

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

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Chair
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Commissioner
Commissioner
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In the Matter of Formal Complaint Regarding
the Services Provided by the Qwest
Corporation d/b/a CenturyLink in Minnesota,
on Behalf of the Communications Workers of
America

DOCKET NO. P-421/C-20-432

**OFFICE OF THE ATTORNEY
GENERAL—RESIDENTIAL
UTILITIES DIVISION’S ANSWER
TO CENTURYLINK’S PETITION
FOR RECONSIDERATION**

INTRODUCTION

Hundreds of CenturyLink customers have contacted the Department of Commerce and Public Utilities Commission staff to complain of service quality issues including long wait times, excessive outages, frequent disruption of emergency service, and a company unwilling to fix legacy infrastructure they rely upon. Rather than fix the problem, for more than four years, CenturyLink has belabored this docket, fighting accountability at each step. On September 17, 2024, the Commission held CenturyLink to account for its substantial failures.

In its reconsideration petition, CenturyLink baldly claims the record does not support the Commission’s or the ALJ’s findings or they contain errors of law. Not so. Each of the issues CenturyLink’s petition raises were already extensively litigated in this docket.

Because CenturyLink has failed to satisfy the standard for reconsideration, because both the Commission’s Order and the ALJ’s report were grounded in extensive fact finding and true readings of plain text statutes and rules, and because CenturyLink has for *years* failed to provide

the quality service it is statutorily required to provide, the Commission should reject CenturyLink's invitation to reconsider and stand by its September Order.

LEGAL STANDARD

The Commission may grant a petition for reconsideration if it “appear[s] that the original decision . . . is in any respect unlawful or unreasonable.”¹ The Commission denies petitions for reconsideration if they “do not raise new issues, do not point to new and relevant evidence, do not expose material errors or ambiguities in the . . . order, and do not otherwise persuade the Commission that it should rethink the decisions set forth in its order.”²

ANALYSIS

CenturyLink's petition does not identify any errors or ambiguities in the Commission's Order, nor does it demonstrate that the order is “unlawful or unreasonable.”³ Accordingly, and for the specific reasons outlined below, the petition should be denied, and the Commission should reject CenturyLink's procedurally irregular, late-breaking “settlement” offer.

I. CENTURYLINK IS WRONG: NEITHER THE COMMISSION'S ORDER NOR THE ALJ REPORT RELY UPON ERRORS OF FACT.

CenturyLink claims that the ALJ and the Commission made errors of fact and law.⁴ In doing so, CenturyLink points to areas where it says the ALJ and the Commission ignored the record.⁵ But each of the alleged omissions CenturyLink raises in its petition were specifically considered and litigated at each stage of these lengthy proceedings.

¹ Minn. Stat. § 216B.27, subd. 3 (2022).

² *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-015/GR-16-664, Order Granting Reconsideration in Part, Revising March 12, 2018 Order, and Otherwise Denying Reconsideration Petitions (May 29, 2018).

³ Minn. Stat. § 216B.27, subd. 3 (2022).

⁴ CenturyLink Petition for Reconsideration (“CL Petition”) at 1–2.

⁵ *Id.* at 2–4.

CenturyLink erroneously claims the ALJ and the Commission ignored (1) the “strong overall performance” of CenturyLink’s POTS, plain old telephone service, network, (2) CenturyLink’s “prioritize[ation]” of POTS, (3) consumer preference for wireless/broadband over POTS, and (4) the decline of POTS customers due to “[c]ompetition in the industry and customer preference.”⁶ Neither the Commission nor the ALJ ignored any of these issues; the ALJ Report expressly wrestled with them, and by incorporation, so did the Commission’s Order.⁷

For example, noting that “[m]any Minnesotans have transitioned [away from POTS] to broadband and wireless phone service,” the ALJ pointed to data showing that for a number of Minnesotans POTS remains a critical resource.⁸ In particular, “[o]lder and lower-income Minnesotans tend to be more reliant upon landline telephone than other customers.”⁹ Further, the ALJ credited evidence that broadband and wireless are not reliably available throughout CenturyLink’s POTS service, making them an inadequate substitute for many CenturyLink customers—especially those located in rural Minnesota.¹⁰

