

June 12, 2014

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East Suite 350
St Paul Minnesota 55101-2147

RE: **Reply Comments of the Minnesota Department of Commerce**
Docket No. P421/AM-14-255

Dear Dr. Haar:

Attached are the reply comments of the Minnesota Department of Commerce (Department) in the following matter:

In the Matter of Qwest Corp. d/b/a CenturyLink Petition for Waiver of Minnesota Rule Part 78105800.

The Department is available to answer any questions the Commission may have.

Sincerely,

/s/ DIANE DIETZ
Rate Analyst

/s/ KATHERINE DOHERTY
Rate Analyst

KD/DD/ja
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

REPLY COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE

DOCKET NO. P421/AM-14-255

I. BACKGROUND

On March 26, 2014, CenturyLink, Inc. (CenturyLink), on behalf of its affiliated companies,¹ filed a petition for a waiver of Minn. Rules pt. 7810.5800. In support of its petition, CenturyLink described market trends and changes in market structure.

CenturyLink's March 26, 2014 petition also requested a rulemaking proceeding for a comprehensive review of the service quality rules, or at a minimum Minn. Rules Parts 7810.4100 through 7810.6100. This rulemaking request is being considered in Docket No. P421/AM-14-256.²

On April 2, 2014, the Minnesota Public Utilities Commission (Commission) issued a notice soliciting comments on CenturyLink's request for a waiver of Minn. Rules pt. 7810.5800.

On April 28 through 30, 2014, the following parties filed comments: the Department, American Association of Retired Persons (AARP) Minnesota and the Legal Services Advocacy Project, CenturyLink, and the Joint Competitive Local Exchange Carriers (CLECs) including Integra Telecom of Minnesota, TW Telecom of Minnesota, TDS Metrocom and Velocity Telephone, Inc.

¹ CenturyLink's affiliated companies operating in Minnesota include Qwest Corporation dba CenturyLink (CenturyLink QC; Embarq Minnesota dba CenturyLink, CenturyTel of Minnesota dba CenturyLink, CenturyTel of Northwest Wisconsin dba CenturyLink, and CenturyTel of Chester dba CenturyLink.

² On May 22, 2014, in Docket P421/AM-256, the Commission issued an Order initiating a rulemaking to consider possible changes to Minnesota Rules Pts. 7810.4100 through 7810.6100 (including Minn. Rules Pt. 7810.5800 for which CenturyLink seeks a waiver.

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On May 21, 2014, CenturyLink filed reply comments. In its reply comments, CenturyLink requested that the Commission grant a variance reducing the 95% standard in Minn. Rules pt. 7810.5800 to an 85% standard during the period wherein the Commission addresses the service quality rules in a rulemaking proceeding.

On May 23, 2014, the Commission issued a Notice of Supplemental Comment Period regarding CenturyLink's request of May 21, 2014.

II. REPLY COMMENTS

Under Minn. Rules pt. 7829.3200, subpt. 1, the Commission may grant a waiver when the Commission determines that the following three requirements are met:

- i. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- ii. granting the variance would not adversely affect the public interest; and
- iii. granting the variance would not conflict with standards imposed by law.

In its April 30, 2014 comments, the Department discussed CenturyLink's proposed waiver request as it relates to each of the requirements delineated in Minn. Rules pt. 7829.3200, subpt. 1.

The Department continues to believe that the proposed waiver does not comply with the requirements in Minn. Rules pt. 7829.3200, subpt. 1.

- i. *Enforcement of the rule would not impose an excessive burden upon the applicant or others.*

In its May 21, 2014 comments, CenturyLink discusses five general types of burden imposed on the Company by Minn. Rules pt. 7810.5800: (a) the reduced number of customers experiencing out-of-service conditions in recent years results in a slimmer margin for error and greater difficulty in recovering from adverse events;³ (b) the existing repair metric does

³ CenturyLink Reply Comments, page 4. The Department notes, with respect to CenturyLink's claim that the reduced number of out of service conditions results in difficulty in recovering from adverse events and day to day fluctuations in volume, that CenturyLink's QC's Alternative Form of Regulation Plan (AFOR) provides for measurement of CenturyLink's results on a *statewide, annual basis* which minimizes the impact of day to day fluctuations.

not distinguish between emergency situations, and all out of service conditions. CenturyLink's "standard practice" of prioritizing emergency situations may result in deployment of technicians in such a way that the metric's objective is difficult to achieve;⁴ (c) attempting to meet the repair metric results in a delay in scheduled repairs and new service installations;⁵ (d) the metric discourages consideration of the wishes of individual customers, "the vast majority" of whom have an alternative means of placing a call⁶; and (e) increased competition results in less revenue to deploy technicians.

The burdens imposed on CenturyLink from the 95% repair metric are faced, to some extent, by other regulated telephone and telecommunications carriers. Unregulated communications carriers also face these same types of burdens, to the extent that these entities face competitive forces. CenturyLink is likely to face the enumerated burdens, to some degree, irrespective of what level of repair metric with which they are required to comply. In fact, some of the burdens cited by CenturyLink existed at the time Minn. Rules pt. 7810.5800 was promulgated and may have been factored into the existing repair metric at that time. The burdens reported by CenturyLink in its May 21, 2014 comments, are normal burdens experienced by other regulated carriers. To the extent they are normal burdens, they are not "excessive" and, therefore, do not meet the requirements for a waiver under Minn. Rules pt. 7829.3200, subpt. 1.

