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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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**OFFICE OF THE ATTORNEY GENERAL—  
RESIDENTIAL UTILITIES DIVISION’S  
REPLY TO EXCEPTIONS**

**April 12, 2024**

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**TABLE OF CONTENTS**

	<b>Page</b>
INTRODUCTION .....	1
ARGUMENT .....	2
I.    The Commission Has Repeatedly Considered and Rejected CenturyLink’s Argument That the Rules Are Arcane. ....	3
II.   CenturyLink Is Violating the Plain Text of the Service Quality Rules.....	5
A.   CenturyLink’s Expired AFOR Does Not Speak to CenturyLink’s Violations of Service Quality Rules That Are Presently in Effect. ....	6
B.   CenturyLink’s Failure to Fix Dilapidated Equipment Violates Minnesota Rule 7810.3300. ....	6
C.   CenturyLink’s Poor Recordkeeping and Reactive Maintenance Scheme Violate Minnesota Rules 7810.5000.....	12
D.   CenturyLink’s Failures to Timely Restore Service and Disruptions of Emergency Service Violate Minnesota Rules 7810.5800.....	14
III.  The Minnesota Legislature Has Given the Commission Broad Authority to Promulgate Service Quality Rules and Enforce Violations Thereof.....	16
IV.  CenturyLink Cannot Hide Behind a Problem of Its Own Making.....	18
Conclusion .....	19

## INTRODUCTION

Judge Middendorf's Report catalogs extensive evidence demonstrating CenturyLink's repeated and willful failures to comply with the Commission's service quality rules. For years, customers and CenturyLink's own technicians have raised concerns about CenturyLink's quality of service. Customers complain of long wait times, excessive outages, and decaying infrastructure that erodes their service quality and pollutes the local landscape. Technicians too report equipment in disrepair and orders from management to avoid costly replacements even when they are needed; they note that CenturyLink has hollowed out the local workforce needed to repair and maintain copper wire landline telephone systems. At bottom, customers and professionals alike report that CenturyLink simply will not help them, having unofficially abandoned wireline customers to focus on customers and communities that offer the company a greater potential for profit. The rosy picture of satisfied customers that CenturyLink presents is at odds with the evidence documenting the crackly reality wireline customers face.

CenturyLink has no answer to the customers whom it repeatedly fails, nor can it explain away its violations of the plain text of the service quality rules. Instead, in its exceptions CenturyLink attempts to obscure the rules' plain text requirements with references to AFOR regimes past, arguments that the service quality rules are arcane, and collateral attacks on the ALJ and the Commission's authority to address documented violations of the service quality rules.

CenturyLink's arguments are tired. For nearly a decade, CenturyLink has—vigorously and unsuccessfully—attacked the very service quality rules this docket demonstrates it has violated. The ALJ's Report acknowledges this regulatory history and notes that the Commission

has repeatedly said that the service quality rules remain vital to protect the “health and safety of people, particularly those more reliant on landline service.”<sup>1</sup>

The rules remain in force, and CenturyLink is obligated to obey them. Having documented CenturyLink’s failure to comply with the rules, the Report recommends concrete steps to restore appropriate services to Minnesotans who rely on a landline to call 9-1-1, communicate with family and friends, and other communication needs. The Commission should adopt Judge Middendorf’s recommendations to protect Minnesotans.

## ARGUMENT

This Commission has said, and the ALJ’s Report reflects, that wireline telephone service quality remains important in Minnesota—a State with diverse geography and remote populations that can be challenging to serve.<sup>2</sup> 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>3</sup> Not only does state statute require the

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<sup>1</sup> Findings of Fact, Conclusions of Law, and Recommendations at 10–11 (quoting *In 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) (May 2, 2016) (eDocket No. 20165- 120922-02)).

<sup>2</sup> See 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).

<sup>3</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 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”).

Commission to make rules enforcing service quality,<sup>4</sup> but it also empowers the Commission to enforce those service quality rules.<sup>5</sup>

CenturyLink is obligated 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>6</sup> For the reasons that follow, the Commission should adopt the ALJ's Report finding CenturyLink has violated the service quality rules and its recommendations to ensure CenturyLink delivers adequate service under the rules.

