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Minnesota Attorney General Keith Ellison
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June 28, 2021

Mr. Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

Re: *In the Matter of a Petition for a Rulemaking Regarding Minnesota Rules Chapter 7810*
MPUC Docket No. P-421/M-21-381

Dear Mr. Seuffert:

The Office of the Attorney General—Residential Utilities Division (“OAG”) submits these comments in response to the Commission’s notice of comment on the Petition of Qwest Corporation d/b/a CenturyLink (“CenturyLink” or “Company”) to eliminate or modify certain telephone service quality rules (“Petition”). CenturyLink’s Petition focuses on two rules that it states are “in critical need of modernization”: Minn. R. 7810.5200, which establishes answering time for customer calls, and Minn. R. 7810.5800, which sets standards for preventing and responding to service interruptions. The OAG provides the following answers to the questions raised in the Commission’s notice.

Is a Rulemaking Necessary to Address CenturyLink’s Concerns? Describe Alternatives that can Possibly Address the Company’s Concerns without the need for Rulemaking.

A rulemaking is not necessary. CenturyLink argues that the rules governing its landline service quality hinder its ability to provide adequate broadband service to its customers. The Company also suggests that the rules it seeks to eliminate or amend are burdensome and outdated.

CenturyLink’s request to eliminate or weaken its service quality standards for landline service should be rejected. As CenturyLink admits, 4.4 percent of Minnesota households still “rely *solely* on landline for voice service.”¹ These landline customers matter, even if they are a small minority of Minnesotans. They deserve access to quality voice service even if they cannot access or afford more modern broadband communications services. For many of these customers, CenturyLink may be their only voice service option. The public comments filed in this docket demonstrate that Minnesotans still depend on having access to quality landline service, and that CenturyLink may not be meeting the minimum standards that it now seeks to change.

¹ Petition at 3 (emphasis added).

CenturyLink's desire to eliminate or modify service quality rules to serve its business objectives should not override the critical public policy need of ensuring that *all* Minnesotans have access to quality voice service.

Moreover, the Commission's rules governing landline service quality do not hinder CenturyLink's ability to provide quality broadband service. CenturyLink has attempted to make this case by repeatedly casting its own decisions as being "effectively" mandated by the Commission.² This is not true. Contrary to CenturyLink's suggestion, the Commission does not "prioritize" the Company's landline service.³ The Commission simply sets the service standards for landline—the part of CenturyLink's business that the Commission regulates. The Commission does not set service standards for broadband. CenturyLink is free to invest whatever amount it wants into maintaining and improving its broadband service without the Commission's input or regulation. And notably, it has the resources to invest significantly more today if it chooses to. In the first quarter of 2021, CenturyLink recorded a net profit of \$475 million, an increase from the \$314 million that it earned in the first quarter of 2020.⁴ CenturyLink has the ability and resources to "prioritize" its broadband service. If it has not done so, this is not the result of the Commission's landline rules.⁵ There is no reason to believe that any savings CenturyLink might gain from reduced telephone regulation will be invested into increased broadband service. It is just as likely that CenturyLink will keep this surplus for its investors. Put differently, the direct result of eliminating or weakening landline service quality rules is that landline service quality will degrade. CenturyLink's claim that reduced landline regulation will improve broadband service is wishful thinking, at best. For these reasons, CenturyLink has not shown that a rulemaking is needed or that it is in the public interest.

The Commission's primary alternative to a rulemaking would be to consider varying a rule that the Commission finds to be problematic. Minnesota R. 7829.3200 allows the Commission to grant a variance to its rules when it determines that the following requirements are met:

- Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- Granting the variance would not adversely affect the public interest; and
- Granting the variance would not conflict with standards imposed by law

² See Petition at 1, 4, 14.

³ *Id.* at 1.

⁴ See CenturyLink's (now Lumen) First Quarter 2021 results [here](#).

⁵ CenturyLink also explains why any network repairs for landline service can also benefit its broadband service. Specifically, the Company acknowledges that "[b]roadband and voice service *use the same network*, often comprised of fiber and copper facilities." Petition at 14 (emphasis added). This means that repairs and improvements to CenturyLink's landline network infrastructure can also benefit broadband network infrastructure that uses the same facilities. CenturyLink's explanation is encouraging, since the Company spent this past legislative session inaccurately suggesting to policymakers and the public that it had separate networks for landline and broadband service, and that landline regulation was hindering the deployment of its fiber optic network. See e.g. [article](#) ("... requiring investments *in a copper network* that consumers are abandoning, is not good for Minnesota. Minnesotans want more investment *in fiber-optic broadband*, and that cannot occur when limited resources are being diverted into uneconomic *copper-network investments*.") (Emphasis added).

CenturyLink has not requested a variance to Minn. R. 7810.5200, 7810.5800, or any other rules pertaining to its quality of service. In its 2014 request, the Company requested a variance of Minn. R. 7810.5800. The Commission did not grant its request.

How does CenturyLink’s Petition Comport with Minn. Administrative Rules, Specifically Parts 1400.2040 and 1400.2500?

CenturyLink’s Petition meets the minimum standards of Minn. R. 1400.2040. It does not follow the recommended format of Minn. R. 1400.2500.

