regulate, a service or a technology, or an application that makes use of IP technology. Sprint and tw telcom addressed definitional issues in its post-workshop comments, clarifying that VoIP calls

> are not necessarily delivered over the public Internet and 'Internet Protocol' and 'the Internet' are completely different things. While there are some 'over the top' voice services that are transmitted over the public Internet, that is only a portion – and in Iowa, likely a small portion – of the Voice over Internet Protocol market. Many, and likely most, VoIP in Iowa is over traditional telephone (and cable) networks, and most of the VoIP traffic uses the public switched telephone network. . . rather than the Internet.[3]

Generally, comments on the VoIP issue can be divided into two groups, with one group opposed to any state regulation of VoIP and the second group taking a range of other positions, but generally agreeing that the Board's regulation of telecommunications service in Iowa should be technology-neutral.

The parties opposed to state regulation of VoIP service agree that there are technological, legal, and policy reasons for a "hands off" approach to VoIP. With respect to technology, AT&T notes that traditional telephone service (Plain Old Telephone Service or POTS) has generally been provided over twisted pairs of copper wire connecting end users to the public switched telephone network (PSTN). POTS is “circuit-switched,” meaning that the customers are connected to circuit switches in telephone-company central offices and those switches direct calls to their destinations. Circuit-switched service works by establishing a dedicated transmission route, using a narrow band dedicated electrical circuit and/or dedicated time slot (when part of a multichannel transport), that connects the parties to a call.

AT&T explains that VoIP, in contrast, is provided over a broadband connection and relies on “Internet Protocol” or “IP” transmission. IP transmission relies on “diverse routing.” This means all communications such as e-mails, video files, or voice

transmissions are packaged into tiny packets, each with a header that enables it to be routed to its final destination over the most efficient path available. Routing of IP packets is “diverse” because the individual packets constituting a single IP-based communication can be and often are split apart and routed over different paths until they reach their destination, where they are reassembled.[4]

Verizon emphasizes that this difference in technology does matter, stating that the "packet-switched nature of VoIP technology *is* fundamentally different from the circuit-switch technology used for traditional phone service, as are the integrated capabilities and features of VoIP service, made possible by the use of Internet Protocol."[5] Verizon argues that just because one of the things VoIP allows a user to do is to make a voice call does not mean that it is appropriate to apply legacy telecommunications regulations to VoIP. Verizon suggests that instead of treating non-nomadic VoIP like regular phone service, it would be more appropriate to view VoIP as one of many applications that rides over a broadband network.[6]

AT&T, Verizon, and VON highlight a wide range of capabilities of VoIP. VON, for example, states that VoIP allows the user to manipulate, generate, store, and transform information.[7] As other innovative features, VON mentions the ability to use an IP-enabled phone from any broadband connection anywhere in the world and a feature that allows voicemail to be sent to e-mail or converted to text.[8] According to AT&T, the technological differences between VoIP and traditional service are what allow VoIP to offer users more features, noting in particular that VoIP's "multi-directional routing" allows more options for integrated calling and voice messaging and simultaneous ringing of devices.[9]

Likewise, Verizon notes that VoIP service allows users to access and manage their accounts online and configure service features and options to interact with voicemail. Verizon also states that VoIP users are able to access their accounts on-line to exercise real-time control over their service and to configure a variety of service features and options to interact with voicemail features and functions. Users can play back voicemail messages on their computers via sound files and/or forward those sound files as e-mail attachments.[10]

As for the legal reasons for their opposition to state regulation, AT&T, Verizon, and VON contend that VoIP is an information service not subject to state regulation, relying primarily on the FCC's *Vonage Preemption Order*.[11] Verizon asserts, for example, that "under the FCC's findings in the Vonage Order *all* VoIP services are jurisdictionally inseverable and, as *inter*state services, not subject to state regulation."[12] These parties also refer to certain FCC decisions and federal court decisions in support of their assertion that the Board cannot regulate VoIP.[13]

From a policy perspective, AT&T urges the Board to refrain from imposing legacy regulations on VoIP, which AT&T describes as a new and developing competitive service using broadband technology.[14] Verizon suggests that by imposing legacy regulation on VoIP service in Iowa, the Board would risk creating uncertainty that could

impede innovation, investment, and jobs, losing such to surrounding states that have adopted legislation precluding state regulation of all forms of VoIP, referring to Illinois, Indiana, Kansas, Michigan, Missouri and Wisconsin.[15] And VON claims there are no policy reasons to regulate non-nomadic VoIP, asserting that a decision not to regulate non-nomadic VoIP would foster innovation in VoIP and IP-enabled applications and services.[16]

On the other side of the issue, OCA approaches its discussion of the VoIP regulatory question by acknowledging the ongoing transition from the PSTN, which has relied on time-division multiplexing (TDM) and circuit-switching, to the IP network. But OCA points out that there still is only one interconnected network. OCA observes that the infrastructure used to provide voice services can also be used for broadband service; VoIP and cable telephony services use the same transmission network as traditional phone service. According to OCA, customers expect a seamless and ubiquitous telecommunications network.[17]

In discussing the Board's regulatory treatment of VoIP, OCA refers to the decisions in the two recent cases in which the Board considered challenges to its authority to regulate VoIP service, the *Sprint v. Iowa Telecom* decision in Docket No. FCU-2010-0001[18] and the *Mediacom v. Connexion* decision in Docket No. FCU-2010-0015.[19] OCA explains that in the *Sprint* case, in which the Board determined it had jurisdiction over intrastate non-nomadic VoIP service, the Board properly recognized the limits of the preemptive effects of the FCC's *Vonage Order*. OCA's position is that the Board's continued regulation of interconnected VoIP services in Iowa will best promote the legislature's public policy goals, as expressed in Iowa Code § 476.95, of promoting competition and protecting consumers.[20]

OCA explains that the FCC has confirmed that the Board is correct in its approach to VoIP, pointing to the FCC's recent decision to allow VoIP numbering trials, in which the FCC stated:

> Interconnected VoIP service enables users, over broadband connections, to receive calls that originate from the public switched telephone network (PSTN) or other VoIP users, and to terminate calls to the PSTN or other VoIP users. However, the Commission has not addressed the classification of interconnected VoIP services, and thus retail interconnected VoIP providers in many, but not all, instances take the position that they are not subject to regulation as telecommunications carriers, nor can they directly avail themselves of various rights under sections 251 and 252 of the Act.[21]

In support of its position urging the Board to continue its approach to regulating VoIP, OCA quotes the National Association of Regulatory Utility Commissioner's (NARUC) comments filed with the FCC in the IP transition proceeding that

> [T]he shift to IP technology merely changes the technology for managing the existing network. It no more creates a new category of regulation than did the conversion from electro-mechanical to electronic switches, the introduction of multiplexers (which use packetized data), or the introduction of ISDN [Integrated Services Digital Network] and frame relay services, which are also packet technologies. Indeed, significant network upgrades and transitions have occurred ever since phone service was invented. None of these shifts in technology changed the fact that providers were still providing voice and data telecommunications services.[22]

ITA's position is that the Board's regulation of telecommunications should be technology-neutral. ITA agrees that VoIP is a new technology that allows consumers to enjoy new features along with their voice services and that the evolution of the PSTN is a technology shift within an existing network. However, the Board's regulatory analysis should be driven by consumer experience and expectation and not by network technology.[23] According to ITA, a shift in technology does not eliminate the role of state regulators in promoting public policy goals, such as consumer protection, local market competition, and universal service.[24]

ITA says that it agrees with the Board's preliminary assessment that there is no technological or other basis that justifies disparate regulatory treatment for IP-enabled services. ITA points out that no compelling technical or legal arguments were presented in this proceeding to refute the Board's assessment.[25] According to ITA, if reduced regulation is appropriate for IP-enabled services, such reduction should apply to functionally-similar services. ITA recognizes that the Board has no jurisdiction or limited jurisdiction over wireless voice and nomadic VoIP services. While ITA has a goal of uniform regulation for all voice providers, it does not take the position that all intrastate regulations of voice service be eliminated at this time. Instead, ITA states that it agrees with the Board that some regulation of voice service continues to be necessary to protect the public interest.[26]

RIITA contends that in general the problem with VoIP itself is primarily an interconnection problem, not a customer service problem. RIITA suggests that if LECs are properly compensated for carrying traffic and for providing E911 or COLR or telecommunications relay service (TRS) services, customers will continue to be provided with those services. RIITA observes it will be difficult, if not outside the jurisdiction of the Board, to regulate VoIP traffic carried over strictly Internet connections. An Internet subscriber may choose a variety of VoIP services that are or are not provided by the Internet service provider, and the Internet service itself is not within the regulatory authority of the Board.

RIITA defines the "regulatory point" as where the VoIP traffic is transferred to the regulated PSTN, specifically where traditional voice telephone traffic is delivered to a regulated local carrier. At that point, RIITA believes the presently-used regulatory

system must continue or local carriers will not be economically viable and Iowans will risk losing their local telephone service.

RIITA also states that whether traffic originates as VoIP or using any other protocol, or whether it is carried using any other variety of protocols, when it is delivered to RIITA's members, it must comply with existing regulations, including signaling system protocols, and must be identifiable, billable, or chargeable to the delivering carrier on a per-minute basis.[27]

CenturyLink agrees with a technology-neutral approach to regulation. CenturyLink notes that technology is not a service but instead an enabler of services. The Board's regulation of the communications marketplace should not vary based on the technology used and that any ongoing regulation should be applied equally to all providers.[28] CenturyLink adds that the customer experience for VoIP services appears to be similar to that of traditional telecom services even with the underlying delivery of those services being different. VoIP is an application like other Internet applications that can allow consumers the ability to change the features and configurations associated with their services through an on-line portal.[29] CenturyLink states that the underlying differences in the delivery of VoIP and traditional telephone services do not justify a heavier hand in regulating traditional telephone services; instead, the same deregulatory approach for all voice services will provide incentives for migrations to new technologies. According to CenturyLink, imposing different regulatory treatment on services that are functionally the same from a consumer's perspective distorts the market by providing a competitive advantage based on regulatory arbitrage rather than on service, innovation, or lower prices.

IAMU says that the Board should allow technology to develop further before determining the appropriate level of regulation.[30]

Cox, Sprint, and T-Mobile urge the Board to pay attention to the distinction between retail and wholesale issues. According to Cox, while federal law is primary regarding retail offerings and market entry, and the current retail telecommunications market is competitive and presents no compelling reason for regulation, federal law gives tools to the states to ensure that voice networks remain interconnected, and that wholesale services and interconnection are available on a competitively and technology-neutral basis.[31] With respect to state regulation of VoIP, Cox states that it is primarily concerned with consistency, i.e., state rules governing retail VoIP service should not make artificial distinctions within a given service or technology. Cox suggests that the Board's present approach to regulate non-nomadic VoIP service more extensively than nomadic VoIP puts facilities-based providers (those that have made the investments encouraged by the 1996 federal Act[32] and Iowa's 1995 Act[33]) at a competitive disadvantage because nomadic providers ride over the top of those facilities. Cox supports a review of the retail regulatory framework, conducted by state and federal policymakers working together.[34]

Sprint stresses that ensuring effective retail competition requires a robust and fully-functioning wholesale market. Sprint explains that its concern that the Board exercise a continuing role in oversight of the wholesale market shapes its comments in this inquiry. The appropriate distinction is one between the traffic level (which involves retail and compensation issues) and the infrastructure level (which implicates interconnection issues). As a result of the FCC's *Transformation Order*,[35] all end-user traffic eventually will share a single classification so traffic-level issues will be less relevant. Sprint notes that at the traffic level, VoIP uses existing networks more efficiently, requires different customer premise equipment, and offers enhanced end-user features, resulting in cost efficiencies. These, according to Sprint, may provide a basis for treating VoIP differently at the traffic level. But Sprint sees no reason to treat VoIP differently at the facilities or infrastructure level. The same physical facilities and interconnection of those facilities are needed regardless of the transmission protocol used by the traffic traveling over those networks.[36]

Sprint and tw telcom note that participants at the Board's workshop were unable to provide a single example of adverse decisions on broadband investment within Iowa due to current Board regulations.[37]

T-Mobile points out that carrier networks have been changing for decades, and does not agree that it is necessary to materially revise chapter 476 just because the technology used in providing telecommunications service has changed from circuit-based to IP-based infrastructure.[38] T-Mobile observes that whether retail VoIP services are technologically different and warrant different regulatory treatment is distinct from whether the Board should regulate terms and conditions for interconnection for the exchange of voice traffic in IP format.[39] T-Mobile does not take a position on whether the Board should regulate facilities-based retail VoIP service offerings to the same extent as traditional wireline telecommunications service offerings, but points out that in some states that have deregulated VoIP service, the relevant legislation carved out carrier disputes. T-Mobile states that while it may be accurate to say that a majority of states have deregulated retail VoIP service, it would not be correct to say that this trend extends to precluding state agency authority to resolve interconnection disputes, even those disputes that involve VoIP service.[40] If the Board is to deregulate retail VoIP service, T-Mobile urges the Board not to limit Board oversight over interconnection rights and obligations[41] and to be careful to distinguish between deregulation of wholesale and retail service.[42]

Windstream points out that comments asserting that the Board is preempted from regulating VoIP service are based on decisions involving retail service. Windstream does not take a position in this proceeding on questions about regulation of retail VoIP, but points out that the Board's authority over IP service providers in the context of interconnection and intercarrier dispute resolution is a different question. Windstream, like T-Mobile, urges the Board to treat retail VoIP issues separately from regulatory decisions affecting wholesale services.[43]

1. Staff Analysis

This portion of the inquiry asks if there is a fundamental difference between VoIP technology and traditional technology that justifies a disparate regulatory approach. The Board has already considered and rejected the legal arguments that the Board does not have jurisdiction to regulate non-nomadic VoIP services. To provide some background for the Board when considering the arguments raised in this proceeding against state regulation of VoIP service, staff includes the following summary of recent Board proceedings involving VoIP. Consumer Advocate correctly states that the Board considered whether it had jurisdiction to regulate intrastate VoIP service in Docket No. FCU-2010-0001, *Sprint v. Iowa Telecom*,[44] and Docket No. FCU-2010-0015, *Mediacom v. Connexion*.[45] Those two cases gave the opportunity for the Board to consider its role in regulating both wholesale VoIP and retail VoIP.

In the *Sprint* case, the Board considered VoIP in a wholesale setting. The Board determined that Iowa Telecom (now Windstream) could charge Sprint access charges included in Iowa Telecom's intrastate access tariff for connecting intrastate interexchange (long distance) calls made by customers of Sprint's cable partner using VoIP technology. In that case, the Board rejected Sprint's arguments that the Board had been preempted. Sprint argued that the Board was preempted under either the "information services" exception (under which VoIP is an information service subject only to FCC regulation, if regulated at all) or the "impossibility" exception (under which state regulation cannot apply because the geographic endpoints cannot be determined for VoIP calls and the call cannot be characterized for jurisdictional purposes as either interstate or intrastate). The Board considered and rejected both arguments.

The Board also considered Sprint's arguments that state regulation was preempted under the FCC's *Vonage Order*. The FCC has explained that the rationale of its *Vonage Order* (which addressed a retail VoIP service offering) applies only to nomadic VoIP, stating that "an interconnected VoIP provider with the capability to track the jurisdictional confines of customer calls would no longer qualify for the preemptive effects of our Vonage Order and would be subject to state regulation."[46]

In *Mediacom v. Connexion*, Docket No. FCU-2010-0015, the Board determined that Broadstar, LLC d/b/a Primecast, a company providing retail non-nomadic VoIP service, was providing a telecommunications service and was subject to the Board's certification, registration, and tariffing requirements in Iowa Code § 476.101(1) that apply to competitive local exchange service providers.

The Board's approach to regulating providers of non-nomadic VoIP in Iowa was explained in the *Mediacom v. Connexion* order. The Board explained that it would allow Primecast (the VoIP service provider) 60 days from the date of that order to apply for a certificate of public convenience and necessity (CPCN) and file tariffs and carrier registrations. With respect to other VoIP providers, the Board extended "a similar grace period to any other non-nomadic VoIP service providers in Iowa, after which the Board may commence proceedings against non-nomadic providers without certificates."[47]

Since that order was issued, three retail VoIP service providers have applied for a CPCN.

Many of the arguments against state regulation of VoIP are based on assertions that interconnected VoIP service is subject only to the jurisdiction of the FCC. As shown by the following statements from the FCC, the Commission has not yet made any decision about the regulatory classification of interconnected VoIP:

- In the *National Broadband Plan*, issued in 2010, the FCC acknowledged it had not completed the work it started in earlier proceedings regarding VoIP compensation and that the status of compensation for VoIP calls was not settled.[48]
- In February 2011, the FCC issued the *USF/ICC Transformation NPRM* announcing its plans to reform the Universal Service Fund (USF) and intercarrier compensation (ICC) system. The FCC stated that "the Commission has never addressed whether interconnected VoIP is subject to intercarrier compensation rules and, if so, the applicable rate for such traffic" and thus sought comment on the appropriate compensation framework for VoIP traffic. The FCC explained that since 2001, it "has sought comment in various proceedings on the appropriate intercarrier compensation obligations associated with telecommunications traffic that originate or terminate on IP networks. . . but has declined to explicitly address the intercarrier compensation obligations associated with VoIP traffic."[49]
- And in the *Transformation Order* issued in November 2011, the FCC again made clear that it has not classified VoIP as an information service. The FCC also stated it as not been persuaded "that all VoIP-PSTN traffic must be subject exclusively to federal regulation."[50]

Based on these statements and the limits of the preemptive effects of the FCC's *Vonage Order*, staff's opinion is that the arguments that the Board cannot regulate intrastate VoIP (such as the one raised by Verizon that all VoIP services are jurisdictionally inseverable) are not persuasive.

Some participants in this proceeding have provided technical comparisons describing the differences between the packet-switched VoIP technology and the circuit-switched technology used for traditional phone service. VoIP has integrated capabilities and features that are made possible by the use of Internet Protocol or related applications. Beyond placing or receiving calls, VoIP users are able to access their accounts on-line to exercise real-time control over a variety of service features and options. More parties, though, have taken the position that the technological differences between VoIP and traditional voice service do not justify a lesser regulatory burden for VoIP. Noting that the customer experience for VoIP services appears to be similar to that of traditional telecom services even if the underlying delivery of those services is different, these parties take the position that the Board's regulatory approach should be technology-neutral.

Staff concludes that the parties objecting to continued state regulation of non-nomadic VoIP have not provided persuasive technological, legal, or policy reasons that would warrant adjusting the Board's current approach, which is to apply traditional telephone regulations to non-nomadic VoIP service in Iowa. As Sprint and tw telcom pointed out in comments filed after the Board's workshop, no participant was able to identify an instance where investment in IP networks had been inhibited by the Board's approach. And, as ITA observed, a voice call is a voice call, and nothing persuasive was submitted in this proceeding to ease the Board's concern about giving one provider of a voice service a competitive advantage over another on the basis of what technology is used to deliver the voice call.

In the end, staff is concerned that if VoIP is exempted from regulation in a manner that is not based on a legitimate and significant technological distinction, one that justifies different regulatory treatment, then the result will be to grant VoIP providers (however defined) a competitive advantage that is not warranted. If, for example, VoIP calls were exempt from intrastate access charges (as Sprint argued in Docket No. FCU-2010-0001), then interexchange carriers would have an artificial incentive to implement VoIP technology in order to avoid paying LECs for interexchange access services. The result would be a substantial loss of revenue for LECs and a windfall (and competitive advantage) for the interexchange carriers (IXC) that use VoIP. The State should not cause such sudden market disruptions without a valid reason for doing so. No such reason has been identified in this record; the VoIP providers insist they use different technology, but do not convincingly explain why that technological difference justifies different regulatory treatment.

For example, in *Exchange of Transit Traffic*, Docket No. SPU-00-7,[51] the Board recognized that the FCC had exempted certain mobile telephone calls from intrastate access charges (calls that involved parties located within the same Major Trading Area, or MTA). It appears the FCC did so because the mobile nature of the service made exchange boundaries less meaningful for this traffic, such that otherwise identical calls were subject to different regulatory treatment in a manner that was difficult to predict and served no real purpose; the MTAs represented a more reasonable definition of a mobile “exchange.” Thus, the technological difference between mobile and landline service justified different treatment for reasons based on sound public policy.

Here, the advocates for deregulation of VoIP service have not made that connection between the differences in the technology used and a justification for the different treatment they seek. Instead, it seems more likely that they seek a competitive advantage over carriers that do not use VoIP technology, regardless of whether it is justified in terms of policy. Staff believes the State should not allow the creation of irrational competitive advantages; the fact is that retail rates for telecommunications services were deregulated based upon the belief that the market is sufficiently competitive to establish reasonable, cost-based rates. As a result, the Board’s role as a regulator has become more like that of a market monitor, observing the competitors and resolving intercompany complaints in a manner that promotes fair competition. Against

that backdrop, the proposal to deregulate VoIP appears to be a significant step away from fair competition.

2. Recommendations

Staff recommends that the Board's approach to VoIP regulation should remain unchanged at this time. Staff recommends that the Board continue to monitor how its regulatory treatment of VoIP affects the availability of VoIP service in Iowa.

B. Carrier of last resort obligations, Iowa Code § 476.29(5)

In today's competitive environment, does Iowa's COLR obligation place an unfair obligation on ILECs? Additionally, does Iowa's COLR obligation impede or promote the public interest?

The Order Initiating Inquiry states Iowa Code § 476.29(5) provides that each local exchange utility has an obligation to serve all eligible customers within the utility's service territory. However the responsibility to serve remote customers has fallen primarily on the incumbent local exchange carrier (ILEC), as competitors resell the ILEC's facilities. Moreover, the status of wireless service availability in the rural areas is not monitored by the Board.

