

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

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East, Suite 350
Saint Paul, Minnesota 55101-2147**

**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**

OAH Docket No. 21-2500-38965

MPUC Docket No. P-421/C-20-432

**INITIAL BRIEF OF
QWEST CORPORATION D/B/A CENTURYLINK IN MINNESOTA**

January 17, 2024

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INTRODUCTION

This docket began nearly four years ago, after Qwest Corporation d/b/a CenturyLink QC in Minnesota (“CenturyLink” or Company”) initiated a three-month process, under its labor agreement, to reduce its technician headcount in Minnesota. In response, the Communications Workers of America (“CWA”) filed a letter with the Minnesota Public Utilities Commission (“Commission”), raising general concerns about alleged service quality issues and asking the Commission to seek an injunction preventing the Company from implementing those intended layoffs. In the intervening years, the allegations leveled against the Company and the remedies sought have changed multiple times. Throughout these four years, though, the Company has produced mountains of data and other information regarding its service quality performance, its investments in its Minnesota network, and other potentially relevant issues. In addition, CenturyLink has now provided three rounds of testimony from four subject matter experts. After this substantial effort by the Company, the record is clear – CenturyLink provides safe, reasonable and adequate voice service to its Minnesota customers, in compliance with Minnesota law. And while CWA has not actively participated in this docket in the past few years, the two state agencies who have, the Minnesota Department of Commerce (“Department” or “DOC”) and Office of the Attorney General – Residential Utilities Division (“OAG”) (collectively, “Agencies”), have substantially narrowed their allegations against the Company. However, the Agencies fail to support even these substantially limited allegations. As such, this matter should be closed without further action.

I. PROCEDURAL HISTORY¹

This docket began in April of 2020, after CenturyLink notified CWA that the Company intended to reduce its technician headcount in Minnesota, as required by the Company's and CWA's collective bargaining agreement ("CBA"). During the three-month notification window provided by the CBA, CWA filed a letter with the Commission, stating that it "intend[s] this letter to serve as a formal complaint."² That letter raised general service quality issues, discussed the Company's potential headcount reduction and asked the Commission to seek an injunction preventing the Company from implementing those intended layoffs.³ CWA filed to withdraw its letter shortly thereafter, after CenturyLink indicated it would not be cutting all of the technician positions originally announced.⁴ In fact, while originally notifying CWA of its intent to reduce over 150 technicians in Minnesota, after working with CWA through the process set forth in the CBA, the Company laid off just five employees in May 2020.⁵ However, when the Company began a new three-month process later in 2020 to reduce its headcount in advance of the annual

¹ This Initial Brief provides only an overview of the procedural history of this docket. A detailed procedural history will be provided in CenturyLink's Proposed Findings of Fact, Conclusions and Recommendation, to be filed February 7, 2024.

² Letter from CWA dated April 22, 2020 ("CWA Initial Letter") and entered in eDockets April 23, 2020 (eDocket No. 20204-162321-01). The Company would note that, despite the caption of this proceeding, no formal complaint meeting the requirements of the Commission's rules (Minn. R. 7829.1700 and Minn. R. 7812.2210, subp. 17A) has ever been filed in this docket.

³ CWA Initial Letter at 2.

⁴ CWA Withdrawal Letter (May 1, 2020) (eDocket No. 20204-162752-01).

⁵ CenturyLink Letter (June 5, 2020) (eDocket No. 20206-163-766-01).

reduction in Minnesota work volumes it experiences in winter months, CWA filed another letter, again raising service quality issues and this docket has been open since that time.⁶

Over the ensuing two and a half years, the Company and the Agencies filed multiple rounds of comments and engaged in settlement discussions, and the Company responded to significant discovery.⁷ Ultimately, the Commission determined that those efforts “left significant factual issues unresolved,” and that “while parties have labored long to find resolution to the matters raised in this docket, after almost three years it appears that they have reached an impasse.”⁸ Therefore, on January 30, 2023, the Commission referred this matter to the Office of Administrative Hearings (“OAH”) for contested case proceedings to “develop a factual record, especially regarding the matters set forth in the Department’s and OAG’s August 30, 2021 joint recommendations” and designating the Company, Department, OAG and CWA (collectively, “Parties”) as parties to this proceeding.⁹ In the “joint recommendations,” the Agencies alleged non-compliance with nine different Minnesota Rules and recommended specific Commission actions to remedy those alleged infractions.¹⁰

⁶ Letter from CWA dated August 18, 2020 (“CWA Second Letter”) (eDocket No. 20208-165981-01).

⁷ CWA also filed one set of comments on August 30, 2021 (eDocket No. 20218-177563-01), its only comments at any stage of this proceeding since the CWA Second Letter.

⁸ Notice of and Order for Public Hearing and Contested Case Hearing (“Notice and Order for Hearing”) at 2-3 (Jan. 30, 2023) (eDocket No. 20231-192697-01).

⁹ Notice and Order for Hearing at 3, 5.

¹⁰ Joint Comments of the Department and OAG at 2-3 and Attachment A (Aug. 30, 2021) (eDocket No. 20218-17752-01).

Following several additional months of discovery, the Company, Department and OAG filed Direct, Rebuttal and Surrebuttal Testimony on September 1, November 1 and December 1, respectively, and on December 13, 2023, the Administrative Law Judge (“ALJ”) conducted the evidentiary hearing. This additional year of effort and the accompanying development of the record since the Notice and Order for Hearing substantially narrowed the issues in dispute, culminating in the Parties’ Joint Stipulation as to Issues in Dispute (“Joint Stipulation”), filed January 4, 2024.¹¹ The Joint Stipulation removed six of the nine alleged rule violations from the scope of this proceeding.

II. ISSUES PRESENTED

Pursuant to the Joint Stipulation, only the following issues remain disputed between the Parties:

1. Has CenturyLink violated the following Minnesota Rules: 7810.3300 (Maintenance of Plant and Equipment), 7810.5000 (Utility Obligations), or 7810.5800 (Interruptions of Service); and
2. If so, what is the appropriate remedy.¹²

III. RELEVANT LAW

While the issues in this proceeding have narrowed to three alleged Minnesota Rule violations, resolution of these issues must also consider the broader framework of

¹¹ eDocket No. 20241-201849-01.

¹² Joint Stipulation at 2. The Company would note that CWA joined the Joint Stipulation but otherwise did not participate in the contested case process. Therefore, in the remainder of this Initial Brief, the Company focuses solely on the positions taken in testimony by the Agencies. The Company will respond, as necessary, to any position CWA puts forth in its Initial Brief, should it choose to file.

applicable federal and state law as set forth in statutes, rules and controlling case law.¹³ This broader framework informs both matters of general importance, such as the public policy and public interest considerations implicated in this proceeding, and specific matters of importance, such as the burden of proof and the extent of the Commission’s jurisdiction.

A. This Proceeding Involves Only the Company’s Provision of Traditional Telephone Service to its Minnesota Customers.

First, it is important to identify the scope of the Commission’s authority – over both the Company and competitors – and to understand the implications of the limits of that authority. Under federal and state law, the Commission has limited jurisdiction over voice telephone service. Specifically, the Commission does not have jurisdiction over voice service provided by fixed and mobile wireless providers. Moreover, the Commission does not have jurisdiction over internet or data services, including voice service provided by Voice over Internet Protocol (“VoIP”).¹⁴ Thus, this proceeding concerns only the non-VoIP voice telephone service, referred to as plain old telephone service (“POTS”), provided by the Company to its Minnesota customers.

Moreover, because Minnesota does not regulate service quality for voice telephony provided by fixed or mobile wireless companies, VoIP providers, including cable

¹³ As discussed further below, in its prefiled testimony, the Department urged the ALJ and Commission to look beyond the applicable law in this matter and hold CenturyLink to standards not set forth in any statute, rule or applicable court or Commission holding, by applying standards plucked from expired alternative form of regulation (“AFOR”) plans, settlements between the State and other companies, or adopted in other jurisdictions. The ALJ and Commission must reject this effort to circumvent the applicable law in this matter.

¹⁴ See *Vonage Holdings Corp. v. Minnesota Public Util.*, 290 F. Supp. 2d 993 (D. Minn. 2003).

companies, or satellite service companies, competition – not regulation, is the standard by which these providers operate.¹⁵ If a customer is not satisfied with the voice service provided by any voice provider, that customer generally has many other providers that she or he can choose from to receive service.¹⁶ As discussed below, the Company faces robust competition from these other voice providers across the exchanges it serves. That competition itself already incentivizes CenturyLink to provide quality voice service to its customers.