**I. THE COMMISSION HAS REPEATEDLY CONSIDERED AND REJECTED CENTURYLINK'S ARGUMENT THAT 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>7</sup> CenturyLink complains that the ALJ's interpretation of the rules does not reflect the competitive landscape of today or the prioritization of broadband, but that accusation is not well founded.<sup>8</sup> 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,"<sup>9</sup>

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<sup>4</sup> *Id.*

<sup>5</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>6</sup> On the contrary, the Commission has a variety of tools at its disposal to bring a utility into line. *See id.*

<sup>7</sup> *See* Minn. Stat. §§ 237.011, 237.081, 237.16; *see generally* Minn. R. Chapter 7810.

<sup>8</sup> *See* CenturyLink Exceptions at 5, 18–22.

<sup>9</sup> *See* Minn. Stat. § 237.011.

“VoIP,”<sup>10</sup> and “satellite”<sup>11</sup> providers, the Legislature has continued to charge the Commission with ensuring quality service.<sup>12</sup>

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. 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>13</sup> In each of these dockets, CenturyLink has pointed to the rising tide of competition<sup>14</sup> and the dwindling number of wireline customers.<sup>15</sup> And in each attempt CenturyLink has failed to obtain the relief it sought.

The Commission has repeatedly engaged with the substance of CenturyLink’s arguments and rejected them, finding that the service quality rules continue to play a vital role in ensuring quality for Minnesota’s most vulnerable telephone customers.<sup>16</sup> In particular, the Commission has repeatedly rejected several of CenturyLink’s key arguments, finding (1) there was “no

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<sup>10</sup> See Minn. Stat. 237.025.

<sup>11</sup> *Id.*

<sup>12</sup> Minn. Stat. §§ 237.011, 237.081, 237.16.

<sup>13</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>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> 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>16</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.

evidence that the market will adequately and uniformly protect customers;”<sup>17</sup> (2) a decline in customer count did not justify softening the rules,<sup>18</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>19</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>20</sup>

This is not a rulemaking proceeding. It is the conclusion of a contested case to determine whether CenturyLink has violated rules that have the force and effect of law. CenturyLink is not following the rules, and their efforts to disparage the rules do not remove the need to improve service to CenturyLink’s most wireline reliant customers.

## **II. CENTURYLINK IS VIOLATING THE PLAIN TEXT OF THE SERVICE QUALITY RULES.**

CenturyLink’s exceptions paint a glowing picture of its performance that is in direct contrast to record evidence.<sup>21</sup> Contrary to CenturyLink’s claims, the Report accurately reflects the OAG and the Department of Commerce demonstrated CenturyLink’s repeat violations of three service quality rules: Minn. R. 7810.3300, 7810.5000, and 7810.5800. CenturyLink

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<sup>17</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>18</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>19</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>20</sup> *Id.*

<sup>21</sup> CenturyLink Exceptions at 21–26.

attempts to obscure its violations of the plain text of the rules with references to AFOR regimes past, and collateral attacks on the ALJ and the Commission’s authority to address documented violations of the service quality rules.<sup>22</sup> But the Report—and the underlying evidentiary record—is clear: CenturyLink is violating the Commission’s rules with its poor maintenance practices, lax recordkeeping, and frequent emergency service disruptions.

**A. CenturyLink’s Expired AFOR Does Not Speak to CenturyLink’s Violations of Service Quality Rules That Are Presently in Effect.**

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 Alternative Form of Regulation (AFOR) plan that expired on December 31, 2016.<sup>23</sup> 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. CenturyLink’s performance is at odds with the plain text of the rules. 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.

**B. CenturyLink’s Failure to Fix Dilapidated Equipment Violates Minnesota Rule 7810.3300.**

The plain text of Rule 7810.3300 requires CenturyLink to “adopt and pursue a maintenance program . . . to permit the rendering of safe and adequate service.”<sup>24</sup> The rule specifically requires telephone utilities to (1) “keep[] all plant and equipment in a good state of repair consistent with safety and adequate service performance,” (2) “repair[] or replace[]”

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<sup>22</sup> See CenturyLink Exceptions at 6–7, 14–15.