OCA, RIITA, IAMU, and ITA present varying perspectives on retaining the COLR obligation. OCA states COLR obligations apply to all carriers and do not allow for cherry-picking of customers. The Board has attempted to ensure that telecommunications service is available throughout the state. Iowa's multiple-carrier COLR obligation serves an important public purpose and should be maintained. OCA further states Iowa has unique characteristics with the presence of many small ILECs. There is little meaningful competition in certain areas of the state.[52]

RIITA agrees the COLR obligations have fallen on ILECs, especially in exchanges served by an independent telecommunications carrier. COLR obligations could be enforced upon competitive wireline carriers and those seeking eligible telecommunications carrier (ETC) designation by requiring them to serve the entire exchange.[53]

IAMU contends the ILEC COLR obligation is not necessarily unreasonable, because an ILEC is compensated for use of its facilities.[54]

ITA states its members have operated under the premise that there is a COLR obligation. Nevertheless, the Board should not enforce any COLR obligation beyond federal ETC standards unless there are additional revenue sources beyond those permitted by the FCC's *Transformation Order*. The Board should continue to designate ETCs and coordinate with the FCC in the area of universal service policies. The continued commitment to the rural areas by the small ILECs is jeopardized by the FCC's process of eliminating the high-cost mechanisms allocated to TDM-based

services. Without universal service support, it will be implausible for any company to provide advanced network connections and comply with a COLR obligation.[55]

AT&T, CenturyLink, Verizon, and Windstream contend the COLR obligation should be eliminated. AT&T states where there is a highly competitive environment, such as in Iowa, legacy COLR obligations no longer benefit consumers, policy makers, or providers. Competition suffers as well as direct investment in new technologies and infrastructure. Harm comes in the form of the ILEC primarily carrying the burden of providing service. Also, new entrants will not be able to choose the markets they wish to enter if forced to cover other markets.[56] AT&T cites an April 2013 study by the National Regulatory Research Institute (NRRI), which shows that the elimination of state COLR requirements has not resulted in carriers withdrawing service or forcing customer migration to other alternative services.[57]

CenturyLink supports the elimination of the remaining COLR requirements since there is competition from various technologies. CenturyLink also believes expanded broadband access to rural areas will bring more choice to customers and preclude the need for COLR requirements. The COLR is no longer relevant considering competitive local exchange carriers (CLEC) and ETCs concur in the exchange boundaries of the ILECs and that wireless carriers are providing ubiquitous coverage.[58] Nine of the states where CenturyLink operates have eliminated all or part of the COLR obligation with no resulting problems.[59]

Verizon states there is no justification to impose COLR obligations absent compensation. There is also no justification to continue investment in the PSTN given the deployment of new IP networks. Verizon concedes § 476.29(5) may only represent a "paper" COLR obligation; nevertheless, the Board should urge the legislature to eliminate the language in recognition of the changed competitive landscape and new technologies. [60]

Windstream contends a COLR proposal that dictates where competitors must compete is unlikely to improve consumers' competitive choices.[61]

1. Staff Analysis

Iowa Code § 476.29(5) states that each local exchange utility has an obligation to serve all eligible customers within the utility's service territory, unless explicitly excepted from the requirement by the Board. This requirement falls under the provisions addressing local exchange certificates and was enacted in 1992. In 1992, there were no CLECs; thus, all local exchange carriers were ILECs. Later in the 1990s as competition emerged, the statute was applied to CLECs.

Although the Board has applied the § 476.29(5) requirement to CLECs, in actual practice, the statute has proven to be a weak COLR obligation for competitive carriers. In one instance, Crystal Communications, Inc., d/b/a HickoryTech (HickoryTech), filed a request to terminate its resale service in all of its Iowa exchanges except the Waukee

exchange. HickoryTech proposed to transfer all customers that didn't specify another carrier to Qwest. Qwest responded that while it was the ILEC, it was not a Provider of Last Resort (POLR) and not the default carrier.[62] The Board stated the following in resolving the dispute:

> [B]ased on the available information, the Board is not satisfied that the discussions between HickoryTech and Qwest have resulted in an agreement that will ensure a satisfactory transition to Qwest of those HickoryTech customers who do not select an alternate carrier. Therefore, the Board will suspend HickoryTech's request and require that HickoryTech and Qwest present to the Board a joint agreement describing the implementation of the transfer of these HickoryTech customers to Qwest.[63]

The case demonstrated the weakness of the § 476.29(5) obligation to serve as it applies to CLECs since the Board's principal recourse when HickoryTech chose not to serve was to require an orderly transfer of CLEC customers back to the ILEC.

OCA contends that the § 476.29(5) COLR obligation is statutorily linked to §§ 476.20 and 476.29(11). OCA also notes that Iowa's COLR obligation extends to multiple carriers unlike the COLR requirements in other jurisdictions. Once a carrier has entered a market in Iowa, it must receive permission from the Board to exit that market, and if no carrier is available to serve in a geographic location, the Board would designate a carrier to serve an area pursuant to § 476.29(11). OCA contends that this process highlights the legislative concern that all Iowans have communications service available to them.[64]

Staff agrees with the OCA's comments that the COLR requirement extends beyond the § 476.29(5) obligation to serve all eligible customers. Section 476.29(11) requires that the Board assure that "all territory in the state" is served by a local exchange utility. The rules implementing this section of the Code are found at 199 IAC 22.20. Under these rules, service territories are defined by the exchange boundary maps on file with the Board, and all ILECs must file such maps. (CLECs are not required to file exchange boundary maps if they adopt the boundary maps filed by the ILEC, and in few cases have CLECs filed boundary maps with Board.)

The requirement that every ILEC must file an exchange boundary map identifying that ILEC as the local exchange utility serving a particular exchange reinforces the OCA's contention that § 476.29(11) is an extension of the § 476.29(5) COLR obligation. If an ILEC decides to discontinue service to all or part of an exchange pursuant to § 476.20, then § 476.29(11) would require the Board to "include all or part of the territory in[to] the certificate of another local exchange utility." It appears the telephone utility authorized by the Board to serve the territory vacated by the ILEC discontinuing service would become the successor ILEC for that exchange area.[65] Moreover, the successor ILEC would be required by § 476.29(5) to serve all eligible customers within the utility's service territory, unless explicitly excepted from the requirement by the Board.

Since 1992, when the telephone certificate provisions of § 476.29 were enacted, it has been the intent of the General Assembly that all areas of Iowa be served by a local exchange utility. The Board's rules implementing the statute have established a regime where there would always be an ILEC to serve every exchange area, even after an existing ILEC discontinues service. Therefore, staff agrees with the OCA's contention that §§ 476.29(5), 476.29(11), and 476.20 are statutorily linked and form the basis of Iowa's COLR obligation. That linkage should not be broken by repealing one statutory section. It seems clear in the exercise of the Board's authority pursuant to §§ 476.20 and 476.29(11) that the Board must also insure that all customers are served.

2. Recommendation

Staff recommends retention of § 476.29(5).

C. Consumer protection and complaint resolution, including unauthorized changes in service (slamming and cramming), §§ 476.3 and 476.103

Should the Board retain authority to resolve complaints involving telecommunications carriers?

The Order Initiating Inquiry states that the Board continues to receive many consumer complaints against telecommunications carriers, mostly in regard to unauthorized changes to a consumer's telecommunications service. The Board provides what appears to be a relatively fast and inexpensive process for complaint resolution and for discouraging behavior contrary to the public interest. Further, the Board participates in enforcement of FCC slamming rules and interprets the prohibition of unauthorized changes in service in § 476.103 to apply to unauthorized charges, or "cramming."

OCA states that customer complaints should start with the company, but when the company does not respond to the customer, the Board's complaint process is available.[66] OCA argues that competition may not be as robust throughout Iowa as several parties state. OCA receives complaints about inadequate service where the consumer cannot find an alternative provider.[67] Another issue is early termination fees (ETF) where complaints have shown that consumers were unaware of the existence of an ETF. OCA maintains that when ETFs are billed in the absence of an agreement, then this is a violation of the cramming prohibition.[68]

OCA maintains that the Board should retain jurisdiction over unauthorized changes in service. This authority is essential for protecting consumers and identifying unfriendly utility consumer policies. OCA observes the Board has seen over one thousand cramming complaints in the past decade and OCA has requested civil penalties in many of these under § 476.103. OCA states there is a need to update § 476.103 to give the Board jurisdiction over wireless cramming.[69] OCA contends that proposals from Securus and Sprint to exclude certain types of errors from being a basis for civil penalties should be rejected. OCA argues it is difficult to determine if a cramming

violation is an isolated incident because most cramming situations are never reported. Also, because the current statute omits an intent requirement, negligent or inattentive behavior is covered and subject to civil penalties. There should be no time limitation placed on when a complaint is filed as it should run from the time of the violation. Civil penalties are meant to deter future violations.

Verizon believes there are two issues to address. First is the two-year records retention requirement for documentation of changes in service.[70] While this aligns with the federal requirement, the Board has accepted informal complaints outside this time window. This has resulted in great expense to carriers to handle complaints outside this retention period. The rule should be amended to require complaints to be filed within two years of the alleged incident. Second, the Board should use its discretion under § 476.3(1) to require any petition seeking formal proceedings for the imposition of civil penalties to include a statement that a consumer's complaint was not resolved to the customer's and Board staff's satisfaction. Given that § 476.103(3)(e) directs the Board to adopt rules that encourage resolution of complaints regarding unauthorized changes in telecommunications without Board involvement, and § 476.3 requires a "reasonable basis" to initiate proceedings to consider the imposition of civil penalties, carriers should not have to expend resources defending a complaint that has been resolved.[71] Finally, Verizon states that the Board should not extend its cramming jurisdiction to wireless carriers. The FCC has recently declined to do so and is monitoring the marketplace.

CenturyLink states the current rules on complaint resolution provide an inexpensive way to reach a complaint resolution but should apply to all providers regardless of the underlying technology. Rules that could be simplified or eliminated include customer notice, deposits, and billing. The Board and OCA should partner together in order to provide a cooperative relationship between industry and the regulator in trying to provide timely and relevant resolution for the customer and to address customer satisfaction.[72] CenturyLink suggests the process should be modified to allow the customer to initiate the complaint, followed by informal work by the carrier and staff to resolve the issue. Once a pattern of inadequate service is seen, a formal proceeding would then be appropriate.[73]

Securus states the Board rules regarding inmate calling are a poor fit with slamming and alternative operator services rules and should be revisited. The rules should be updated by memorializing the decisions of the many contested cases held before the Board. Securus contends that isolated, inadvertent errors are not a basis for civil penalties. Securus concurs with Verizon in that not every complaint rises to the level of a formal proceeding.[74]

Sprint also advocates incorporating significant Board and court decisions into the rules. This would help all to see how the law has evolved. Sprint believes this fine-tuning of the consumer protections will prevent intentional scams and fly-by-night schemes and will avoid punishing carriers for inadvertent mistakes.[75]

ITA states the Board is best able to address consumer protection mechanisms, several of which are principles listed in NARUC's Federalism Principles. These include the accepting and responding to consumer complaints, ensuring consumer data remains private, and ensuring fair and accurate billing. The Board's oversight will help when market failure occurs or disputes threaten consumers, network reliability, or public safety. Jurisdiction over slamming and cramming should continue; however, there are some outdated provisions in the rules. ITA concurs with Verizon regarding a two-year period to bring a complaint. Other rules should be adjusted to bring standards for wireline and wireless carriers into agreement such as notice, deposit, collections, and refund obligations.[76]

T-Mobile observes that the Office of Consumer Protection of the Iowa Department of Justice provides prompt resolution of consumer complaints involving communications providers, but acknowledges the Board has specialized expertise regarding slamming and cramming. Likewise, AT&T agrees it is appropriate for the Board to continue to enforce the FCC's slamming rules for wireline carriers.[77]

Cox believes the current consumer complaint rules may need some fine-tuning but generally provide a balance of the rights of consumers and the carriers. Cox disagrees with OCA regarding the validity of early termination fees. These fees allow for revenue certainty for the carrier and the reduction in upfront costs for many services.[78]

CTIA also argues the Board should not address early termination fees. The wireless marketplace has addressed early termination fees and wireless providers have voluntarily adopted consumer protection guidelines. CTIA states that OCA's proposal to update § 476.103 to grant the Board jurisdiction over wireless cramming could be contrary to state and federal law.[79]

1. Staff Analysis

Iowa Code § 476.3 allows for the investigation of consumer complaints and the opportunity to conduct formal proceedings. The Board receives consumer complaints against telecommunications carriers, most of which involve unauthorized changes to a consumer's telecommunications service. As several commenters stated, the Board provides a relatively fast and inexpensive process for resolving these complaints and for discouraging behavior that is contrary to the public interest. The Board participates in the enforcement of the FCC's slamming rules as defined in § 476.103 and resolves cramming complaints under the provisions of § 476.103.

The handling of slamming complaints is split between the states and the FCC. Fourteen states allow the FCC to process slamming complaints, while the majority of the states retain jurisdiction over slamming complaints. Several of the commenters operate in multiple states and would have experience under both the state and the FCC's jurisdiction. CenturyLink, T-Mobile, and AT&T state that the Board should retain its jurisdiction. One reason cited is that the Board's process provides a quick and less costly resolution. Staff notes that the FCC clarified its slamming rules a few years ago,

but the Board's rules have not been updated to reflect these changes. The Board should consider which of those changes should be incorporated into the Board's rules.

Currently the Board does not have jurisdiction over wireless cramming, as § 476.103 only applies to wireline carriers. The Office of Consumer Protection of the Iowa Department of Justice resolves consumer wireless complaints. OCA believes eliminating wireless cramming is a consumer protection priority and suggests the Board be authorized to address this issue by updating the cramming statute to apply to voice services in general. OCA suggests that wireless cramming is a widespread practice that goes undetected by consumers.[80] Staff believes it would be appropriate for the Board to open a dialogue with the Iowa Office of Consumer Protection to gain a better understanding of the volume of wireless cramming complaints and their ultimate resolution. At this point, staff does not believe there is enough evidence to make a case to the legislature that wireless cramming jurisdiction needs to be turned over to the IUB.

Staff believes Sprint's and Securus' recommendation to incorporate past Board and court decisions into the rules has some merit and could be considered in a rule making proceeding.

Verizon proposes that a two-year statute of limitations be placed on the filing of a complaint regarding a change in service. Verizon believes that the handling of informal complaints before the Board has caused great expense to the carriers because many complaints have not been raised until after the record retention period lapses. OCA counters by saying any limitation period should run from the time of the violation.

47 C.F.R. § 64.1120(a)(1)(ii) states:

> No submitting carrier shall submit a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service prior to obtaining… [v]erification of that authorization in accordance with the procedures prescribed in this section. The submitting carrier shall maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.

199 IAC 22.23(2)"a"(4) states:

> The local service provider may change the preferred service provider, for customer-originated changes to existing accounts only, through maintenance of sufficient internal records to establish a valid customer request for the change in service. At a minimum, any such internal records must include the date and time of the customer's request and adequate verification of the identification of the person requesting the change in service. The burden will be on the telecommunications carrier to show that its internal records are adequate to verify the customer's request for the change in service.

> All verifications shall be maintained for at least two years from the date the change in service is implemented. Verification of service freezes shall be maintained for as long as the preferred carrier freeze is in effect.

After review of the federal rule and the Board's rule, staff is persuaded by OCA's argument. The Board's rule is similar to the federal rule. There appears to be little additional regulatory burden placed on a carrier by the Board's rule compared to the federal rule. A two-year period should be considered the minimum time that a carrier must maintain its records.

2. Recommendations

Staff concludes that at this time it is not appropriate to recommend changing § 476.103 to grant the Board jurisdiction over wireless cramming. Staff believes it would be appropriate for the Board's staff to open a dialogue with the Iowa Office of Consumer Protection to gain a better understanding of the volume of wireless cramming complaints and their ultimate resolution.

Staff recommends the Board initiate a rule making to consider updates to 199 IAC 6.8 and 199 IAC 22.23 in order to incorporate recent FCC rule changes covering unauthorized changes in telecommunications services. That rule making could also consider incorporating significant Board and court decisions into the general complaint provisions of 199 IAC Chapter 6 or 199 IAC Chapter 22.

At this time, staff does not recommend that a strict two-year statute of limitations be applied to the filing of complaints regarding an unauthorized change in service.

D. Fees assessed to telecommunications carriers

How could regulatory fees to telecommunications carriers be more equitably assessed?

The Order Initiating Inquiry explains that telecommunications carriers are assessed fees for programs that promote the public interest, such as E911, dual party relay service, and Board assessments for the costs of regulation. The Board notes that not all fees are assessed on a consistent basis.

Most commenters agreed that regulatory fees should be applied on a technology and competitively neutral basis, as both public interest programs and a ubiquitous telecommunications network are available to and benefit all end users of telecommunications services.[81] OCA agrees with the Board that fees should be collected from those who cause the costs, including those who indirectly benefit from the Board's regulatory actions.[82] ITA notes that only commenters who want the Board to have little or no jurisdiction over voice services disagree with broadening the base of providers for regulatory fees.[83]

RIITA and T-Mobile believe that the Board's indirect assessments should be applied to regulated entities only.[84] Regarding direct assessments, RIITA maintains that non-parties filing comments should not be assessed by the Board, and T-Mobile contends that only those parties that voluntarily avail themselves of the Board's authority to resolve disputes should be assessed.[85]

Similarly, Verizon does not believe the Board has authority to impose additional regulatory fees on providers of services that fall outside the Board's jurisdiction. In addition, Verizon argues no commenter defines an "indirect benefit" of Board actions or how providing indirect benefits to a non-regulated entity could form a legal basis for imposition of regulatory fees on that entity.[86]

AT&T believes the Board should define which service providers' customers are required to support public interest programs such as E911 and Dual Party Relay Service (DPRS) charges. For general regulatory assessments, it suggests the Board consider moving to direct assessments, imposing costs on the cost-causer based on time and resources required by the Board and its staff for proceedings.[87]

During the workshop, there was some discussion regarding fees assessed for the Board's DPRS programs. OCA believes the intent of the language in Iowa Code § 477C.7 is to ensure everyone in the telecom industry should contribute to the funding of this service, which it reiterated in its post-workshop comments.[88] However, the section needs to be revised as it has not kept pace with technology and excludes a category of providers who now provide service in the state. Technology-neutral language should be used rather than a list of providers. OCA further suggests that in order to assess all providers, the annual report mechanism where assessments are based upon intrastate revenues should still be operable. RIITA does not disagree with OCA but concedes that as a practical matter, some providers are hard to "track down." All participants agreed this is a problem. CenturyLink cautions the Board to determine what services are assessable, and states that since the assessment is large, if it is not shared, it is not fair. ITA agrees with OCA, RIITA and CenturyLink's comments. T-Mobile points out when VoIP providers get number resources, as appears to be the indication,[89] those telephone numbers could be a "touch point" in the future for determining assessments. T-Mobile notes that certain VoIP providers would argue that their revenues are all interstate revenues and thus, have no intrastate revenues that are assessable.

1. Staff Analysis

As stated in the Inquiry Order, the Board assesses a variety of fees pursuant to Iowa Code for programs that promote the public interest, such as dual party relay service[90] and Board assessments for the cost of regulation.[91] The Inquiry Order included E911 fees as another such example; however, E911 surcharges are not under the Board's authority but are determined by the local joint E911 service board in each county.[92]

Most commenters suggested the Board should "broaden the base of communications service providers" for regulatory fees and that these fees should be collected on a technology-neutral basis. Staff agrees.

DPRS Assessment

Iowa Code § 477C, Dual Party Relay Service, gives the Board authority to administer Iowa's Telecommunications Relay Service (TRS) and Equipment Distribution programs. Subsection 7 describes how these programs are to be funded. Iowa Code § 477C.7(1) states:

> The board shall impose an annual assessment to fund the programs described in this chapter upon all telecommunications carriers providing service in the state.

Although none of the commenters suggested any changes to the DPRS assessment in their initial written comments, staff believes it should be reviewed at this time. Pursuant to 47 CFR § 64.603, all providers of telecommunications service are obligated to provide TRS. Since 2007, FCC rules have required interconnected VoIP[93] service providers to make contributions to the federal TRS Fund.[94] And in 2011, the FCC extended the obligation to contribute to the federal TRS Fund to non-interconnected VoIP providers[95] pursuant to Section 715 of the Communications Act of 1934, codified at 47 U.S.C. § 616.[96]

Further, the Board has determined it has jurisdiction over intrastate interconnected VoIP.[97] Thus, at a minimum, staff believes interconnected VoIP providers should be required to contribute to the DPRS fund. Staff suggests the Board take the scope of DPRS assessments even one step further. Since all providers of telecommunications service are obligated to provide DPRS regardless of facilities used,[98] all providers, including non-interconnected VoIP providers, should be assessed for DPRS.

It was clear at the workshop there was agreement that the assessment for DPRS should be expanded to include contributions from all telecommunications carriers. However, there was also agreement that it will be difficult to determine who all of those carriers are and how they could be assessed.

One possibility is to assess any provider that has telephone numbers by basing the assessments on those telephone numbers. This is currently the method used to assess the wireless carriers for the DPRS and it has worked very well. No revenue information is reported by these carriers; only the number of Iowa telephone numbers is reported and a set fee (currently three cents for wireless carriers) per telephone number is remitted.[99]

As discussed in the VoIP section of this report, it is clear that the Board maintains regulatory authority over interconnected VoIP.[100] In accordance with the findings in the *Mediacom v. Connexion* case, staff believes these carriers can be considered "local

exchange telephone utilities" as referenced in Iowa Code § 477C.7. Because Iowa's DPRS program must follow federal requirements, staff believes the issue of whether non-interconnected VoIP providers should be subject to the Board's assessment authority in § 477C.7 (as they are subject to federal assessment for interstate TRS) may be an appropriate topic for further inquiry. Another topic for such a proceeding would be how to identify and assess non-interconnected VoIP providers.

Direct Assessments

Iowa Code § 476.10 and the Board's rules at 199 IAC 17 set out the manner in which the Board may assess for direct and indirect, or "remainder," expenses attributable to its duties.

Regarding the Board's direct assessments, RIITA complains that parties wishing to file comments but not participate in a proceeding are hindered if they do not know if and how much they will be assessed. However, staff believes the Board's discretion to determine whether to directly assess parties is necessary and properly encompassing. The Board has authority to directly assess any "person bringing a proceeding before the board or to persons participating in matters before the board." The Board has discretion whether to assess, based on several factors: a party's financial resources, the impact of an assessment on participation by intervenors, the nature of the matter, and the contribution of a party's participation to the public interest. The Board can "decide not to charge expenses to persons who, without expanding the scope of the proceeding or matter, intervene in good faith in a board proceeding."[101]

AT&T comments that the Board should initiate billing based on direct assessments. The Board already bills in this manner when it is appropriate. Staff believes it is not possible to move entirely to direct assessments as not all of staff's time can be allocated directly to specific dockets or proceedings. Staff's opinion is that the direct assessments section of the statute does not need to be modified.