Similarly, neither the Commission nor the ALJ ignored that there are areas in which CenturyLink’s performance is strong. In fact, the ALJ credited CenturyLink’s broadly satisfactory performance, while concluding that to ignore persistent troubles in some areas would render the rules meaningless.¹¹ The fact that CenturyLink serves some or even most of its customers adequately does not excuse its serially deficient performance on behalf of others:

⁶ *Id.*

⁷ Findings of Fact, Conclusions of Law, and Recommendations (March 13, 2024) (“ALJ Report”) at 7–8.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 9.

¹¹ See ALJ Report at 29–31 (“Without discounting its network-wide performance, it remains the case that CenturyLink’s compliance with Minn. R. 7810.5900 is not material to the allegations [of violations of Minn. R. 7810.3300 and Minn. R. 7810.5000] against it.”).

[W]hile CenturyLink’s overall statewide network performs satisfactorily, certain customers—most commonly located in the rural periphery—are not receiving adequate service These Minnesotans are among the population for whom the Commission rejected, out of concern for the public interest, CenturyLink’s prior attempts to escape its regulatory obligations.¹²

As the Commission’s Order recognized, particularly in areas where frequent outages thwart emergency response and other core functions, CenturyLink’s failing are both a violation of the plain text requirements of the service quality rules and a significant public safety hazard.¹³

CenturyLink has not identified any errors or omissions in the record. Instead, CenturyLink has identified a series of areas where it wishes the fact finders had weighed all relevant evidence, legal requirements, and customer needs differently. This is not a valid basis for reconsideration, and thus its petition should be denied.

II. NEITHER THE ORDER NOR THE ALJ REPORT RELY UPON ERRORS OF LAW.

In addition to its many factual and record misstatements, CenturyLink erroneously claims the Commission’s Order and the ALJ Report contain errors of law.¹⁴ To support its claims, CenturyLink once-again makes collateral attacks on the Commission’s service quality rules. In particular, CenturyLink attempts to supplant the plain text obligations of the rules with text from long-expired Alternative Form of Regulation (“AFOR”) regimes.¹⁵

None of this is new or persuasive. In this docket alone, CenturyLink is attempting its third bite at the rule-nullification apple, having repeatedly briefed the argument that the rules are arcane.¹⁶ CenturyLink’s attempt to strike the rules in this docket comes on the heels of a decade

¹² ALJ Report at 31.

¹³ Order at 16–18.

¹⁴ CL Petition at 2.

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 7–16. *See also* CenturyLink Exceptions at 2–21; CenturyLink Initial Brief at 4–31.

of unsuccessful attempts to do the same, arguing that competition obviated the need for service quality rules and the rules are outdated.¹⁷

A. The ALJ’s Report and the Commission’s Order Faithfully Interpret State Statutes, Rules, and Policy Objectives.

As it has in each stage of these proceedings, CenturyLink once again complains that it is being subjected to a reading of the rules that is inconsistent with state statute and policy objectives. CenturyLink’s complaint that the Order and ALJ Report do not reflect the competitive landscape is not well founded.¹⁸ The ALJ’s interpretation of the rules was true to the plain text of the rules, and both the legislative and regulatory rationales that created them.

Even as the Minnesota Legislature has enacted laws concerning “higher speed telecommunication services and greater capacity for voice, video, and data transmission,”¹⁹ “VoIP,”²⁰ and “satellite”²¹ providers, the Legislature has continued to charge the Commission with “ensuring customer protections are maintained.”²² For its part, the Commission has taken numerous opportunities to consider the service quality rules and their relationship to changes to the competitive landscape and telecommunications priorities. The ALJ report, and by adoption, the Commission’s Order cataloged this history and affirmed that “the telephone service quality rules remain necessary to ensure the provision of adequate service in a timely manner, to preserve access to basic communications services, and to protect health and safety.”²³

¹⁷ See *In the Matter of Rulemaking to Consider Possible Amends. to Minnesota Rules, Parts 7810.4100 Through 7810.6100 in the Matter of the CenturyLink, Inc. Petition for Rulemaking to Revise Serv. Quality Rules*, No. P-421/AM-14-256; *In the Matter of the Petition of CenturyLink, Inc. for a Variance to Minnesota Rules, Part 7810.5800*, No. P-421/AM-14-255; *In the Matter of the Petition for a Rulemaking Regarding Minnesota Rules Chapter 7810*, No. P-421/M-21-381.