Finally, as a state agency created by the legislature, the Commission “may not impose . . . remedies absent express or implied statutory authority.”¹⁷ *Qwest Corp. v. Minn. Pub. Util. Comm’n*, 427 F.3d 1061, 1064 (8th Cir. 2005). The Minnesota Supreme Court has been “[h]istorically . . . reluctant to find implied statutory authority in the context of the MPUC’s remedial power.”¹⁸ “[A]ny enlargement of express powers by implication must be fairly drawn and fairly evident from the agency objectives and powers expressly given by the legislature.”¹⁹

Each of these constraints on the Commission’s ability to regulate today’s dynamic telecommunications marketplace must be recognized and considered in this proceeding.

¹⁵ Ex. CTL-1 at 15-16 (Mohr Direct).

¹⁶ Ex. CTL-1 at 15-16 (Mohr Direct).

¹⁷ *Qwest Corp. v. Minn. Pub. Util. Comm’n*, 427 F.3d 1061, 1064 (8th Cir. 2005).

¹⁸ *In re Qwest’s Wholesale Service Quality Standards*, 702 N.W. 2d 246, 259 (Minn. 2005) (citing *In re Northern States Power Co.*, 414 N.W.2d 383, 387 (Minn. 1987)) (internal quotation marks omitted).

¹⁹ *Peoples Nat. Gas Co. v. Minn. Pub. Util. Comm’n*, 369 N.W.2d 530, 534 (Minn. 1985).

B. Minnesota’s Telecommunications and Broadband Goals Provide Guidance for the ALJ and Commission.

The Commission referred this matter to the OAH to develop a record regarding whether CenturyLink is fulfilling the service quality requirements of Minnesota Statutes Chapter 237 (the “Telecommunications Statutes”) and Minnesota Rules Chapter 7810 (the “Telephone Utilities Rules”).²⁰ No party has alleged violation of any of the Telecommunications Statutes. However, that does not mean these statutes should be summarily dismissed, as they set forth important public policy considerations that should inform the ALJ’s and Commission’s consideration of the remaining issues.

For example, in 1997, the legislature set out Minnesota’s telecommunications goals, stating in Minnesota Statutes, Section 237.011:

The following are state goals that should be considered as the commission executes its regulatory duties with respect to telecommunication services:

- (1) supporting universal service;
- (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;

²⁰ Notice and Order for Hearing at 6.

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

(8) encouraging voluntary resolution of issues between and among competing providers and discouraging litigation.

Many provisions of the Telecommunications Statutes have changed or become obsolete since the 1997 establishment of these goals, as competition in the telecommunications marketplace has exploded. For example, CenturyLink is no longer rate regulated under either traditional rate regulation, pursuant to Minn. Stat. § 237.075, or through an alternative form of regulation (“AFOR”), pursuant to Minn. Stat. § 237.76, et. seq. Rather, with the approval of the Commission, the Company now operates under the Competitive Market Regulation statute, passed in 2016.²¹ Under this statute, once CenturyLink demonstrated that certain competitive criteria had been met in its exchanges, it became regulated essentially as a competitive local exchange carrier (“CLEC”), meaning many of the provisions of Chapter 237 no longer apply to the Company.²²

Nonetheless, while some of the telecommunications goals of Minn. Stat. § 237.011 may have been superseded by subsequent legislation or competition, goals such as “encouraging *economically efficient* deployment of infrastructure for higher speed telecommunication services and greater capacity for voice, video, and data transmission” and “encouraging *fair and reasonable competition for local exchange telephone service in*

²¹ Minn. Stat. § 237.025.

²² Ex. CTL-1 at 22 (Mohr Direct); *see* Docket No. P-421/AM-16-496.

a competitively neutral regulatory manner” continue to be important public policy objectives, as does “maintaining or improving quality of service.”

More recently, the legislature also set out ambitious *broadband* goals for Minnesota, stating in Minnesota Statutes Section 237.012:

It is a state goal that:

(1) no later than 2022, all Minnesota businesses and homes have access to high-speed broadband that provides minimum download speeds of at least 25 megabits per second and minimum upload speeds of at least three megabits per second; and

(2) no later than 2026, all Minnesota businesses and homes have access to at least one provider of broadband with download speeds of at least 100 megabits per second and upload speeds of at least 20 megabits per second.

....

It is a goal of the state that by 2022 and thereafter, the state be in:

(1) the top five states of the United States for broadband speed universally accessible to residents and businesses;

(2) the top five states for broadband access; and

(3) the top 15 when compared to countries globally for broadband penetration.

For Minnesota to continue making progress toward the goal of universal broadband access, these broadband goals must also be considered in telecommunications matters such as the current docket.

C. Telephone Utilities Rules.

While the Telecommunications Statutes have changed dramatically over the past 50 years, reflecting the change from a rate of return, fully-regulated, monopoly provider environment to today's competitive marketplace, the Telephone Utilities Rules have not. In fact, Minnesota's Telephone Utilities Rules remain in substantially the same form as they appear in January of 1977, years before the first commercially available wireless phone and decades before the advent of VoIP service.²³

These legacy rules present a variety of challenges. For example, some of the rules are simply anachronisms in today's telecommunications and information systems environment and use terms that no longer have meaning.²⁴ In addition, the rules do not define several of the relevant terms, leading to potential confusion or misalignment between stakeholders as to what the rules do or do not require.²⁵ Third, some of the rules do not set specific "standards" or "metrics" that must be reached. Rather, they discuss "objectives." Finally, some of these legacy rules have no "measurements" or "objectives" whatsoever but use general language and recognize the role of utility judgement in deploying its resources. The three rules still at issue in this proceeding demonstrate these challenges, as will be discussed further in Section V of this Initial Brief.

²³ See 1 S.R. 976-982 (Jan. 5, 1977) (publishing proposed Rule PSC 179, now Minnesota Rule 7810.1100, in the same form it exists today, and stating that PSC 170–178 and PSC 184–211, which included the predecessors to other Telephone Utilities Rules at issue here, remained the same). A review of subsequent State Registers reveals no substantive changes to the Telephone Utilities Rules since that time, with only minor formatting or agency name changes.

²⁴ Ex. CTL-1 at 24-25 (Mohr Direct).

²⁵ Ex. CTL-1 at 25 (Mohr Direct).

1. Minn. R. 7810.3300 (Maintenance of Plant and Equipment).

Minnesota Rule 7810.3300 concerns maintenance of plant and equipment and states, in its entirety:

Each telephone utility shall adopt and pursue a maintenance program *aimed at achieving efficient operation of its system so as to permit the rendering of safe and adequate service*. Maintenance shall include keeping all plant and equipment in good state of repair *consistent with safety and adequate service performance*. Broken, damaged, or deteriorated parts *which are no longer serviceable* shall be repaired or replaced. Adjustable apparatus and equipment shall be readjusted as necessary when found by preventive routines or fault location tests to be in unsatisfactory operating condition. Electrical faults, such as leakage or poor insulation, noise, induction, cross talk, or poor transmission characteristics, shall be corrected *to the extent practicable* within the design capability of the plant affected. (Emphasis added).

Without defining any of the key terms or providing any means of measuring compliance, the plain text of this rule calls for the telephone utility to be “aimed at achieving efficient operation” of its network, so that it provides “safe and adequate service.” The rule also discusses repairing or replacing parts that “are no longer serviceable” and correcting certain issues “to the extent practicable.”

2. Minn. R. 7810.5000 (Utility Obligations).

Minnesota Rule 7810.5000 is a general statement of telephone utility obligations, providing, in part:

Each telephone utility shall provide telephone service to the public in its service area in accordance with its rules and tariffs on file with the commission. Such service shall meet or exceed the standards set forth in this chapter. Each telephone utility has the obligation of continually reviewing its operations to assure the furnishing of adequate service. Each telephone utility shall maintain records of its operations in sufficient detail as is necessary to permit such review and such records shall be made available for inspection by the commission upon request at any time within the period prescribed for

retention of such records. Each utility shall make measurements to determine the level of service for each item included in these rules. Each utility shall provide the commission or its staff with the measurements and summaries thereof for any of the items included herein on request of the commission or its staff. Records of these measurements and summaries shall be retained by the utility as specified by the commission.

This rule discusses both the need to provide “adequate service” and the need to maintain records. The record fully demonstrates the Company’s provision of “adequate service” to its Minnesota customers. Additionally, the record makes clear that CenturyLink maintains voluminous records regarding its voice service to Minnesota customers and has produced those records in response to discovery. To date, neither the Department nor OAG has identified how CenturyLink may be in violation of the general “utility obligations” set forth in this rule and the Company reserves the right to address any such allegations in its Reply Brief.

