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**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
600 North Robert Street  
St. Paul, Minnesota 55101**

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 7th Place East  
Suite 350  
St. Paul, Minnesota 55101-2147**

**MPUC Docket No. P-421/C-20-432  
OAH Docket No. 21-2500-38965**

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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*

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**REPLY BRIEF  
OF THE OFFICE OF THE ATTORNEY GENERAL—  
RESIDENTIAL UTILITIES DIVISION**

**February 7, 2024**

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## INTRODUCTION

In the three years this docket has been pending, hundreds of CenturyLink customers have contacted the Department of Commerce and PUC staff to complain of service quality issues including long wait times, excessive outages, and a company unwilling to fix the legacy infrastructure they rely upon.

CenturyLink has no answer to the customers whom it repeatedly fails. Instead, in its initial brief, CenturyLink focuses its arguments on collateral attacks to the Commission’s service quality rules and the Commission’s authority to remedy violations thereof. CenturyLink’s first argument is a tired one, trotted out unsuccessfully in numerous dockets attempting to repeal the very rules CenturyLink is shown to be violating. In each of those dockets, the Commission determined the rules remain a necessary floor for wireline telephone service quality. The rules remain in force. CenturyLink is obligated to obey them. Moreover, the legislature has empowered the Commission to act to bring disobedient utilities into line. In the face of CenturyLink’s repeated and ongoing breaches of the service quality rules, the Commission must act to protect Minnesotans from ongoing service quality problems.

## ARGUMENT

Wireline telephone service quality remains important in Minnesota—a state with diverse geography and remote populations that can be challenging to serve. Recognizing wireline’s place, the Minnesota Legislature has instructed the Commission to ensure and improve telephone service quality for Minnesotans via promulgation and enforcement of service quality rules.<sup>1</sup> Not

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<sup>1</sup> 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

only does state statute require the Commission to make rules enforcing service quality,<sup>2</sup> but it also empowers the Commission to enforce those service quality rules.<sup>3</sup>

None of the history or market trends CenturyLink invokes nullifies CenturyLink's obligations to meet the requirements of the rules. And nothing in state law or precedent requires the Commission to sit idly by in the face of the Company's ongoing defiance.<sup>4</sup> For the reasons that follow, the ALJ and the Commission should find CenturyLink has violated the service quality rules and impose conditions to ensure CenturyLink delivers adequate service under the rules.

**I. THE COMMISSION HAS REPEATEDLY CONSIDERED AND REJECTED CENTURYLINK'S ARGUMENTS THE RULES ARE ARCANE.**

The Minnesota Legislature and the Commission have made clear their expectations that *all* Minnesota telephone customers will enjoy a base level of service quality.<sup>5</sup> CenturyLink complains that the state's statutes and rules do not reflect the competitive landscape of today, but that accusation is not well founded. The statutory language CenturyLink derides is interspersed with references to "higher speed telecommunication services and greater capacity for voice, video, and data transmission,"<sup>6</sup> "VoIP,"<sup>7</sup> and "satellite"<sup>8</sup> providers—many of the technologies CenturyLink claims have displaced the need for regulation of its offerings. It is clear that the

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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").

<sup>2</sup> *Id.*

<sup>3</sup> Minn. Stat. § 237.081 (empowering the commission to use its orders upon a finding that performance is lacking); Minn. Stat. § 237.461 (outlining a series of remedies available to remedy noncompliance with the Commission's rules).

<sup>4</sup> On the contrary, the Commission has a variety of tools at its disposal to bring a utility into line. *See id.*

<sup>5</sup> *See* Minn. Stat. §§ 237.011, 237.081, 237.16; *see generally* Minn. R. Chapter 7810.

<sup>6</sup> *See* Minn. Stat. § 237.011.

<sup>7</sup> *See* Minn. Stat. 237.025.

<sup>8</sup> *Id.*

Minnesota Legislature knew of additional telecommunications technologies at the time it drafted statutes empowering the Commission to enforce service quality. That awareness did not dissuade legislators from charging the Commission with ensuring quality service.