<sup>23</sup> *Id.* at 6.

<sup>24</sup> Minn. R. 7810.3300.



equipment that is “broken, damaged, or deteriorated,” and (3) correct “electrical faults, such as leakage or poor insulation, noise, induction, cross talk, or poor transmission.”<sup>25</sup> Each of these elements is mandatory under the rules.

Rather than making up new standards, as CenturyLink claims,<sup>26</sup> the Report correctly documents CenturyLink’s repeated failure to adhere to the plain text requirements of Minn. R. 7810.3300.<sup>27</sup> CenturyLink has systematically failed to repair its equipment, depleted the relevant workforce, and failed to adequately maintain its systems.<sup>28</sup> These failures have led to substandard service for Minnesotans, several of whom participated in this docket via comments and public hearings.<sup>29</sup>

CenturyLink’s failures to comply with Minn. R. 7810.3300 were on vivid display throughout the contested case in public and expert testimony. In just a few days of driving around the metropolitan area over the Thanksgiving holiday, only a few weeks before the contested case hearing in this matter, OAG expert witness Brian Lebens was able to capture 93 pages of images of CenturyLink equipment that is “[b]roken, damaged, or deteriorated.”<sup>30</sup> The images (excerpted below) documented countless instances of naked wires, jagged metal, and other hazards exposed in the public right of way:<sup>31</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> CenturyLink Exceptions at 27–28.

<sup>27</sup> Report ¶¶ 35–46.

<sup>28</sup> *Id.* See also Report ¶¶ 83–87.

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

<sup>30</sup> See Report ¶¶ 74–78 (citing Exhibits OAG-5, OAG-6, OAG-7, OAG-8, OAG-9).

<sup>31</sup> *Id.*





Even using the most generous definitions, there is no way that equipment decaying to the point of posing a safety hazard to children and animals in the public right of way can be characterized as “in good state of repair consistent with safety.”<sup>32</sup> Many of the photos showed completely inadequate attempts at “quick fixes,” but placing a piece of plastic or a garbage bag over an exposed pedestal or other plant cannot be considered a “repair” under any fair reading of the rules.<sup>33</sup> Instead, they demonstrated that CenturyLink was likely aware of the broken, damaged, and deteriorated plant and failed to take any meaningful action to fix the problem.

Setting aside photographs, while the impact of CenturyLink’s stingy maintenance efforts is felt throughout the state, it is particularly acute in less dense areas, where customers indicate they report problems again and again, only to have the company continue to deny a long-term fix.<sup>34</sup> There was extensive public testimony from customers in Greater Minnesota documenting CenturyLink’s failures to address failing landline infrastructure.<sup>35</sup> For example, an individual who came to the Owatonna public hearing described how CenturyLink infrastructure is decaying in plain sight throughout his community, and the impact to service quality is obvious.<sup>36</sup> Outages are significant, and the customer reported that with three-quarters of pedestals open to the elements, every time it rains the lines start to crackle and so badly he can “hardly hear anybody.”<sup>37</sup>

Another Owatonna resident reported a “pedestal that’s been left open for six to eight months” and a “pit that’s been dug to put in underground services that’s been left open all

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<sup>32</sup> See Minn. R. 7810.3300.

<sup>33</sup> *Id.* See also Report at ¶ 77.

<sup>34</sup> See Report at ¶ 86.

<sup>35</sup> See, e.g., Report at ¶¶ 35–46 (highlighting extensive public comments concerning CenturyLink’s failures to address service issues and the difficulty of getting service restored to medically vulnerable seniors).

<sup>36</sup> Owatonna Pub. Mtg. Tr. at 21–24 (July 27, 2023).

