

## **ASSURANCE OF VOLUNTARY COMPLIANCE**

### **REGARDING CLAIMS FOR VIOLATIONS OF IOWA CODE CHAPTER 480**

The State of Iowa, ex rel. Brenna Bird, Attorney General of Iowa (the “State”); MidAmerican Energy Company (“MidAmerican”), an Iowa corporation engaged in the business of owning and operating underground natural gas and electric facilities in Iowa; Mediacom Communications Corporation, a Delaware corporation engaged directly or indirectly through affiliates in the business of owning and operating underground telecommunication facilities in Iowa (“Mediacom”); and Lumen Technologies, Inc., a Louisiana corporation engaged in the business of owning and operating underground telecommunication facilities in Iowa and all of its Subsidiaries operating in Iowa (“CenturyLink”) (each a “Party” and together the “Parties”) enter into the following Assurance of Voluntary Compliance (the “Agreement”).

#### **I. DEFINITIONS**

The terms “excavation,” “operator,” and “underground facility” shall have the definitions set forth in Iowa Code § 480.1; “underground facilities” shall mean the plural of “underground facility.”

#### **II. JURISDICTION**

1. Iowa Code section 480.4(1)(a) requires that an excavator, before an excavation, contact the statewide notification center and provide notice of the planned excavation. The notice must be given at least 48 hours before the commencement of the excavation, excluding weekends and legal holidays.

2. Under Iowa Code section 480.4(2), the notification center must then immediately transmit the information contained in the notice to each operator of underground facilities in the area of the proposed excavation and provide the names of all operators in that area to the excavator. The operators then have 48 hours, excluding weekends and legal holidays, to accurately mark their underground facilities, unless the excavator agrees to a different schedule. Iowa Code § 480.4(3)(a)(1).

3. A person who violates chapter 480 is subject to a civil penalty. When the violation is related to natural gas and hazardous liquid pipelines, the penalty is up to \$10,000 for each day the violation continues, up to a maximum of \$500,000. Iowa Code § 480.6(1)(a). When the violation is related to any other underground facility, the penalty is up to \$1,000 for each day the violation continues, up to a maximum of \$20,000. Id. at § 480.6(1)(b)

4. Iowa Code § 480.6(2) authorizes the Attorney General, upon the receipt of a complaint, to institute legal proceedings necessary to enforce the penalty provisions of chapter 480.

### III. STATEMENT OF FACTS

1. Placing locate requests before excavating is critical to protecting underground infrastructure and preventing injury. Timely and accurate locating and marking of underground facilities in response to those requests is equally critical.

2. MidAmerican, Mediacom, and CenturyLink are each an operator required to perform locates for their respective underground facilities.

3. Mediacom and CenturyLink each independently contracted with USIC Locating Services, LLC ("USIC") to perform locates for their respective underground facilities.

4. MidAmerican contracted with USIC to perform locates for its underground facilities, under a contract that was effective for the period April 1, 2021, to March 31, 2024. However, beginning November 15, 2023, and ending December 4, 2023, MidAmerican transitioned responsibility for locates from USIC to two new locate vendors. USIC did not perform locates for MidAmerican for locates requested at or after 7:00AM, December 4, 2023.

5. The State received a number of complaints from January 2018 through May 25, 2021, regarding untimely and inaccurate locates performed by USIC on behalf of each of MidAmerican, Mediacom, and CenturyLink.

6. The State investigated those complaints and confirmed numerous violations occurred.

7. On May 25, 2021, the State issued warning letters to MidAmerican, Mediacom, and CenturyLink for the violations. The warning letters acknowledged those companies receive thousands of locate requests each year but affirmed that the failure to adequately address untimely and inaccurate locating of their underground facilities could result in enforcement proceedings.

8. From May 26, 2021, through the end of 2023, the State continued to receive complaints alleging MidAmerican, Mediacom, and CenturyLink, through USIC, failed to timely and accurately locate and mark their underground facilities.

