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August 21, 2014

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

**Re: In the Matter of the Petition of CenturyLink, Inc. for a Variance to
Minnesota Rules, part 7810.5800
Docket No. P-421/AM-14-255**

Dear Dr. Haar:

Enclosed for filing is CenturyLink's Petition for Reconsideration regarding the above-referenced matter.

Very truly yours,

/s/ Jason D. Topp

Jason D. Topp

JDT/bardm

Enclosures

cc: Service List

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

**Beverly Jones Heydinger
David Boyd
Nancy Lange
Dan Lipschultz
Betsy Wergin**

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

**In the Matter of the Petition of
CenturyLink, Inc. for a Variance to
Minnesota Rules, part 7810.5800**

Docket No. P-421/AM-14-255

CENTURYLINK'S PETITION FOR RECONSIDERATION

Pursuant to Minn. R. 7829.3000, CenturyLink submits this Petition for Reconsideration of the Commission's Order issued on August 11, 2014 ("Order"). CenturyLink respectfully suggests that the Order fails to properly apply Minn. Stat. § 237.011, which identifies "state goals that should be considered as the commission executes its regulatory duties with respect to telecommunication services." Those goals include:

- ...
- (2) maintaining just and reasonable rates;
- (3) encouraging economically efficient deployment of infrastructure for higher speed telecommunication services and greater capacity for voice, video, and data transmission;
- (4) encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner;
- (5) maintaining or improving quality of service;
- (6) promoting customer choice;

- (7) ensuring consumer protections are maintained in the transition to a competitive market for local telecommunications service;
...¹

The Order focuses on consumer protection goals in the statute and ignores the equally important telecommunication service objectives. This singular focus delays the installation of new services, delays their repair and due to the formulaic anomalies presented by the metric, it penalizes the Company for reducing out-of-service conditions in the first place.

More fundamentally, however, the Order directly impedes the attainment of other goals contained in Minn. Stat. § 237.011 thereby stifling competition and the benefits such competition can yield to consumers. CenturyLink has agreed to annual service quality performance reporting in order to receive the same pricing flexibility that its competitors receive. As a result, the significant impact of this metric is not “competitively neutral.” It does not encourage “fair and reasonable competition.” Instead, it places a thumb on the scale and delays CenturyLink’s ability to provision new service and perform other repairs that might be more critical to a given consumer.

Because of these oversights in the Order, as well as CenturyLink’s need for relief pending the current rulemaking proceeding, CenturyLink files this motion for reconsideration.

DISCUSSION

Minnesota Rule 7829.3200 allows the Commission to grant a variance to its rules when it determines the following requirements are met:

¹ Minn. Stat. § 237.011.

- 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.

In rejecting CenturyLink's request, the Order misapplies Minn. Stat. § 237.011 and ignores uncontroverted evidence establishing that a variance is appropriate.

A. Direct Oversight Of Service Quality Is Not A Key Policy Objective Contained In Minnesota Statutes.

The Order identifies “[d]irect oversight of service quality” as “a key policy objective of the Commission’s regulatory responsibilities under Minn. Stat. § 237.011.”² This finding is inconsistent with both the language of the statute and the Commission’s regulatory approach to service quality. The statute does not mention “direct oversight.” Furthermore, the Commission does not directly oversee the service quality of any Minnesota telecommunications provider other than for those companies that must agree to an Alternative Form of Regulation Plan in order to receive the same pricing flexibility its competitors receive. Instead, it only addresses such issues in the unlikely event of a complaint.³

If direct oversight of service quality were a key policy objective required by statute, the Commission should justify why it only implements such oversight for a small percentage of Minnesota customers. It does not do so for facilities-based competitive local exchange

² Order, p. 2.

³ It is difficult to imagine a situation in which a customer or agency would have a factual basis to complain that a provider fails to meet a 95% out-of-service repair standard when the company does not report its performance pursuant to the standard.

carriers. It does not do so for small incumbent providers. It does not do so for larger incumbent providers unless the provider agrees to an alternative form of regulation plan.

B. CenturyLink Has Established That The Rule Imposes An Excessive Burden.

1. CenturyLink Has Presented Evidence More Powerful Than An Artificial Quantification Of Cost In Support Of Its Petition.

In the Order, the Commission rejected CenturyLink's arguments that the standard imposes an excessive burden because CenturyLink did not submit a specific cost associated with compliance:

... a lack of any quantification of associated costs undermines the company's claim that the standard imposes extraordinary costs and reduces the company's competitiveness. Further, the company did not explain or quantify how reducing the standard to 85 percent would reduce its costs and increase its competitiveness.⁴

As was explained at the hearing, identifying any specific cost associated with the standard would be artificial. CenturyLink could meet the standard at no cost if it (1) stopped installing new service and (2) stopped repairing broadband services or telecommunications service that does not involve an out-of-service condition.⁵

Taking such an approach would clearly contradict Commission goals and CenturyLink's business interests. Any other cost estimate would require assumptions regarding the repair resources allocated to these competing demands.