3. Minn. R. 7810.5800 (Interruptions of Service).

Finally, Minnesota Rule 7810.5800 addresses interruptions and restoration of service and states, in part:

Each telephone utility shall make *all reasonable efforts* to prevent interruptions of service. When interruptions occur, the utility shall reestablish service with the shortest possible delay. 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. (Emphasis added.)

The plain language of this rule does not establish a hard and fast “standard” that must be met. Rather, it calls for “all reasonable efforts” to be taken to prevent interruptions of service and sets a “minimum objective” for restoring service following an interruption.

D. Burden Of Proof.

OAH Rule, Minn. R. 1400.7300, subp. 5 provides: “*the party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard.*” While the Telecommunications Statutes provide that telephone companies bear the burden of proof in matters of rate setting or rate investigations,²⁶ neither the Telecommunications Statutes nor Telephone Utilities Rules address the burden of proof in a complaint proceeding such as this. Here, the Agencies urge the ALJ and Commission to take action, find that CenturyLink has violated certain Telephone Utilities Rules, and impose certain obligations on the Company going forward. As such, OAH Rules place the burden of proof in this proceeding on the Agencies to support their allegations of rule violations by a preponderance of the evidence.

IV. CERTAIN CORE FACTS SHOULD INFORM THE ALJ’S AND COMMISSION’S CONSIDERATION OF THIS MATTER.

The Telephone Utilities Rules that remain at issue in this case contain extraordinarily general and broad language that essentially require a provider to provide “*safe and adequate service*” (Minn. R. 7810.3300) or “*adequate service*” (Minn. R. 7810.5000) or make *all reasonable efforts* to prevent interruptions of service (Minn. R. 7810.5800). Determining compliance depends on an overall perspective of what could be considered “reasonable,” or “adequate” and the rules provide little guidance on what such terms mean, particularly in a telecommunications marketplace wildly different than that

²⁶ See, e.g., Minn. Stat. §§ 237.075, subd. 4 and 237.28.

which existed at the time these rules were written. CenturyLink suggests that the ALJ and Commission consider the broader picture of the telecommunications marketplace, and the Company's performance under the rules that were referred as a part of this proceeding, but for which the Agencies and CWA have stipulated they are not alleging the Company has violated, to assess the Company's overall performance in delivering traditional POTS voice service to its Minnesota customers. The Company's performance under the measurements no longer included in this proceeding provides evidence of CenturyLink's commitment to these customers and its compliance with the general rules still at issue.

A. The Competitive Landscape.

When the Telephone Utilities Rules were adopted, the Company had a complete monopoly on the provision of voice service and was fully rate-regulated, with a guaranteed opportunity to earn a fair and reasonable rate of return on its investments.²⁷ Moreover, it had a “three legged stool” of support available to it, to effectively subsidize the provision of voice service to high-cost and low-density areas of the state – state-approved rates for metropolitan and business service customers that were set above cost, “access” charges paid by long-distance companies to terminate calls on the local network that were set above cost and federal or state “universal service funds.”²⁸

Today, nearly two-thirds of Minnesota households do not even have “landline” telephone service, relying solely on wireless for their voice service – a percentage that continues to increase year-over-year – and CenturyLink competes with cable companies,

²⁷ See Ex. CTL-1 at 20-21, 24 (Mohr Direct).

²⁸ Ex. CTL-1 at 16 (Mohr Direct); Ex. CTL-19, Sched. 1 at ¶ 30 (Turner Rebuttal).

competitive local exchange carriers, fixed wireless providers and satellite service providers for that shrinking customer base.²⁹ Moreover, the three-legged stool of support for high-cost areas has been obliterated.³⁰

Competition for voice service is robust throughout all of CenturyLink’s Minnesota wire centers, as demonstrated by Table 1, below.³¹

Table 1 (Competitor Summary)

Total Wire Centers (WCs)	WCs with Landline Competitors	WCs with Mobile Wireless Competitors	WCs with Fixed Wireless Competitors	WCs with Cable Competitors	WCs with Commercial Satellite Competitors
154	153	154	153	146	154

Further demonstrating the strength and scope of the competition in Minnesota, the Federal Communication Commission’s (“FCC”) 2022 Competition Report provides urban and rural breakdowns by county regarding wireline broadband availability as well as wireline and wireless broadband availability.³² In Minnesota, 100% of urban and 98.5% of rural areas have access to 25Mbps/3Mbps broadband service, which is more than enough speed to use VoIP for voice services.³³ In addition, the FCC’s national broadband map notes that satellite service is available to all Minnesota locations for broadband in both urban and rural areas.³⁴

²⁹ Ex. CTL-1 at 9, 14 (Mohr Direct).

³⁰ Ex. CTL-1 at 16-17 (Mohr Direct).

³¹ Ex. CTL-1 at 17 (Mohr Direct).

³² Ex. CTL-1 at 18 (Mohr Direct).

³³ Ex. CTL-1 at 18 (Mohr Direct).

³⁴ Ex. CTL-1 at 18 (Mohr Direct).

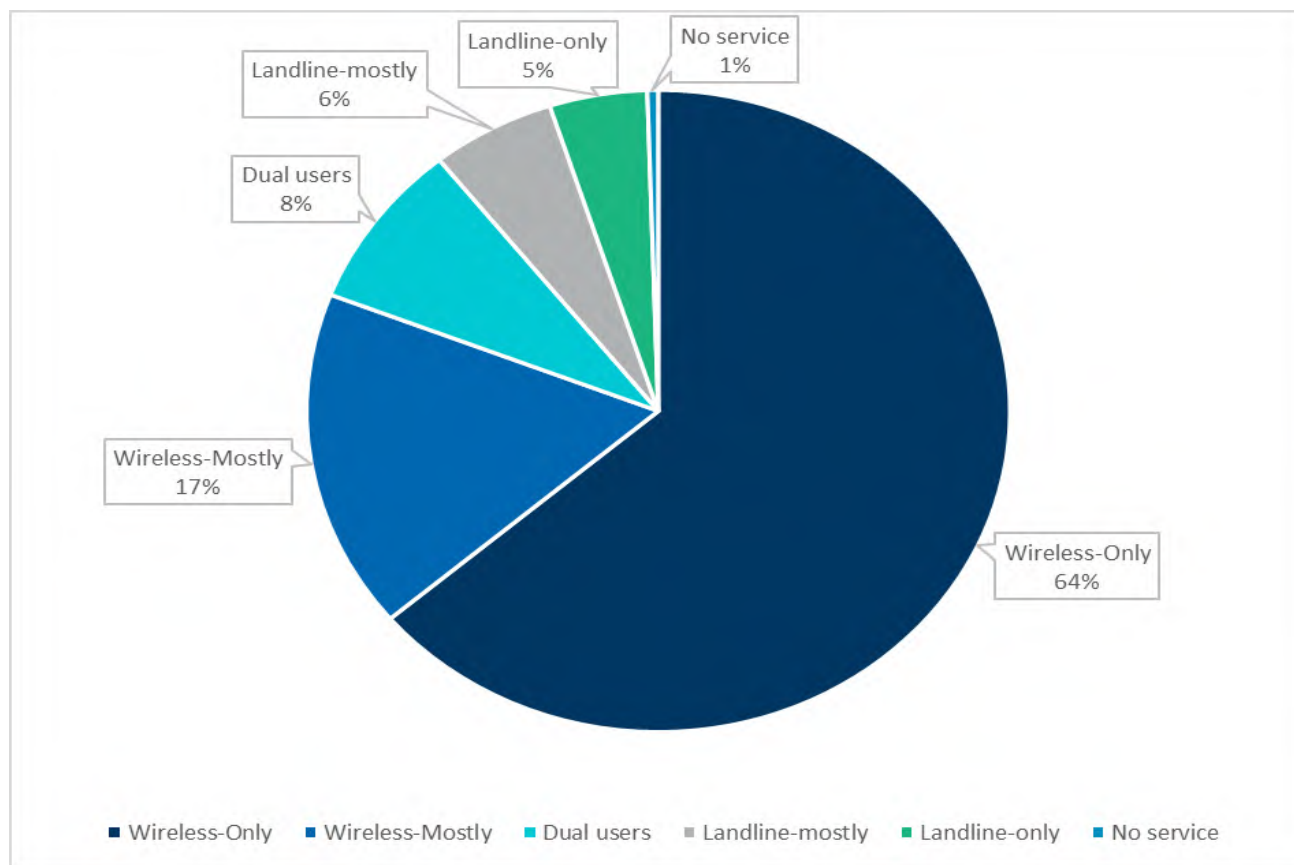
The Commission recognized this competition across the areas served by CenturyLink in the Company's Competitive Market Regulation docket. In that docket, *decided nearly seven years ago*, the Commission found that CenturyLink demonstrated it met the statutory criteria for competition in all but five of its exchange service areas in the State.³⁵

In addition to this Commission decision and the statistics noted above, two figures dramatically demonstrate the impact of competition on POTS providers in Minnesota generally and on CenturyLink in particular. First, as shown in Figure 1, 2020 data from the National Center for Health Statistics, Centers for Disease Control and Prevention demonstrates that while two-thirds of Minnesota households had wireless-only service by that time, only five percent of Minnesota households relied exclusively on landline service.³⁶

³⁵ Docket No. P-421/AM-16-496, Order Granting Petition in Part (May 22, 2017) (eDocket No. 20175-132109-02).