Furthermore, the wide variation in potential operational effects from the 95% repair metric suggests the need for an in-depth examination of the impact of a change in the repair metric and the degree of change warranted before changing the existing repair metric.

In its May 21, 2014 comments, CenturyLink discusses, at length, the impact of the reduction in out-of-service reports on its ability to meet the 95% repair metric. In its comments, CenturyLink states that its success in reducing the number of out-of-service situations "makes it more difficult for CenturyLink to meet the 95% metric. In 2007, CenturyLink QC had an average of 10,511 out-of-service conditions per month. In 2014, CenturyLink has thus far averaged 1,573 customers out of service per month. The number of misses CenturyLink can experience and still meet the standard has shrunk to very few misses per day."⁷

⁴ Id, page 5.

⁵ Id, page 6.

⁶ Id.

⁷ May 21, 2014 Comments of CenturyLink, page 5, section A.

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CenturyLink, however, fails to provide the detail necessary to determine whether the temporal reduction in out-of-service situations may have been accompanied by a proportionately greater reduction in the number of technicians to repair the out-of-service situations. Without a sufficient number of technicians on hand, CenturyLink would be doomed in its efforts to satisfactorily address out-of-service situations. Without more detail, it is impossible to fully analyze the relationship between the temporal reduction in the number of out-of-service conditions and CenturyLink's ability to comply with the 95% metric.

Finally, even if the Commission were to find that CenturyLink faces alleged burdens from the current repair metric, CenturyLink has provided no evidence to prove that an 85% repair metric is optimal.

CenturyLink has not shown, or quantified in dollar terms, that the proposed variance is justified by an excessive burden placed upon the carrier.

ii. Granting the variance would adversely affect the public interest.

In its May 21, 2014 Reply Comments, CenturyLink suggests that the 95% repair metric provides little or no meaningful protection to customers given that [a]ny time a customer is in . . . an emergency situation, all the customer needs to do is indicate the situation when placing the service request, and CenturyLink will prioritize that repair and make sure service is restored as quickly as possible.”⁸

CenturyLink's proposal to create a priority repair list for service outages is an idea that should undergo examination in a rulemaking proceeding where the operational details of such a list can be examined. While CenturyLink has described the general notion of a priority service repair list in its May 21, 2014 Reply Comments, the Company has provided no operational details relating to such a policy. Numerous contingencies exist that may impact the effectiveness of a priority service repair list. For example, does CenturyLink propose that its existing priority service repair policy would be used if the proposed waiver is granted in the current docket? What operational changes are needed to establish a priority service repair list if the proposed waiver is granted? How would such a list operate in an emergency situation with widespread service outages? Without answers to these and related questions, granting the proposed variance has the potential to adversely affect the public interest to an unknown degree.

⁸ May 21, 2014 Comments of CenturyLink, page 3, section I.

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While a priority service repair list has the potential for enhancing the public interest, the mere notion of such a list provides no evidence to show that an 85% repair metric is optimal either on a temporary basis or on a permanent basis.

Further, approval of the proposed waiver would provide CenturyLink with a competitive advantage over other regulated telephone and telecommunications carriers. This competitive advantage would extend for an unforeseeable period until the rulemaking proceeding is completed. Providing such a competitive advantage to one carrier is inconsistent with the statutory goal in Minn. Stat. section 237.011 (4) (Telecommunication's Goals) of "encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral manner."

CenturyLink has not shown that the proposed variance would not adversely affect the public interest.

iii. Granting the variance would conflict with standards imposed by law.

In its April 30, 2014 comments, the Department explained why the proposed variance does not comport with Qwest Corporation dba CenturyLink's (CenturyLink QC) Alternative Form of Regulation (AFOR) Plan and Minnesota Statutes applicable to AFOR Plans. Even if the Commission were to determine that a waiver of Minn. Rules pt. 7810.5800 is appropriate, the rule waiver would have no effect on CenturyLink QC's obligations under the terms of the service quality provisions in its AFOR Plan.

As explained in the Department's comments, Minn. Stat. section 237.765(a)(c) requires that the Service Quality Plan, approved by the Commission as part of the AFOR plan, "must be offered to extend through the duration of an alternative regulation plan." CenturyLink QC's AFOR Plan requires that CenturyLink QC's objective shall be "to clear 95% of out-of-service trouble report conditions within 24 hours of the time such troubles are reported. Compliance with the objective shall be determined by a 12-month annual statewide average performance for the measure."

The AFOR Plan, including the service quality plan, was approved by the Commission on December 23, 2009 in Docket No. P421/AR-09-790, and extended by Commission Order at CenturyLink QC's request (pursuant to Minn. Stat. section 237.766(3)(b)) through December 31, 2016. As the Commission noted in its order approving the extension, Minn. Stat. section 237.766, subd. 1 (Plan Duration and Extension) requires that "unless otherwise specified in the plan, all other provisions of the plan shall continue in effect throughout the extension

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period.” There is no provision in the AFOR Plan that permits changes to the Service Quality Plan during the term of the plan.

III. RECOMMENDATION

The Department continues to recommend that the Commission deny the proposed variance reducing the 95% standard in Minn. Rules pt. 7810.5800 to an 85% standard during the period wherein the Commission addresses the service quality rules in a rulemaking proceeding.

/ja

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

Minnesota Department of Commerce
Reply Comments

Docket No. P421/AM-14-255

Dated this 12th day of **June 2014**

/s/Sharon Ferguson

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