¹⁸ See CL Petition at 15–16 (echoing arguments made in CenturyLink’s Exceptions at 5, 18–22).

¹⁹ See Minn. Stat. § 237.011.

²⁰ See Minn. Stat. § 237.025.

²¹ *Id.*

²² Minn. Stat. §§ 237.011, 237.081, 237.16.

²³ ALJ Report at 10–11, ¶¶ 27–34.

B. CenturyLink’s Claim that the Service Quality Rules Can Only Be Applied in Aggregate Is Incorrect.

In its petition, CenturyLink argues that service cannot be assessed on a line-by-line basis.²⁴ This argument is simply another gloss on all of CenturyLink’s prior efforts to persuade the Commission to water down its service quality rules to the point of nonenforcement. In support of its claim, CenturyLink points to the text of the rules and the AFOR text. These arguments mischaracterize the rules and are fundamentally flawed.

CenturyLink points to small snippets of Minn. R. 7810.3300 and Minn. R. 7810.5000 to claim that “adequate service” can only be evaluated with respect to overall network performance. In pointing to a singular phrase, CenturyLink ignores the plain text requirements of the complete rules and their statutory underpinnings.²⁵ CenturyLink’s birds-eye, hazy reading of the rules would obligate the ALJ and the Commission to ignore the rule’s plain text commands that the company must “keep[] all plant and equipment in good state of repair;” “repair[] or replace[]” the [b]roken, damaged, or deteriorated parts which are no longer serviceable;” and correct “[e]lectrical faults, such as leakage or poor insulation, noise, induction, cross talk, or poor transmission characteristics.”²⁶ CenturyLink provides no rationale for ignoring these inconvenient segments of the rule.

²⁴ CL Petition at 6.

²⁵ See Minn. R. 7810.3300; Minn. R. 7810.5000. See Minn. Stat. §§ 237.011 (“as the commission executes its regulatory duties with respect to telecommunication services” it “maintain[] or improve[] quality of service”), 237.081 (if after a contested case, the Commission finds service lacking, the “commission shall make an order respecting the tariff, regulation, act, omission, practice, or service that is just and reasonable and, if applicable, shall establish just and reasonable rates and prices”), 237.461 (specifying the Commission’s rules may be “enforced by any one or combination of: criminal prosecution, action to recover civil penalties, injunction, action to compel performance, and other appropriate action”).

²⁶ Minn. R. 7810.3300.

CenturyLink's quotation of expired AFOR regimes is similarly unavailing. In an effort to muddy the waters and create ambiguity around their serial violations of the plain text of the Commission's service quality rules, CenturyLink cites to its AFOR plan that expired on December 31, 2016.²⁷ CenturyLink's prior AFOR is irrelevant. It has not set the rules for CenturyLink's conduct for more than seven years.

Absent the AFOR, regulation of CenturyLink reverts back to the Commission's rules. Determining whether CenturyLink is in compliance with the rules requires an examination of the service quality rules, not of some prior regulatory text.

The ALJ's Report appropriately documented CenturyLink's failures to comply with the rules that are presently in effect, rather than the AFOR that expired seven years prior. The Commission agreed with the ALJ's reasoned findings and found especially persuasive the extensive photographic evidence submitted by Attorney General Witness Brian Lebens, which documented numerous instances of broken, damaged, and unsafe CenturyLink equipment in violation of Minn. R. 7810.3300.²⁸

The plain text of the rules does not allow CenturyLink to shirk its responsibility for broken equipment by hiding behind a façade of generally acceptable performance. And CenturyLink can point to no authority that compels the Commission to ignore CenturyLink's failure to meet the plain text obligations of the rules. Nothing in CenturyLink's petition suggests there is any basis for undoing the Commission's Order requiring CenturyLink to meet its obligations.