³⁶ Ex. CTL-19, Sched. 1 at ¶ 25 (Turner Rebuttal).

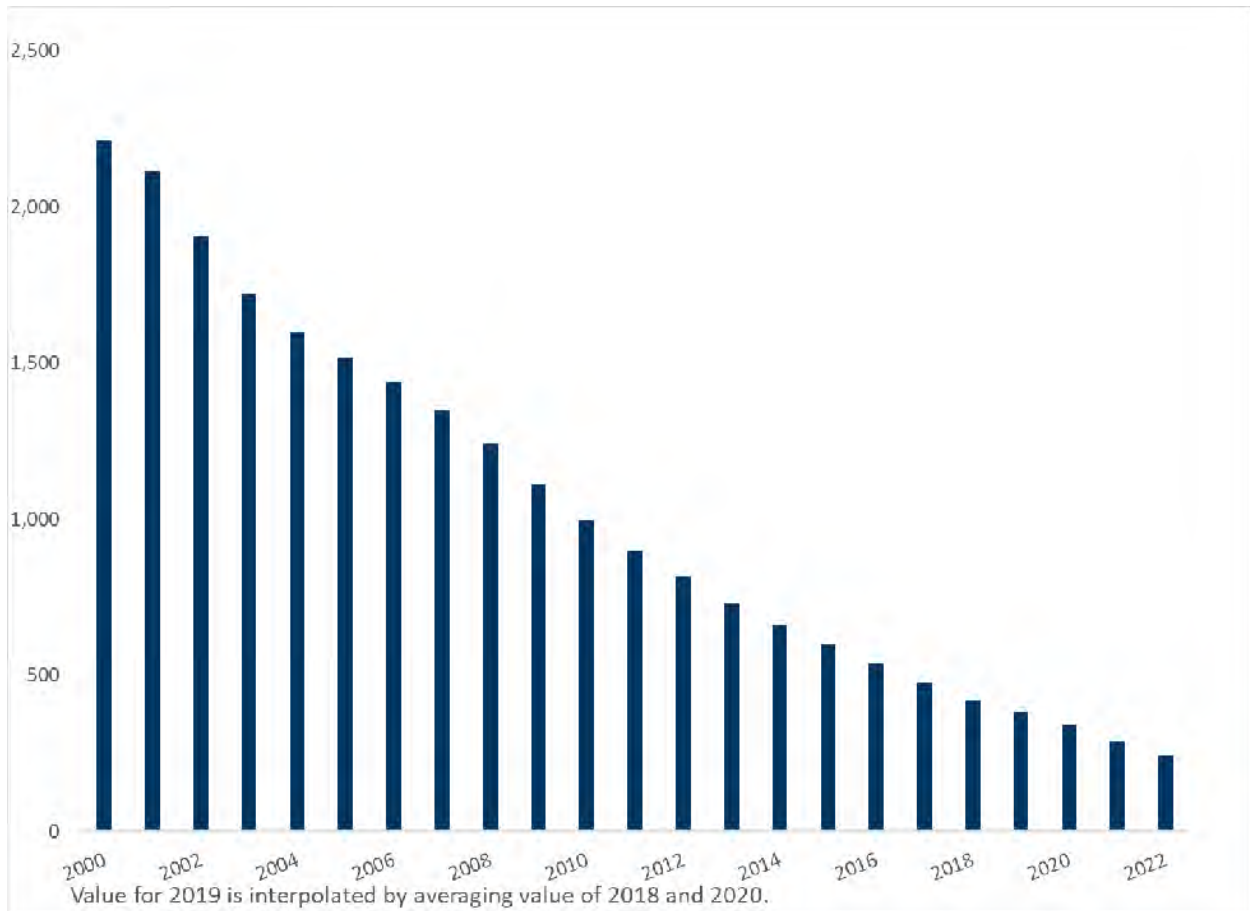
Figure 1
Voice Technologies of Minnesota Households (2020)



Second, this competition has caused a roughly 90 percent erosion of CenturyLink’s access lines in Minnesota over the past 20 years.³⁷

³⁷ Ex. CTL-19, Sched. 1 at ¶ 31 (Turner Rebuttal).

Figure 2
CenturyLink Retail Switched Access Lines in Minnesota (000s)



Of course, neither the existence of widespread competition from unregulated providers nor the collapse of the historic means of cost support for telephone utilities to enable service to high-cost and low-density areas changes the language of Minnesota’s legacy Telephone Utilities Rules. However, to the extent these legacy rules are interpreted to require CenturyLink to focus its limited resources on POTS service, rather than broadband, that interpretation would direct resources away from the broadband services desired by customers and delay Minnesota’s ability to meet its broadband goals, which

may not serve the broad public interest.³⁸ As the FCC wrote in 2019: “Given the sweeping changes in the communications marketplace since the passage of the 1996 Act... we find that *the public interest is no longer served* [emphasis added] by maintaining... legacy regulatory obligations and their associated costs.”³⁹ The FCC noted that these legacy requirements can trap “incumbent LECs into preserving outdated technologies and services at the cost of a slower transition to next-generation networks and services that benefit American consumers and businesses.”⁴⁰ The same document notes that the FCC has worked hard to “encourage and facilitate the ongoing technology transitions and to promote broadband deployment,” not least because POTS “voice service—particularly that provided over copper—is rapidly becoming obsolete.”⁴¹

B. The Company’s Continuing Commitment to Minnesota and its POTS Customers.

Despite the challenges faced by CenturyLink in the face of increased competition, access line loss, and the loss of historic means of cost support, the record demonstrates the Company’s strong commitment to the State and to its POTS customers.⁴² As Ms. Mohr testified, the Company’s goal every day is:

to provide high-quality customer service, so that we can continue to be a trusted provider of telecommunications services in the communities we serve. And we understand that maintaining and building on that “trusted provider” status has become ever more important as our customers’ competitive choices have exploded over the past several years. Simply put,

³⁸ See Ex. CTL-21, Sched. 1 at ¶ 28 (Turner Surrebuttal).

³⁹ Ex. CTL-19, Sched. 1 at ¶ 36 (Turner Rebuttal).

⁴⁰ Ex. CTL-19, Sched. 1 at ¶ 36 (Turner Rebuttal).

⁴¹ Ex. CTL-19, Sched. 1 at ¶ 36 (Turner Rebuttal).

⁴² Ex. CTL-1 at 2 (Mohr Direct).

if we do not focus on providing high-quality service to our customers, we will not stay in business.⁴³

To meet this goal, CenturyLink plans to continue providing high-quality POTS voice services over its copper network, while upgrading its network with fiber-based facilities and offering VoIP service as internal economics permit, or as state or federal grant funding is made available to the Company.⁴⁴ And the Company has demonstrated its commitment, with combined capital and maintenance investments in its Minnesota network continuing at over **[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS]** per year, even as the Company continues to see its access lines and market share decrease.⁴⁵

In addition to the investments in its Minnesota network, the Company has demonstrated its commitment to its Minnesota POTS customers by the manner in which it prioritizes its work, as will be discussed further, below. For example, when a “trouble ticket” is created, requiring technician work, that ticket is assigned through a “route optimizer,” with *POTS out-of-service troubles as the highest priority*.⁴⁶ In addition, in its call center, the Company *prioritizes calls from Minnesota regulated voice telephone service customers*, despite the risk of dissatisfaction from customers with competitive unregulated service.⁴⁷ In short, both the Company’s investments and its day-to-day actions demonstrate its commitment to Minnesota and to its POTS telephone customers here.

⁴³ Ex. CTL-1 at 2 (Mohr Direct).

⁴⁴ Ex. CTL-1 at 9 (Mohr Direct).

⁴⁵ Ex. CTL-1 at 9 (Mohr Direct).

⁴⁶ Ex. CTL-6 at 8 (Ardoyno Direct).

⁴⁷ Ex. CTL-13 at 8 (Rejanovinsky Direct); Ex. CTL-4 at 5-6 (Mohr Rebuttal).