Remainder Assessments

In order to recoup all fiscal year expenses incurred by the Board, the Board has the authority to bill for a "remainder assessment" for those expenses not directly assessable. The Board's authority to assess for these expenses is limited to "persons providing service over which the board has jurisdiction."[102] The remainder assessment is calculated based on the proportion of each regulated provider's gross operating revenues from intrastate operations.[103]

As noted above, staff agrees with commenters that advocate broadening the base of providers that are subject to Board regulatory assessments. Changes to Iowa Code § 476.10 would be necessary.

In order to assess on a technology-neutral basis, it would be necessary to determine how to change the calculation of the remainder assessment. Iowa Code § 476.10(1)(b)

states the calculation of the remainder assessment is based upon intrastate revenues, which are reported in annual reports to the Board. However, not all providers are currently required to file annual reports. If the Board were to continue to base remainder assessments on an intrastate revenue basis, changes would also be necessary in the Board's administrative rules, namely, 199 IAC 23, Annual Report, and 199 IAC 17, Assessments. Another option is to proportionately determine the remainder assessment based on the number of active telephone numbers.

Other

There are several obsolete sections in Chapter 23 of the Board's rules. Section 2 lists annual report requirements for rate-regulated utilities. The Board no longer rate regulates telegraph or telephone utilities and, thus, 23.2(3) *Telegraph utilities* and 23.2(4) *Telephone utilities,* could be eliminated. The Board will continue to receive annual telephone reports pursuant to its rules in Chapter 23.3(3). However, this subsection should also be updated to remove obsolete language regarding the type of report to be filed.

The Board's rules at Chapter 17.4(7) reference Iowa Code § 476.97 – Price Regulation. Since it is recommended in this report that this Code section be eliminated, 199 IAC 17.4(7) should also be eliminated.

2. Recommendations

Staff recommends that the Board consider the possibility of expanding the scope of providers that contribute to the DPRS fund to ensure inclusion of both interconnected and non-interconnected VoIP, to follow the apparent intent of the legislation and to mirror the federal law. This can be accomplished through further inquiry as discussed above to determine who must contribute and the most appropriate assessment mechanism.

Staff believes no changes are necessary to the direct assessment section of Iowa Code § 476.10.

Staff recommends that the remainder assessment subsection in § 476.10 be further reviewed and revised, perhaps in an inquiry or workshop, to include assessments to all carriers that provide telecommunications service in Iowa.

Finally staff recommends that 199 IAC 23.2(3), 23.2(4), and 17.4(7) be eliminated, as these sections are outdated and no longer necessary, and 23.3(3) be amended to eliminate obsolete language.

E. Federally-delegated regulatory authority

Should the Board make changes to its current regulatory role as delegated by the FCC?

The Board undertakes a variety of regulatory activities pursuant to authority delegated by the federal government. These include telephone numbering issues under 47 U.S.C. § 251, the promotion of a competitive marketplace for LEC services under §§ 251 and 252, and federal USF administration pursuant to § 254. The Board requested comment on the continued participation in these programs.

OCA states the federal Telecommunications Act of 1996 contemplated a role for state regulatory authority. States have delegated authority under provisions of 47 U.S.C. §§ 251 and 252 that is directed at promoting and protecting a competitive marketplace for LEC services, including terminating exemptions for rural carriers and conducting arbitrations of interconnection agreements. OCA urges the Board to continue to carry out these responsibilities.[104] Similar comments were submitted by RIITA, Cox, ITA, T-Mobile, IAMU, Windstream, and Sprint.[105]

OCA reasons that the Board is familiar with the nature of Iowa's market, has a continuing relationship with the industry and stakeholders, and is close to the scene and the relevant sources of information. The Board has an interest in seeing that public policy goals are met and can provide timely solutions when difficult situations or potential threats occur. T-Mobile and Cox concur with OCA and suggest that the Board offers timely resolution of these conflicts.[106] ITA agrees with OCA's statement that the Board is the party best positioned to handle these conflicts.[107] Windstream states interconnection is vital and that the *Transformation Order* discusses the importance of interconnection in the transition to an IP network.[108] T-Mobile states interconnection rights are a necessary prerequisite to competition as Iowa's largest ILEC's network remains the only way for several providers to interconnect indirectly in the state.[109]

Sprint also reasons that the Board must maintain regulatory oversight of the interconnection process as it remains a monopoly. Sprint argues retail competition can continue only if there is effective upstream competition, that carriers can interconnect and exchange traffic in an efficient and cost-effective way, and that no carrier can engage in arbitrage situations. This role continues while the transition to an IP-based network is underway.[110]

CenturyLink presents a different viewpoint regarding interconnection. CenturyLink argues that a § 251 regulatory framework should not be overlain on the ILEC network as it evolves into an IP-enabled environment, as doing so would bring unnecessary costs and slow the build-out of a universal IP network. Physical interconnection has no real meaning when all that is needed is a broadband connection, and that commercially-negotiated agreements should be used.[111] While AT&T concurs with the majority of the commenters regarding the traditional networks, it concurs with CenturyLink regarding the evolving IP-enabled environment. According to AT&T, the issue of whether IP interconnection is subject to §§ 251 and 252 will be decided in a federal forum.[112] In a discussion at the workshop, AT&T made clear it sees no state role in resolving IP interconnection disputes. AT&T indicates it would address

interconnection issues in commercial agreements, not interconnection agreements filed with the Board.

Verizon argues the Board should cease any regulatory functions that federal law does not require it to perform. The continuation of any duplication of a federal regulatory effort only increases costs to the consumer.[113]

OCA recommends the Board continue with the oversight of numbering issues granted under 47 U.S.C. 251(e) and of USF issues such as the designation of eligible carriers, annual certifications, and network planning reporting under 47 U.S.C. 254. The Board has been active in these areas and OCA uses the same arguments in support of this statement as for the interconnection agreements; the Board is familiar with the nature of Iowa's market, has a continuing relationship with the industry and stakeholders, and is close to the scene and the relevant sources of information.[114] ITA concurs with OCA and further states that the Board is well positioned to address ETC requirements. ITA also requests that the Board not require more state reports that would be in addition to the many new federal reports. ITA further states that concepts of the NARUC Federalism Task Force, such as ensuring that networks remain ubiquitous and interconnected regardless of technology or end-user location and seeing that there is a robust and reliable network available to all at affordable rates, may best be implemented by the Board's retention of its federally delegated authority.[115] OCA states that a concept of the NARUC Federalism Report[116] has state agencies working with federal agencies on these and other issues in order to resolve end-user and carrier issues and ensure competition, as mandated by the 1996 Telecommunications Act.[117] Sprint concurs with ITA and OCA.[118]

T-Mobile does not believe the Board should help administer the federal USF. In states where the state agency has declined to administer the federal USF, the impact to T-Mobile has been minimal.[119]

Sprint claims that a monopoly power remains in the area of access charges. The Board should continue its oversight of these access charges while the FCC addresses this issue.[120] AT&T states the Board should continue its oversight of carrier access charges and high volume access rates, and that this delegation comes down through the *Transformation Order*. When access charges are transitioned to a bill-and-keep scenario, AT&T suggests the Board review at that time whether this oversight is needed.[121]

1. Staff Analysis

The vast majority of the respondents agree that the Board should continue with its federally-delegated regulatory authority over interconnection. This authority is given directly to the states under 47 U.S.C. §§ 251 and 252. Among the reasons for the continuance of the Board's oversight include the Board's ability to adjudicate a decision relatively quickly, the Board's expertise to oversee any problem, the Board's relationships with the industry as well as knowledge of the current state of the

telecommunications market, and the fact that the smaller carriers believe that interconnection remains closer to a monopoly than a free market. T-Mobile states that with the exception of the very largest competitors in the country, all facilities-based service providers filing initial comments agree there must be an adequate regulatory backstop such as § 252 arbitrations to ensure all competitors may interconnect with all other carriers on reasonable terms and conditions to exchange voice traffic in IP format.[122]

The OCA and ITA support the concepts expressed in NARUC's Federalism Task Force Report. This report offers eight principles for those entities engaged in providing, regulating, or managing communications services to follow. These principles are: 1) consumer protection; 2) network reliability and public safety; 3) competition; 4) interconnection; 5) universal service; 6) regulatory diversity; 7) evidence-based decision making; and 8) broadband access, affordability, and adoption. The report proposes that the states have a critical role in seeing there is a robust and reliable telecommunications system available to all users. As OCA and ITA stated, the Board has performed these responsibilities for several years.

CenturyLink, AT&T, and Verizon assert these federal statutes are meaningless in an IP network environment and that the Board's role is duplicative of federal efforts. CenturyLink's and AT&T's principal argument is that § 251 is meaningless in an IP network environment as only a broadband connection is needed. However, Windstream argues that the FCC, in its *Transformation Order*, continues to see the importance of a role for the state commissions in the area of interconnection as the industry is evolving to an IP-environment. This indicates that the FCC views the states as having a vital role to fill for the foreseeable future. This argument is persuasive. The commenters show a wariness as to what the near future will be and what issues may arise on the way to an IP-based world. The transition to an IP-network remains several years into the future and the transition may bring many unknowns to all parties. The handling of these unknowns may best be done in an environment that is accustomed to handling diverse problems. Verizon's argument of duplication of effort does not have good footing in the area of interconnection, as several commenters point out the many complaints that have come before the Board for resolution and that a more timely resolution was reached than if the complaint was taken to the FCC. This should result in lower costs to the end user, rather than Verizon's claim that costs would increase for the end user.

There were three parties who directly addressed federal USF issues. OCA and ITA state the Board should continue its oversight of the USF issues. T-Mobile argues the Board should refrain from any oversight of the federal USF, based on its observation that its operations have not been impacted in states where there is no state oversight.

IAMU and RIITA provided general statements that the Board should continue with all federally-delegated responsibilities. The reasons given are similar as those given for the continuance of the oversight of interconnection issues.

The federal law regarding universal service is found in 47 U.S.C. § 214(e). The statute appears to provide the state commissions with the primary obligation to process carrier requests for ETC designation. Staff notes the FCC has reached the same conclusion in its orders.[123]

Section 332(c)(3)(A) of the Telecommunications Act of 1996 addresses wireless carriers' ETC applications. The section prohibits states from regulating the entry of or the rates charged by a wireless carrier and the restriction does not permit a state commission to reject a wireless carrier's ETC application. The FCC also reached this position.[124]

Since the Board adopted emergency rules in Docket No. RMU-97-9 in order to comply with the Telecommunications Act of 1996, the Board has been granting ETC designation to Iowa carriers.[125] Staff notes the Board first exercised its jurisdiction over ETC designations for wireless carriers beginning with the Western Wireless L.L.C., d/b/a CellularOne application.[126] There have been several subsequent wireless carriers that have been granted ETC status.

Staff agrees with the FCC conclusions that state commission involvement in ETC-related work is needed to help ensure the success of USF reform and that state commissions should remain as partners with the FCC as these programs evolve. As a point of reference, in 2012 Iowa's eligible carriers received $134,975,000 in USF high-cost support.[127] The Board's rules in Chapter 39 contain provisions regarding universal service, including requirements for ETCs. A re-write of this chapter is necessitated by the *Transformation Order* and the *Lifeline Reform Order*[128] changes to the FCC's Part 54 universal service rules.

OCA is the only commenter on numbering issues. OCA states the Board should continue with oversight of this issue. There are no express arguments against the Board's oversight. Number conservation has been a critical component of the review of a company's application for a CPCN. This oversight should continue.

The area of access charges was addressed by Sprint and AT&T. Their argument centers on the belief that this area is still subject to monopolistic tendencies and the Board has been active in handling issues in this area. The goal of a competitive marketplace in Iowa cannot happen if there remains a monopoly regarding access charges.

Staff notes that the *Transformation Order* and the *Lifeline Reform Order* have added multiple reporting requirements for carriers. These reports are now to be filed with both the FCC and state commissions. Many of the reports contain confidential information. When these reports are filed with the Board, the Board must issue orders granting requests for confidentiality. In order to improve efficiency, staff believes revisions can be made to 199 IAC 1.9 to make these reports confidential by rule, relieving the Board from issuing numerous orders granting confidentiality.

2. Recommendations

The FCC has expressly stated in the *Transformation Order* that the states play a vital role in the conversion to an IP-based world. The Board should continue with the oversight of interconnection.

The Board should also continue with its oversight of numbering issues and the universal service fund for the same general reasons as interconnection oversight.

Iowa Administrative Code chapter 39 – Universal Service Rules will need to be revised to coordinate with FCC regulations, pursuant to the Part 54 universal service rules, to avoid inconsistent or duplicative requirements.

Staff recommends that amendments be made to 199 IAC 1.9 to designate certain federal ETC reports that are filed with the Board confidential by rule.

F. State authority to hear and resolve intercarrier disputes, Iowa Code § 476.11

Should the Board continue its role in resolving intercarrier toll complaints?

Iowa Code § 476.11 gives the Board jurisdiction to hear complaints and resolve disputes regarding the terms and conditions of interconnection. The Board questioned the continued usefulness of its involvement in resolving intercarrier disputes.

OCA states that Iowa Code § 476.11 provides the Board with jurisdiction over how toll communication is interchanged. OCA argues this jurisdiction must be preserved as the FCC has stated that it will rely on states to handle many complaints at least until 2019, when the transition from access charges to a bill-and-keep basis, as set out in the FCC's *Transformation Order*, will be complete.[129]

Windstream and T-Mobile add that if pro-competition policies are to be given effect, the Board must be able to hear these disputes. Windstream cautions against the abdication of the Board's authority over wholesale issues. The FCC's *Transformation Order* talked of multiple interdependent goals, of which interconnection was one. Windstream argues that without adequate governance of interconnection and intercarrier issues, competition and consumer choice is threatened, as well as the transition to an all IP-network. T-Mobile concurs with Windstream in that the Board's oversight may be very important in the transition to this IP-world and adds that complaint resolution before the Board provides a timely resolution. ITA expresses its concern that the wholesale deregulation of IP-enabled services could adversely impact interconnection issues by opening up a regulatory escape route for carriers.[130]

Windstream points out that no party has submitted supporting analysis regarding the possible result of abdication of any Board oversight.

Cox, T-Mobile, ITA, Sprint, and IAMU expressed concern that there may be a potential loss of oversight of the wholesale market if the Board did not continue its role in resolving these complaints. These parties also stated that this regulatory oversight is important to prevent market power from overwhelming smaller carriers.[131]

Windstream, CenturyLink, OCA, and Sprint argue the Board has the expertise in communications matters and has the knowledge of Iowa's markets and carriers.[132] Sprint states the Board's role with handling intercarrier disputes overlaps with the monitoring and protecting of a competitive marketplace.[133]

AT&T states the Board should continue to hear complaints and resolve disputes as it has authority to do so under 47 U.S.C. §§ 251 and 252. AT&T concurs with others that the Board offers an efficient path to a resolution of these complaints.[134] (On the basis of AT&T's workshop comments, staff assumes AT&T is not expressing support for Board oversight of IP interconnection disputes.)

1. Staff Analysis

Several commented that the Board offers a venue where a relatively quick resolution can be obtained. This was deemed to be a favorable factor. Alternatives to bringing a complaint before the Board were to take the complaint to the FCC or to the court system. These alternatives may result in decisions that are reached several years after the complaint is filed.

Several respondents are concerned with the wholesale market. IAMU, ITA, and others are concerned that market power may bring harm to small carriers. Maintaining the Board's complaint process will help to level the playing field. Sprint states simply that during the transition to an IP-network, there will be other unknown issues that will arise and the Board is in the best position to address them. RIITA believes these disputes will not lessen in the immediate future.

The parties did not limit themselves to discussing only Iowa Code § 476.11. Several other Iowa Code sections were mentioned where the Board has complaint jurisdiction. OCA put forth Iowa Code §§ 476.3(1) and 476.101, covering general complaint jurisdiction and anti-competitive behavior. Windstream mentioned Iowa Code §§ 476.95, 476.100, and 476.101, regarding competition, and forbidden actions. OCA and Windstream recommended the Board's jurisdiction under these statutes and § 476.11 should continue. As OCA states, the Board's authority under these statutes allows for the effective monitoring of the competitive landscape in Iowa's telecommunications market and promptly addresses problems.[135] Windstream argues that the authority to oversee intercarrier matters should not rest only on 47 U.S.C. §§ 251 and 252. The elimination of Iowa Code §§ 476.100 and 476.101, as AT&T proposes,[136] would leave no authority for the Board to address intercarrier disputes outside of the interconnection claims that the federal Code allows.[137]

Although Windstream did not directly address the interplay between Iowa Code § 476.11 and Iowa Code §§ 476.100 and 476.101, OCA succinctly sums it up by saying these statutes are all necessary for the Board to effectively monitor the landscape of the telecommunications market.

The parties appear to be uncertain about the immediate future of the telecommunications industry. Staff agrees with statements made by OCA and Windstream. OCA points out that the change from access charges to a bill-and-keep basis for local exchange access is not scheduled to be completed until 2019. OCA also states there are disputes that are not based on rates. Windstream states that without adequate measures to govern interconnection and intercarrier issues, competition, consumer choice, and the transition to an all IP-network may be jeopardized. This uncertainty calls for a cautious approach to any modifications to the Board's oversight.

Iowa Code § 476.11 should remain. The viewpoints of the many respondents are essentially unanimous in that they believe the Board has an important role in the foreseeable future in handling intercarrier disputes.

2. Recommendation

There should be no modifications to Iowa Code § 476.11.

G. Quality of service regulations

Has competition in the telecommunication marketplace made quality of service regulation less necessary?

The Board is given jurisdiction over the quality of service provided by wireline LECs, pursuant to Iowa Code § 476.3. The Board's rules contain various provisions implementing this authority. The Board, in its Order Initiating Inquiry, stated it could be argued that competition in the marketplace makes quality-of-service regulation less necessary. Alternatively, the Board noted it could also be argued that the level of competition in the local exchange market is not yet sufficiently robust to make this type of regulation unnecessary, pointing to the ongoing call-completion situation affecting Iowa's rural customers. The Board invited comment on the continuing need for this consumer protection function.

CenturyLink, Cox, and ITA agree that the Board must retain some jurisdiction over quality of service to ensure public safety and network reliability.[138]

CenturyLink believes competition in the marketplace drives a company to meet customer expectations, which change with each technological advance.[139] Rules addressing a specific technology are obsolete in today's market. Customer satisfaction and complaint resolution should be driven by the customer and not by arbitrary standards that may or may not be of interest to the customer.[140]

Cox agrees by stating that competition is the preferred way to ensure appropriate rates, terms, and service quality. Regulation should be undertaken with an ever-lighter touch under "normal operating conditions," with more substantial regulation reserved for actions and actors who would impair competition, distort the marketplace, or harm customers or other actors in the market.[141]

AT&T asserts that regulating service quality in a competitive market is not only unnecessary, it is harmful to consumers. Competition is far better at setting service quality standards that match customer expectations and demands than regulations. Regulators do not have the continual feedback that the market provides and therefore cannot know which attributes of service quality are most valued by consumers relative to their costs.[142] Consumers have multiple providers and services to choose from in today's market, so not only can consumers switch providers or service if they are not getting the level of service quality they demand, the competitive pressures on providers ensure that the optimal level of service quality is maintained. Outdated service quality standards in a competitive market should be eliminated. Fifteen of the 22 states where AT&T operates as an ILEC have eliminated quality-of-service requirements via state legislation or state commission reform. AT&T encourages the Board to do the same.[143]

IAMU, OCA, and RIITA agree that the Board should continue its role overseeing the quality of telephone service provided to Iowans.[144] These three commenters have concerns with the rural call completion issue and agree this issue should be investigated further.[145] The failure of calls and faxes to complete affects the health, safety, and welfare of Iowans. The Board has a vital role in addressing these complaints. The transition to IP heightens the importance of this role. OCA further suggests this issue may call for new regulation or new legislation.[146]

OCA contends that rules requiring local exchange utilities to furnish and maintain adequate plant, equipment, and facilities to ensure satisfactory transmission of communications cannot be dismissed as outdated and need to be maintained.[147]

1. Staff Analysis

Staff believes it is necessary to retain certain criteria for service quality, and the quantity and variability of the customer complaints received by the IUB customer service section verify this need. The IUB's complaint process allows customers a way to resolve quality of service issues. Written complaints regarding telephone quality of service have not substantially decreased over the past five years.[148] Increased competition has not reduced the need for service quality regulation.

Iowa Code § 476.3, among other provisions, gives the Board jurisdiction over the quality of service provided by wireline LECs. The Board's rules contain various provisions implementing this authority. Several commenters argue that competition in the market makes quality-of-service regulation less necessary but the number of complaints fielded by the Board, including the ongoing issue of call completion, indicates that competition in the market is not sufficiently robust to make this type of regulation unnecessary.

Several comments were received in the Inquiry regarding the call completion issues faced by rural customers in Iowa. Many rural customers are experiencing difficulty receiving long distance or wireless calls on their landline telephones. The issue may stem from the manner in which telephone providers route these calls. Because rural areas traditionally have higher costs associated with the termination of long distance traffic, providers that route long distance calls may route these calls in a way to minimize costs. The practice, known as least cost routing, may ultimately result in poor service quality and lost calls. The Board is currently investigating several of these complaints in formal complaint dockets.[149]

Iowa Code § 476.3 provides the requirement to furnish reasonably adequate service, and the Board rules found in 199 IAC 22.5 and 22.6 provide quality of service metrics. Most commenters agree that these metrics should be reviewed to determine which rules are of limited or no applicability in the delivery of TDM or IP-enabled services due to technological change, competitive forces, or other regulatory, market, or economic developments.[150] Staff agrees with ITA and others in that Board rules should be reviewed to determine whether the rules remain practical. However, staff recommends a review should wait until the call completion dockets are complete.

2. Recommendations

The Board's rules in 199 IAC 22.5 and 22.6 should be reviewed to determine continued applicability in the evolving telecommunications marketplace. However, staff believes it is appropriate to defer any changes to the Board's rules until the call completion dockets are complete.

H. Management of public right-of-way, including joint use of utility poles

Are there other issues for the Board to consider in this area that will not be addressed in Docket No. RMU-2012-0002?

The Order Initiating Inquiry noted that the Board has an ongoing rule making to consider the possibility of asserting jurisdiction over attachments (by communications utilities, cable system providers, video service providers, data service providers, wireless providers, and similar entities) on poles owned by electric and telecommunications utilities. For the inquiry, the Board stated it would consider more general comments concerning the joint use of utility poles and the management of the public right-of-way.