²⁷ CL Petition at 8–10 (rehashing arguments made in CenturyLink's Exceptions at 6).

²⁸ MN PUC Agenda Meeting re Docket 20-432 (June 20, 2024), *available at* https://minnesotapuc.granicus.com/player/clip/2385?view_id=2&redirect=true

C. It Is No “[M]ystery” Why the Commission Found CenturyLink Violated Minn. R. 7810.5800.

CenturyLink claims it is a “mystery” how the ALJ and the Commission concluded CenturyLink is violating Minn. R. 7810.5800.²⁹ The only mystery here, however, is CenturyLink’s failure to notice the reams of record evidence documenting the company’s profound and persistent failures to timely reconnect customers and restore emergency service.

The plain text of Minn. R. 7810.5800 requires CenturyLink to “make all reasonable efforts to prevent interruptions of service,” and, when interruptions occur to “reestablish service with the shortest possible delay.”³⁰ The Rule further provides that the “minimum objective should be to clear 95 percent of all out-of-service troubles within 24 hours of the time such troubles are reported” and “[e]mergency service shall be available, as required, for the duration of the interruption.”³¹

The Commission appropriately found that CenturyLink “‘failed to make ‘all reasonable efforts to prevent interruptions of service’ and to reestablish service ‘with the shortest possible delay.’”³² The record is filled with examples from customers and emergency service professionals who have been affected by CenturyLink’s repeated failures to timely address outages.³³

The clearest example of CenturyLink’s repeated failings came from an individual who works in emergency response. In portions of Cook County, for example, telephone outages have become so routine that the lead dispatcher for the Public Safety Answering Point testified locals are habituated to knowing they can drop by the local fire station if their phone service is out and

²⁹ CL Petition at 19.

³⁰ Minn. R. 7810.5800

³¹ *Id.*

³² Order at 18.

³³ See ALJ Report ¶¶ 35–46; 92–95. See generally DOC-1 at 13:6–19:17 (Gonzalez Direct).

they need an emergency responder.³⁴ Keeping the fire station staffed so that locals can physically go there to secure an emergency dispatch strains local resources.³⁵

And state agencies frequently hear from frustrated CenturyLink customers. The Department and Commission staff have fielded 530 complaints from CenturyLink customers during the pendency of these proceedings.³⁶ A whopping 46 percent of people calling to complain reported service outages.³⁷ In one instance, the Department received a call from the daughter of an elderly woman living in Anoka whose service had been out for ten days.³⁸ The woman was desperate to have service restored, because her mother had a heart condition that required remote monitoring over her landline, but CenturyLink had scheduled and missed five repair appointments during the 10 day outage.³⁹

The ALJ and the Commission credited this extensive and compelling evidence and concluded that CenturyLink is violating the plain text requirements of the rule. CenturyLink's petition offers no grounds to displace these conclusions or the remedies the Commission has prescribed.

III. CENTURYLINK RELIES UPON A SELECTIVE READING OF ITS WITNESS'S TESTIMONY TO CLAIM ERROR.

One of CenturyLink's proffered reasons for reconsideration is a finding that it alleges was "simply wrong."⁴⁰ CenturyLink claims the ALJ was wrong to state that CenturyLink undertakes maintenance projects only if they satisfy a five-year payback.⁴¹ To support its claim,

³⁴ Evidentiary Hearing Transcript at 32:5–15 and 38:3–39:17 (Mielke Direct). *See also* ALJ Report ¶¶ 35–46.

³⁵ Evidentiary Hearing Transcript at 32:5–15 and 38:3–39:17 (Mielke Direct).

³⁶ DOC-1 at 13:6–14:5 (Gonzalez Direct)); ALJ Report ¶¶ 36–38.

³⁷ DOC-1 at 13:6–14:5 (Gonzalez Direct)).

³⁸ *Id.* at 15:16–20.

³⁹ *Id.*

⁴⁰ CL Petition at 21.