CenturyLink's arguments that the Commission's service quality rules do not take into consideration the competitive landscape are similarly meritless. Just within the last ten years, CenturyLink has initiated multiple dockets for the sole purpose of persuading the Commission to modify its service quality rules.<sup>9</sup> In each of these dockets, CenturyLink has pointed to the rising tide of competition<sup>10</sup> and the dwindling number of wireline customers.<sup>11</sup> And in each attempt CenturyLink has failed to obtain the relief it sought.

Far from being ignorant of the competitive landscape as CenturyLink suggests, the Commission has repeatedly engaged with the substance of CenturyLink's arguments and rejected them, finding the rules continue to play a vital role in ensuring quality for Minnesota's most vulnerable telephone customers.<sup>12</sup> In particular, the Commission has repeatedly rejected several of CenturyLink's key arguments, finding (1) there was "no evidence that the market will

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<sup>9</sup> 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.

<sup>10</sup> See *In the Matter of a Petition for a Rulemaking Regarding Minnesota Rules Chapter 7810*, MPUC Docket No. P-421/M-21-381, ORDER DENYING PETITION at 5 (Aug. 5, 2021).

<sup>11</sup> See *In the Matter of a Petition for a Rulemaking Regarding Minnesota Rules Chapter 7810*, MPUC Docket No. P-421/M-21-381, ORDER DENYING PETITION at 5 (Aug. 5, 2021).

<sup>12</sup> 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.

adequately and uniformly protect customers;”<sup>13</sup> (2) a decline in customer count did not justify softening the rules,<sup>14</sup> and (3) absent the rules, there would likely be “changes in service quality that might affect some customers more than others, depending on customer demographics, geographic location, and the degree to which consumers have choices within specific markets.”<sup>15</sup> The Commission concluded, “Under lower service quality conditions, the health and safety of people, particularly those more reliant on landline service, could be jeopardized.”<sup>16</sup>

This contested case is not the place for an empirical analysis of the telecommunications landscape or a policy debate about what type of rules would best serve state telecommunications goals. Those are issues reserved to the legislature and the Commission—which weighed the information CenturyLink offers in this docket and promulgated the rules that bracket this inquiry. Instead, this contested case is a space to determine whether CenturyLink has violated rules the Commission has lawfully promulgated to ensure all customers receive a base level of quality service. CenturyLink is not following the rules, and their efforts to disparage the rules do not remove the need for improved service for CenturyLink’s most wireline reliant customers.

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<sup>13</sup> *In the Matter of the 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*, MPUC Docket No. P-421/AM-14-256, ORDER CLOSING RULEMAKING PROCEEDING AND INITIATING STAKEHOLDER WORKGROUP PROCESS at 17 (May 2, 2016).

<sup>14</sup> *See In the Matter of a Petition for a Rulemaking Regarding Minnesota Rules Chapter 7810*, MPUC Docket No. P-421/M-21-381, ORDER DENYING PETITION at 5 (Aug. 5, 2021).

<sup>15</sup> *In the Matter of the 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*, MPUC Docket No. P-421/AM-14-256, ORDER CLOSING RULEMAKING PROCEEDING AND INITIATING STAKEHOLDER WORKGROUP PROCESS at 17 (May 2, 2016).

<sup>16</sup> *Id.*

## II. CENTURYLINK IS IN VIOLATION OF THE PLAIN TEXT OF THE SERVICE QUALITY RULES.

The OAG's initial brief highlighted CenturyLink's violations of three service quality rules: Minn. R. 7810.3300, 7810.5000, and 7810.5800. The OAG will not rehash the record evidence of violations presented in our initial brief here but will take a moment to address a textual argument raised in CenturyLink's initial brief.

There is overwhelming evidence that CenturyLink has violated Minn. R. 7810.3300 by leaving malfunctioning equipment in a state of disrepair throughout Minnesota, and obviously decrepit and dangerous exposed towers throughout the metropolitan area.<sup>17</sup> CenturyLink attempts a textual sleight of hand to distract from its obvious violations of the rule. CenturyLink accuses the OAG of demanding the company to maintain a state of "near perfection."<sup>18</sup> CenturyLink then claims that it is not violating the rule because "the Company provides maintenance sufficient to ensure safe and adequate telephone service *to its customers*."<sup>19</sup>

Though the phrase is repeated throughout CenturyLink's discussion of the rules, "to its customers" is not part of the text of Rule 7810.3300. Instead, the rule requires a company to "adopt and pursue a maintenance program . . . so as to permit the rendering of safe and adequate service;" "keep all plant and equipment in good state of repair consistent with safety and adequate service performance;" and "repair[] or replace[]" "[b]roken, damaged, or deteriorated parts which are no longer serviceable."<sup>20</sup>

It is CenturyLink, and not the OAG, that is requesting a reading of Minn. R. 7810.3300 that is unmoored from the text. The plain text of the rule requires CenturyLink to replace

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<sup>17</sup> See generally OAG Initial Brief.