Instead of providing an artificial cost estimate, CenturyLink did provide the Commission with a number of critical factors that cause this standard to impose an excessive burden:

1. Out-of-service conditions vary dramatically from day to day, sometimes double or triple average volumes;⁶

⁴ Order, p. 8.

⁵ See, generally, Affidavit of Patrick Haggerty, ¶¶ 9-14.

⁶ *Id.*, ¶ 12.

2. The math associated with the metric means that, if CenturyLink misses the standard on a high volume day, “the mathematical metric results can fall so far that it will take months to recover.”⁷
3. Recovering from a high volume day is more difficult than it was in the past because very few CenturyLink customers experience out-of-service conditions in the first place, meaning that the opportunity to perform better than 95% is very slim.⁸
4. CenturyLink has substantially fewer customers than it did ten years ago, further narrowing the opportunity to make up for a high volume day measured against this metric;⁹
5. The geographic area over which it must address out-of-service conditions has remained stable, meaning it is more difficult for technicians to address multiple out-of-service conditions on a single trip.
6. The factors listed in paragraphs 3, 4 and 5 have reduced the margin by which CenturyLink can compensate for a high volume day by 80% and made it more difficult to exceed the standard on a particular day.¹⁰
7. CenturyLink has been forced to delay installations and delay repairs not involving service outage conditions to address such situations.¹¹

This evidence does represent a cost to the Company that is far more powerful than simply quantifying a dollar amount. CenturyLink has met its obligation to demonstrate that the rule imposes an excessive burden and that a variance is appropriate.

2. Force Majeure Provisions In The AFOR Do Not Fully Address The Problems Caused By The Standard.

The Order reasons that force majeure provisions in the AFOR ameliorate the impact of the 95% standard on CenturyLink:

The company’s AFOR directly addresses this concern, stating that no customer remedy will be required for missed restoration of service due to force majeure events

⁷ *Id.*, ¶ 13.

⁸ *Id.*, ¶¶ 6-8.

⁹ *See* Affidavit of Patrick Haggerty, ¶¶ 6-7.

¹⁰ *Id.*, ¶ 8.

¹¹ *Id.*, ¶ 22.

beyond the company's control. Further, the AFOR limits complaints against the company by the Department or OAG for non-compliance if failure to meet a standard is the result of circumstances beyond the company's control.¹²

While force majeure language can be helpful in addressing the standard, such events do not account for the wide discrepancy in repair events reported pursuant to the metric. The number of customers experiencing out-of-service conditions varies widely from day to day and such variability may or may not be caused by weather or other outside circumstances.¹³

C. CenturyLink Has Established that a Variance is in the Public Interest.

In rejecting CenturyLink's petition, the Order simply dismisses CenturyLink's evidence despite having no factual basis to do so:

Concluding that the public interest would not be adversely affected by granting the variance requires finding that the company is correct in its assertions that it cannot both meet the standard and effectively allocate resources in a manner that best serves consumers and best protects service quality. **Based on the record in this case, however, there is not sufficient information or other data to draw that conclusion.**¹⁴

However, the only sworn evidence in the case establishes not only that the standard causes a misallocation of resources, but also that the standard disadvantages consumers by delaying the availability of new services and by delaying repair of non-outage conditions.¹⁵ Thus while, as the Order notes, the Legislature has recognized the importance of service quality,¹⁶ the Order fails to account for uncontroverted evidence establishing that this service quality standard has the effect of hurting, rather than assisting with achievement of that goal.¹⁷

¹² Order, p. 8.

¹³ See, e.g., Affidavit of Patrick Haggerty, ¶ 12.

¹⁴ Order, p. 8.

¹⁵ Affidavit of Patrick Haggerty, ¶ 22.

¹⁶ Order, p. 9.

¹⁷ Affidavit of Patrick Haggerty, ¶¶ 19-22.

D. CenturyLink Has Established that the Variance is Consistent With Applicable Law.

The Order did not resolve the question of whether or not CenturyLink's petition is consistent with applicable law. CenturyLink relies on its submissions to date on this issue.

CONCLUSION

In today's telecommunications environment, Minn. R. 7810.5800 imposes an excessive burden on CenturyLink. Granting a variance advances the public interest and is consistent with applicable law. The Commission's Order rejecting CenturyLink's petition improperly applies Minn. Stat. § 237.011 and improperly ignores substantial unconverted evidence that the standards for granting a variance apply. The Commission should reconsider its August 11, 2014 Order in this docket and grant CenturyLink's request that Minn. R. 7810.5800 either be waived while the current rulemaking takes place, or be altered to an 85% standard during that time period.

Dated this 21st day of August, 2014.

CENTURYLINK

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