Most of the parties indicate they would stand by their comments filed in the pole attachment rule making.[151] However, IAMU states the Board could investigate the costs and benefits of the undergrounding of utility lines.[152]

ITA's comments focus on Iowa Code § 477, which provides a general right-of-way authority to telephone companies and cable system operators to extend their lines or facilities. ITA acknowledges there is some uncertainty regarding the Board's authority to resolve right-of-way disputes under § 477.1. Nevertheless, ITA notes two potential

issues involving the statute. First, the statute may need amending to extend the benefits and protections to entities that are currently recognized as telecommunications and video service providers but are transforming into broadband providers. ITA wants to assure that such service providers not lose their ability to use and occupy right-of-ways that benefit consumers. Second, local right-of-way permitting and management should not chill the future deployment of broadband services.[153] At the workshop, CenturyLink commented that problems obtaining access to right-of-ways seem to vary from community to community.

1. Staff Analysis

On May 24, 2013, the Board issued an order in its pole attachment rule making.[154] In that order, the Board declined to assert jurisdiction over the rates, terms, and conditions of pole attachments by communications providers on poles owned by electric and telecommunications utilities. The Board also decided the most effective course would be to leave pole attachment agreements subject to the jurisdiction of the FCC while establishing additional requirements to ensure that pole attachments meet the Iowa Electrical Safety Code. Staff notes the Board will likely issue an order adopting final rules amending the Iowa Electrical Safety Code and closing the pole attachment rule making in October 2013. Thus, there is no need for this report to make further recommendations related to the pole attachment rules or the Iowa Electrical Safety Code.

ITA commented that the general right-of-way provisions of § 477.1 may need to be examined to ensure that protections exist for all providers offering essential communications services, regardless of whether such services are subject to public utility regulation. Staff notes that § 477.1 provides telephone companies and other communications providers the eminent domain authority to extend their lines and facilities across public and private property. Eminent domain authority may be an important consideration to the build-out of broadband and other advanced telecommunications services in Iowa. However, the information provided in response to the Board's inquiry does not support any specific statutory changes at this time; thus staff does not believe that this report should recommend amendments to this section of the Iowa Code. This may be an appropriate subject for future inquiry or workshop.

2. Recommendations

Because new pole attachment rules will soon be adopted, there is no need to address the pole attachment rules or the Iowa Electrical Safety Code at this time.

I. Railroad crossings by telecommunications utilities

Should the Board continue its § 476.27 authority over railroad crossings by telecommunications utilities?

The Order Initiating Inquiry asks communications utilities whether the Board should continue its jurisdiction to adopt rules prescribing the terms and conditions for crossing railroad right-of-ways.

All comments were supportive of the Board retaining jurisdiction.[155] The OCA notes the streamlined procedures under the railroad crossing statute allow utilities to resolve disputes in a timely and cost effective manner. OCA points to several challenges to the Board's rulings on railroad crossings, but notes that a May 30, 2013, ruling by the Iowa Court of Appeals affirmed the Board's jurisdiction to determine whether § 476.27 is applicable "to the parties and property in question." OCA states that, even when the courts uphold the Board's ruling, there will be other issues needing resolution. For example, it is not clear whether the railroad crossing statute applies to private data lines not installed by a traditional telephone company or a franchised cable television operator. This uncertainty could impede the expansion of broadband and other data services.[156]

1. Staff Analysis

Section 476.27 provides that a public utility that locates its facilities within the railroad right-of-way for a crossing shall pay the railroad a one-time crossing fee of $750. Railroads generally assess fees much higher than $750 if they believe the crossing party does not meet the statutory definition of "public utility." Comments support the Board maintaining its jurisdiction to resolve railroad crossing disputes involving telecommunications utilities and note that the resolution of future disputes could impact the deployment of broadband services in Iowa.

2. Recommendation

There should be no changes to Iowa Code § 476.27 that would preclude the Board's authority over railroad crossings by telecommunications utilities.

J. Alternative operator services companies

Should the Board continue its jurisdiction over AOS utilities?

Iowa Code § 476.91 gives the Board authority over rates and services provided by AOS companies, regardless of deregulation pursuant to § 476.1D. The Order Initiating Inquiry gave examples of AOS companies, such as hotel telecommunications service providers and companies providing telecommunications services to inmates at correctional facilities. The Board noted that the widespread use of wireless telephones appears to have made this provision less necessary in the hotel situation, but AOS concerns may still exist in certain markets. The Board invited comments on this provision.

OCA suggests the availability of wireless service may have made AOS protections less necessary but not unnecessary, especially when it comes to providing telecommunications services to inmates at correctional facilities.[157]

Securus asserts that the Board should not further regulate inmate calling services (ICS), as it is a unique market with distinctly different economics than traditional telephone service. Securus' system not only facilitates a telephone call but is also a sophisticated surveillance tool. The terms and conditions of service are established by the correctional facility's highly competitive Request for Proposals process and use of the service is controlled by the facility.[158]

OCA contends Securus' argument that the highly competitive bidding process drives down costs does not exert downward pressure on rates for consumers. Instead, it may result in higher rates because the bidder who charges the highest rates can offer the correctional facilities the largest commissions. Rule making proceedings regarding interstate ICS are pending at the FCC. OCA recommends there be no changes to the law or rules, and that the Board should monitor relevant developments.[159]

At the workshop, OCA reiterated its position that with the wide dissemination of wireless phones, AOS rates and practices are not as much of an issue as when the law was enacted. OCA also mentioned the FCC's recent rulings on interstate ICS rates, and suggested that perhaps the Board should address intrastate ICS rates in a rule making. In its written post-workshop comments, OCA claims the language in the Iowa Code indicates a legislative intent to provide protections to consumers who have no choice in carriers because of their location or circumstances and thus, supports its position that the Board retain jurisdiction.[160]

In its post-workshop comments, CenturyLink provided a brief statement with no analysis recommending that the statute be eliminated.[161]

1. Staff Analysis

Iowa Code § 476.91, Alternative Operator Services, defines AOS companies and related terms, and establishes the Board's service jurisdiction over these companies. An AOS company is defined in the statute as a non-governmental company that receives more than half of its Iowa intrastate telecommunications revenues from calls placed by end users from telephones other than ordinary residence and business telephones.[162]

AOS tariffs, containing both rates and terms of service, must be approved by the Board.[163] The rates for AOS utilities can be set "at or below the corresponding rates for similar services of utilities whose rates have been approved by the board in a rate case or set in a market determined by the board to be competitive."[164] Because the Board no longer conducts rate case proceedings, the portion of the rule referencing rate cases can be eliminated.

In reviewing AOS tariff filings that propose new or increased rates, the Board's recent practice has been to approve proposed rates in which the filing party provides a statement that its rates do not exceed rates for similar services set in a competitive market.[165] In recent years, the Board has received few consumer complaints regarding any type of AOS rates or service. Moreover, the reduction in complaints may be associated with the use of debit calling in correctional facilities.

On the national front, staff's monitoring of this issue has revealed that many states are reviewing ICS rates; e.g., Louisiana, Alabama, Mississippi, Virginia, and Illinois.[166]

This is also a timely topic at the federal level. On December 28, 2012, the FCC released a Notice of Proposed Rulemaking to consider whether changes to its rules are necessary to ensure just and reasonable ICS rates. On July 10, 2013, the FCC hosted a workshop on ICS to examine and analyze policy issues related to these services. The workshop focused on such issues as the impact of current ICS rates on inmates and their families, a review of state reforms of ICS rates, and a discussion regarding the cost of providing service and how to balance the needs of consumers and correctional facilities. In comments at the workshop, Acting FCC Chairwoman Clyburn called for a collective effort on the part of the FCC and the states to resolve these complex issues.

In its Open Meeting held on August 9, 2013, the FCC took action on lowering rates for interstate ICS calls. The FCC's Report & Order and Further Notice of Proposed Rulemaking also seeks comment on reforming rates and practices affecting intrastate calls. The report was released on September 26, 2013, and no comment dates have yet been set.[167]

It appears to staff the only significant AOS topic is in regard to rates for services provided to correctional facilities. Although the FCC's authority is over interstate ICS rates, its actions may also impact the states. At a minimum, it may be beneficial to know what final action the FCC takes in order to mirror it, if appropriate, or supplement it if necessary. Because the FCC has issued a further notice of proposed rulemaking that could impact intrastate rates and practices for ICS calls, staff recommends the Board take no action at this time to modify its jurisdiction over AOS utilities, including any changes to the rules, but continue to monitor FCC actions on ICS.

2. Recommendation

Iowa Code § 476.91 and the Board's rules in 199 IAC 22.12 and 22.19 should be reviewed once the FCC takes final action on ICS.

K. Tariff Retention

Are the general tariff requirements pursuant to Iowa Code § 476 still needed in a less regulated and more competitive environment?

The Order Initiating Inquiry notes that Iowa Code §§ 476.4, 476.4A, 476.5, and other statutory provisions establish a variety of rights and requirements associated with public utility tariff filings. The order asks whether these provisions of the Iowa Code continue to serve the public interest in a less regulated retail environment.

Intrastate Access Tariffs

RIITA, OCA, ITA, Windstream, Verizon, Sprint, tw telecom, and Cox all agree that intrastate access tariff requirements should remain in place.[168] OCA states these tariffs offer benefits including Board and OCA review of unfair, discriminatory, or unreasonable provisions.[169] ITA notes that the Board rule permitting ITA to file a tariff on behalf of its members avoids unnecessary duplication and expense.[170] RIITA and Cox point to the ongoing implementation of the FCC's *Transformation Order* as a reason to retain intrastate access tariffs in the interim.[171] Sprint comments that access services are not competitive, and access tariffs are meaningful between carriers.[172]

Local Exchange Tariffs

CenturyLink, AT&T, Verizon, Sprint, tw telecom, and IAMU state there is no longer a need for local exchange tariffs to be filed with the Board. CenturyLink claims that the current Board requirement to file tariffs with the Board and a separate rate catalog is burdensome and unnecessary.[173] AT&T asserts tariffs no longer serve the public interest because consumers want and demand innovative new services. AT&T contends that carriers need the flexibility to launch, modify, and withdraw products and services quickly without regulatory delay.[174]

Verizon states that filing local exchange tariffs with the Board is an unnecessary burden on both the Board and the provider's resources. Verizon notes that interexchange carriers no longer file tariffs and local exchange tariffs only contain terms and conditions of services, not rates. Verizon urges the Board to expand its incremental approach to detariffing by eliminating retail tariffing requirements.[175] Sprint echoes the comments of CenturyLink, AT&T, and Verizon and adds that the Legislature and Board have determined the entire state is subject to effective retail competition. In this environment, a retail tariff regime simply creates busy work that slows down responses to competitive conditions.[176] IAMU recommends eliminating the requirements for municipal tariff filings since the Board does not have jurisdiction over municipal rates, and all information contained in the tariffs is a public record of the municipal telecommunications utility. The administrative costs associated with tariffs, to both the municipal utility and Board, are unnecessary.[177]

ITA believes that the filing and review of local exchange tariffs provides an established and reasonably efficient mechanism for setting uniform terms and conditions for regulated services, including such terms as may be necessary to reflect appropriate consumer protection and quality of service requirements.[178] ITA also states that § 476.101(5) should be changed from "shall file tariffs to "may file tariffs."[179]

The OCA points out that although retail rates have been deregulated in Iowa by the legislature, regulatory authority over service quality was specifically retained under Iowa Code § 476.1D(1)“c." The OCA adds that filing a tariff which sets forth the basic terms of service, and the various company and customer obligations continues to be the best vehicle to advance that same goal.[180] Similarly, Cox contends that the Board’s current system for local exchange tariffing achieves the right regulatory balance and creates a minimal administrative burden for the utility and Board staff.[181]

1. Staff Analysis

As noted above, there was unanimous agreement that Iowa’s intrastate access tariff regime should remain in place. These tariffs govern the rates, terms and conditions between LECs and interchange carriers over the exchange of toll traffic. Rates are still listed in the intrastate access tariffs and, pursuant to § 476.11, the Board has authority to set rates and resolve disputes after a complaint is filed.

Most of the comments, however, expressed a preference that the local exchange tariffs, which govern the provision of retail services to consumers, be eliminated or made optional. OCA and Cox comment that the current retail tariffing requirements remain appropriate and do not present large administrative burdens. Staff notes that the local exchange tariffs no longer contain rates, although the tariffs contain the consumer service quality provisions as well as a listing of exchanges where the LEC provides service and the extended area service routes.

As noted by Verizon, the Board has taken an incremental approach to detariffing. Staff notes that the last detariffing policy change occurred in July 2005 after the legislature deregulated all local exchange rates in Iowa. Subsequently, LECs removed their rates, and services associated with those rates, from their local exchange tariffs. In some cases, LECs moved those rates and services to their deregulated catalogs and in other cases rates were moved to the carrier websites. Since 2005, local exchange tariffs could be considered “service quality” tariffs, which generally reflect the Board’s administrative rules for telephone companies. For example, the Board’s “customer relations” rules under 199 IAC 22.4 are often repeated word-for-word in the local exchange tariffs. The 199 IAC 22.4 rules prescribe the terms and conditions for customer deposits, billing, complaints, disconnection of service, etc. Verizon clarified that local exchange detariffing would not affect the Board’s ability to enforce state law or Board rules, which would remain in effect.[182] This was reiterated by OCA during the workshop.

It is staff’s understanding that detariffing of local exchange services would in no way undermine the Board’s authority over local exchange service quality. Local exchange utilities would abide by the same statutes and rules governing service quality as they do today. The only change would be that local exchange utilities (and the Board) would no longer need to maintain and update tariffs after statutes and rules change. Instead, local exchange utilities would simply abide by the current statutes and rules that govern

telephone service quality. Detariffing of local exchange service would require amendments to the following statutes to eliminate the tariffing requirement:

- Iowa Code § 476.4 - *Tariffs filed*. This section would need to be amended to clarify that local exchange service is not subject to tariffs.
- Iowa Code § 476.4A - *Exemption from tariff filings for telephone utilities.* This section exempts telephone utilities from filing a tariff for Centron, Centrex, intraexchange private line, or multiline variety package service. Since the Board previously deregulated these services, the reference to these services should be eliminated.
- Iowa Code § 476.5 *Adherence to schedules – discounts.* The first paragraph of this section, which also applies to energy and water utilities, states that no public utility subject to rate regulation shall directly or indirectly charge a greater or lesser compensation for its services than that which is prescribed in its tariffs. The first paragraph would need to be amended to clarify that local exchange service is not subject to a tariff requirement. The second paragraph of § 476.5 permits communications utilities to provide rate discounts to officers, directors, and employees. Since the Board no longer has jurisdiction over the retail rates of telephone utilities, this is an obsolete provision and should be deleted.
- Iowa Code § 476.29(6) - *Local Exchange Certificates.* This subsection states that a certificate and tariffs are the only authority for a utility to furnish land-line local telephone service. The reference to tariffs would need to be deleted from this subsection of the Code.
- Iowa Code § 476.101(5) – *Local Exchange Competition.* This subsection requires the filing of tariffs and price lists to comply with the Board's rules on unbundling of essential facilities and interconnection. The statute also requires that the Board review the tariffs or price lists to ensure that the charges are cost-based. Because all local exchange rates are deregulated, this subsection of the Code should be eliminated.

Detariffing of local exchange services would also require changes to the administrative rules. There are numerous references to the filing of local exchange tariffs throughout the telephone rules in 199 IAC Chapter 22. It would require a rule making to remove those references. Additionally, if local exchange services are to be detariffed, the Board should consider a means for customers to gain access to information previously contained in the tariffs. As noted above, past practice has been for local exchange carriers to move previously-tariffed services and rates to their deregulated catalogs or websites.

Currently the Customer Relations rules under 22.4(1)"b" provide for annual bill inserts to assist customers in resolving complaints. Staff recommends that the bill insert rules be amended to assist customers wishing to gain access to information regarding previously-tariffed services, rates, and regulations. For customers receiving paper bills, the bill inserts could provide a printed URL for access to the deregulated catalogs or carrier websites. For customers receiving electronic bills, the URL could be a "hot link" for direct access to the deregulated catalogs or carrier websites. In amending the rules,

the Board should consider increasing the frequency of the bill inserts so that customers would see this information more often than annually.

2. Recommendations

No statute or rule changes should be made to alter a local exchange utility's obligation to file intrastate access tariffs.

As explained above, the following statutes should be amended or deleted to clarify that telephone utilities would no longer be required to file local exchange tariffs: Iowa Code §§ 476.4, 476.4A, 476.5, 476.29(6), and 476.101(5).

199 IAC Chapter 22 should be amended to remove references to the filing of local exchange tariffs. The bill insert rules under 199 IAC 22.4(1)"b" should be amended to provide customers access to deregulated catalogs and websites containing previously-tariffed services, rates, and regulations.

L. Monitoring and protection of the competitive marketplace

Are all of the provisions of the Local Exchange Competition statutes, which guide the obligations of ILECs and CLECs, still relevant?

Iowa Code §§ 476.100 and 476.101 encompass a variety of provisions relating to local exchange competition, the obligations of ILECs and CLECs, and the Board's role in monitoring and protecting the competitive marketplace. The Order Initiating Inquiry noted that some of these statutes may be out-of-date or superseded by federal law and invited comments on these provisions.

OCA states the provisions in Iowa Code §§ 476.100 and 476.101 have not been superseded by the federal Telecom Act and should be retained. Federal law, specifically 47 U.S.C. § 253(a), bars any state or local statute, regulation, or other legal requirement which "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." OCA claims there are no provisions in these two sections that would trigger the prohibition.[183] T-Mobile concurs with OCA regarding Iowa Code § 476.100 and further offers that Iowa Code §§ 476.101(2), 101(3), and 101(8) remain relevant and critical. These subsections relate to equal access to and interconnection with LEC facilities, reasonable access to ducts, conduits, rights-of-way, and other pathways, and the presence of a complaint mechanism.[184]

RIITA states present rules should be retained as situations such as ETC designations, self-help actions of the interexchange companies, competitive carriers not serving the entire exchange, and tariffs not being followed have been addressed by the Board and should remain under the Board's jurisdiction. The continued oversight will help with the minimization of these events happening again.[185]

Windstream states that Iowa Code §§ 476.100 and 476.101 remain relevant as they have not been preempted by federal action. The Board must police intercarrier conduct and exercise its jurisdictional authority in wholesale markets. A party must make a showing of either preemption or obsolescence for others and Board staff to address. Windstream states there are other sections that should be retained as the Board has invoked these in its investigations of carrier complaints. These include the entire § 476.100 and §§ 476.101(2), (3), (8), (9) and (10).[186]

IAMU states that effective competition is not everywhere. IP networks still need physical connection to copper, co-axial, or fiber. Monitoring will show where competition is not present and the Board should regulate here. If the Board cannot do so now, legislation may be needed.[187]

ITA also states that the Board should retain its jurisdiction. A competitive market should be sought but should not be elevated above all other public interests. A modernization of Iowa Code § 476.95 to include other public interests such as the encouragement of innovation and deployment of advanced communications services at affordable rates should be undertaken.[188] ITA further suggests the distinction between CLECs and ILECs as stated in Iowa Code § 476.101(1) should be eliminated to reflect the presence of effective competition in most service areas.[189] ITA and Sprint state the 90-day "rocket docket" provision, § 476.101(8), could be lengthened to 120 days for good cause shown as the 90-day timeline has sometimes been burdensome to the complainant.[190]

Cox states that its main concern is for the Board to retain its jurisdiction for the handling of intercarrier disputes. Otherwise, allowing the competitive marketplace to resolve other issues is the preferred approach.[191]

In contrast to these commenters, AT&T simply states that the two provisions be eliminated as they are out of date and/or have been superseded by federal law.[192]

T-Mobile suggests that subsections regarding certification requirements, Iowa unbundling and pricing, tariffing or price list requirements, and resale obligations have been superseded or are no longer necessary.[193]

OCA states that all of the price regulation provisions included within Iowa Code §§ 476.95 through 476.99 could be rescinded as they have no continuing operative effect.[194]

In its reply comments, ITA asserts that the provisions of Iowa Code § 476.95 should be modernized regarding competition. Other concerns such as the effects of decisions regarding broadband deployment, impacts on consumers, and impacts on local economic development should be considered rather than the lone objective of increasing competition. Many areas of the state may not be able to support several competitors.

1. Staff Analysis

Iowa Code §§ 476.100 and 476.101 contain provisions relating to local exchange competition and the Board's role in monitoring and promoting competition in the market. There is a concern that certain parts may be outdated or superseded by federal law.

OCA offers a standard for the review of the two sections. OCA states that 47 U.S.C. § 253(a) bars any state or local statute, regulation, or other legal requirement which "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service," i.e., impedes competition. If any part of §§ 476.100 or 476.101 has the potential to violate this standard, it may be appropriate to consider an amendment.

Iowa Code § 476.100 provides a list of prohibited acts of a LEC. The majority of the seven specific prohibitions refer to some form of discrimination. These include discrimination by refusing or delaying access to its services, discrimination by refusing or delaying access to essential facilities on terms and conditions no less favorable than those provided to itself, and discrimination in favor of itself in the provision and pricing of any telephone service. Others prohibit the degradation of the quality of access or service provided to another carrier, refusal or delay of interconnection, use of basic exchange rates to subsidize other services, and failure to disclose in a timely manner information needed for network interfacing.

No party asserted that any of these prohibited acts have been superseded by federal law. These provisions appear to help promote the concept of competition in the marketplace. The majority of the commenters state these prohibitions remain vital. Only AT&T states that they should be eliminated. However, AT&T did not explain how a competitive marketplace would or could be harmed by the retention of this statute.

Iowa Code § 476.101 discusses local exchange competition. Those subsections that at least one commenter specifically states should remain are subsections 2, 3, 8, 9, and 10. Subsection 2 pertains to the equal access of, and interconnection with, other carriers. This subsection ties in with the discussion of the Federal Delegated Regulatory Authority issue. Given the analysis of that issue, this section should remain. Subsection 3 provides for the reasonable access to ducts, conduits, rights-of-way, and other pathways. IAMU states that there is no effective competition in this area and staff believes it should remain.

Subsection 8, the so-called "rocket docket" provision, allows any person to file a complaint with the Board to determine LEC compliance with Iowa Code §§ 476.96 to 476.102. Several commenters, throughout several topics, have stated that there remains a role for the Board to handle disputes. This subsection allows for a person or party to make such a complaint. This subsection should be modified by removing the references to §§ 476.96 to 476.99 and to lengthen the 90-day period to 120 days, if good cause is shown. Sections 476.96 to 476.99 refer to price regulation and all parties agree that these sections are no longer relevant. The lengthening of the 90-day

decision time to 120 days, if good cause is shown, would allow for more time for investigation of complicated issues and should result in a more reasoned decision.