9. The State continued to investigate the complaints received and engaged each of MidAmerican, Mediacom, and CenturyLink in the course of its investigation. Each company was receptive, engaged, and proactive throughout the course of the investigation and provided data and information regarding their respective locate performance through USIC, including data and information not available through the state One Call system, and met personally with the Iowa Attorney General's office to help them understand the performance data and information and discuss their respective ongoing efforts to improve locating performance.

10. Review of the data and information provided demonstrated the following locate performance metrics for each company in calendar years 2022 and 2023:

- **MidAmerican:** In 2022, MidAmerican's overall late response rate through USIC was approximately 23%, ranging from approximately 16% to 40% during the peak construction months of May to October. In 2023, MidAmerican's overall late

response rate through USIC was approximately 22%, ranging from approximately 16% to 35% during the peak construction months of May to October.

- **Mediacom:** In 2022, Mediacom’s overall late response rate through USIC was approximately 26%, ranging from approximately 22% to 38% during the peak construction months of May to October. In 2023, Mediacom’s overall late response rate through USIC was approximately 26%, ranging from approximately 21% to 38% during the peak construction months of May to October.
- **CenturyLink:** In 2022, CenturyLink’s overall late response rate through USIC was approximately 32%. ranging from approximately 16% to 45% during the peak construction months of May to October. In 2023, CenturyLink’s overall late response rate through USIC was approximately 31%. ranging from 12% to 45% during the peak construction months of May to October.

11. The State’s investigation indicated that USIC’s use of agreed-to-marking schedules, which under Iowa Code § 480.4 allow operators, with the excavator’s agreement, to complete locates outside the required 48-hour period, substantially increased from 2021 to 2022. The State’s investigation also indicated that USIC frequently selected “agreed to marking schedule” in the One Call system even when the excavator did not respond positively to a request for an agreed to marking schedule. This alleged practice caused the locate to appear timely in the One Call system even if it was performed outside the 48-hour period. MidAmerican, Mediacom, and CenturyLink directed USIC to stop this alleged practice and provided data and information beyond that available in the One Call system to help the State to investigate the accurate late response rates.

12. Since the initiation of the investigation, MidAmerican, Mediacom, and CenturyLink have made substantial improvements in their locating and marking performance and compliance, which has continued through 2024. During the first four months of 2024, the companies’ respective late response rate has been as follows: MidAmerican, 1% or below; Mediacom, 1.8%; CenturyLink, 2.5%.

13. Throughout the course of the State’s investigation, MidAmerican, Mediacom and CenturyLink were cooperative, proactive, forthright and earnest in their discussions with the State about the locating violations and took specific and concrete steps to address USIC’s failure to timely locate and mark underground facilities on their behalf.

#### IV. VIOLATIONS

1. The State has concluded that from September 1, 2021, through November 30, 2023, MidAmerican, through USIC, regularly failed to timely mark MidAmerican’s underground facilities in violation of Iowa Code section 480.4(3)(a)(1).

2. The State has concluded that from September 1, 2021, through November 30, 2023, Mediacom, through USIC, regularly failed to timely mark Mediacom’s underground facilities in violation of Iowa Code section 480.4(3)(a)(1).

3. The State has concluded that from September 1, 2021, through November 30, 2023, CenturyLink, through USIC, regularly failed to timely mark CenturyLink's underground facilities in violation of Iowa Code section 480.4(3)(a)(1).