C. Company Performance Under the Legacy Rules.

Despite the outdated nature of the Telephone Utilities Rules governing regulated POTS voice service, the record demonstrates that CenturyLink is meeting or exceeding the majority of the objectives set forth in these Rules, and no party now alleges a violation of any statute or of six out of the nine Minnesota Rules initially raised. While some of these earlier contested rules are no longer at issue, the Company's performance under them provides strong evidence of CenturyLink's commitment to its Minnesota voice customers.

1. Trouble Reports.

The best indicator of a network's performance is the number of trouble reports received.⁴⁸ A trouble report is:

*any oral or written report from a subscriber or user of telecommunications service relating to a physical defect or to difficulty or dissatisfaction with the operation of telecommunications facilities. One report shall be counted for each oral or written report received even though it may duplicate a previous report or merely involve an inquiry concerning progress on a previous report. Also, a separate report shall be counted for each telephone . . . reported in trouble when several items are reported by one customer at the same time, unless the group of troubles so reported is clearly related to a common cause.*⁴⁹

As is evident in this expansive definition and calculation methodology, the term "trouble reports" encompasses a wide range of potential issues and considers all duplicative reports.

As such, a company's performance with respect to this metric indicates how frequently customers are reporting *any* trouble related to facilities. Minnesota Rule 7810.5900 establishes that "[i]t shall be the objective to so maintain service that the average rate of all

⁴⁸ Ex. CTL-6 at 5 (Ardoyno Direct); Ex. CTL-7, Sched. 2 (Ardoyno Direct).

⁴⁹ Minn. R. 7810.0100, subp. 13 (emphasis added).

customer trouble reports in an exchange is no greater than 6.5 per 100 telephones per month” and that a “trouble report rate of more than 8.0 per 100 telephones per month by repair bureau on a continuing basis indicates a need for investigative or corrective action.”⁵⁰

At the outset, it must be noted that no party in this proceeding now alleges a violation of Minnesota Rule 7810.5900; nor could they. CenturyLink has significantly bettered this objective, consistently achieving trouble reports of below 1.0 per 100 lines.⁵¹ On a monthly average, the Company has maintained a level of service below 6.5 per 100 lines per month since January 2019, with only **[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS]** instances of trouble report rates in excess of the objective in any exchange in any month, out of 8316 such measurements.⁵² This amounts to a rate of **[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS]** out of every **[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS]** measurements—less than **[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS]** percent.⁵³ Considering the fact that certain exchanges have few remaining customers and that a single trouble report or two in a month could result in the Company missing the trouble report rate objective,⁵⁴ the Company’s performance is a strong indicator of a healthy network. In fact, during this timeframe,⁵⁵ the Company’s state-wide monthly average of trouble reports has been at or below 1 report per 100 lines for **[NOT PUBLIC DATA BEGINS NOT**

⁵⁰ Minn. R. 7810.5900.

⁵¹ Ex. CTL-1 at 30 (Mohr Direct).

⁵² Ex. CTL-6 at 5 (Ardoyno Direct).

⁵³ Ex. CTL-6 at 5 (Ardoyno Direct).

⁵⁴ Ex. CTL-1 at 28 (Mohr Direct).

⁵⁵ January 2019 through July 2023. Ex. CTL-7, Sched. 2 (Ardoyno Direct).

PUBLIC DATA ENDS] out of 55 months and has never exceeded **[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS]** reports.⁵⁶

Department witness Mr. Webber agrees that CenturyLink is meeting the objective of Minn. R. 7810.5900.⁵⁷ In the timeframe Mr. Webber analyzed,⁵⁸ he determined that the Company's trouble report rate exceeded 6.5 per 100 lines only **[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS]** percent and 8.0 per 100 lines only **[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS]** percent.⁵⁹ In other words, when measured at the exchange level, Mr. Webber found that CenturyLink was meeting the trouble report objective of 6.5 per 100 lines **[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS]** percent of the time and the objective of 8.0 per 100 lines **[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS]** percent of the time.⁶⁰ When considered in light of the highly-inclusive definition of trouble report in the Minnesota Rules, and the potential for skewed results based on only a handful of trouble reports in exchanges with low customer counts, CenturyLink's trouble report performance is strong evidence that the Company maintains its copper-based network in good repair.⁶¹ This performance also shows that the Company is "keeping all plant and equipment in good

⁵⁶ Ex. CTL-6 at 5 (Ardoyno Direct).

⁵⁷ Ex. DOC-4 at 35 (Webber Direct).

⁵⁸ January 2019 through July 2022. Ex. DOC-4 at 35 (Webber Direct).

⁵⁹ Ex. DOC-4 at 35 (Webber Direct).

⁶⁰ Ex. CTL-19, Sched. 1 at ¶ 80 (Turner Rebuttal).

⁶¹ Ex. CTL-19 at 2 (Turner Rebuttal).

state of repair consistent with safety and adequate service performance,” as discussed in Minnesota Rule 7810.3300.⁶²

2. Install Time.

Minnesota Rule 7810.2800 sets forth the objective that “ninety percent of the utility’s commitments to customers as to the date of installation of regular service orders shall be met excepting customer-caused delays and acts of God.”⁶³ However, the Rule does not provide a timeframe by which the ninety percent compliance objective is to be measured. In light of this lack of clear guidance, CenturyLink **[NOT PUBLIC DATA BEGINS**

⁶⁴ **NOT PUBLIC DATA ENDS]** The Company considers an installation commitment missed when the reason that the installation does not occur at the agreed-upon time is due to a Company-related issue.⁶⁵

CenturyLink has been meeting its installation commitments for new service orders from January 2018 to the present.⁶⁶ Again, no party in this proceeding is alleging a violation of Minnesota Rule 7810.2500; nor could they. As recognized by Department witness Mr. Webber, CenturyLink has achieved at least a **[NOT PUBLIC DATA BEGINS**

⁶⁷ **NOT**

⁶² Minn. R. 7810.3300; Ex. CTL-19, Sched. 1 at ¶ 88 (Turner Rebuttal).

⁶³ Minn. R. 7810.2800.

⁶⁴

⁶⁵ Ex. CTL-6 at 8 (Ardoyno Direct).

⁶⁶ Ex. CTL-9 at 2 (Ardoyno Rebuttal).

⁶⁷

PUBLIC DATA ENDS] Put into context, this performance is even more impressive. Most of the missed appointments are related to the prioritization of POTS out-of-service calls and the inefficiencies that this prioritization causes with respect to the Company's system of assigning work to its technicians, discussed below in more detail.⁶⁸ Considering that the Company continues to well exceed this metric, despite challenges imposed by its prioritization of POTS out-of-service repairs, not only indicates exemplary compliance with the Rule, but also demonstrates a strong commitment to voice customer service and to maintaining its copper-based network.

3. Call Answer Time

Minnesota Rule 7810.5200 sets forth the objective that:

[n]inety percent of repair service calls, calls to the business office, and other calls shall be answered within 20 seconds. An "answer" shall mean that the operator or representative is ready to render assistance and/or ready to accept information necessary to process the call. An acknowledgment that the customer is waiting on the line shall not constitute an answer.⁶⁹

CenturyLink yet again is meeting the objective set out in Minnesota Rule 7810.5200, and no party in this proceeding now alleges a violation of the Rule. Although the Rule does not require that ninety percent of calls be answered within twenty seconds on a monthly basis, CenturyLink tracks its compliance with the call answer time objective

⁶⁸ Ex. DOC-6 at 8 (Ardoyno Direct).

⁶⁹ Minn. R. 7810.5200. The Rule also requires that “[a]dequate forces shall be provided at local manual offices to ensure that 95 percent of the calls will be answered within ten seconds.” Minn. R. 7810.5200. However, this objective is significantly outdated, as it refers to manual operators that used to physically connect calls. Ex. CTL-13 at 5 (Rejanovinsky Direct).

by month.⁷⁰ When measured on this monthly basis, CenturyLink has met the call answer time objective since April of 2022 excepting only two months—May 2022 at [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] percent and July 2023 at [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] percent.⁷¹ When measured on an annual basis, as the Commission previously approved in the Company’s last AFOR plan,⁷² the Company met the call answer time objective in Minnesota Rule 7810.5200 with [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] percent of calls answered within twenty seconds year-to-date, and [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] percent on a rolling 12-month average, as of July 2023.⁷³

CenturyLink’s compliance with the call answer time objective is a result of significant efforts to ensure compliance with the twenty second objective in the Rule, which is substantially more onerous than the requirement that ninety percent of calls were answered in *sixty seconds* in the Company’s 2009 AFOR plan,⁷⁴ and to overcome disruption due to the COVID-19 pandemic.⁷⁵ First, and indicative of the seriousness with which CenturyLink endeavors to comply with the twenty second standard, the Company *prioritizes calls from Minnesota regulated voice telephone service customers*, despite the risk of dissatisfaction from customers with competitive unregulated service who may not

⁷⁰ Ex. CTL-13 at 7 and Sched. 1 (Rejanovinsky Direct).