Subsection 9 states that a telecommunications carrier shall not use customer information inappropriately, disparage the services of another carrier, and take action that disadvantages a customer who chooses to receive services that could hinder the development of competition from another carrier. These actions describe inappropriate behavior of carriers and should remain.

Subsection 10 discusses the allocation of costs involved with a proceeding associated with the granting of a certificate. Since staff recommends retention of certification requirements in the next section of the report, Certificates of Public Convenience and Necessity, this subsection remains pertinent.

Subsections 4, 5, 6, and 7 were not specifically addressed by the commenters. Subsection 4 discusses a rule making proceeding that was to commence in 1995 and would adopt rules for unbundled services, set reciprocal cost-based compensation for termination of telecommunications services, require interim number portability, and the development of a cost methodology appropriate for a competitive telecommunications environment. Subsection 5 discusses tariffs or price lists regarding these access matters. Subsection 7 states that a LEC shall not impose restrictions on the resale of local exchange services. There were no direct comments on these sections and they appear to prohibit discriminatory practices. Staff suggests a clean-up of the sections to remove references to the 1995 rule making.

Subsection 6 discusses the enforcement of rules or orders entered in contested cases pending on July 1, 1995. This subsection points to a particular time 18 years ago and there should be no more pending cases from that date. This section could be eliminated.

OCA states that the price regulation statutes no longer have a continuing operative effect. In response to a workshop question, all commenters concurred with OCA's statement. Staff agrees with the commenters that Iowa Code §§ 476.97 through 476.99 should be eliminated. Iowa Code §§ 476.95 and 476.96 should be retained as they relate to statements of policy directed to the Board by the general assembly and the definitions of terms used in § 476.95.

2. Recommendations

There should be no modification to Iowa Code § 476.100.

Iowa Code § 476.101(4) could be eliminated as it references a 1995 rule making that has long since been completed. Iowa Code § 476.101(6) should be eliminated as it points to cases pending in 1995. The price regulation statutes of Iowa Code §§ 476.97 through 476.99 should be eliminated.

Iowa Code § 476.101(8) should be modified to allow for a party to increase the review period from 90 days to 120 days, for good cause shown, as well as to remove references to price regulation.

M. Certificates of public convenience and necessity

Is there a continuing need for the Board to issue certificates of public convenience and necessity?

The Order Initiating Inquiry asked whether there is a need for the Board to continue to issue CPCNs or if there may be a better mechanism to meet that need.

All commenters on this issue, with the exception of one, believe that the Board should continue to require carriers to have a CPCN before furnishing landline local telephone service.[195] T-Mobile asserts certificates are not necessary to protect communications competition in Iowa.[196]

OCA further suggests that the certificate requirement be technologically neutral,[197] although Verizon disagrees. Verizon maintains that wireless services are not subject to Board jurisdiction and the FCC prohibited imposing certification requirements on certain VoIP providers, citing the *Vonage Order*.[198]

OCA, Sprint, and RIITA highlight the importance of the Board's power to revoke a certificate.[199] Sprint suggests, given the recent experience in traffic pumping-related cases and the value of the Board's means to investigate whether carriers are operating as legitimate CLECs, the Board may want to adopt rules to clarify the process and standards for revocation of certificates.

Sprint and OCA point out certificates allow interconnection rights and access to numbering resources, which they state are necessary to competition.[200] OCA submits,[201] and ITA agrees,[202] that the Board may want to consider an amendment to Iowa Code § 476.29 to offer a separate certificate to wholesale providers which recognizes they do not provide local exchange service but provides them the interconnection rights and numbering resources of a certificate holder.

1. Staff Analysis

The Board's authority to issue and revoke certificates for providing local telecommunications services is found in Iowa Code § 476.29. According to the law, a utility must have a CPCN issued by the Board before furnishing land-line local telephone service in this state. Pursuant to § 476.29(6), a certificated telephone utility must also have Board-approved tariffs. In Iowa, local exchange rates are deregulated and detariffed; thus, local exchange tariffs essentially address the service quality standards for the protection of consumers. In Iowa, intrastate access rates are not

deregulated, and in recent years intrastate access tariffs have been the subject of formal complaints before the Board.

One of the Board's questions for this topic is whether there is a continuing need for the Board to issue CPCNs. All but one of the commenters believes it is important for the Board to have authority over the certification and tariffing of LECs. T-Mobile's contention that certificates are not necessary aligns with its position favoring little to no Board jurisdiction over voice services and it aligns with the regulatory treatment of the wireless industry where carriers operate without tariffs.

A second question posed by the Board is whether there is a better procedure for issuing CPCNs. Two commenters advocate the Board establishing separate certificates for wholesale providers so those providers may have rights to interconnect and access to numbering resources. The Board has issued several "Order[s] in Lieu of Certificate[s]" to wholesale carriers in the past.[203] In those orders, the Board noted that the issuance of such an order would provide the applicant with essentially all of the rights and privileges of a certificate holder, other than authorization to offer land-line local exchange telephone service in Iowa. The Board recognized that for a telecommunications provider to obtain telephone numbering resources from the North American Numbering Plan Administration (NANPA), the FCC rules required that such a carrier be authorized to provide service in the state where the carrier seeks numbering resources. The Board found that its action is consistent with Iowa Code § 476.95, which requires that the Board exercise regulatory flexibility in a changing telecommunications environment.[204] However, this practice has been discontinued due to a directive from NANPA.[205] Since that time, current Board practice is to advise wholesale providers that wish to have the rights allowed with a CPCN to apply with the Board and agree to comply with all Iowa CPCN requirements, including the provision of local telecommunications service, and the filing of tariffs and maps. In addition, the Board recognizes there are some questions regarding the designation and transfer of these types of orders and the appropriate forum for addressing these concerns is in this NOI.[206]

If separate certificates were allowed for wholesale providers, legislative changes to § 479.29 would be necessary. However, no commenters supporting this position offered suggestions for specific language changes.

OCA contends the issuance of certificates should be technologically neutral, alluding to the Board's jurisdiction over some types of VoIP providers. In a 2011 formal complaint decision involving MCC Telephony of Iowa and a VoIP provider, the Board found that it has jurisdiction over non-nomadic VoIP providers providing service in Iowa. The Board believes this includes the authority to require a CPCN and approved tariffs before a non-nomadic VoIP provider can provide local exchange telephone service in Iowa.[207] (Although Verizon cites the *Vonage Order* to claim that VoIP providers are exempt for state certification, the *Vonage Order* addressed only nomadic VoIP services.) Since the Board's non-nomadic VoIP determination, the Board has approved applications and issued certificates to a few VoIP providers.[208]

Sprint believes the Board also needs to clarify how the Board handles revocation of certificates, in which Sprint alludes to the traffic pumping case in Docket No. FCU-07-2. Specifically, Sprint thinks rules should better define what notice is required, making clear the initial criteria for certificates are continuing obligations, and expressly establishing that unlawful service provided under a certificate is a form of "inadequate service" that justifies revocation.

Staff notes that after the Docket No. FCU-07-2 traffic pumping case, the Board initiated a rule making to address high-volume access service (HVAS). As part of that rule making, the Board revised its certificate revocation rule under 199 IAC 22.20(5). The revised rule gives the Board authority to revoke the certificate of a LEC that fails to bill high-volume access service charges in a manner consistent with the HVAS rules.

2. Recommendations

Staff believes that no changes are necessary to Iowa Code § 476.29 regarding the issuance and revocation of certificates.

However, there is a need to clear the statute of obsolete requirements. These include the portion of subsection 3 which refers to reorganizations under Iowa Code §§ 476.76 and 476.77 (see discussion in the Reorganization section of this report) and subsection 15 in its entirety which discusses a January 2005 report to the general assembly describing the current status of local telephone service in the state.

Further, to be consistent with the recommendation in this report that retail telephone tariffs be excluded from the requirements in Iowa Code § 476.4, § 476.29(6) should also be revised to remove the tariff reference.

N. Review of proposed reorganizations

Should the Board continue to review proposed reorganizations of certain carriers?

The Order Initiating Inquiry invited comment on the continuing need for the Board to review proposed reorganizations for some carriers, pursuant to § 476.77.

OCA, RIITA, Cox, and Sprint believe Board reviews of reorganizations should continue unchanged.

OCA and RIITA's main focus is on consumer protection. OCA points out that as systems transition to Internet protocols, new providers may be entering the marketplace whose operations and financial strength may be unfamiliar to the Board. OCA is concerned that when companies maximize "synergies," it could potentially threaten safe and reliable service or other public policy goals. If Board review of particular mergers is not necessary in the public interest, OCA points out the statute allows for waiver of the

review.[209] RIITA states that the Board's review is especially effective when a large carrier reorganizes and large numbers of customers are affected.[210]

Cox maintains reorganization proceedings provide an important forum for concerns about issues critical to competition, such as ordering processes, system integration, and number porting,[211] as was demonstrated in the Qwest/CenturyTel merger.[212] In its comments during the workshop, Sprint agreed with Cox's position.

ITA agrees that Board review of reorganizations is important but suggests that oversight be limited only to competition and universal service, issues it considers to be critical to the public interest.[213]

Verizon, AT&T, CenturyLink, and Windstream recommend the Board discontinue its reviews of reorganizations. Verizon claims reorganizations are amply reviewed at the federal level, making state-level reviews unnecessary, duplicative and costly.[214] As an alternative to elimination of applicable statutes, Verizon and Windstream support modification of applicable statutes.[215] According to AT&T, burdensome review requirements significantly hinder the ability for carriers to adapt quickly in the ultracompetitive communications market.[216] CenturyLink's overarching theme is that technology should not be the focus of the Board's inquiry and the Board should eliminate rules that apply only to wireline carriers.[217] In its post-workshop comments, CenturyLink offered an alternative to elimination by suggesting the Board require notification of reorganizations which include updates of contact information.[218]

Windstream suggested that if the Board does not eliminate reviews of reorganizations, it should adopt new rules that require no approval of reorganization for any Iowa certificated entity that acquires the substantial assets of another Iowa certificated communications service provider. Windstream contends most reorganizations are between providers that are already certificated by the Board and, thus, have already established technical and financial ability.[219]

OCA disagrees with Windstream and contends the mere fact that a company/affiliate holds an Iowa certificate does not necessarily mean that a proposed plan of reorganization between them would satisfy the statutory criteria. The Board has the authority to waive the review if it is familiar with the companies and their plan of reorganization.[220]

CenturyLink contested Sprint's comments at the workshop that Board review of a reorganization is the only forum to address OSS[221] and interconnection concerns, stating there are other opportunities to discuss those issues such as in its OSS forum.[222] It appeared that all parties participating in the workshop are in favor of deleting the language in Iowa Code § 476.29(3) that refers to reorganizations under Iowa Code §§ 476.76 and 476.77.

1. Staff Analysis

Iowa Code § 476.76 defines reorganization as the acquisition or disposition of all or a substantial part of a public utility's assets[223] or the purchase or disposition of the controlling capital stock of any public utility. Iowa Code § 476.77 gives the time and standards for review of public utility reorganizations.

The requirements for reorganizations apply to "public utilities," which in the case of telecommunications is defined as rate-regulated telephone utilities providing local exchange telecommunication service.[224] Although the Board no longer regulates retail rates of telecommunications carriers, the Board has concluded that the reorganization requirements continue to apply to the large ILECs (CenturyLink, Windstream, and Frontier). These entities were subject to retail rate regulation at the time the statute was enacted.[225] In addition, because LEC access rates continue to be regulated by the Board, pursuant to Iowa Code § 476.11 (on a complaint basis), the Board has relied on this section to support its authority to review ILEC reorganizations such as Docket No. SPU-2010-0006, the Qwest-CenturyLink merger and Docket No. SPU-2009-0010, the Iowa Telecom-Windstream merger. The Board's practice has also been to not review CLEC reorganizations.

There is no consensus among the commenters as to whether Board review of reorganizations for telephone utilities should continue.

Those parties that do not believe there should be any changes to reorganization statutes and rules feel Board review of reorganizations provides important safeguards for consumers, the public interest, and the competitive marketplace. Those parties that recommend elimination of the utility reorganization statutes, as applicable to telecommunications companies, cite burdensome requirements that hinder quick competitive responses and the availability of other avenues in which to address specific wholesale carrier concerns.

Staff does not support Windstream's recommendation to adopt rules to require no approval of reorganization between Iowa-certificated entities. Staff agrees with OCA's comment that, as the statute stands, the Board may waive the review if the Board finds review is not necessary in the public interest,[226] such as where the Board is familiar with the companies and their plan of reorganization. Staff believes the statute allows sufficient flexibility and the Board has appropriately used its discretion in the past when applying the waiver. In addition, there may have been changes in the company's managerial, technical, and financial status since the Board's original issuance of a certificate, so reliance on past information may not be adequate or appropriate. Thus, if the reorganization laws and rules are not eliminated entirely, staff does not believe this modification is necessary.

Whether to recommend continuance or elimination of the current regulation is a difficult decision. On one hand, OCA's argument that the Board may grant a waiver should it decide it is not necessary to review certain reorganizations has some merit.

Nonetheless, the applicant still has the burden to file a detailed statement of why Board review is not necessary or in the public interest, in compliance with the Board's rules in Chapter 32, so a waiver does not completely address or alleviate the regulatory burden on the affected companies.

Further, there may be some validity to Cox's argument that reorganization proceedings provide an important forum for concerns about issues critical to competition. For example, the CLEC Settlement in the Qwest/CenturyLink merger contained provisions that maintained the status quo for a specified period of time for certain operating systems and negotiated agreements. However, whether the CLEC customers could negotiate these types of terms absent Board review of reorganizations is not known.

Should the reorganization review requirement be preserved, in order to be more equitable in the application of the requirement, the Board's review could be expanded to include carriers of a certain size (possibly based on number of customers, access lines, or telephone numbers), regardless of technology used to provide voice services.

Should the requirement be eliminated, but there remains a desire to have some sort of review of proposed reorganizations, one option is to add limited reorganization review provisions to the certificate transfer process in Iowa Code § 476.29(3). This alternative would not include reorganizations that do not involve a certificate transfer, but those are probably generally inconsequential to the Board. Another option is to consider CenturyLink's suggestion in workshop comments that requires notification of reorganizations and updating of contact information, which could perhaps be included in an amendment to this Code section.

It seems to staff that the current reorganization requirements are contrary to competitive neutrality, as they are only applicable to CenturyLink, Windstream, and Frontier. And as posited by Verizon and AT&T in their remarks, review of a reorganization does seem to be a barrier to responding quickly in a competitive market.

Given the considerations discussed above, staff concludes that the review of telephone reorganizations, as it currently stands, be eliminated.

Staff believes the best compromise for the parties involved is to amend the certificate transfer process in § 476.29(3). The amendments would require notice to the Board, add limited Board review of reorganizations, and include the authority for the Board to review a reorganization in more detail should anti-competitive concerns arise. Modification would require a careful consideration of the type of information the Board deems crucial to review and the criteria as to whom the requirement would apply (e.g., size of the carrier). Further, staff believes it necessary to include provisions for the Board to be allowed to waive review, should the Board determine it is not necessary to review a particular transaction.

Staff notes that 199 IAC 32, the corresponding rules related to reorganizations, could be eliminated.

2. Recommendations

Staff believes the reorganization requirements should no longer apply to any telecommunications carrier, which furthers the goal of competitive neutrality for all carriers. Thus, staff recommends that Iowa §§ 476.76 and 476.77 be eliminated, along with the affiliated rules in 199 IAC 32. In addition, Iowa Code § 476.29(3) should be modified to: 1) delete the language that refers to reorganizations under Iowa Code §§ 476.76 and 476.77, and 2) add a notice requirement and limited reorganization review provisions when a certificate is transferred.

O. Discontinuance of service

Should changes be made to the Discontinuance of Service statute?

The Order Initiating Inquiry invited comment about the regulatory requirements associated with discontinuance of service, set out in Iowa Code § 476.20.

ITA distinguishes between retail carrier and wholesale carrier discontinuance of service. Regarding wholesale discontinuance of service, ITA states that some carriers have resorted to self-help by not paying for or by adjusting their (access) bills downward. Larger wholesale carriers realize that the costs of filing formal complaints are unpalatable for most rural ILECs. ITA states that the Board should evaluate its authority to implement expanded alternative dispute resolution procedures and should consider adopting rules to prohibit the use of self-help in connection with wholesale carrier disputes.[227]

RIITA and Windstream also believe the Board should update its rules governing the discontinuance of service to wholesale carriers for nonpayment of tariffed services. Windstream states that rules should not only make the disconnection process clearer to all parties, but should also lessen the administrative burdens on the Board when service interruptions are threatened and emergency hearing pleadings require Board disposition. [228]

Sprint states the Board's past precedents regarding (wholesale) discontinuance of service are well established and there is no reason they should not be incorporated into the Board's rules. Specifically, carriers should not discontinue services where competition will be harmed or where end-user customers' ability to make calls will be affected.[229]

ITA states the Board's past experience with retail carrier discontinuance of service has been with minor, non-dominant carriers (such as CLECs and resellers). ITA suggests that in the future the Board may need to address the discontinuance of service by rural ILECs that can't adapt to the impacts of the FCC's *Transformation Order*. Thus, the ITA suggests the Board continue its efforts to streamline the discontinuance of service process while balancing the impacts on consumers.[230]

AT&T comments that it is important for policymakers to help facilitate the IP transition by eliminating legacy requirements that deter investment in next-generation networks. To the extent the discontinuance of service statute can be interpreted as requiring a provider to maintain its TDM network, they should be immediately eliminated.[231]

1. Staff Analysis

Iowa Code § 476.20 addresses discontinuance of service, but much of the statute specifically addresses the discontinuance of service to end-user customers by gas and electric utilities. Section 476.20(1) is the only part of the statute addressing the discontinuance of service of one telecommunications carrier by another telecommunications carrier, such as the discontinuance of a wholesale carrier by a retail carrier. Section 476.20(1) states that a utility shall not, except in cases of emergency, discontinue, reduce, or impair service to a community, or part of a community, except for nonpayment of account or violation of rules and regulations unless and until permission is obtained from the Board. The rules, pursuant to 199 IAC 22.16, implement § 476.20(1) and provide the requirements of the notice that must be filed with the Board and Consumer Advocate if a retail carrier intends to discontinue service with a wholesale carrier or IXC. The notice must be filed at least 90 days in advance of the planned discontinuance of service if retail customers would be affected.

ITA, RIITA, and Windstream express concerns about their lack of recourse when an IXC or other interconnected carrier stops paying for tariffed services. Staff notes that the discontinuance of service to an IXC may result in the discontinuance of long distance service to the LEC's own customers. In several past situations, the Board has been reluctant to allow a LEC to discontinue service to an IXC because of the impact the discontinuance would have on retail local exchange customers. ITA, RIITA, and Windstream suggest various ways to address the non-payment of access charge problems through rule changes. Sprint's position seems to be that the Board's past reluctance to allow IXC disconnections should be adopted into rules.

Staff believes that any changes to the discontinuance of service procedures between retail and wholesale carriers (LECs and IXCs) could likely be addressed through rule changes instead of changes to § 476.20. To some extent, the need for changes could be relatively short-term in nature because the FCC's *Transformation Order* has begun a transition to reduce access rates to bill-and-keep over the next few years. As access rates diminish to bill-and-keep, the need for a remedy of discontinuing service between carriers for non-payment of tariffed charges may also diminish.

Regarding retail discontinuance of service, ITA notes that the Board may be faced with rural ILECs going out of business in the future and that the Board should streamline the discontinuance of service process in order to balance the impacts on consumers. Staff agrees that in the past the Board has not dealt with business failures involving ILECs. However, Iowa Code § 476.29(11) specifically contemplates this possibility and grants the Board authority to assign the service territory of a failed ILEC to another ILEC.

Staff notes that § 476.29(11) provides the Board an important authority related to the receipt of high-cost federal USF. The FCC's *Transformation Order* creates a five-year phase down of high-cost USF to competitive ETCs. Thus, the FCC intends for ILECs to be the preferred recipients of high-cost USF and it will be important for the Board to maintain its authority to appoint a new ILEC in order to continue the flow of federal USF to the service territory of an ILEC that discontinues service.

2. Recommendations

Because the specific provisions addressing the discontinuance of service by one telecommunications carrier to another telecommunications carrier are found in the Board's telecommunications rules as opposed to § 476.20, staff does not recommend changes to the statute at this time. Revisions to the procedures governing the discontinuance of service by one telecommunications carrier to another telecommunications carrier should be further explored in a rule making to modify the Board's rules at 199 IAC 22.16.

Section 476.29(11) provides the Board authority to assign the service territory of a failed ILEC to another carrier, thus creating a replacement ILEC. This authority should be retained in order to preserve the flow of federal USF to the service territory of an ILEC that discontinues service.

P. Universal service provisions of § 476.102

How should the Board preserve universal service into the future?

The Order Initiating Inquiry invited comments on the regulatory requirements associated with the state universal service provisions of Iowa Code § 476.102, an authority which the Board has not yet found necessary to implement.

AT&T, Cox, OCA, Sprint, and Verizon argue against establishing an Iowa USF at this time. Sprint and Cox contend there is no evidence or record that supports the case for an Iowa USF. Cox states the FCC's 2012 Monitoring Report shows Iowa's telephone penetration rate at end-of-year 2011 at 98.2 percent, above the national average of 95.7 percent.[232] Cox states the Board should not adopt an Iowa USF at this time, given the impact of the reforms to the federal USF is still unknown. The Board should not take action to establish a direct fund for broadband deployment and should instead allow additional time to analyze the reforms under the federal USF. Cox notes that carriers are already pursuing broadband initiatives on their own, driven by the marketplace.[233]

OCA states that Iowa Code § 476.102, enacted in 1995, establishes Iowa's policy on universal service to ensure the continued viability of universal service by maintaining quality services at just and reasonable rates. The Legislature required that a universal service plan for Iowa should establish specific and predictable mechanisms to provide competitively neutral and nondiscriminatory support collections and disbursements.