<sup>37</sup> *Id.*

through the winter with no safety fences around it.”<sup>38</sup> In Marshall, too, customers noted frequent trouble with water getting into the lines because of plant in disrepair.<sup>39</sup> For example, one customer questioned why “in the spring of the year when we get rain, or a lot of rain or snow melt, our phone goes out. And sometimes we’re without a week, and you ask for a credit on your bill and you get it one month, but the next month they add it so you’re paying double.”<sup>40</sup>

CenturyLink has tried to undermine this extensive factual record by claiming the Report’s findings were “*directly and unequivocally refuted*.”<sup>41</sup> Not so. For example, CenturyLink claims the Report erred in concluding CenturyLink does not pursue maintenance that doesn’t satisfy the five-year payback window.<sup>42</sup> CenturyLink claims this conclusion is “directly rebutted” by testimony that “may be done out of a local expense budget.”<sup>43</sup> But 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.<sup>44</sup> It would be Orwellian to claim projects assigned to a nonexistent budget are being actively pursued by the company.

The record is clear: CenturyLink is serially failing some of its most wireline-dependent customers by failing to adequately maintain equipment. CenturyLink’s failings are a violation of Minn. R. 7810.3300.

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<sup>38</sup> Owatonna Pub. Mtg. Tr. at 19:15–22 (July 27, 2023).

<sup>39</sup> *See, e.g.*, Marshall Pub. Mtg. Tr. at 19:8–14 (July 26, 2023).

<sup>40</sup> *Id.*

<sup>41</sup> CenturyLink’s Exceptions at 18–19.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Evidentiary Hearing Transcript 184:18–186:12 (Ardoyno); DOC-20.

**C. CenturyLink’s Poor Recordkeeping and Reactive Maintenance Scheme Violate Minnesota Rules 7810.5000.**

Minn. R. 7810.5000 requires telephone utilities to proactively assess their service performance and maintain records. Specifically, each telephone utility must continually review its operations to assure adequate service and maintain records of its operations “in sufficient detail” to allow for Commission’s review.<sup>45</sup> CenturyLink’s reactive maintenance regime and its incomplete recordkeeping violate this rule.

The Department and the OAG demonstrated that CenturyLink is not “continually reviewing its operations to assure the furnishing of adequate service,” so much, as it is occasionally (and inadequately) responding to one of every several complaints it received about service in a given area.<sup>46</sup> While CenturyLink touts its overall trouble-report rate in its exceptions, it glosses over the fact that the company does nothing to learn from these reports and systemically improve service.<sup>47</sup>

Per the plain text of Minn. R. 7810.5000, it is not sufficient for a telephone utility to merely collect reports of trouble; the company must “continually review[] . . . to assure the furnishing of adequate service.”<sup>48</sup> Instead of engaging in proactive management as the rule requires, CenturyLink has engaged in a pattern of break-fix maintenance. The record and CenturyLink’s words demonstrated CenturyLink’s maintenance is purely reactive: “the Company’s current program for maintenance of its outside plant is the creation of trouble tickets, whether by customers or internal triggers.”<sup>49</sup> In its own words, “CenturyLink doesn’t automatically or systematically run any proactive testing, only as part of an install or repair

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<sup>45</sup> Minn. R. 7810.5000. *See also* Report at ¶¶ 85–87.

<sup>46</sup> *Id.*

<sup>47</sup> CenturyLink Exceptions at 12–17.

<sup>48</sup> Minn. R. 7810.5000.

<sup>49</sup> Evidentiary Hearing Transcript 192:8–12 (Ardoyno).

request.”<sup>50</sup> In fact, when asked for all documents pertaining to the company’s predictive maintenance program, CenturyLink responded that no such documentation exists.<sup>51</sup>

When the OAG asked for information about how CenturyLink’s maintenance practices comply with the rules, the company claimed its “trouble report rates demonstrate that it has an effective maintenance program in place for keeping its plant in good order.”<sup>52</sup> Yet when asked for the trouble report in subsequent requests, CenturyLink did not produce the report, but instead explained, “This trouble report is not an Excel document or any normal report we look at each day. This is in our dispatch system and tickets are generated when three or more tickets are called in on a 100 pair group.”<sup>53</sup> This system serves customers poorly and leaves persistent troubles unaddressed.<sup>54</sup> At the evidentiary hearing, CenturyLink Witness Ardoyno and Department of Commerce Counsel discussed several instances of customers experiencing repeat troubles over several years with no resolution.<sup>55</sup> These chronic problems slip through the cracks of CenturyLink’s current system.