## V. AGREEMENT

Considering the recitations herein, and the wish of each of the Parties to avoid protracted litigation and to compromise and resolve all claims, the Parties agree to the following:

1. **Civil Penalty.** In settlement of the claims and allegations arising out of or relating to the facts alleged above, MidAmerican, Mediacom, and Century Link each hereby admit, for purposes of this settlement only, that sufficient evidence exist for a court to enter a finding of the violations alleged above and therefore, to resolve this dispute, the Parties agree to pay a civil penalty independently and separately to the State under Iowa Code § 480.6(1) as set forth below:

- a. **MidAmerican:** \$50,000.00
- b. **Mediacom:** \$50,000.00
- c. **CenturyLink:** \$50,000.00

The amounts set forth above shall be due and payable no later than August 1, 2024. The Parties agree that the interest rate applicable to judgments and decrees of courts under Iowa Code § 535.3(1) shall apply and that interest shall accrue on any amount not paid when due. For purposes of calculation of interest under this paragraph, the "date of commencement of action" under Iowa Code § 668.1(1) shall be August 1, 2024, and interest shall be computed daily to any date of payment after August 1, 2024. Payment of the civil penalty and interest, if any, shall be made payable to the "State of Iowa" and submitted to the person and address set forth for the State in paragraph 8 of this section, or as the State subsequently identifies pursuant to said paragraph 8.

2. **Reporting.** MidAmerican, Mediacom, and CenturyLink each agree to independently submit to the Iowa attorney general locate performance data and information as set forth in Exhibit A to this Agreement. Any required reports shall be submitted to the person and address set forth for the State in paragraph 8 of this section, or as the State subsequently identifies pursuant to said paragraph 8. The Parties agree that they may submit the data by electronic email. The State agrees that the data and information provided under this paragraph will be informational and shall not be the basis for any future claims or enforcement actions against MidAmerican, Mediacom or CenturyLink, arising from or related to any alleged violations of Iowa Code chapter 480 that occur on or after July 1, 2024, through the pendency of the reporting requirement set forth in Exhibit A.

3. **Stipulated penalties.** MidAmerican, Mediacom, and CenturyLink each agree to pay a civil penalty of \$500 per day for each day that MidAmerican, Mediacom, or CenturyLink respectively fail to submit a monthly or annual report required under paragraph 2 of this section. Payment of any stipulated civil penalties due under this paragraph shall be made no later than ten (10) days after receipt of a written demand from the State for payment and shall be made payable

to the “State of Iowa” and sent to person address set forth for the State in paragraph 8 of this section, or as the State subsequently identifies pursuant to said paragraph 8. Payment of any stipulated civil penalties due under this paragraph shall constitute full and final settlement of any penalty claims that were made or could have been made by the State for violations of this Agreement to which the stipulated civil penalties applied; however, payment of any such stipulated civil penalties shall not relieve the paying Party from any other obligations established by this Agreement or other provision of law.

4. **Availability of Reporting Data.** The Parties understand and agree that the ability of each of MidAmerican, Mediacom, and CenturyLink (collectively the “Reporting Parties”) to meet on a timely basis the reporting requirements of paragraphs 2 and 3 of this section and Exhibit A depends on the availability to such Reporting Parties of data and information from third parties not under the control of any such Reporting Party. The Parties agree that no Reporting Party shall be liable for any penalties under paragraph 3 of this section, nor deemed to have violated any paragraph of this Agreement or its Exhibits, for any failure or delay in performing any reporting required by paragraphs 2 and 3 of this section if the failure or delay results from acts, omissions, events or circumstances beyond their reasonable control, including that the data and information set forth in Exhibit A to this Agreement or otherwise needed to comply with such reporting requirements is not reasonably available at a reasonable cost to such Reporting Party for such purpose on a timely basis or at all.

5. **Effect of the Agreement.** The Parties agree that:

- a. The State hereby releases MidAmerican, Mediacom, and CenturyLink, along with each of their parents, owners, investors, subsidiaries, and other affiliates, from any and all claims, including but not limited to all civil claims, statutory claims, regulatory claims, common law claims, criminal claims and other claims of any nature whatsoever, known or unknown, arising out of or relating to the any of the facts, acts, omissions, conduct or violations (whether on the part of any of the released persons or entities or USIC or another third party) alleged or which could have been alleged in this Agreement including alleged violations of Iowa Code section 480.4(3)(a)(1), occurring on or before June 30, 2024. The Parties intend this Agreement to be a global resolution and settlement between the Parties of all claims, known or unknown, asserted or which could be asserted arising out of and relating to the facts, acts, omissions, conduct or violations alleged or which could have been alleged in in this Agreement.
- b. This Agreement is not a permit, and compliance with its terms does not guarantee compliance with all applicable federal, state, or local laws or regulations. Nothing herein relieves MidAmerican, Mediacom, or CenturyLink from any obligation to comply with other federal, state, or local laws, regulations, permits, or orders.
- c. Except as provided in paragraphs 3, 4, and 5 of this section, nothing herein shall be construed to prevent or limit the State’s rights to seek or obtain civil or

administrative penalties or injunctive relief for violations of Iowa Code chapter 480 occurring on or after July 1, 2024.

- d. This Agreement does not limit or affect the rights of MidAmerican, Mediacom or CenturyLink against any third parties, not a party to this Agreement, nor shall this Agreement be construed to create rights in, or grant any cause of action to, any third party not party to this Agreement or construed to be an admission of guilt or liability in any such cause of action which could or may be asserted by any third party.

6. **Enforcement of this Agreement.** Nothing herein shall be construed to prevent or limit the State's rights to enforce the terms of this Agreement, whether at law or in equity. MidAmerican, Mediacom, and CenturyLink each agree that in any such enforcement action, the State shall be entitled to injunctive relief to enforce the payment and reporting terms agreed to herein.

7. **Independent obligations.** The obligations of payment and reporting herein are independent to each of MidAmerican, Mediacom, and CenturyLink. Neither MidAmerican, Mediacom, nor CenturyLink shall be liable or responsible for any obligation of the other or others under this Agreement or under Iowa Code chapter 480, including but not limited to the obligation to pay any civil penalty or stipulated civil penalty or to make any reporting required under this Agreement. Default by any one of MidAmerican, Mediacom, or CenturyLink shall not be default of the others.

8. **Notices.** For purposes of implementation of this Agreement, all technical submittals, documents, correspondence or legal notices shall be sent to the following:

**State:**

Jacob J. Larson  
Assistant Attorney General  
Office of Iowa Attorney General  
Hoover State Office Building  
1305 E. Walnut Street, 2<sup>nd</sup> Floor  
Des Moines, Iowa 50319  
Phone: (515) 281-5341  
Fax: (515) 281-4209  
E-mail: [jacob.larson@ag.iowa.gov](mailto:jacob.larson@ag.iowa.gov)

**MidAmerican:**

Mark D. Lowe  
Sr. Vice President and General Counsel  
MidAmerican Energy Company  
P.O. Box 657  
Des Moines, Iowa 50306  
Phone: (515) 281-2642  
Fax: (515) 242-4398  
E-mail: [mark.lowe@midamerican.com](mailto:mark.lowe@midamerican.com)

**Mediacom:**

Thomas Larsen  
SVP of GR & PR  
1 Mediacom Way  
Mediacom Park, NY 10918  
Phone: (845) 443-2754  
Fax: (845) 698-4100  
E-mail: [tlarsen@mediacomcc.com](mailto:tlarsen@mediacomcc.com)

**CenturyLink:**

Jason Topp  
Assistant General Counsel  
200 S. 5<sup>th</sup> St.  
Minneapolis, MN 55402  
Phone: (651) 312-5364  
E-mail: [jason.topp@lumen.com](mailto:jason.topp@lumen.com)

A Party may change the notice recipient or the address by serving written notice to all other Parties.

9. **Modification.** This Agreement may be amended to accommodate changed circumstances by the written agreement of the State and any of MidAmerican, Mediacom, or CenturyLink, but only as applied to the Party joining said written agreement.

10. **Public Document.** This Agreement is a public record available for inspection and copying in accordance with the requirements of Iowa Code Chapter 22.