⁴¹ *Id.*

CenturyLink cites to the testimony its witness, Mr. Ardoyno, who explained that projects that don't meet the five-year payback may be funded "out of a local expense budget."⁴²

In claiming this error, CenturyLink has failed to disclose that its very same witness later acknowledged—and the company's IR responses confirm—that CenturyLink simply does not have a local expense budget.⁴³ Claiming that projects assigned to a nonexistent budget are being actively pursued by the company is a transparent attempt to disguise its abandonment of landline customers. And it is particularly galling to see CenturyLink argue this issue is a basis for reconsideration since this alleged error was expressly briefed⁴⁴ and disproven⁴⁵ for the Commission's consideration prior to the Agenda Meeting on June 20, 2024.

There was no error here, and CenturyLink has not identified new evidence or evidence that was ignored. CenturyLink's claim of a basis to reconsider on this issue is meritless.

IV. CENTURYLINK'S DUE PROCESS RIGHTS HAVE NOT BEEN VIOLATED.

CenturyLink claims the Commission's Order imposes previously unasserted legal obligations in excess of the Commission's legal authority and in violation of CenturyLink's Due Process rights.⁴⁶ CenturyLink's repeated argument continues to be mistaken.

As has been repeatedly briefed and argued,⁴⁷ the Minnesota Legislature has expressly instructed the Commission to exercise its regulatory duties with respect to telecommunication services to maintain or improve quality of service and to ensure consumer protections are maintained.⁴⁸ The Commission is responsible for issuing rules that "ensure the provision of high-

⁴² *Id.* at 22.

⁴³ Evidentiary Hearing Transcript 184:18–186:12 (Ardoyno); DOC-20.

⁴⁴ CenturyLink Exceptions at 18–19.

⁴⁵ OAG Reply to Exceptions at 11.

⁴⁶ CL Petition at 16–18 (renewing arguments made in CenturyLink Exceptions at 27–28, 32).

⁴⁷ *See* OAG Reply to Exceptions at 16–18.

⁴⁸ Minn. Stat. § 237.011 (5) & (7).

quality telephone services throughout the state,”⁴⁹ but that is not the beginning and end of the Commission’s authority vis-à-vis service quality. The legislature has also given the Commission tools to bring entities into compliance.⁵⁰

The Commission has statutory authority to investigate “[w]henver the commission believes that a service is inadequate.”⁵¹ If it is ultimately determined that service is unreasonable or insufficient, statute empowers the Commission to “make an order respecting the tariff, regulation, act, omission, practice, or service that is just and reasonable.”⁵² Statute provides for violations of the Commission’s rules to be “enforced by any one or combination of: criminal prosecution, action to recover civil penalties, injunction, action to compel performance and other appropriate action.”⁵³ Further, if a “telephone company fails to comply with any law of the state or any order of the commission after it has become final,” the Office of the Attorney General can bring an action in district court to compel obedience with the law or order.⁵⁴

Given its clear legislative mandate to safeguard service quality, the Commission need not invest tremendous energy in CenturyLink’s convoluted due process argument.⁵⁵ CenturyLink claims the term “adequate service” is impossibly vague.⁵⁶ In doing so, CenturyLink ignores the testimony of its own witness who, when asked if a customer experiencing repeat troubles had received adequate service, conceded: “Looking at this spreadsheet, I would say no . . . all he did is experience trouble this whole time.”⁵⁷

⁴⁹ Minn. Stat. § 237.16, subd. 8.

⁵⁰ *See, e.g.*, Minn. Stat. §§ 237.081, 237.461.

⁵¹ Minn. Stat. § 237.081.

⁵² *Id.*

⁵³ Minn. Stat. § 237.461.

⁵⁴ Minn. Stat. § 237.27.

⁵⁵ *See* CL Petition at 16.

⁵⁶ *Id.*

⁵⁷ Evidentiary Hearing Transcript 225: 4–14 (Ardoyno).