<sup>18</sup> CTL Initial Brief at 32-33.

<sup>19</sup> *Id.* at 33 (emphasis added).

<sup>20</sup> Minn. R. 7810.3300.

broken, damaged, deteriorated, unserviceable equipment.<sup>21</sup> The plain text of the rule requires CenturyLink to render safe and adequate service.<sup>22</sup> The rule does not merely establish an expectation of safety for CenturyLink’s end user; it sets an expectation of safety in CenturyLink’s provision of service.<sup>23</sup> The OAG is not asking CenturyLink to “‘gold plate’ its network,” but to stop leaving exposed wires, jagged towers, and other broken and dangerous items littered throughout the public right of way when the rules demand their repair or removal.<sup>24</sup> The OAG is asking CenturyLink to replace failing equipment and serve its customers, as statute and rule requires.

### **III. THE MINNESOTA LEGISLATURE HAS GIVEN THE COMMISSION BROAD AUTHORITY TO PROMULGATE SERVICE QUALITY RULES AND ENFORCE VIOLATIONS THEREOF.**

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.<sup>25</sup> Specifically, the Commission is responsible for issuing rules that “ensure the provision of high-quality telephone services throughout the state.”<sup>26</sup> But the authority to make rules 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.<sup>27</sup>

The Commission has statutory authority to investigate “[w]henver the commission believes that a service is inadequate.”<sup>28</sup> If the Commission investigates, refers the matter to a contested case hearing, and ultimately determines a service is unreasonable or insufficient,

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<sup>21</sup> *See id.*

<sup>22</sup> *See id.*

<sup>23</sup> *See id.*

<sup>24</sup> Compare CTL Initial Br. at 55 with Minn. R. 7810.3300.

<sup>25</sup> Minn. Stat. § 237.011 (5) & (7).

<sup>26</sup> Minn. Stat. § 237.16, subd. 8.

<sup>27</sup> *See, e.g.,* Minn. Stat. §§ 237.081, 237.461.

<sup>28</sup> Minn. Stat. § 237.081.



statute empowers the Commission to “make an order respecting the tariff, regulation, act, omission, practice, or service that is just and reasonable.”<sup>29</sup> Further, statute expounds, that violations of 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.”<sup>30</sup> Further, if a telephone company fails to comply with a final Commission order, the Office of the Attorney General can bring an action in district court to compel obedience with the order.<sup>31</sup> The Minnesota Legislature has spoken clearly: the Commission is charged with ensuring quality telephone service, and the law gives the Commission tools to secure performance.

Despite clear statutory authority authorizing the Commission to act, CenturyLink attempts to cast doubt on the Commission’s ability to cure the company’s deficient performance. CenturyLink cites to *Qwest Corp. v. Minn. Pub. Util. Comm’n*, 427 F.3d 1061 (8th Cir. 2005) for the proposition that the Commission “may not impose . . . remedies absent express or implied statutory authority.”<sup>32</sup> But this precedent does not go the distance CenturyLink would have it travel to block any action by the Commission in this docket.

In *Qwest Corp.*, the court was evaluating a Commission order that imposed “restitution.”<sup>33</sup> Restitution is a well-known equitable remedy, and the court determined the Commission was not empowered to sit as a court of equity to impose restitution.<sup>34</sup> At the same

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<sup>29</sup> *Id.*

<sup>30</sup> Minn. Stat. § 237.461.

<sup>31</sup> Minn. Stat. § 237.27.

<sup>32</sup> CTL Initial Brief at 6.

<sup>33</sup> *Qwest Corp. v. Minnesota Pub. Utilities Comm’n*, 427 F.3d 1061, 1064 (8th Cir. 2005).