*[Signature page follows]*

IN WITNESS WHEREOF, the Parties have duly executed this Agreement which becomes effective as of the last date entered below.

**STATE OF IOWA**

DocuSigned by:

*Jacob Larson*

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Jacob J. Larson

Assistant Attorney General

Date: June 27, 2024

**MIDAMERICAN ENERGY COMPANY**

DocuSigned by:

*Mark Lowe*

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Mark D. Lowe

Sr. Vice President and General Counsel

Date: June 27, 2024

**MEDIACOM COMMUNICATIONS  
CORPORATION**

DocuSigned by:

*Thomas Larsen*

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Thomas Larsen

SVP of GR & PR

Date: June 27, 2024

**LUMEN TECHNOLOGIES, INC.**

DocuSigned by:

*Jason Topp*

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Jason Topp

Assistant General Counsel

Date: June 27, 2024



## **ASSURANCE OF VOLUNTARY COMPLIANCE: EXHIBIT A**

### **Reporting Requirements**

MidAmerican Energy Company (“MidAmerican”); Mediacom Communications Corporation, (“Mediacom”); and Lumen Technologies, Inc., (“CenturyLink”) (each a “Party” and together the “Parties”) agree to the following:

- a. Each Party shall separately submit reports to the Iowa Attorney General’s Office containing the following information for the two months prior to the date of the report:
  - i. The total number of locate requests received by that Party;
  - ii. The total number of that Party’s responses to locate requests where the Party and the excavator agreed to a marking schedule (“ATMS”) outside the statutorily required 48-hour time period, and the percentage of tickets this represents out of the total requests received listed in Paragraph No. 1(a)(i);
  - iii. The total number of that Party’s responses to locate requests where the Party located and marked its underground facilities within the statutorily required 48-hour time period, and the percentage of tickets this represents out of the total requests received listed in Paragraph No. 1(a)(i);
  - iv. The total number of “on-time” responses to locate request tickets in which that Party located and marked its underground facilities in response to a locate request, regardless of whether it occurred within the statutorily required 48-hour time period or within an extended time period authorized by an ATMS, and the percentage of tickets this represents out of the total requests received listed in Paragraph No. 1(a)(i); and
  - v. The total number of “late” (or “non-response”) responses to locate request tickets in which each party either failed to locate and mark its underground facilities in response to a locate request, regardless of whether it occurred within the statutorily required 48-hour time period or within an extended time period authorized by an ATMS, or failed to locate and mark its underground facilities at all, and the percentage of tickets this represents out of the total requests received listed in Paragraph No. 1(a)(i).

- b. The Parties shall submit the reports required by Paragraph 1(a), on the dates and covering data and information from the reporting periods below:

Reporting Period	Report Due Date
August 2024 and September 2024	October 15, 2024
October 2024 and November 2024	December 16, 2024
December 2024 and January 2025	February 17, 2025
February 2025 and March 2025	April 15, 2025
April 2025 and May 2025	June 16, 2025
June 2025 and July 2025	August 15, 2025
August 2025 and September 2025	October 15, 2025
October 2025 and November 2025	December 15, 2025
December 2025 and January 2026	February 16, 2026
February 2026 and March 2026	April 15, 2026
April 2026 and May 2026	June 16, 2026
June 2026 and July 2026	August 16, 2026
August 2026 and September 2026	October 15, 2026
October 2026 and November 2026	December 15, 2026
December 2026 and January 2027	February 16, 2027

- c. The requirement to submit the reports described in Paragraph No. 1(a) shall terminate after February 16, 2027, with the final reporting period including data and information from the December 2026 and January 2027 reporting period.
- d. The Parties shall each submit an annual report to the Iowa Attorney General's Office, detailing the information identified in Paragraph No. 1(a)(i)-(v) of this Agreement, for the calendar years 2024 (for the period August 1, 2024, through December 31, 2024, only), 2025, and 2026. The Parties shall submit the annual reports required by this section by January 31 following the close of the calendar year for which the report is due.