CenturyLink claims it would be a due process violation to hold CenturyLink to service quality standards that have been codified in rule, subjected to ordinary canons of construction, and interpreted in light of expert testimony provided by individuals with decades of experience in the relevant field. If this is a due process violation, one might wonder how the Commission may ever hold a regulated entity accountable. CenturyLink's due process argument is baseless, and does not supply grounds for reconsideration.

V. CENTURYLINK IS WRONG ON REMEDIES.

CenturyLink claims the Commission's Order imposes remedies that are not insufficiently grounded in fact and law. For all of the reasons articulated above—and all of the evidentiary and legal submissions that informed the Commission's Order—CenturyLink's argument is unfounded.

This Commission has said, and the ALJ's Report reflected, that wireline telephone service quality remains important in Minnesota—a State with diverse geography and remote populations that can be challenging to serve.⁵⁸ The Commission promulgated service quality rules to ensure every single Minnesotan has access to a reasonable level of telephone service. Both the ALJ's Recommendations and the Commission's Order prescribe appropriate measures to address CenturyLink's well documented failure to comply with the service quality rules.

CenturyLink's most vulnerable customers deserve and depend upon the basic level of service the rules are supposed to assure. The Commission's Order offers these customers the hope of future reliable service. Nothing CenturyLink has put forth in its petition justifies

⁵⁸ See ALJ Report at ¶¶ 26–34 (citing *In the Matter of the CenturyLink, Inc. Petition for Rulemaking to Revise Service Quality Rules*, MPUC Docket No. P-421/AM-14-256; *In the Matter of the Petition of CenturyLink, Inc. for a Variance to Minnesota Rules, Part 7810.5800*, MPUC Docket No. P-421/AM-14-255; *In the Matter of the Petition for a Rulemaking Regarding Minnesota Rules Chapter 7810*, No. P-421/M-21-381).

reconsideration or retreat from the Commission's Order. And CenturyLink's procedurally dubious late breaking offer of half measures to settle should be firmly rejected.

VI. THE COMMISSION SHOULD REJECT CENTURYLINK'S LATE-BREAKING, GRUDGING SETTLEMENT OFFER.

Having lost at every stage in these four-year-long proceedings—not to mention in several attempted rule nullification proceedings prior—CenturyLink has made a last-ditch effort to avoid the accountability. Rather than abide by the terms of the Commission's September Order, CenturyLink proposes its own half-measures to bring its performance closer to what the rules require. But CenturyLink's grudging offer would not provide CenturyLink's customers with the same swift and thorough relief that the Commission's Order would.

It may be tempting to seize upon CenturyLink's offer to avoid the specter of potential litigation. That would be a shame for at least two reasons. One, the Commission's September Order is well grounded in fact, law, and the needs of Minnesota customers. And, two, opting for CenturyLink's middling settlement at this post-hearing stage would set a terrible precedent for future parties to stonewall and slog through litigation, only to be able to secure preferred settlement posture after being shown to have operated in breach of the rules. Doing so would create adverse incentives and would discount the participation of Minnesotans in these proceedings.

During the four-year pendency of this docket, Minnesotans have participated by making complaints, filing comments, and testifying in public hearings to make their repeat customer service issues known. The Commission's September Order is grounded in Minnesotans' lived experiences, in extensive administrative fact-finding, in law, and the ongoing needs of Minnesota consumers. CenturyLink has provided no justification to retreat from the Commission's September Order and no grounds for shifting to half-measures of relief for customers at this time.

CONCLUSION

For more than four years, CenturyLink has had extensive opportunities to respond to customer concerns and contest the allegations in this docket. Having failed to effectively do so, CenturyLink has petitioned for reconsideration. CenturyLink's petition has not "raise[d] new issues," "point[ed] to new and relevant evidence," or "expose[d] material errors or ambiguities."⁵⁹ The time has come for CenturyLink to abide by the terms of the Commission's September Order and provide service in accordance with the Commission's rules.

Dated: October 7, 2024

Respectfully submitted,

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⁵⁹ *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-015/GR-16-664, Order Granting Reconsideration in Part, Revising March 12, 2018 Order, and Otherwise Denying Reconsideration Petitions (May 29, 2018).