<sup>34</sup> *Id.* (“Nothing in the statutory language expressly grants MPUC the authority to order restitution. Moreover, Minnesota case law supports the conclusion that we should not find implied statutory authority to order restitution, absent a clear grant of authority by the legislature.”).

time, the court left in place a \$25.95 million penalty the Commission issued in the same docket.<sup>35</sup> The court acknowledged the Commission's express authority to set fines and to regulate, while disallowing an implied right to order restitution.<sup>36</sup>

No one is asking the Commission to order restitution in this matter.<sup>37</sup> Instead, the parties are asking the Commission to use its statutory authority to secure improved performance into the future.<sup>38</sup> This request is well within the bounds of the Commission's broad statutory powers to regulate telecommunications and well within the boundaries set by *Qwest Corp.* The Commission must act to ensure that CenturyLink abides by the rules it promulgated. The legislature gave the Commission authority and tools to act, and instructed the Commission to ensure service quality.

#### **IV. CENTURYLINK CANNOT HIDE BEHIND A PROBLEM OF ITS OWN MAKING.**

In a last-ditch effort to avoid consequences, CenturyLink argues it will be unable to improve performance because of staffing challenges. CenturyLink argues that “even if the economic reality of servicing this large geographic area with dwindling customer counts was not an issue, the Company struggles to hire qualified technicians with the skills needed to address repairs on the Company’s legacy copper network.”<sup>39</sup>

It is ironic, if not audacious, that CenturyLink raises the issue of insufficient skilled labor given the origins of this docket. This matter began when the very skilled technicians

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<sup>35</sup> *Id.* at 1068.

<sup>36</sup> *See id.* at 1064-68.

<sup>37</sup> No party is seeking restitution, and *Qwest* indicates the Commission may not provide restitution. At the same time the *Qwest* precedent is crystal clear that the Commission *could* impose civil penalties for CenturyLink's violations of the service quality rules. *See id.* Statute sets the penalty at up to \$5000 for “each day of each violation.” Minn. Stat. § 237.461.

<sup>38</sup> Here again, violations of the Commission's final orders may be enforced by any combination of criminal prosecution, injunction, action to compel performance, or civil penalties of up to \$5000 for “each day of each violation.” *Id.*

<sup>39</sup> CTL Initial Brief at 30-31.

CenturyLink now claims it cannot find submitted a complaint to the Commission about lagging quality and impending technician layoffs.<sup>40</sup> Specifically, the Communications Workers of America alerted the Commission to the fact that CenturyLink was falling short of many of the Commission's service quality rules.<sup>41</sup> The workers cautioned that these failures would only intensify if CenturyLink followed through on its plan to dismiss 154 technicians.<sup>42</sup>

Three and a half years after the Communications Workers of America warned that staffing shortages would cause CenturyLink to fall further behind in meeting its regulatory obligations, it would be unthinkable to excuse CenturyLink's foreseeable failure to comply with the rules because of a staffing shortage the company created.

### **CONCLUSIONS AND RECOMMENDATIONS**

The Commission promulgated service quality rules to ensure every single Minnesotan has access to a reasonable level of telephone service. The Commission promulgated these rules at the behest of the legislature, and the legislature has empowered the Commission to take action to maintain quality.

CenturyLink's most vulnerable customers deserve and depend upon the basic level of service the rules are supposed to assure. Yet many are grappling with serial outages, questionable call quality, and repeated requests for service that are not meaningfully addressed. The OAG urges the ALJ and the Commission to find that CenturyLink is violating the service quality rules and urges the Commission to order CenturyLink to take the following actions:

- a. Fix, replace, or remove all deficient plant and equipment identified by the Department of Commerce's expert or by Mr. Lebens's photographs.
- b. Prohibit CenturyLink from sidelining maintenance projects that do not satisfy the five-year payback.

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<sup>40</sup> See Communications Workers of America Initial Filing at 1 (Apr. 23, 2020).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 1-2.

- c. Implement a “Plant Pride” program.
- d. Reduce repair appointment windows from 8 hours to 4 hours.

Dated: February 7, 2024

Respectfully submitted,

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/s/ Erin E. Conti

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