Since 1995, the Board has initiated proceedings to consider the need for a state USF but never adopted a plan, in large part because of the availability of federal USF. OCA contends that since universal service funding is obtained from end users, either directly via surcharges or indirectly via prices, the benefits of an Iowa USF must be carefully weighed against the costs to Iowa's end users. Given the FCC's reform of federal USF, the issues related to the available federal funding need to be resolved before the Board acts on an Iowa USF.[234]

Sprint and Verizon note the consensus among commenters is that there is no need for the Board to act on the issue of an Iowa USF at this time. Sprint notes that the ITA and RIITA did not strongly push for an Iowa USF. Sprint doubts a state USF will be needed or justified in the future. Rather than creating new subsidies, the Board should focus on eliminating competitive distortions, which impede effective competition. Sprint states that federal USF reforms are just beginning, and the impacts on Iowa remain unknown. In addition, Sprint notes that a recent report released by Connect Iowa shows significant gains in access to broadband in Iowa.[235] Sprint states that with federal USF and broadband issues, the Board should avoid duplication and funding issues which will burden consumers. Verizon also advises the Board to decline exploring the subject of an Iowa USF.[236]

RIITA states that in the past it opposed an Iowa USF; however, with the present federal regulatory changes, an Iowa USF may need to be reconsidered. RIITA states that if the Board were to decide an Iowa USF is needed, then mechanisms used in other states could be considered.[237]

ITA notes most commenters agree that all Iowans should have access to comparably priced, high-quality voice service and to comparably priced, robust broadband service. ITA notes that a study it commissioned, and released by Wichita State University, reflects a dramatic impact of the FCC's *Transformation Order* on rural Iowa companies.[238] Using historical and projected financial and employment data from more than 100 Iowa LECs and responses to survey questions, the report predicts that between 2012 and 2017, high-cost USF support will drop by $47.1 million.[239] ITA notes this reduced cost recovery will result in an estimated direct loss of employment of 9.7 percent by 2017, using 2012 employment levels as a baseline. In addition, 81 percent of survey participants expect a reduction in capital expenditures as a result of the FCC's *Transformation Order*. ITA notes this finding is consistent with a 2012 survey of ITA members reflecting that 49 of 82 respondents delayed plans to deploy fiber projects, while 16 of 82 respondents cancelled fiber projects because of the FCC's *Transformation Order*.

ITA states that the chilling effect of the federal USF and ICC reforms on broadband investment by Iowa's rural LECs foretells the impact of such policies on all rural and high-cost markets in the state. Between 2012 and 2020, ITA predicts that USF/ICC support benefiting rural customers served by large price-cap carriers could be reduced by 85 to 90 percent and for smaller carriers support could be reduced by 35 percent, with even steeper percentage losses in cash flow.[240]

1. Staff Analysis

Only RIITA and ITA support the need for an Iowa USF, but these two organizations generally represent the views of the smaller ILECs that serve Iowa. There are at least 130 of these smaller ILECs in Iowa and they provide telephone and broadband service in roughly half of the 800 exchanges in Iowa.

Although Iowa does not have a state USF, 22 states currently have funds specifically dedicated to high-cost support.[241] Staff notes that the FCC *Transformation Order*, issued in late 2011, implemented sweeping reforms to ICC and federal USF, which will impact the revenues of all ILECs, small and large. Among other things, the reforms to ICC and federal USF are intended to help spur the deployment of broadband services to unserved and underserved areas as announced in the 2010 *National Broadband Plan* (NBP). RIITA calls the *National Broadband Plan* "seriously flawed" and believes the end result will be a degradation of service to rural Iowans.[242] As noted above, an ITA survey of its members indicates that many small ILECs have already delayed or cancelled plans to deploy fiber projects in the wake of the FCC's *Transformation Order*.

AT&T, Cox, OCA, Sprint, and Verizon recommend against establishing an Iowa USF at this time, essentially arguing that the reforms begun with the *Transformation Order* need more time before outcomes will be known. Staff notes the Board currently has no docket open to examine an Iowa USF. Two previous Board inquiries were opened and closed without reaching a conclusion on the necessity for an Iowa USF. In closing the most recent inquiry addressing the potential for a state USF, the Board stated:

> [I]t could be several years before the full impact of the NBP reforms is known. However, at this point, it appears likely that traditional USF and ICC support mechanisms for voice service will be reduced and support for broadband services will be increased. The proposed federal reforms make it difficult at this time for the Board to move ahead with its inquiry into the SUSF [state USF]. It is not yet clear how the ultimate changes to the USF and ICC will affect Iowa consumers. Without more information about how consumers will be affected, the Board cannot determine whether an Iowa USF is appropriate and what level of support would be necessary to maintain universal service at reasonable rates for Iowa consumers. Further, the extent to which Iowa will mirror federal reforms by directing universal service support to broadband instead of voice service is not yet known.[243] (emphasis added)

Staff contends that the underlined statement above still appears to be true, because the industry is still in the initial phases of adjusting to the ICC/USF reforms implemented by the *Transformation Order*. However, that situation could change as the costs and revenues associated with deploying broadband service, and maintaining existing networks in higher cost areas of the state become clearer.

Staff notes the *Connect Every Iowan* broadband initiative announced by Governor Branstad and Lieutenant Governor Reynolds in early September has the stated purpose of increasing access, adoption, and use of broadband technology. That initiative is being run by the Governor's STEM Advisory Council's Broadband Committee to develop legislative recommendations to encourage broadband build-out throughout Iowa, particularly in unserved or underserved areas.[244] It is possible that a legislative outcome of the *Connect Every Iowan* initiative could be tied in some way to Iowa Code § 476.102, the Board's authority to preserve universal service. Thus, staff recommends that the Board take no steps to amend or repeal § 476.102.

2. Recommendation

At the present time, the Board cannot determine whether an Iowa USF is appropriate or what level of support would be necessary to maintain universal service at reasonable rates for Iowa consumers. The Board should take no action to amend or repeal § 476.102.

Q. Deployment of broadband service

What should be the Board's role in promoting broadband deployment, if any?

The Order Initiating Inquiry asks whether the Board should undertake a role in promoting broadband deployment in Iowa and nearly all comments from larger carriers recommend a "hands-off" role for the Board. For example, CenturyLink states that there is consensus that the broadband network in existence today has been driven by consumer demand and the absence of regulation.[245] Verizon notes that the Illinois General Assembly codified a hands-off policy towards such services by stating:

> Increased investment into broadband infrastructure is critical to the economic development of this State and a key component to the retention of existing jobs and the creation of new jobs. The removal of regulatory uncertainty will attract greater private-sector investment in broadband infrastructure.[246]

RIITA maintains the *National Broadband Plan* is flawed and that the Board should take an advocacy role to assure rural customers are positioned to receive the same quality and capacity of services that will be afforded to urban customers.[247]

ITA comments the Board should develop policies to encourage the deployment of IP-capable networks and services for the benefit of consumers in rural service areas.[248] The ITA applauds the Governor's *Connect Every Iowan* initiative and looks forward to helping develop realistic incentives and reforms to enable consumers to have access to reliable, robust, and affordable broadband services.[249]

1. Staff Analysis

Currently the Board plays an indirect role in broadband deployment when performing its duties relating to ETCs. For a carrier to receive federal universal service support, which to a large extent will support broadband networks, it must be an ETC. ETCs are designated by the Board and each year the Board is required to certify the use of high-cost funds that ETCs use to build and maintain their voice and broadband networks. The Board's ETC-related duties comprise a significant part of its telecom-related workload. Only T-Mobile questioned the need for Board involvement in ETC-related duties, noting that in other states where the state commission has declined to administer federal USF programs the impact is minimal.[250] Staff notes the annual reports filed with the Board by ETCs (pursuant to 47 CFR § 54.313) are currently transitioning from voice-only reports to voice and broadband reports. Thus, the data from these reports should provide the Board important information on broadband deployment, available speeds, and possibly the need for supplemental support from an Iowa USF in the future.

The comments from ITA and RIITA appear to advocate the eventual need for an Iowa USF to support broadband deployment in rural parts of the state. ITA frames its comments within the context of its five guiding principles, one being universal service and another being the deployment of advanced services. RIITA frames its comments within the context of a "flawed" *National Broadband Plan*. Staff notes that rural carriers are generally concerned about the long-term implementation of the *National Broadband Plan* by the FCC, which mandates increases to end-user telephone rates, reductions in access rates and changes to subsidies from the federal USF. The broadband deployment advocacy role advocated by RIITA is likely a suggestion that the Board not close the door on the potential need for a state USF tied to the deployment of broadband in rural areas of Iowa.

As noted previously, the *Connect Every Iowan* broadband initiative was announced by the Governor in early September. Although the Board is not a member of the STEM Advisory Council, meetings for the broadband initiative are being held bi-weekly at the Iowa Utilities Board with a member of the Board's staff attending. Legislative recommendations from the STEM Advisory Council are planned to be delivered to Governor Branstad by December 1, 2013. Depending on the nature of legislation that may be passed, the IUB could see new responsibilities in the areas of broadband deployment and/or adoption.

2. Recommendations

The Board should continue its indirect role in encouraging broadband deployment through its work of designating ETCs and certifying the use of federal USF used by ETCs to support voice and broadband networks.

Future legislation resulting from the *Connect Every Iowan* broadband initiative could redefine the Board's role in broadband deployment and/or adoption. The IUB should

remain prepared to implement legislative changes that could be enacted as early as 2014.

R. Other

The Board did not limit the discussion by interested parties to only the topics presented in its Order Initiating Inquiry and stated that the list in the Order was not to be considered exclusive or limiting. The Board invited comment concerning all aspects of the appropriate future of telecommunications regulation in Iowa.

What actions should the Board take regarding INS, traffic pumping, and mileage pumping?

Issues surrounding Iowa Network Services (INS), traffic pumping, and mileage pumping were not specifically listed in the Order Initiating Inquiry, but they were addressed in comments by Sprint, AT&T, and RIITA. Sprint believes the Board should review the operations and rates of INS because it contends the carrier likely gained a massive windfall by the traffic pumping of some of Iowa's LECs.[251] Sprint recommends the Board adopt rules incorporating the traffic pumping findings from Docket No. FCU-07-2 and the mileage pumping findings from the FCC's *Alpine Decision,* which involved an Iowa LEC and INS.[252]

AT&T states the obligation for IXCs to connect to rural LECs exclusively through INS has outlived its usefulness and creates a perverse incentive for both the LEC and INS. The arrangement leads not only to high access charges from the LECs and INS, but also provides incentives to other carriers to engage in arbitrage practices such as traffic pumping and mileage pumping.[253] AT&T believes the Board needs to update its intrastate access rules to reflect prior decisions by the Board and FCC and to address the appropriate intrastate ICC for providers such as INS.[254]

RIITA states that Sprint's assertions about INS are without merit and are based solely on allegations. The FCC rules already require INS to revise its Centralized Equal Access (CEA) rate every two years to reflect changes in costs and minutes-of-use. INS tariff rates must be supported by evidence of costs and a Tariff Review Plan prepared in accordance with FCC rules. Those rules prohibit INS from earning more than an authorized rate of return. This has resulted in rate decreases in situations where LECs have engaged in actions that increased minutes of use.[255] RIITA notes that the Board and FCC authorized INS to construct and operate its network to combine rural traffic, to provide access to and from IXCs, to centralize expensive features, and to bring the benefits of advanced communications services and competition to rural areas of Iowa.[256]

1. Staff Analysis

The central point of Sprint's and AT&T's comments seems to be that INS is a conduit for transporting long distance calls to LECs in Iowa involved in arbitrage schemes. Even

though INS may not be guilty of developing the arbitrage schemes per se, IXCs must still pay INS to transport the elevated traffic levels or unnecessary transport distances when certain LECs in Iowa initiate arbitrage schemes.

Both Sprint and AT&T were intervenors in Docket No. FCU-07-2 where the Board ruled that eight Iowa LECs had wrongfully charged Qwest, Sprint, and AT&T intrastate access for their traffic pumping schemes. Subsequent to the Docket No. FCU-07-2 decision, the Board amended its intrastate access rules to address the high volume access service findings from the traffic pumping case.

The FCC's 2012 *Alpine Decision* addressed what is now called mileage pumping, where a LEC selects a distant point of interconnection in order to add unnecessary transport mileage to the cost of originating or terminating long distance traffic. *Alpine* involved interstate mileage pumping and INS; thus, Sprint and AT&T are recommending the Board address intrastate mileage pumping through another intrastate access rule making.[257]

Staff notes that if Sprint, AT&T, or any other party believes there is an urgent need to further amend the intrastate access rules, they could petition the Board to initiate a rule making and propose specific language for the rule changes. However, staff does not believe this warrants immediate attention from the Board.

2. Recommendation

Revisions to the procedures governing interconnection and payments to INS when LECs initiate traffic or mileage pumping schemes could be explored through changes to the Board's intrastate access rules at 199 IAC 22.14 and not through statutory changes.

S. Non-substantive legislative changes

One of the Board's purposes in conducting this inquiry was to identify statutory provisions which are outdated or extraneous and to include them in a recommendation to the Legislature for updating chapter 476. Written and workshop comments and Board staff's review of chapter 476 reveal the following as provisions that are appropriate for elimination or modification:

1. Iowa Code § 476.1D(1)(c)(1) through (3)

These provisions relate to deregulation and are outdated after the Board's deregulation of retail rates for telecommunications services. (See Board rule 22.1(6) listing deregulation proceedings.) These provisions could be replaced with a provision explicitly stating that retail rates for telecommunications service are not subject to regulation. As suggested by OCA, care must be taken to preserve language that retains the Board's authority over service. Further, any legislative change should not disrupt the Board's authority to reimpose rate regulation if the Board finds the service is no longer subject to effective competition.

2. Iowa Code § 476.4A Exemption from tariff filings for telephone utilities.

This provision should be amended because its reference to specific services (centron, centrex, intraexchange private line, or multiline variety package service) as exempt from tariff requirements is outdated since the Board deregulated these services. The first two sentences of the first paragraph should be deleted. The last sentence of the first paragraph should be retained. It provides that a "telephone utility offering its services without filing a tariff shall not discriminate in an unreasonable manner for or against any customer."

3. Iowa Code § 476.5 Adherence to schedules – discounts.

The first paragraph of this provision states that no public utility subject to rate regulation shall directly or indirectly charge a greater or lesser compensation for its services than that which is prescribed in its tariffs. This section applies to all public utilities, including energy and water utilities, and should be amended to clarify that local exchange services are not subject to a tariff requirement.

The second paragraph of this section allows telecommunications companies to offer discounted service to their employees. This language should be deleted because the Board no longer regulates retail rates.

4. Iowa Code § 476.6 Changes in rates, charges, schedules, and regulations

Section 476.6, subsection 9, provides that the Board may approve a schedule of rate levels for any regulated service provided by a utility providing communication services. Section 476.6(9) should be deleted to reflect rate deregulation.

5. Iowa Code § 476.29 Certificates for providing local telecommunications services.

Section 476.29, subsection 15, required the Board to provide a written report to the Legislature no later than January 20, 2005, describing the current status of local telephone service in Iowa. Because the Board has already provided the report, the provision is outdated and can be eliminated.

6. Iowa Code §§ 476.97 through 476.99

These provisions relate to price regulation and can be eliminated as outdated.

7. Iowa Code § 476.101 Local exchange competition

Section 476.101, subsection 4, refers to a rule making proceeding which was required to be initiated prior to September 1, 1995. That rule making has been completed. Section 476.101(4) should be deleted.

Section 476.101, subsection 6, refers to contested cases pending on July 1, 1995, and should be deleted.

IV. GLOSSARY

AOS	-	Alternative Operator Services
CLEC	-	Competitive Local Exchange Carrier
COLR	-	Carrier of Last Resort, also known as POLR or Provider of Last Resort
CPCN	-	Certificate of Public Convenience and Necessity
DPRS	-	Dual Party Relay Service
ETC	-	Eligible Telecommunications Carrier
FCC	-	Federal Commerce Commission
ICC	-	Intercarrier Compensation
ICS	-	Inmate Calling Services
ILEC	-	Incumbent Local Exchange Carrier
INS	-	Iowa Network Services
IP	-	Internet Protocol
IUB	-	Iowa Utilities Board
IXC	-	Interexchange Carrier
LEC	-	Local Exchange Carrier
NARUC	-	National Association of Regulatory Utility Commissioners
NBP	-	National Broadband Plan
NRRI	-	National Regulatory Research Institute
POTS	-	Plain Old Telephone Service
PSTN	-	Public Switched Telecommunications Network
TDM	-	Time Division Multiplexing
TRS	-	Telecommunications Relay Service
USF	-	Universal Service Fund
VoIP	-	Voice over Internet Protocol

V. ENDNOTES

- **VoIP**

[1] VON initial comments, p. 5, citing FCC *Local Telephone Competition: Status as of December 31, 2011*, FCC Industry Analysis and Technology Division, Wireline Competition Bureau, January 2013 (*Local Competition Report*).
[2] Sprint and tw telcom post-workshop comments, p. 2.
[3] Sprint and tw telcom post-workshop comment, pp. 2-3.
[4] AT&T initial comments, pp. 6-7.
[5] Verizon initial comments, pp. 5-6, *emphasis in original*.
[6] Verizon initial comments, p. 9.
[7] VON initial comments, pp. 1-2.
[8] VON initial comments, p. 6.
[9] AT&T initial comments, pp. 8-9.
[10] Verizon initial comments, p. 6.
[11] VON initial comments, p. 3, 5; Verizon initial comments, pp. 7-10; AT&T initial comments, pp. 12-15, citing *Re: Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Utils. Comm'n*, WC Docket No. 03-211, "Memorandum Opinion and Order," FCC 04-267, 19 FCC Rcd 22404 (Nov. 12, 2004).
[12] Verizon initial comments, p. 8, *emphasis in original*.
[13] VON initial comments, pp. 2-4; Verizon initial comments, p. 7; AT&T initial comments, pp. 17-18.
[14] AT&T initial comments, pp. 5-6.
[15] Verizon initial comments, p. 5.
[16] VON initial comments, pp. 5-8.
[17] OCA initial comments, pp. 3-5.
[18] *Sprint Communications Co. L.P. v. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom*, Docket No. FCU-2010-0001, "Order" (issued Feb. 4, 2011). Sprint filed appeals of the Board's decision in both state and federal court. On September 16, 2013, the Polk County District Court affirmed the Board's decision. The federal district court granted the Board's motion to abstain; the U.S. Court of Appeals for the Eighth Circuit affirmed the district court's decision to abstain. Sprint's appeal of the Eighth Circuit's decision is pending before the U.S. Supreme Court. See *Sprint v. Jacobs et al*., Docket No. 12-815.
[19] *MCC Telephony of Iowa, LLC, and MCC Iowa LLC v. Capitol Infrastructure LLC d/b/a Connexion Technologies and Broadstar, LLC d/b/a Primecast*, Docket No. FCU-2010-0015, "Order on Motions to Dismiss, Finding Violations, and Providing Notice of Possible Civil Penalties" (issued March 30, 2011).
[20] OCA initial comments, p. 10.
[21] OCA initial comments, p. 11, citing *Re: Numbering Trials for Modern Communications, IP-Enabled Services, et al*., WC Docket No. 13-97, et al., "Notice of Proposed Rulemaking, Order and Notice of Inquiry," slip op. at ¶ 6 (footnotes omitted) (FCC April 18, 2003).
[22] OCA initial comments, p. 12, quoting the comments filed by NARUC in *In the Matter of AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, WC Docket No. 12-353, filed Jan. 28, 2013, pp. 11-20.
[23] ITA reply comments, pp. 5-6.
[24] ITA post-workshop comments, p. 3.
[25] ITA post-workshop comments, p. 3.
[26] ITA initial comments, pp. 7-8; post-workshop comments, p. 3.
[27] RIITA initial comments, pp. 2-3.
[28] CenturyLink post-workshop comments, p. 2.
[29] CenturyLink initial comments, pp. 2-3.
[30] IAMU initial comments, p. 1.
[31] Cox reply comments, p. 2.
[32] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.
[33] 95 Iowa Acts, ch. 199, H.F. 518.
[34] Cox initial comments, pp. 4-5.

[35] In the *Transformation Order*, released on November 18, 2011, the FCC adopted reforms to the intercarrier compensation system and the Universal Service Fund. The reforms to intercarrier compensation include a transition to a uniform bill-and-keep framework through phased reductions in switched access rates. The USF reforms transform the fund into the Connect America Fund (CAF), which will fund broadband deployment. The *Transformation Order* was appealed by multiple parties, including NARUC. Appeals have been consolidated and are being heard by the United States Court of Appeals for the 10th Circuit. *See Connect America Fund; et al.,* WC Docket Nos. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 F.C.C.R. 17663 (Nov. 18, 2011), appeal docketed, *In re: FCC-11-161*, No. 11-9900 (10th Cir.)
[36] Sprint initial comments, pp. 2-3.
[37] Sprint and tw telcom's post-workshop comments, p. 6.
[38] T-Mobile post-workshop comments, p. 1.
[39] T-Mobile initial comments, p. 1.
[40] T-Mobile reply comments, pp. 1-3.
[41] T-Mobile reply comments, p. 4.
[42] T-Mobile post-workshop comments, p. 2.
[43] Windstream reply comments, p. 3.
[44] *Sprint Communications Co. L.P. v. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom*, "Order," Docket No. FCU-2010-0001 (Feb. 4, 2011).
[45] *MCC Telephony of Iowa, LLC, et al. v. Capitol Infrastructure LLC, et al*., "Order on Motions to Dismiss, Finding Violations, and Providing Notice of Possible Civil Penalties," Docket No. FCU-2010-0015 (March 30, 2011).
[46] *Re: Universal Service Contribution Methodology*, WC Docket No. 06-122, 21 FCC Rcd 7518, ¶ 56, rel. June 27, 2006.
[47] *MCC Telephony of Iowa, LLC, and MCC Iowa LLC v. Capitol Infrastructure LLC d/b/a Connexion Technologies and Broadstar, LLC d/b/a Primecast*, Docket No. FCU-2010-0015, "Order on Motions to Dismiss, Finding Violations, and Providing Notice of Possible Civil Penalties," p. 50, n. 2 (issued March 30, 2011).
[48] Federal Communications Commission, *Connecting America: The National Broadband Plan,* rel. March 16, 2010.
[49] *Re: Connect America Fund, et al.,*; WC Docket Nos. 10-90, et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, at ¶¶ 608, 610, 26 FCC Rcd 4554, 4560-61 (2011), released February 9, 2011 (*USF/ICC Transformation NPRM*).
[50] *Transformation Order,* ¶ 934, ¶ 946, n. 1906.
[51] *Exchange of Transit Traffic*, "Order Affirming Proposed Decision and Order," Docket No. SPU-00-7, issued March 18, 2002.