⁷¹ Ex. CTL-13 at 7 and Sched. 1 (Rejanovinsky Direct).

⁷² Ex. CTL-15 at 4, n.7 (Rejanovinsky Rebuttal).

⁷³ Ex. CTL-13 at 7 and Sched. 1 (Rejanovinsky Direct).

⁷⁴ Ex. CTL-1 at 29 (Mohr Direct).

⁷⁵ Ex. CTL-13 at 7 (Rejanovinsky Direct).

receive such a timely response.⁷⁶ Second, due to the mandated quarantines ordered in response to the COVID-19 pandemic, coupled with limited in-home internet access and lack of personal computer equipment for the Company’s representatives, the Company experienced a substantial decrease in the number and availability of call center representatives.⁷⁷ In response the Company worked to provide its representatives with computers, headsets, webcams, and adequate access to the internet; upgraded its call center systems by acquiring the Genesys call routing platform—considered the best call routing platform in the industry—to improve response time; and utilized alternative technologies such as click-to-chat.⁷⁸ By July 2020, the Company’s Repair call center performance showed significant improvement and, as evidenced by the metrics above, the Company’s call centers have been meeting the call answer time objective.⁷⁹

4. Out of Service Restorations.

Minnesota Rule 7810.5800 establishes 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.”⁸⁰ POTS out-of-serve restorations are, and will continue to be, the top priority in how the Company allocates technician availability.⁸¹ In effort to meet this objective, the

⁷⁶ Ex. CTL-13 at 8 (Rejanovinsky Direct); Ex. CTL-4 at 5-6 (Mohr Rebuttal).

⁷⁷ Ex. CTL-13 at 7 (Rejanovinsky Direct).

⁷⁸ Ex. CTL-13 at 8 (Rejanovinsky Direct).

⁷⁹ Ex. CTL-13 at 7-8 (Rejanovinsky Direct).

⁸⁰ Minn. R. 7810.5800 (emphasis added).

⁸¹ Ex. CTL-6 at 6 (Ardoyno Direct).

Company prioritizes out-of-service restorations, which are allocated to technicians before installation requests or repairs of broadband services.⁸²

CenturyLink recognizes that it is struggling to meet the objective of clearing ninety-five percent of all out-of-service troubles within twenty-four hours.⁸³ However, CenturyLink's difficulty in meeting this objective is primarily, if not entirely, a function of fewer and fewer POTS customers on the Company's geographically expansive network.⁸⁴ This inevitably results in a larger and larger geographic dispersion of customers. CenturyLink had an average of [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] telephone lines per mile of copper in 2000.⁸⁵ By 2022, the average is only [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] lines per mile.⁸⁶ CenturyLink attempts to reduce the impact of this geographic dispersion by utilizing a route optimizer to generate job lists for each technician based on many variables that include the technician's location, the proximity of various tasks to one another, and the technician's skill set—some technicians are skilled in copper networks and others are not.⁸⁷ However, since CenturyLink prioritizes POTS out-of-service restorations above all other technician tasks, the route optimizer does not always assign tasks in the most efficient way, i.e., to the technician closest to a certain task or by grouping geographically clustered tasks together.⁸⁸

⁸² Ex. CTL-6 at 6 (Ardoyno Direct).

⁸³ Ex. CTL-1 at 30 (Mohr Direct).

⁸⁴ Ex. CTL-6 at 7 (Ardoyno Direct).

⁸⁵ Ex. CTL-19, Sched. 1 at 26, Fig. 5 (Turner Rebuttal).

⁸⁶ Ex. CTL-19, Sched. 1 at 26, Fig. 5 (Turner Rebuttal).

⁸⁷ Ex. CTL-6 at 6-7 (Ardoyno Direct).

⁸⁸ Ex. CTL-6 at 7 (Ardoyno Direct).

Instead, the route optimizer may end up assigning a new POTS out-of-service restoration to a technician that is located far away because the technicians who are closer may not have the proper skillset or were fully-allocated to other jobs by the time the out-of-service call came in.⁸⁹

Due to the Company's geographically large network, yet declining number of customers, POTS out-of-service restorations needing attention on any given day may be very far apart, requiring technicians to travel significant distances to get to the customer's location.⁹⁰ Thus, a repair that might only take an hour to address may require two hours of travel just to get to the location, and then another two hours to get to the technician's next assignment.⁹¹ Simply put, this customer dispersion along the legacy copper network leads to inefficiencies, as the ratio of technician travel time to the amount of hands-on repair time for a POTS repair significantly increases.⁹² This problem is further exacerbated by competition from competitive unregulated services. When newly installed cable or fiber optic connections become prevalent, particularly in urban areas, the competitive impacts of these technologies are most acutely felt by legacy providers in areas of greatest subscriber density and has significant impacts on technician efficiency.⁹³

Workforce issues contribute to CenturyLink's challenges in meeting this objective. Although hiring additional technicians sounds like a simple solution, the reality of the issue

⁸⁹ Ex. CTL-6 at 7 (Ardoyno Direct).

⁹⁰ Ex. CTL-6 at 7 (Ardoyno Direct).

⁹¹ Ex. CTL-6 at 7 (Ardoyno Direct).

⁹² Ex. CTL-6 at 7, 14 (Ardoyno Direct).

⁹³ Ex. CTL-19, Sched. 1 at ¶ 100 (Turner Rebuttal).

is more complex.⁹⁴ First, it is simply not feasible for the Company to maintain qualified technicians in geographically dispersed locations across the state in the same manner it did in the past when it had ten or more times the number of customers and was guaranteed a rate-of-return.⁹⁵ POTS customers and POTS trouble tickets have and continue to decline year-to-year, meaning there is less work for the Company's technicians to perform.⁹⁶ For example, CenturyLink had approximately 420,000 total landline voice subscribers at the end of 2018.⁹⁷ The number of subscribers fell to approximately 240,000 by the end of 2023, a reduction of more than 40 percent over four years.⁹⁸ Similarly, the number of POTS installs and troubles tickets has declined, with a total of approximately **[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS]** POTS installs and repairs completed in 2021, **[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS]** in 2022, and, at the time the record was created (September 1, 2023), 2023 was on track for approximately **[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS]**.⁹⁹

There is a limit to the resources that the Company can responsibly spend on its technician workforce to complete this declining number of jobs needed to serve a declining number of customers.¹⁰⁰ Behaving as if this reality were not true would only make high-

⁹⁴ Ex. CTL-1 at 30 (Mohr Direct).

⁹⁵ Ex. CTL-1 at 30 (Mohr Direct).

⁹⁶ Ex. CTL-9 at 11 (Ardoyno Rebuttal); Ex. CTL-6, Sched. 2 (Ardoyno Direct).

⁹⁷ Ex. CTL-19, Sched. 1 at ¶ 53 (Turner Rebuttal).

⁹⁸ Ex. CTL-19, Sched. 1 at ¶ 53 (Turner Rebuttal).

⁹⁹ Ex. CTL-6 at 14 (Ardoyno Direct).

¹⁰⁰ Ex. CTL-6 at 13 (Ardoyno Direct).

Additionally, contract resources generally lack the necessary skills to work on copper networks.¹⁰⁸

V. ARGUMENT

A. Neither the Department Nor OAG Have Demonstrated Violations of Minnesota Rules.

As discussed above, OAH Rules provide that the Agencies bear the burden of demonstrating, by a preponderance of the evidence, that CenturyLink has violated the Telephone Utilities Rules.¹⁰⁹ The Agencies have failed to meet that burden.

1. The Company's Network Performance Complies with Minnesota Rules.

Pursuant to the Joint Stipulation, the remaining issue to be decided by the Commission is whether the Company is in compliance with three Minnesota Rules: 7810.3300 (Maintenance of Plant and Equipment), 7810.5000 (Utility Obligations), and 7810.5800 (Interruptions of Service). These rules all implicate the overall performance of the Company's POTS network in Minnesota.

Minn. R. 7810.3300 provides:

7810.3300 MAINTENANCE OF PLANT AND EQUIPMENT.

Each telephone utility shall adopt and pursue a maintenance program aimed at achieving efficient operation of its system so as to permit the rendering of safe and adequate service. Maintenance shall include keeping all plant and equipment in good state of repair consistent with safety and adequate service performance. Broken, damaged, or deteriorated parts which are no longer serviceable shall be repaired or replaced. Adjustable apparatus and equipment shall be readjusted as necessary when found by preventive routines or fault location tests to be in unsatisfactory operating condition. Electrical faults, such as leakage or poor

¹⁰⁸ Ex. CTL-6 at 12 (Ardoyno Direct).