Given CenturyLink’s minimalist response to the OAG’s request for maintenance documentation, it was difficult for OAG to get a comprehensive picture of CenturyLink’s internal operations. The Department witnesses, however, painted a stark picture of how CenturyLink is failing Minnesota customers with its inadequate and reactive maintenance and monitoring.<sup>56</sup> Department witness Webber explained in his testimony why this approach is so inadequate. Webber noted that the Commission already determined reactive maintenance is

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<sup>50</sup> Evidentiary Hearing Transcript 194:18–24 (Ardoyno).

<sup>51</sup> Evidentiary Hearing Transcript 199:5–200:1 (Ardoyno).

<sup>52</sup> OAG-2 (Lebens Direct Schedule D-4 at 1–2) (quoting CenturyLink response to OAG IR 29).

<sup>53</sup> OAG-4 at 8:8–22 (Lebens Surrebuttal).

<sup>54</sup> Evidentiary Hearing Transcript 223:9–226:22 (Ardoyno).

<sup>55</sup> *Id.*

<sup>56</sup> *See, e.g.*, DOC-4 at 10–16 (Webber Direct)

inadequate under the rules.<sup>57</sup> In particular, he noted, that in the Frontier matter, Frontier had primarily relied upon customer reports of outages to engage in “break/fix” maintenance, and this was ultimately found by the Commission to be inadequate.<sup>58</sup> The Commission ultimately required Frontier to implement a more proactive maintenance plan that would avert problems rather than relying upon customer failure reports.<sup>59</sup> This precedent demonstrates CenturyLink’s performance is inadequate under the rules.

**D. CenturyLink’s Failures to Timely Restore Service and Disruptions of Emergency Service Violate Minnesota Rules 7810.5800.**

One of the Commission’s most important service quality rules is the protection against extended outages and emergency service disruptions.<sup>60</sup> The Rule requires each telephone utility to “make all reasonable efforts to prevent interruptions of service,” and, when interruptions occur to “reestablish service with the shortest possible delay.”<sup>61</sup> 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.”<sup>62</sup>

There is no factual dispute that CenturyLink is falling short of the 95 percent standard set by the Rule,<sup>63</sup> and the record was filled with examples from customers and emergency service professionals who have been affected by CenturyLink’s repeated failures to timely address outages.<sup>64</sup>

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<sup>57</sup> *See id.*

<sup>58</sup> *Id.* at 12:1–13;2.

<sup>59</sup> *Id.*

<sup>60</sup> *See* Minn. R. 7810.5800.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> CenturyLink Exceptions at 30 (“The Company has acknowledged it is not clearing 95 percent of its out-of-service troubles within 24 hours, so is not currently meeting this objective.”)

<sup>64</sup> *See* Report ¶¶ 35–46; 92–95. *See generally* DOC-1 at 13:6–19:17 (Gonzalez Direct).



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 they need an emergency responder.<sup>65</sup> Keeping the fire station staffed so that locals can physically go there to secure an emergency dispatch strains local resources.<sup>66</sup>

And state agencies frequently hear from frustrated CenturyLink customers. The Department of Commerce and the Consumer Affairs Office of the Public Utilities Commission have fielded 530 complaints from CenturyLink customers during the pendency of these proceedings.<sup>67</sup> A whopping 46 percent of people calling to complain reported service outages.<sup>68</sup> 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.<sup>69</sup> 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.<sup>70</sup>

As the Report documented, the evidence clearly demonstrated CenturyLink's repeat failure to provide its wireline telephone customers with the level of service the rules require. The impact of CenturyLink's failings is felt throughout the state, and it is imposing negative

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<sup>65</sup> Evidentiary Hearing Transcript at 32:5–15 and 38:3–39:17 (Mielke Direct). *See also* Report ¶¶ 35–46.

<sup>66</sup> Evidentiary Hearing Transcript at 32:5–15 and 38:3–39:17 (Mielke Direct).