Minn. R. 1400.2040 describes the content and procedure for filing a petition for rulemaking with a regulatory agency. Minnesota R. 1400.2040, subp. 1 lists the general content required for a rulemaking petition, including that the petitioner provide “the specific action . . . requested by the petitioner”; and subp. 2 requires that the petition be filed with the head of the agency. Subpart 3 of the rule requires that the agency provide a written response within 60 days of receiving the petition. While CenturyLink has fulfilled the minimal obligations of this rule, the only “specific action” it seeks is a general request to “eliminate or modify” Minn. R. 7810.5200 and 7810.5800.⁶ It has not provided suggested language or a detailed description of a proposed modification.

Minn. R. 1400.2500 contains a recommended format for a petition for rulemaking. The recommended format suggests that “[f]or rule amendments, repeat the text of the rule, striking through deletions and underlining new language. If you cannot provide new rule language, then write a detailed description of the rule that you are requesting.” CenturyLink has requested that Minn. R. 7810.5200 and 7810.5800 be eliminated or modified. It has not, however, provided language or a detailed description of a potential modification.

What Should be the Scope of any Rulemaking Proceeding Related to Minn. Rules Ch. 7810?

As explained above, CenturyLink has not provided a sufficient basis to eliminate or modify either Minn. R. 7810.5200 or Minn. R. 7810.5800. If, however, the Commission proceeds with a rulemaking, it should consider comments and proposals to improve any of the telephone service quality rules found in Minn. R. 7810.4100 - .6100. CenturyLink’s proposal is based on its argument that these service quality rules need to be updated to reflect the current telecommunications environment.⁷ If the Commission agrees with this argument, it should not limit its review to only those rules selected by CenturyLink. It should, instead, undertake an inclusive process to update its rules.

Moreover, the Commission’s focus in a possible rulemaking proceeding should be to *enhance* protections for telephone customers and *improve* service. CenturyLink’s Petition wrongly suggests that weakening or abandoning protections for its remaining landline customers would improve the service CenturyLink provides to its broadband customers.⁸ The Commission

⁶ See Petition at 22.

⁷ *Id.* at 1.

⁸ See *id.*

does not regulate CenturyLink's broadband service, and it is not responsible for outages on CenturyLink's broadband network or the Company's repair time. The Commission should not abandon its duty to ensure that all Minnesotans have access to reliable voice service because it is inconvenient for CenturyLink to provide that service. Rather, the Commission should use any rulemaking as an opportunity to enhance the quality of the landline service that it regulates.

What Procedures Should the Commission Establish for any Rulemaking Proceeding?

The Commission should follow the procedures set forth in Minn. Stat. Ch. 14 ("Administrative Procedures Act"), which establishes the process and standards for promulgating and modifying agency rules. The Administrative Procedures Act allows two processes for rulemaking.⁹ First, the agency may adopt a rule following a public hearing conducted by an Administrative Law Judge.¹⁰ Second, an agency may adopt a rule without a public hearing.¹¹ The agency is required to proceed with the first option and hold a public hearing if a hearing is requested by 25 or more persons.¹²

What Additional Information and Analysis Should the Commission Seek if it Considers Proceeding with a Rulemaking?

If the Commission proceeds with a rulemaking, it should, at a minimum, require the development of a balanced record that includes an examination of CenturyLink's performance under every rule it seeks to modify or eliminate. This includes looking at customer complaints about service quality; the frequency, number, and total length of service interruptions (including the total time a customer has no dial tone and/or 911 access); issues related to maintenance of copper facilities; and the number of landline customers with no other functional or affordable service alternative. The Commission should also consider how any rule changes or eliminations would impact Minnesota's elderly, low-income, and rural customers. Some of this information will be provided on July 1, 2021 in Commission Docket 20-432, *In the Matter of the Formal Complaint Regarding the Services Provided by the Qwest Corporation d/b/a CenturyLink in Minnesota, on behalf of the Communication Workers of America (CWA)*, and may be the reason CenturyLink seeks elimination of Minn. R. 7810.5200 and 7810.5800 in particular.

Should the Commission Approve or Deny CenturyLink's Petition for Rulemaking?

For the reasons set forth above, the Commission should deny CenturyLink's Petition for Rulemaking.

⁹ A "rule" includes an agency action to amend or repeal an existing rule. Minn. Stat. § 14.02, Subd. 4.

¹⁰ Minn. Stat. §§ 14.13 - .20.

¹¹ Minn. Stat. §§ 14.21 - .28.

¹² Minn. Stat. § 14.25.

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Are there Other Issues or Concerns Related to this Matter?

The OAG has no other issues or concerns related to this matter at this time.

Sincerely,

/s/ Ian Dobson

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CERTIFICATE OF SERVICE

Re: *In the Matter of a Petition for a Rulemaking Regarding Minnesota Rules Chapter 7810*
MPUC Docket No. P-421/M-21-381

I, JUDY SIGAL, hereby certify that on the 28th day of June 2021, I e-filed with eDockets *a Letter of the Minnesota Office of The Attorney General—Residential Utilities Division* and served a true and correct copy of the same upon all parties listed on the attached service list by e-mail, electronic submission, and/or United States Mail with postage prepaid, and deposited the same in a U.S. Post Office mail receptacle in the City of St. Paul, Minnesota.

/s/ Judy Sigal

JUDY SIGAL

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_21-381_M-21-381
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-381_M-21-381
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_21-381_M-21-381
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th Pl E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-381_M-21-381
Eric	Swanson	eswanson@winthrop.com	Winthrop & Weinstine	225 S 6th St Ste 3500 Capella Tower Minneapolis, MN 554024629	Electronic Service	No	OFF_SL_21-381_M-21-381
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