¹⁰⁹ Minn. R. 1400.7300, subp. 5.

insulation, noise, induction, cross talk, or poor transmission characteristics, shall be corrected to the extent practicable within the design capability of the plant affected.

Notably, this rule sets forth *no specific metrics or objectives* to be met and focuses instead on the provision of “safe and adequate service” and equipment being maintained in “serviceable” or satisfactory “operating condition.” The OAG takes the position that Minn. R. 7810.3300 imposes a standard of maintaining network equipment in state of near-perfection, regardless of whether or not such maintenance is needed in order to provide the Company’s customers with safe and adequate service.¹¹⁰ As discussed in greater detail below, the OAG’s arguments miss the mark. Because the Company provides maintenance sufficient to ensure safe and adequate telephone service to its customers, it is in compliance with Minn. R. 7810.3300.

Minn R. 7810.5000 provides in relevant part:

7810.5000 UTILITY OBLIGATIONS.

Each telephone utility shall provide telephone service to the public in its service area in accordance with its rules and tariffs on file with the commission. Such service shall meet or exceed the standards set forth in this chapter. Each telephone utility has the obligation of continually reviewing its operations to assure the furnishing of adequate service. Each telephone utility shall maintain records of its operations in sufficient detail as is necessary to permit such review and such records shall be made available for inspection by the commission upon request at any time within the period prescribed for retention of such records. Each utility shall make measurements to determine the level of service for each item included in these rules. Each utility shall provide the commission or its staff with the measurements and summaries thereof for any of the items included herein on request of the commission or its staff. Records of these measurements and summaries shall be retained by the utility as specified by the commission.

¹¹⁰ The OAG attempted to prove its case through submission of a series of photographs that purport to show Company equipment in poor state of repair. As is discussed below, however, these photographs do not demonstrate that the Company is failing to provide safe and adequate telephone service to its customers.

Like Minn. R. 7810.3300, Minn. R. 7810.5000 does not provide specific metrics or objectives to be measured and tracked, but instead sets forth a number of general requirements. Both of these rules focus on the quality of service provided – they focus on the provision of safe and adequate service to customers, and maintaining the network so that such service can be provided.

The best indication of whether the Company is providing safe and adequate service, and is therefore in compliance with these general service quality rules, is the Company’s trouble report rate, which, according to John Ardoyno, the Company’s Director of Network Service Operations with responsibility for the network operations in five states, including the Minnesota POTS network, remains low, reflecting strong network performance.¹¹¹ Minnesota Rule 7810.5900 establishes an objective to maintain service that the average rate of all customer trouble reports in an exchange is no greater than 6.5 per 100 telephones per month. The DOC agreed that the Company has consistently met this objective,¹¹² and both the DOC and OAG have agreed to drop any contention that the Company is in violation of Minn. R. 7810.5900.

DOC witness Webber, faced with the fact that the Company’s trouble report rate does not provide any basis for a finding of any violation of service quality rules, undertakes a number of number-crunching exercises designed to put the Company’s performance in the worst possible light. As discussed in greater detail below, these mathematical

¹¹¹ Ex. CTL-6 at 5 (Ardoyno Direct); *see also* Ex. CTL-19 at ¶ 88 (Turner Rebuttal) (“CenturyLink’s compliance with Minnesota PUC Rule 7810.2900 regarding trouble report rates has been unambiguously strong between 2019 and 2023[.]”).

¹¹² Ex. DOC-4 at 35 (Webber Direct).

gymnastics are not tied to any requirement set forth in Minnesota rules and are therefore of no relevance to this matter.

Minn. R. 7810.5800 provides:

7810.5800 INTERRUPTIONS OF SERVICE.

Each telephone utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service with the shortest possible delay. 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. In the event that service must be interrupted for purposes of working on the lines or equipment, the work shall be done at a time which will cause minimal inconvenience to customers. Each utility shall attempt to notify each affected customer in advance of the interruption. Emergency service shall be available, as required, for the duration of the interruption.

Every telephone utility shall inform the commission, as soon as possible, of any major catastrophe such as that caused by fire, flood, violent wind storms, or other acts of God which apparently will result in prolonged and serious interruption of service to a large number of customers.

Minn. R. 7810.5800 provides a *requirement* that “the utility shall reestablish service with the shortest possible delay,” and also provides a measurable *objective*, that is just that – an objective. As discussed above, this rule was adopted at a time when POTS was the industry standard in telecommunications, and virtually every home and business had a traditional telephone line. As a result of the significant changes to the telecommunications landscape, due in no small part to the modern importance of internet service as recognized by the state of Minnesota’s broadband policy, there are far fewer overall POTS customers today, and they are no longer necessarily located in close proximity to one another.¹¹³ That

¹¹³ Ex. CTL-6 at 3 (Ardoyno Direct).

said, as discussed in greater detail below, the Company has taken, and will continue to take, measures designed to help meet this objective.

a. The Company's Trouble Report Rate Shows Strong Overall Network Performance.

As previously noted, the best indication of the Company's compliance with the general rules, such as Minn. R. 7810.3300 and 7810.5000, is the Company's trouble report rate. As discussed in Mr. Ardoyno's testimony, the Company has maintained a monthly average of fewer than 6.5 trouble reports per 100 telephones since January 2019, with less than [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] of the objective on a monthly basis over that time period,¹¹⁴ meeting the objective set forth in Minn. R. 7810.5900. In fact, the Company's monthly average of trouble reports has been at or below [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] report per 100 lines for the vast majority of the past 55 months, and has remained below [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] reports per month per 100 lines for the entirety of that time period.¹¹⁵ The entirety of the Company's trouble rates from 2019 to present are provided as a schedule to Mr. Ardoyno's direct testimony.¹¹⁶

Nothing in either the DOC's or OAG's testimony disputes that the Company's trouble report rates meet the objective set forth in Minn. R. 7810.5900. In fact, DOC witness Webber directly acknowledges that the Company's trouble report rates show that

¹¹⁴ Ex. CTL-6 at 5 (Ardoyno Direct).

¹¹⁵ Ex. CTL-6 at 5 (Ardoyno Direct).

¹¹⁶ Ex. CTL-7, Sched. 2 (Ardoyno Direct).

it is meeting the objective of this rule,¹¹⁷ while the OAG's single witness, Mr. Lebens, does not address the Company's trouble report rate performance at all.¹¹⁸ And while the Agencies have dropped any contention that the Company is not in compliance with the trouble report rule, they still contend that the Company is violating the more general service quality rules, overlooking the obvious fact that, if the Company was actually failing to meet its responsibilities to maintain its equipment and remain attentive to the quality of service provided by its network, the number of troubles on the network would increase, leading to an increase in the trouble report rate.¹¹⁹

It is also notable that the trouble report rule includes a specific trouble report rate level – 8.0 per 100 telephones -- beyond which “investigative or corrective action” is warranted.¹²⁰ As discussed above, the Company's trouble reports are well below that rate, demonstrating that no corrective action is needed with respect to the Company's network performance. The fact that the Company's performance is well in compliance with the objective set forth by this rule, and even further below the level at which regulatory action is suggested, demonstrates that the Company is taking the appropriate steps to maintain its network so that it provides safe and adequate service to its customers.

¹¹⁷ Ex. DOC-4 at 35 (Webber Direct).

¹¹⁸ Mr. Lebens' only discussion of the Company's trouble report rate is limited to a misconception as to the Company's treatment of trouble reports, in which he claims, inaccurately, that the Company does not address troubles unless 3 or more reports are made on a 100-pair group. Ex. OAG-1 at 18 (Lebens Direct). Mr. Ardoyno corrected this misconception in his Rebuttal Testimony. Ex. CTL-9 at 3 (Ardoyno Rebuttal).

¹¹⁹ Ex. CTL-9 at 6 (Ardoyno Rebuttal).

¹²⁰ Minn. R. 7810.5900.

b. DOC's Alternative Theories of Liability Do Not Demonstrate Noncompliance with Any Applicable Minnesota Rule.

Admitting that the Company's trouble report rate does not provide it with a route to find that the Company is out of compliance with either Minn. R. 7810.3300 or 7810.5000, the DOC gets creative, adopting an approach whereby the DOC develops its *own* standards for determining compliance, untethered to the actual language of the applicable rules. Specifically, the DOC creates a number of metrics that are based on assessing troubles on individual lines or within exchanges over varying periods of time; suggests that the Company is not spending enough on preventative maintenance; and argues that the Company does not employ a sufficient number of technicians. Of course, none of these so-called measures are found within Minnesota's rules, and none of the spaghetti that the Department throws against the wall sticks.