- **Carrier of last resort obligations, Iowa Code § 476.29(5)**

[52] OCA initial comments, pp. 13-14. At workshop and in its post-workshop comments, p. 3, OCA noted the statutory linkage between §§ 476.29(5), 476.29(11), and 476.20.
[53] RIITA initial comments, pp. 3-4.
[54] IAMU initial comments, p. 1.
[55] ITA initial comments, pp. 9-10. At the September 10, 2013, workshop, Burnie Snoddy (Kiesling) commented that a COLR obligation needs to be supported by a funding mechanism.
[56] AT&T initial comments, pp. 20-22.
[57] *NRRI Report*, Telecommunications Deregulation: Updating the Scorecard for 2013, Report No. 13-05 (May 2013), available at http://www.nrri.org/documents/317330/0e3a5988-6f57-492d-8ce5-70926cfe68f4.
[58] CenturyLink reply comments, p. 6.
[59] September 10, 2013, workshop comments of Mark Harper.
[60] Verizon initial comments, pp. 11-12.
[61] Windstream initial comments, pp. 8-9.
[62] POLR and COLR have equivalent meanings.
[63] Crystal Communications, Inc., d/b/a HickoryTech, "Order Suspending Proceedings and Requesting Joint Proposal," Docket No. TCU-00-53, issued May 29, 2003.
[64] OCA post-workshop comments, p. 3.

[65] 199 IAC 22.1(3) defines ILEC as the utility, or successor to such utility, that was the historical provider of local exchange service pursuant to an authorized certificate of public convenience and necessity within the geographic area described in maps approved by the Board as of September 30, 1992.

- **Consumer protection and complaint resolution, §§ 476.3 and 476.103**

[66] OCA reply comments, pp. 5-12.
[67] OCA post-workshop comments, pp. 1-2.
[68] OCA initial comments, pp. 20-23.
[69] OCA initial comments, p. 25; post-workshop comments, p. 4.
[70] Verizon references 199 IAC 22.23(2)"a"(4) and 47 C.F.R. § 64.1120(a)(1)(ii).
[71] Verizon initial comments, pp. 13-14.
[72] CenturyLink initial comments, pp. 4-5; reply comments, pp. 9-10.
[73] CenturyLink post-workshop comments, p. 2.
[74] Securus initial comments, pp.4-7; reply comments, pp. 2-5.
[75] Sprint initial comments, pp. 3-4; reply comments, pp. 3-4.
[76] ITA initial comments, p. 10; reply comments, pp. 10-11; post-workshop comments, pp. 4-5.
[77] T-Mobile initial comments, p. 2; AT&T initial comments, pp. 22-23.
[78] Cox reply comments, pp. 2-3.
[79] CTIA reply comments, pp. 5-6.
[80] OCA post-workshop comments, p. 4.

- **Fees assessed to telecommunications carriers**

[81] OCA initial comments, p. 25; ITA initial comments, p. 10; AT&T initial comments, p. 23; CenturyLink initial comments, p. 4; T-Mobile initial comments, pp. 2-3.
[82] OCA initial comments, p. 26.
[83] ITA reply comments, p. 12.
[84] RIITA initial comments, pp. 5-6; T-Mobile initial comments, p. 3.
[85] Ibid.
[86] Verizon reply comments, pp. 10-11.
[87] AT&T initial comments, pp. 23-24.
[88] OCA post-workshop comments, p. 5.
[89] T-Mobile is referring to the action taken in the *Numbering Trials order*.
[90] Iowa Code § 477C. Dual party relay service is also known as Telecommunications Relay Service or TRS.
[91] Iowa Code § 476.10.
[92] Iowa Code § 34A.
[93] 47 U.S.C. § 153(25).
[94] *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities,* Report and Order, 22 FCC Rcd 11275, 11291-97, ¶¶ 32-43 (2007) (*"VoIP TRS Order"*).
[95] 47 U.S.C. § 153(36).
[96] *Contributions to the Telecommunications Relay Service Fund,* Report and Order, 26 FCC Rcd 14532, CG Docket No. 11-47, FCC 11-150 (rel. Oct. 7, 2011).
[97] *Sprint Communications Company L.P., v. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom*, "Order," Docket No. FCU-2010-0001, issued February 4, 2011.
[98] The FCC uses definitions from 47 USC § 153 for its analysis in the respective TRS orders and rulings referenced above. Subsection 51 of that statute defines "telecommunications carrier" as "any provider of telecommunications services." Further, "telecommunications service" is defined in 47 USC § 153(53) as "the offering of telecommunications for a fee directly to the public…regardless of the facilities used."
[99] Staff notes that the three cent surcharge ultimately adopted was the amount proposed by the wireless carriers in the 2005 legislation revising Iowa Code § 477C.7.
[100] *Mediacom v. Connexion,* Docket No. FCU-2010-0015.

[101] Iowa Code § 476.10(1)"a."
[102] Iowa Code § 476.10(1)"b."
[103] 199 IAC 17.5 and 17.6.

- **Federally-delegated regulatory authority**

[104] OCA initial comments, pp. 26-27.
[105] AT&T initial comments, pp. 24-25; RIITA initial comments, p. 6; Cox initial comments, p. 3; ITA initial comments, p. 11; T-Mobile initial comments, pp. 3-4; IAMU initial comments, p. 1; Sprint initial comments, pp. 4-5; Windstream reply comments, pp. 4-6.
[106] T-Mobile initial comments, p. 4; Cox initial comments, p. 3.
[107] ITA reply comments, p. 12.
[108] Windstream reply comments, pp. 4-5.
[109] T-Mobile initial comments, p. 3.
[110] Sprint initial comments, pp. 4-5; reply comments, p. 2.
[111] CenturyLink reply comments, p. 2.
[112] AT&T initial comments, pp. 24-25, for existing TDM environment and workshop comments for IP-network environment.
[113] Verizon initial comments, p. 14; reply comments, p. 11.
[114] OCA initial comments, pp. 26-27.
[115] ITA reply comments, pp. 12-13.
[116] *DRAFT NARUC Federalism Task Force Report: Cooperative Federalism and Telecom In the 21st Century* (June 2013), available at http://www.naruc.org/Publications/Draft%20Federalism%20Task%20Force%20Report.pdf. The final *NARUC Federalism Task Force Report*, dated September 2013, is available at http://www.naruc.org/Publications/20130825-final-DRAFT-Federalism-Task-Force-Report.pdf.
[117] OCA reply comments, p. 13.
[118] Sprint post-workshop comments, pp. 3-4.
[119] T-Mobile initial comments, p. 4.
[120] Sprint reply comments, p. 2.
[121] AT&T initial comments, p. 24.
[122] T-Mobile reply comments, p. 8.
[123] *Federal-State Joint Board on Universal Service*, Twelfth Report and Order, and Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, par. 93, (2000); FCC *Transformation Order*, par. 15.
[124] *Federal-State Joint Board on Universal Service*, First Report and Order, FCC 97-157, 12 FCC Rcd 8776, par. 145 (1997).
[125] ETC designation to over 160 ILECs occurred on December 3, 1997, per the Board's "Order Granting Waivers and Designating Eligible Carriers," Docket No. 199 IAC 39.2(4). The Board's current rules dealing with ETC designations and High-Cost Fund use-of-funding certifications can be found in 199 IAC Chapter 39. The Board exercised its authority over wireless ETC applications for the first time on January 15, 2002, when it approved the application of WWC License LLC, d.b.a. CellularOne, in its "Order Granting Request for Eligible Telecommunications Carrier Status", Docket No. 199 IAC 39.2(4), issued January 15, 2002.
[126] *WWC License LLC, d.b.a. CellularOne*, "Order Granting Request For Eligible Telecommunications Carrier Status," Docket No. 199 IAC 39.2(4), issued January 15, 2002.
[127] See 2012 USAC Annual Report, page 47, at http://www.usac.org/_res/documents/about/pdf/annual-reports/usac-annual-report-2012.pdf.
[128] The *Lifeline Reform Order* made significant changes to the federal low-Income telephone assistance program which include reforms that substantially reduce the amount of waste, fraud and abuse in the program. The reforms also improve program administration and accountability, improve enrollment and consumer disclosures, initiate modernization of the program for broadband, and constrain the growth of the program in order to reduce the burden an all who contribute to the Universal Service Fund. *Lifeline and Link Up Reform and Modernization*, WC Docket Nos. 11-42, et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) (*Lifeline Reform Order)*.

- **State authority to hear and resolve intercarrier disputes, Iowa Code § 476.11**

[129] OCA initial comments, pp. 27-28.
[130] Windstream reply comments, pp. 2-5; T-Mobile initial comments, pp. 4-7; ITA reply comments, p. 14.
[131] T-Mobile reply comments, pp. 3-4; Sprint initial comments, pp. 4-5; ITA initial comments, pp. 11-12; Cox initial comments, pp. 2-3; IAMU initial comments, p. 1.
[132] Windstream initial comments, p. 2; CenturyLink reply comments, pp. 6-7; Sprint initial comments, pp. 4-5; OCA initial comments, p. 6.
[133] Sprint initial comments, p. 5.
[134] AT&T initial comments, p. 24.
[135] OCA initial comments, pp. 28-29.
[136] AT&T initial comments, pp. 29-30 in its discussion regarding the "Monitoring and Protection of the Competitive Marketplace."
[137] Windstream reply comments, p. 5.

- **Quality of service regulations**

[138] CenturyLink reply comments, p. 4; Cox reply comments, pp. 3-4; ITA reply comments, pp. 14-15.
[139] CenturyLink initial comments, unnumbered p. 4.
[140] CenturyLink initial comments, Attachment A.
[141] Cox initial comments, pp. 1-3.
[142] AT&T initial comments, p. 25.
[143] AT&T initial comments, p. 27.
[144] IAMU initial comments, p. 2; OCA initial comments, pp. 30-31; RIITA reply comments, pp. 6-7.
[145] IAMU initial comments, p. 2; RIITA initial comments, p. 7.
[146] OCA initial comments, p. 43.
[147] OCA reply comments, pp. 13-14.
[148] The number of written complaints addressed by the Board for landline telephone quality of service issues over the past five years are:

2012 -- 74
2011 -- 83
2010 -- 55
2009 -- 132
2008 -- 92

[149] The Board's Administrative Law Judge is investigating these issues in Docket Nos. FCU-2012-0019, FCU-2013-0004, FCU-2013-0005, FCU-2013-0006, FCU-2013-0007, and FCU-2013-0009.
[150] ITA reply comments, p. 15.

- **Management of public right-of-way, including joint use of utility poles**

[151] AT&T initial comments, p. 27; CenturyLink initial comments, p. 4; Sprint initial comments, p. 5; and Cox initial comments, p. 4.
[152] IAMU initial comments, p.2.
[153] ITA post-workshop comments, pp. 7-8.
[154] Pole Attachment Rule Making [199 IAC chapter 27] and Amendment to 199 IAC 15.5(2), "Order Adopting Amendment to 199 IAC 15.5(2) and Giving Notice of Proposed Amendments to 199 IAC 25.4," Docket No. RMU-2012-0002, issued May 24, 2013.

- **Railroad crossings by telecommunications utilities**

[155] For example, ITA post-workshop comments, p. 5.
[156] OCA initial comments, pp. 44-45; OCA reply comments, p. 15.

- **Alternative operator services companies**

[157] OCA initial comments, pp. 45-46.
[158] Securus initial comments, pp. 1-4.
[159] OCA reply comments, p. 16.
[160] OCA post-workshop comments, p. 6.

[161] CenturyLink post-workshop comments, p. 3.
[162] Iowa Code § 476.91(1)"a."
[163] Iowa Code § 476.91(2); 199 IAC 22.19(2).
[164] 199 IAC 22.12(1).
[165] Ibid.
[166] TR's State NewsWire, dated 10/19/2012, 1/7/2013, 1/22/2013, and 5/13/2013.
[167] *Rates for Interstate Inmate Calling Services,* Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 12-375, FCC 13-113 (rel. Sept. 26, 2013).

- **Tariff Retention**

[168] RIITA initial comments, p. 8; OCA reply comments, p. 17; ITA initial comments, p. 14; Windstream initial comments, p. 3; Verizon initial comments, p. 14; Cox reply comments, p. 4.
[169] OCA reply comments, p. 17
[170] ITA initial comments, p. 14.
[171] RIITA initial comments, pp. 7-8; Cox initial comments, p. 4.
[172] Sprint initial comments, p. 6.
[173] CenturyLink initial comments, p. 4.
[174] AT&T initial comments, p. 29.
[175] Verizon initial comments, p. 14.
[176] Sprint initial comments, p. 5.
[177] IAMU initial comments, p. 2.
[178] ITA initial comments, p. 14.
[179] ITA post-workshop comments, p. 6.
[180] OCA initial comments, pp. 46-47.
[181] Cox initial comments, p. 4.
[182] Verizon post-workshop comments, p. 7.

- **Monitoring and protection of the competitive marketplace**

[183] OCA initial comments, pp. 47-48.
[184] T-Mobile initial comments, pp. 8-9.
[185] RIITA initial comments, p. 8.
[186] Windstream reply comments, pp. 2-6.
[187] IAMU initial comments, p. 2.
[188] ITA initial comments, p. 14.
[189] ITA reply comments, p. 17.
[190] Workshop comments of Sprint and ITA on whether the expedited provision in Iowa Code § 476.101(8) should be modified.
[191] Cox initial comments, pp. 2-3.
[192] AT&T initial comments, pp. 29-30.
[193] T-Mobile initial comments, pp. 8-9.
[194] Initial comments of OCA, p. 47.

- **Certificates of public convenience and necessity**

[195] Initial comments of OCA, pp. 48-49; IAMU, p. 2; Sprint, p. 7; RIITA, pp. 8-9; ITA, p. 14-15.
[196] T-Mobile initial comments, p. 9.
[197] OCA initial comments, p. 49.
[198] Verizon reply comments, p. 14.
[199] Initial comments of OCA p. 49; Sprint p. 7; RIITA pp. 8-9.
[200] Initial comments of OCA p. 49; Sprint p. 7
[201] OCA initial comments, pp. 49-50.
[202] ITA reply comments, pp. 17-18.
[203] Level 3 Communications, LLC, "Order in Lieu of Certificate," Docket No. TF-05-31 (TCU-99-1), issued June 20, 2005; Sprint Communications Company L.P., "Order Canceling Certificate and Issuing Order in Lieu of Certificate," Docket No. SPU-05-21, issued March 3, 2006 (*Sprint Order)*; Momentum Telecom,

Inc. "Order in Lieu of Certificate," Docket No. TCU-08-7, issued July 25, 2008; 360Networks (USA), Inc., "Order Canceling Certificate, Withdrawing Tariff, and Issuing Order in Lieu of Certificate," Docket No. SPU-2009-0002 (TCU-2007-0007), issued April 20, 2009.
[204] *Sprint Order*, pp. 3-4.
[205] Staff memo in *Onvoy, Inc. d/b/a Onvoy Voice Services*, Docket No. TCU-2012-0003, dated April 27, 2012.
[206] *360Networks (USA) Inc., and Zayo Group, LLC*, "Order Accepting Notice of Merger and Authorizing Transfer of 'Order in Lieu of Certificate,'" Docket No. SPU-2013-0003, issued March 19, 2013, pp. 4-5.
[207] MCC Telephony of Iowa, LLC, et al. v. Capitol Infrastructure LLC, et al., "Order on Motions to Dismiss, Finding Violations, and Providing Notice of Possible Civil Penalties," Docket No. FCU-2010-0015, issued March 30, 2011.
[208] SpeedConnect LLC, "Order Approving Tariff and Issuing Certificate," Docket No. TCU-2011-0008, certificate issued 3/14/2012; New Edge Network d/b/a Earth Link Business, "Order Granting Application and Approving Concurrence in Maps," Docket No. TCU-2011-0009, application granted 12/20/2011 (no tariff filed and no certificate issued to date); Toshiba America Information Systems, "Order Approving Tariff and Issuing Certificate," Docket No. TCU-2012-0006, certificate issued April 5, 2013.

- **Review of proposed reorganizations**

[209] OCA initial comments, p. 50; post-workshop comments, p. 6.
[210] RIITA initial comments, p. 9.
[211] Cox reply comments, p. 5.
[212] Cox is referencing *Qwest Communications International, Inc. and CenturyTel, Inc.,* Docket No. SPU-2010-0006. The "CLEC Settlement" approved by the Board in that docket provided terms regarding Qwest's wholesale Operations Support System (OSS), obligations under existing interconnection agreements, the Qwest Performance Assurance Plan, the Qwest Change Management Process, and that FCC merger terms that are inconsistent with these terms will supersede these terms.
[213] ITA initial comments, p. 15.
[214] Verizon initial comments, p. 17.
[215] Verizon post-workshop comments, p. 7; Windstream initial comments, pp. 4-5, and reply comments, pp. 7-8.
[216] AT&T initial comments, p. 30.
[217] CenturyLink initial comments, pp. 1-2.
[218] CenturyLink post-workshop comments, p. 3.
[219] Windstream initial comments, pp. 4-5 and reply comments, pp. 7-8.
[220] OCA reply comments, pp. 17-18.
[221] OSS stands for Operations Support System and is defined as "Methods and procedures which directly support the daily operation of the telecommunications infrastructure. The average LEC has hundreds of OSSs, including automated systems supporting order negotiation, order processing, line assignment, line testing and billing." *Newton's Telecom Dictionary, 27th Updated & Expanded Edition, 2013.*
[222] CenturyLink workshop comments.
[223] 199 IAC 32.2(1) is more specific and states an application or waiver must be filed if a public utility acquires or leases assets having a value in excess of 3 percent of the utility's Iowa jurisdictional utility revenue or $5 million, whichever is greater.
[224] Iowa Code § 476.72.
[225] Iowa Code § 476.1(3), which excludes certain (most) types of telephone companies from rate regulation, except for the larger telephone companies that have more than 15,000 customers and more than 15,000 access lines.
[226] Iowa Code § 476.77(4).

- **Discontinuance of service**

[227] ITA reply comments, p. 19.
[228] Windstream initial comments, p. 5.
[229] Sprint initial comments, p. 8.
[230] ITA reply comments, p. 18.
[231] AT&T initial comments, p. 30.

- **Universal service provisions of § 476.102**

[232] Cox initial comments, p. 5 citing FCC Monitoring Tables at www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/2012_MR_Tables.zip (specifically, table 3.7).
[233] Cox reply comments, p. 5.
[234] OCA initial comments, pp. 50-51.
[235] Connect Iowa media release, dated June 6, 2013, attached to Sprint reply comments.
[236] Verizon reply comments, p. 15.
[237] RIITA initial comments, pp. 9-10.
[238] *Impact Analysis of the USF Transformation Order on the State of Iowa,* Wichita State University W. Frank Barton School of Business, Center for Economic Development and Business Research (May 2013).
[239] ITA reply comments, p. 20. ITA cites Balhoff & Williams, LLC, *State USF White Paper: New Rural Investment Challenges*, (June 2013) at 2 (reporting that, on a nationwide basis, the negative impact to rate of return carriers is estimated to be up to 35% reduction of ICC and USF revenues).
[240] Ibid. at 19-20.
[241] *NRRI Survey of State Universal Service Funds 2012*, released July 2012. This report indicates that 44 states and the District of Columbia have a combination of various universal service funds, including high-cost, lifeline, schools and libraries, and other types of funds. This report states that 21 states have high-cost support funds and 4 states have funds dedicated specifically to broadband service (pp. iv-v).
[242] RIITA initial comments, p. 10.
[243] State Universal Service Fund, "Order Terminating Inquiry," Docket No. NOI-08-2, issued August 25, 2010, p. 2.
[244] STEM is an acronym for Science, Technology, Engineering, and Mathematics.

- **Deployment of broadband service**

[245] CenturyLink reply comments, p. 5.
[246] Verizon initial comments, p. 18.
[247] RIITA initial comments, p. 10.
[248] ITA reply comments, pp. 3-4.
[249] ITA post-workshop comments, p. 2.
[250] T-Mobile initial comments, p. 4.

- **INS, Traffic Pumping, and Mileage Pumping**

[251] Sprint initial comments, pp. 8-10.
[252] *AT&T Corp. v. Alpine Communications, LLC et al.,* Memorandum Opinion and Order, File No. EB-12-MD-0003, FCC 12-110 (Sept. 12, 2012) ("*Alpine decision")*.
[253] AT&T reply comments, p. 16.
[254] Ibid.
[255] RIITA reply comments, p. 4.
[256] RIITA reply comments, p. 3.
[257] Sprint initial comments, pp. 10-11.

ATTACHMENT 1

STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: INQUIRY INTO THE APPROPRIATE SCOPE OF TELECOMMUNICATIONS REGULATION	DOCKET NO. NOI-2013-0001

ORDER INITIATING INQUIRY

(Issued January 11, 2013)

I. INTRODUCTION

The Utilities Board (Board) is opening this docket to receive public comment regarding the appropriate scope of regulation of telecommunications services in Iowa. It appears the existing regulatory statutes (primarily Iowa Code chapters 476 and 478) contain outdated provisions and may benefit from a general review with the goal of updating the regulatory approach to reflect new technology and new market conditions. Accordingly, the Board is inviting comment on possible updates to statutes.

The Board is aware that some states are considering, or have enacted, different degrees of regulation for different telecommunications technologies. Since 2010, at least 22 different states have taken steps to update their approach to regulating the telecommunications industry. Many states have deregulated retail rates, as Iowa did in 2008. Others have altered or eliminated tariff requirements, changed their quality of service standards, changed their carrier of last resort (COLR)

requirements, or otherwise taken action to reduce regulation. Increased competition in the telecommunications marketplace appears to be the most common justification for these actions. That competition includes not only the traditional wireline local exchange carriers but also wireless carriers and Voice over Internet Protocol (VoIP) service providers.

To the extent the market is becoming increasingly competitive, it may be appropriate to re-evaluate the need for the existing system of intrastate telecommunications regulation. It seems likely that some level of regulation will continue to be necessary to protect the public interest, but the extent and nature of that regulation deserves discussion. Accordingly, the Board is opening this docket to receive comment from the public regarding these issues.

In this order, the Board identifies a number of topics for discussion. This list should not be considered exclusive or limiting; comment is sought concerning all aspects of the appropriate future of telecommunications regulation in Iowa.

II. TOPICS FOR INQUIRY

A. VoIP

As noted above, many states have recently enacted legislation altering the scope of regulation in those states, particularly with respect to VoIP traffic on the public switched telephone network (PSTN), which the FCC has defined as “traffic

exchanged over PSTN facilities that originates and/or terminates in IP format."[1] It appears the activity in some of those states may generally be described as limiting or reducing regulatory authority over many aspects of VoIP while typically preserving state regulatory authority over matters such as taxes, fees for E911 and Telecommunications Relay Service (TRS), delegated federal authority, and management of the use of public rights-of-way, among other things. Regulation of traditional telecommunications service may or may not be affected by these changes.