<sup>67</sup> DOC-1 at 13:6–14:5 (Gonzalez Direct); Report ¶¶ 36–38.

<sup>68</sup> DOC-1 at 13:6–14:5 (Gonzalez Direct).

<sup>69</sup> *Id.* at 15:16–20.

<sup>70</sup> *Id.*

consequences on businesses, emergency responders, and some of the state’s most vulnerable households.

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

CenturyLink claims the Recommendations exceed the Commission’s legal authority and violate the Due Process Clause.<sup>71</sup> CenturyLink is mistaken.

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>72</sup> Specifically, the Commission is responsible for issuing rules that “ensure the provision of high-quality telephone services throughout the state.”<sup>73</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>74</sup>

The Commission has statutory authority to investigate “[w]hensoever the commission believes that a service is inadequate.”<sup>75</sup> If the Commission investigates, refers the matter to a contested case hearing, and ultimately determines a 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.”<sup>76</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

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<sup>71</sup> CenturyLink Exceptions at 27–28, 32.

<sup>72</sup> Minn. Stat. § 237.011 (5) & (7).

<sup>73</sup> Minn. Stat. § 237.16, subd. 8.

<sup>74</sup> See, e.g., Minn. Stat. §§ 237.081, 237.461.

<sup>75</sup> Minn. Stat. § 237.081.

<sup>76</sup> *Id.*

appropriate action.”<sup>77</sup> 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.<sup>78</sup>

Given its clear legislative mandate to safeguard service quality, the Commission need not invest tremendous energy in CenturyLink’s convoluted due process argument.<sup>79</sup> CenturyLink claims the term “adequate service” is impossibly vague.<sup>80</sup> 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.”<sup>81</sup> Swinging for the fences, CenturyLink further asserts 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.

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. So too has the Legislature has given the Commission clear statutory authority to obtain penalties.<sup>82</sup> While the OAG believes other performance remedies recommended by the OAG and the

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<sup>77</sup> Minn. Stat. § 237.461.

<sup>78</sup> Minn. Stat. § 237.27.

<sup>79</sup> See CenturyLink Exceptions at 27–28.

<sup>80</sup> *Id.* at 27.

<sup>81</sup> Evidentiary Hearing Transcript 225: 4–14 (Ardoyno).

<sup>82</sup> See *Qwest Corp. v. Minnesota Pub. Utilities Comm’n*, 427 F.3d 1061, 1064-68 (8th Cir. 2005). Statute sets the penalty at up to \$5000 for “each day of each violation.” Minn. Stat. § 237.461.

Department are the best path to restoration of service for customers in this docket, the OAG stands ready to pursue penalties should the Commission find them warranted in this matter.

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

In a last-ditch effort to avoid consequences, CenturyLink makes a specific plea to avoid having to implement four-hour repair windows. The company claims such a system would make it difficult to efficiently rout technicians to repair tickets.<sup>83</sup>

The reason for this inefficiency was revealed in CenturyLink's initial brief, which argued 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>84</sup>

This is an instance of chickens coming home to roost. This docket began when the very skilled technicians CenturyLink now claims it cannot find submitted a complaint to the Commission about lagging quality and impending technician layoffs.<sup>85</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>86</sup> The workers cautioned that these failures would only intensify if CenturyLink followed through on its plan to dismiss 154 technicians.<sup>87</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.

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<sup>83</sup> CenturyLink Exceptions at 38.

<sup>84</sup> CTL Initial Brief at 30-31.

<sup>85</sup> See Communications Workers of America Initial Filing at 1 (Apr. 23, 2020).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 1-2.

## CONCLUSION

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. The ALJ appropriately applied the plain language of these rules to the facts in the record and recommended that the Commission find CenturyLink has failed to meet the service quality standards.

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. Others are dealing with the blight of unrepaired and unsafe equipment littering their neighborhoods. The OAG urges the Commission to heed the ALJ's Report, find CenturyLink is violating the service quality rules, and adopt the Report's Recommendations to restore service for Minnesota's most wireline reliant customers.

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Respectfully submitted,

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