Initially, the Board seeks to understand whether VoIP technology is different from the technology used for traditional service in some way that justifies disparate regulatory treatment. Technological differences can justify different regulatory treatment; mobile telephone technology is an example. But at this stage, the Board has not identified any technological basis for treating non-nomadic VoIP in a different manner than other voice telecommunications services and has determined in at least two cases that intrastate VoIP service is subject to certain regulatory requirements.[2] Stated differently, if some degree of reduced or limited regulation is appropriate in the telecommunications marketplace, why should it be limited to VoIP? Would a difference in regulatory activity create an artificial competitive advantage based on the technology used?

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[1] *See In the Matter of Connect America Fund, etc.,* WC Docket No. 10-90, etc.. 26 FCC Rcd. 17663 (2011), *pets. for review* pending (hereinafter the "CAF Order"), at para. 940.

[2] Sprint Comm. Co. L.P. v. Iowa Telecommunications Services, Inc., Docket No. FCU-2010-0001, and MCC Telephone of Iowa, LLC, et al., v. Capitol Infrastructure LLC, et al., Docket No. FCU-2010-0015.

B. Other questions regarding the appropriate scope of regulation

Regardless of whether there is a basis for regulating services in differing manners based on the technology used, the Board is also interested in public comment on the appropriate scope of regulation for telecommunications services in today's market. Without limiting the scope of the comments, the Board is interested in receiving comments concerning the continued appropriateness of the following regulatory requirements:

1. Carrier of last resort obligations, Iowa Code § 476.29(5)

Iowa's COLR requirement is different than in many other states. Section 476.29(5) provides that each local exchange utility has an obligation to serve all eligible customers within the utility's service territory. Thus, on paper the obligation is shared among all the local service providers; no single company is designated.

However, in practice it appears the obligation to serve remote customers has fallen mainly on the ILEC (incumbent local exchange carrier), as many (if not most) CLECs (competitive local exchange carrier) resell the ILEC's facilities if required to provide service to every customer in an exchange, including those beyond the reach of their own facilities. Meanwhile, wireless service availability in rural areas may be improving, although the Board does not monitor that. The Board is interested in comment concerning the need for, and proper design of, a modern COLR requirement.

2. Consumer protection and complaint resolution, including unauthorized changes in service (slamming and cramming), §§ 476.3 and 476.103

The Board continues to receive significant numbers of consumer complaints against telecommunications carriers, most of which involve unauthorized changes to a consumer's telecommunications service. It appears the Board provides a relatively fast and inexpensive process for resolving these complaints and for discouraging behavior that is contrary to the public interest. Moreover, the Board participates in enforcement of the FCC's slamming rules.[3] The Board is interested in receiving comment about the continuing need for this consumer protection function.

3. Fees assessed to telecommunications carriers

Telecommunications carriers are assessed a variety of fees for programs that promote the public interest, such as E911 (Iowa Code chapters 34 and 34A), dual party relay service (chapter 477C), Board assessments for the cost of regulation (§ 476.10), and perhaps others. The Board understands that most carriers pass most, if not all, of these fees through to their customers in the form of a surcharge or separate line item on each customer's bill. These fees are not always assessed on a consistent basis, in terms of the services or revenues they are based on or the carriers they are assessed to. As a result, customers of some telecommunications carriers, such as certain VoIP service providers, may make use of E911 or the dual party relay service but may not pay any part of the cost of those programs.

[3] See http://www.fcc.gov/encyclopedia/slamming-states-administering-slamming-rules.

The Board will assume that the E911 and dual party relay service programs will continue even if the telecommunications industry is further deregulated. If that assumption is correct, then as a general principle it seems the costs of these programs should be collected from telecommunications carriers (and, ultimately, their customers) over as broad a base as possible.

Board assessments are somewhat different. Many carriers have availed themselves of the Board's services, such as its authority to resolve inter-carrier disputes pursuant to § 476.11, and the Board is able to assess its costs associated with those proceedings to the carrier(s) involved. The Board also has ongoing costs associated with various other telecommunications regulation, such as administering the state functions associated with the federal universal service program, and those costs are typically assessed to the regulated telecommunications industry in general. Finally, the Board has general overhead costs that must be recovered from all regulated entities, since they are not associated with any particular utility or industry. The Board is interested in receiving comment regarding the most equitable mechanism for recovering its costs from the cost-causers, including those who indirectly benefit from the Board's regulatory actions.

4. Federally-delegated regulatory authority

In addition to the slamming enforcement activity described above, the Board undertakes a variety of regulatory activity pursuant to authority delegated to states by the federal government. This includes a variety of actions pursuant to 47 U.S.C.

§§ 251 and 252 that are generally directed at promoting and protecting a competitive marketplace for local exchange carrier services; telephone numbering issues pursuant to § 251; federal universal service fund administration pursuant to § 254; and perhaps others. Some of these functions are mandatory delegations, while others are optional. Interested persons are invited to comment upon the agency's continued participation in these programs.

5. State authority to hear and resolve intercarrier disputes

Iowa Code § 476.11 gives the Board jurisdiction to hear complaints and resolve disputes regarding the terms and conditions of interconnection between carriers. This authority has been invoked by a number of telecommunications utilities in recent years. The Board is interested in receiving comment from the public regarding the continued usefulness of this alternative for resolving intercarrier disputes.

6. Quality of service regulations

Iowa Code § 476.3, among other provisions, gives the Board jurisdiction over the quality of service provided by wireline local exchange carriers (with the exception of services or facilities that are fully deregulated pursuant to § 476.1D(1), as opposed to those services that are only deregulated as to rates pursuant to § 476.1D(1)"c"). The Board's rules contain various provisions implementing this authority. It could be argued that competition in the marketplace makes quality-of-service regulation less necessary; it could also be argued that the level of competition in the local exchange

service marketplace is not yet sufficiently robust to make this type of regulation unnecessary, as may be demonstrated by the ongoing call-completion situation affecting rural customers in Iowa and elsewhere. Interested persons are invited to comment on this issue.

7. Management of public right-of-way, including joint use of utility poles

In Docket No. RMU-2011-0007, the Board is considering the possibility of asserting jurisdiction over utility pole attachments. Any specific issues associated with that proposal will be considered in that docket, rather than this one. However, in this docket the Board will consider more general comments concerning joint use of utility poles and management of the public right-of-way in general.

8. Railroad crossings by telecommunications utilities

Iowa Code § 476.27 gives the Board jurisdiction to adopt rules prescribing the terms and conditions for crossing of railroad right-of-way by utility facilities, including communications services. It seems likely that communications utilities would prefer that this jurisdiction continue, regardless of what other changes might be made to the Board's regulatory authority; still, the Board invites comment on the continued need for this provision in the future.

9. Alternative operator services companies

Iowa Code § 476.91 gives the Board jurisdiction over services provided by alternative operator services (AOS) companies, regardless of deregulation pursuant to § 476.1D. An AOS company is defined as a nongovernmental company that

receives more than half of its Iowa intrastate telecommunications services revenues from calls placed by end-users from telephones other than ordinary residence and business telephones. The classic example of an AOS company was a service provider at a hotel in the days before wireless telephones became so common; hotel customers were effectively captive customers of the hotel's telecommunications service provider. Some service providers (and hotels) took advantage of that situation by implementing unreasonable rates for calls from the customer's hotel room.

The widespread use of wireless telephones appears to have made this provision less necessary in the hotel situation described above. However, AOS concerns may still exist in certain markets, such as telecommunications services provided to inmates at correctional institutions. The Board invites comment on this provision.

10. Tariff requirements

Iowa Code §§ 476.4, 476.4A, 476.5, and other statutory provisions establish a variety of rights and requirements associated with public utility tariff filings. In addition to these statutory provisions, the filed tariff doctrine (or filed rate doctrine) makes the terms and conditions of a public utility's tariff binding on the customers of that utility. See, for example, Teleconnect Co. v. US West Communications, Inc., 508 N.W.2d 644 (Iowa 1993). While these provisions served the public interest when all aspects of a utility's retail tariff were subject to the jurisdiction of the Board, it is not

clear that the provisions serve the public interest in a less-regulated retail environment. At the same time, however, it appears the FCC contemplates that states will continue to review and approve intrastate access tariffs for at least some services for some time, which may be relevant to this discussion.[4]

Commenters are invited to address the role of tariffs in the future telecommunications marketplace.

11. Monitoring and protection of the competitive marketplace

Iowa Code §§ 476.100 and 476.101 contain a variety of provisions relating to local exchange competition, the obligations of ILECs and CLECs, and the Board's role in monitoring and promoting the development of competition among and between local exchange carriers. Some parts of these statutes appear to be out of date; others were superseded by federal law. Interested persons are requested to comment on the various provisions of these statutes.

12. Other

There are a number of other regulatory provisions about which the Board seeks public comment. First, is there a continuing need for the Board to issue certificates of public convenience and necessity pursuant to § 476.29, and if so, is there a better mechanism for meeting that need? Second, should the Board continue to review proposed reorganizations for some carriers, pursuant to § 476.77? Third, the Board invites comment about the regulatory requirements associated with discontinuance of service, set out in § 476.20 and the universal service provisions of

[4] CAF Order, para. 35.

§ 476.102, an authority which the Board has not yet found necessary to implement. How can the Board preserve universal service in Iowa in the future?

Finally, at this time the Board does not play a major role in encouraging the deployment of broadband services in Iowa. However, based upon the information gathered by the Board in In Re: National Broadband Plan and State Broadband Deployment Plan, Docket No. NOI-2010-0002, it appears that broadband is and will continue to be a major factor in intrastate communications in the future. Should the Board undertake a role in promoting broadband deployment? If so, what should that role be?

III. CONCLUSION

The Board intends this to be an open-ended inquiry into the future of telecom regulation in Iowa, so no tentative conclusions are offered at this time.

Initial written comments are to be filed on or before May 1, 2013. Reply comments may be filed on or before July 1, 2013. Further proceedings, possibly including a workshop, will be scheduled by the Board after the written comments have been reviewed and analyzed.

The Board anticipates this inquiry will result in a Board or staff report summarizing and analyzing the comments, and possibly including recommendations regarding the need for legislative changes, new rule makings or deregulation dockets, and other changes that may be identified and determined to be appropriate.

IV. ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. An inquiry, identified as Docket No. NOI-2013-0001, is opened to receive comment from the public regarding the appropriate scope of telecommunications regulation in Iowa.

2. Initial written comments may be filed on or before May 1, 2013.

3. Reply comments may be filed on or before July 1, 2013.

UTILITIES BOARD

/s/ Elizabeth S. Jacobs

/s/ Darrell Hanson

ATTEST:

/s/ Joan Conrad */s/ Swati A. Dandekar*
Executive Secretary

Dated at Des Moines, Iowa, this 11th day of January 2013.

ATTACHMENT 2

STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: INQUIRY INTO THE APPROPRIATE SCOPE OF TELECOMMUNICATIONS REGULATION	DOCKET NO. NOI-2013-0001

ORDER SCHEDULING WORKSHOP

(Issued August 20, 2013)

I. BACKGROUND AND WORKSHOP DETAILS

On January 11, 2013, the Utilities Board (Board) initiated this inquiry to receive public comment regarding the appropriate scope of regulation of telecommunications services in Iowa. It appears the existing regulatory statutes (primarily Iowa Code chapter 476) may contain outdated provisions and could benefit from a general review with the goal of updating the regulatory approach to reflect new technology and new market conditions, if necessary.

To the extent that the telecommunications market is becoming increasingly competitive, the Board determined it was appropriate to re-evaluate the need for the existing system of intrastate telecommunications regulation. To that end, the Board identified a number of topics for discussion, but welcomed comments concerning all aspects of the appropriate future of telecommunications regulation in Iowa. The Board received written comments regarding the specified topics from several interested parties. Based on Board staff's review of the comments, it appears that a

discussion of the parties' positions on certain issues in a workshop setting would be useful.

The Board will schedule a workshop for Tuesday, September 10, 2013, at 9 a.m., at the Board's offices, 1375 E. Court Ave., Des Moines, Iowa, in Conference Rooms 1 and 2 to allow interested persons and Board staff to discuss issues raised in the comments received to date and additional questions identified in this order. The Board anticipates the workshop will conclude at 3 p.m.

To encourage discussion at the workshop, the Board includes in this order a list of questions based on the comments received thus far and a list of questions relating to potential amendments to certain Iowa Code provisions. Workshop participants will have an opportunity to make brief opening statements, discuss the matters raised by the questions included in this order, and comment on the potential statutory revisions, as well as to engage in informal, follow-up discussion with Board staff and other workshop participants.

Some of the Board members will attend the start of the workshop and hear opening statements from any participants wishing to make such statements, but the Board members currently do not intend to be present beyond the opening statements. No transcript will be made of the workshop discussions. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)725-7334 at least five days in advance of the workshop.

To accommodate those persons who cannot attend the workshop in person, the Board has established the following bridge line to allow participation by telephone:

Toll Free Dial-In Number: (866) 685-1580
Conference Code: 5671729958

Please dial in at least five minutes prior to the beginning of the workshop.

The Board will not require written responses to the questions asked in this order to be filed in advance of the workshop. Participants wishing to file written comments memorializing their positions on issues discussed at the workshop, responding to new issues raised at the workshop, or responding to the positions of other parties expressed at the workshop may file such written comments on or before Wednesday, September 18, 2013.

II. WORKSHOP DISCUSSION QUESTIONS

From its review of the comments submitted to date, the Board has prepared the following questions. This list is not exclusive and workshop participants are free to address other topics.

A. VoIP, transition to IP networks

The Board has explained that it seeks to understand whether Voice over Internet Protocol (VoIP) technology is different from the technology used for traditional telephone service in some way that justifies different regulatory treatment. In comments responding to that question, some parties have explained that VoIP

should be given a "hands off" regulatory approach because it is based on packet-switched technology and because it offers a wider array of services and features than traditional telephone service. Some parties also assert, based on older FCC decisions, that the Federal Communications Commission (FCC) has preempted state regulation of VoIP or at least has predicted that it will do so.

The Board would prefer to start with the most recent statements from the FCC about VoIP. In the *ICC/USF Transformation Order*,[5] the FCC explicitly stated it has not classified interconnected VoIP as an information service. The Board opened this inquiry proceeding to give the Board and interested parties an opportunity to move beyond arguments already considered and rejected and, if VoIP is to be deregulated, to identify the appropriate reasons for taking that step. To that end, the Board has prepared the following additional questions about VoIP:

1. Some comments suggested that the Board should allow Internet Protocol (IP) technology to develop further before the Board determines the appropriate level of regulation to apply to VoIP. So that the Board can better understand where VoIP is in terms of its development and presence in Iowa's telecommunications market, please describe the extent to which VoIP technology is used in both retail and wholesale service in Iowa.

2. As noted above, several parties contend that the nature of the facilities and technology used to deliver VoIP voice calls requires a hands-off approach to

[5] *Connect America Fund*, etc., WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663, ¶ 954 (FCC Nov. 18, 2011).

regulation. Please clarify why the facilities or technology used to provide voice communications should matter in analyzing how the Board should treat VoIP service. In other words, for regulatory purposes, can the service (voice communications) be separated from the means of delivering the service (the Internet)? Also, do retail VoIP offerings typically require the customer to purchase both a voice service and Internet service? Or can a customer buy VoIP as a standalone service without buying Internet service? If so, what percentage of customers do so?

3. Will increasing use of IP technology in delivering local telephone service affect the reliability of emergency service calls? If so, how?

4. The FCC has not made a decision about the regulatory classification of interconnected VoIP. What would the implications be if interconnected VoIP were deregulated in Iowa at this time and the FCC subsequently classifies VoIP as a telecommunications service?

5. Some comments suggest that the availability of VoIP promotes broadband investment and that applying traditional telecommunications regulation to VoIP service inhibits investment in IP networks. To assist the Board in understanding how state regulation of VoIP has affected and will affect Iowa's telecommunications market and the development of IP networks, please point to specific evidence that such investment has been inhibited by the Board's current approach to regulation of VoIP. What services, if any, are not available to Iowa customers because of the Board's current approach to VoIP regulation?

6. Several comments suggest that the Board should maintain its regulatory authority over wholesale VoIP to ensure carriers' interconnection rights. Please describe the state of IP-interconnection in Iowa and explain whether carriers have experienced any difficulty in reaching IP interconnection agreements and, if so, the types of difficulties encountered. Are any changes to Iowa Code chapter 476 or the Board's rules needed to affirm the Board's role in ensuring IP-interconnection rights and deciding IP interconnection disputes?

7. There was some discussion in the comments suggesting that there is no "regulatory gap" with respect to VoIP because the FCC has issued directives applying to VoIP, including FCC orders on E-911, universal service, and discontinuance of service. To what extent does federal law contemplate a state role in these areas for Board oversight of intrastate services?

8. If the Board's regulatory responsibilities in the area of consumer protection are eliminated with respect to intrastate VoIP service, who will assist Iowa consumers with issues relating to service quality, number porting, billing, and access to 9-1-1 services in a VoIP environment?

B. Carrier of last resort (COLR)

If the Iowa General Assembly were to determine that Iowa's COLR requirement is no longer necessary, it would follow that the requirement in Iowa Code § 476.29(5) that carriers "serve all eligible customers within the utility's service territory" should be eliminated. The Board is interested in receiving comments at the

workshop addressing the short-term and long-term effects eliminating this provision would have on the following aspects of telephone service in Iowa:

- The availability of voice service in all areas of Iowa;
- Voice service quality;
- Public safety;
- Broadband expansion;
- Federal requirements that an eligible telecommunications carrier must provide Lifeline and other services throughout the carrier's service territory; and
- Whether the transition to an IP environment will have any effect on the consequences of eliminating the COLR requirement.

C. Certificates of public convenience and necessity and tariffs

Some comments supported the idea that the Board should retain its authority to require local exchange utilities to be certificated pursuant to Iowa Code § 476.29. Other comments suggested the Board should eliminate the requirement that local exchange carriers maintain tariffs. The Board invites comments at the workshop about the following issues relating to certificates and tariffs:

1. If the tariffing requirements in Iowa Code § 476.29(6) were to be eliminated, would there still be a reason to retain the certification requirements?

2. Certain consumer protection requirements reside in local exchange tariffs. What are the risks to the Board's ability to enforce consumer protection provisions included in state law and Board rules if tariffing requirements are eliminated?

D. Discontinuance of service and intercarrier disputes

1. Iowa Code § 476.29(11) requires that all areas of Iowa be served by a local exchange utility. Under this section, if a territory is no longer being served due to a discontinuance of service, the Board is required to authorize another local exchange utility to serve that territory. The Board is interested in receiving comments at the workshop addressing whether this statutory provision should be retained.

2. Some comments from local exchange carriers propose that the Board adopt new procedures to provide for the discontinuance of service to interexchange carriers (IXCs) that engage in "self-help" by withholding access charge payments. The Board is interested in receiving comments at the workshop addressing the following issues related to this topic:

- The magnitude of the non-payment or "self-help" issue.
- Whether IXCs are disputing access charges pursuant to the provisions of access tariffs.
- Whether a LEC could discontinue intrastate service to an IXC without discontinuing interstate service.
- Whether procedures for the discontinuance of intrastate service to an IXC would need to coordinate with procedures for the discontinuance of interstate service to an IXC.

E. Fees assessed to telecommunications carriers

Several participants suggested that the Board should broaden the base of service providers that are subject to assessment of regulatory fees by applying those fees on a technology and competitively-neutral basis. The Board has the following questions about the assessment to support intrastate Telecommunications Relay Service and the Iowa Equipment and Distribution Program:

1. Should all VoIP providers be required to support these programs?

2. What mechanism could be used to assess the various types of VoIP providers for these programs?

3. Should the Board recommend that the statute be amended to explicitly identify which service providers will be required to contribute?

F. Request for comment on potential statutory amendments

Based on the information gathered in this proceeding, the Board may determine and recommend to the Iowa General Assembly that certain provisions of Iowa Code chapter 476 and other related statutes be revised. In addition to responding to any questions about potential statutory amendments mentioned in the list above, the Board asks workshop participants to address the following list of potential statutory amendments:

1. § 476.1D (Deregulation). Subsection (1)(c) addresses retail rate deregulation. Should this subsection be deleted? If not, why should it be retained? Would other changes be necessary if this subsection is removed?

2. § 476.4A (Services that are exempt from tariff requirements). Can this section be deleted? If not, why should it be retained?

3. § 476.5 (Requires utilities to adhere to schedules and prohibits discounts but allows telephone companies to offer free service to their employees). Because the Board no longer regulates retail rates, can the provision regarding free service be eliminated? If not, why should it be retained?

4. § 476.29 (Certificates of public convenience and necessity). Can the language in subsection (3) referring to reorganizations under Iowa Code §§ 476.76 and 476.77 be deleted?

5. §§ 476.76 and 476.77 (Utility reorganizations). Should the Board propose that these provisions be amended to clarify that no telecommunications company is required to file for review of a corporate reorganization? Short of elimination, are any modifications of these provisions needed?

6. § 476.91 (Alternative operator services companies). Should the Board recommend that this provision be deleted? If not, are there any current issues relating to these companies in Iowa that warrant retention of this provision?

7. §§ 476.96 – 476.99 (Price regulation plans). Should the Board propose that these provisions be deleted as outdated? If not, why should they be retained?

8. § 476.101 (Board's authority to monitor, protect, and promote competition in local exchange market; also the "rocket docket" provision). Should this section be updated to reflect the Board's current role and activities? Should the Board propose that the expedited proceeding provision in § 476.101(8) be retained, deleted, or modified in some way? If there is reason to retain the provision, should the Board propose that it be amended to allow the Board to extend the 90-day time frame “for good cause shown”?

III. ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. A workshop is scheduled for Tuesday, September 10, 2013, at 9 a.m. at the Board's offices in Conference Rooms 1 and 2 located at 1375 E. Court Avenue, Des Moines, Iowa, as described in this order.

2. Participants wishing to file written comments after the workshop may do so on or before Wednesday, September 18, 2013.

UTILITIES BOARD

/s/ Elizabeth S. Jacobs

/s/ Nick Wagner

ATTEST:

/s/ Joan Conrad
Executive Secretary

Dated at Des Moines, Iowa, this 20th day of August 2013.