The various calculations that DOC witness Mr. Webber performs, and that DOC witness Gonzalez relies upon in making her recommendations, are not in any way related to the Minnesota rules at issue in this case. They are instead cobbled together from a Commission settlement agreement that does not involve the Company, standards in other states' regulations, and the Alternative Form of Regulation (AFOR) that the Company was subject to between 2009 and 2016, but is no longer in force.¹²¹ In one case, the DOC has created a brand new "standard" from thin air.¹²²

¹²¹ Ex. CTL-19, Sched. 1 at ¶ 91 (Turner Rebuttal).

¹²² Ex. CTL-19, Sched. 1 at ¶¶ 92-93 (Turner Rebuttal).

Second, the observations made by Mr. Webber as to the Company's monetary investment in its copper network, which he offers as a proxy for analyzing the Company's performance under the service quality rules, are not related to network performance. Again, the best indicator of the quality of the Company's POTS network is the trouble report rate, which is in compliance with the objective set forth by Minnesota Rules, and is far below the threshold for regulatory action.

Finally, Mr. Webber's discussion regarding the number of technicians employed by the Company is similarly detached from any rule requirement and does not provide any helpful insight for the ALJ or the Commission.

i. Mr. Webber's Alternative Service Level Calculations are Unrelated to the Standards Applicable to this Matter and Do Not Provide Useful Information.

The DOC does not dispute that the standards it employs to demonstrate noncompliance are not based on the rule, but argues that the ALJ and Commission should consider these various calculations because they provide information that could be "worthwhile to consider" in determining whether the Company is in compliance with the service quality rules.¹²³ Because none of these so-called metrics are related in any way to the standards that actually govern this matter, however, they are of no assistance. Company witnesses Turner and Ardoyno explain why Mr. Webber's various calculations are of no value in assessing whether the Company is in compliance with the service quality rules at issue in this matter.

¹²³ Ex. DOC-4 at 28 (Webber Direct).

Mr. Webber purports to analyze the Company’s performance with respect to “repeat troubles,” while admitting that “[c]hapter 7810 does not contain a specific rule or standard” addressing recurring trouble reports on the same service line.¹²⁴ Mr. Webber claims that measured against the Company’s previous AFOR standard and the Commission’s settlement with Frontier, to which the Company is not a party, the Company is not performing well.¹²⁵ Mr. Webber, however, did not actually apply the AFOR standard, which called for a state-level, annual analysis, which he acknowledged on cross-examination.¹²⁶ Instead, Mr. Webber applied a month-by-month wire center-by-wire center analysis.¹²⁷ Applying the *actual* repeat trouble standard from the AFOR, it turns out that CenturyLink is in complete compliance with the AFOR’s repeat trouble performance standards in each year for which data has been produced.¹²⁸ This is just the first instance of Mr. Webber manipulating data to make it appear that the Company is not meeting a benchmark, when in fact it is.

Mr. Webber also creates, out of whole cloth, an entirely new metric that he calls “chronic troubles.” This metric refers to troubles on a single line that are experienced “repeatedly over time . . . in non-consecutive months, or *even years*.”¹²⁹ Company witness Turner notes that by including any household that makes non-consecutive trouble reports

¹²⁴ Ex. DOC-4 at 36 (Webber Direct).

¹²⁵ Ex. DOC-4 at 36-37 (Webber Direct).

¹²⁶ Evid. Hrg. Tr. (Dec. 13, 2023) at 110-111 (Turner); *see also* Ex. CTL-19, Sched. 1 at ¶¶ 74-75, 90 (Turner Rebuttal).

¹²⁷ Ex. CTL-19, Sched. 1 at ¶ 90 (Turner Rebuttal).

¹²⁸ Ex. CTL-19, Sched. 1 at ¶ 91 (Turner Rebuttal).

¹²⁹ Ex. DOC-4 at 41 (Webber Direct) (emphasis added).

across a multi-year period, Mr. Webber has engaged in “an exceptionally capacious method for inflating the count of total problems” and that “this is a far more expanded definition of trouble reporting than Chapter 7810 ever contemplates.”¹³⁰ The ALJ should not give any weight to this contrived calculation, which, as noted by Mr. Turner and is evident from a review of the applicable Minnesota Rules, is not tied to any regulatory requirement and has not been used to measure compliance.

ii. DOC’s Contention that the Company’s Compliance with the Service Quality Rules can be Ascertained by the Company’s Spending on Maintenance or the Number of Projects Completed by the Company is Not Based on Minnesota Law.

Mr. Webber’s, and by extension, the DOC’s, theory of the case with respect to Minn. R. 7810.3300 and 7810.5000 is that it requires a program of “*preventative maintenance* that is primarily focused on identifying and resolving potential OSP network failures *before* they have negative impacts on a telephone companies’ basic telephone service subscribers.”¹³¹ Company witness Turner disagrees with Mr. Webber’s interpretation, providing a more reasonable interpretation that “[t]he rule . . . instead seeks to ensure that a telephone company will provide genuinely dependable service to its customers by adopting a robust program of maintenance and repair.”¹³²

That said, the Company *does* engage in proactive or preventative maintenance. As discussed by Company witness Ardoyno, the Company engages in proactive rehabilitation

¹³⁰ Ex. CTL-19, Sched. 1 at ¶¶ 92-93 (Turner Rebuttal).

¹³¹ Ex. DOC-4 at 11 (Webber Direct) (emphasis in original).

¹³² Ex. CTL-21 at ¶ 13 (Turner Surrebuttal).

projects, which are projects that are not related to a particular trouble report.¹³³ The Company identifies necessary proactive maintenance projects in a number of ways, primarily through its technicians, who are working on the network every day. Technicians are able to identify potential projects through the use of the plant maintenance request (PMR) tool. Technicians are required to submit PMRs to identify conditions that are unsafe and/or cannot be corrected immediately upon discovery.¹³⁴ Technicians also have the authority to identify and immediately address maintenance needs through the submission of company demand tickets (as opposed to customer trouble tickets). Third parties are also able to call the Company about conditions that they observe, which may also be handled through a company demand ticket.¹³⁵

The DOC, however, takes issue with the fact that not all of the projects identified by technicians are completed, ignoring the fact that there could be any number of reasons why a project does not go forward. The DOC also, as is its modus operandi in this matter, relies on calculations completely untethered to any regulatory standard in order to identify additional maintenance projects. The method used to identify these additional potential projects, however, are not tied to any specific need for maintenance, and the DOC fails to demonstrate that they would have any impact on the performance of the Company's network, as discussed below.

¹³³ Ex. CTL-6 at 9-10 (Ardoyno Direct).

¹³⁴ Ex. CTL-9 at 5 (Ardoyno Rebuttal).

¹³⁵ Ex. CTL-9 at 5 (Ardoyno Rebuttal).

The DOC also contends that the Company is not spending enough money on preventative maintenance, otherwise known as proactive rehabilitation. During the time period under consideration in this matter, proactive rehabilitation projects have been funded in a number of different ways. Such work, including cable replacement, line repair or pedestal repair, can be funded by the Company's capital budget, the Company's transformation budget, or local expense funds.¹³⁶ The DOC has focused on the transformation budget, to the exclusion of other means of funding maintenance projects. The transformation budget is a specific fund within the Company that funds a limited pool of projects.¹³⁷ Those projects are funded under the transformation budget if they will yield a positive payback within five years.¹³⁸ And, in the past, transformation projects had a minimum cost of \$1000 (that limit is no longer applied).¹³⁹ The Company does not track the amount of capital funds or local expense funds spent on proactive maintenance as opposed to work done to address specific trouble tickets, nor is it required to under Minnesota Rules.¹⁴⁰ That does not mean, however, that the Company fails to expend capital or local expense funds on proactive maintenance, and the Department's restrictive view on the funds expended on such projects is misleading. In any event, the DOC's attempts to demonstrate noncompliance by focusing on an alleged lack of preventative rehabilitation misses the point – as noted by Company witness Turner, if the Company truly was

¹³⁶ Ex. DOC-9 at 5 (Ardoyno Rebuttal); Evid. Hrg. Tr. Vol. 1 (Dec. 12, 2023) at 229 (Ardoyno); Ex. DOC-11 at 5 (Ardoyno Surrebuttal).

¹³⁷ Ex. DOC-11 at 9 (Ardoyno Surrebuttal).

¹³⁸ Ex. DOC-11 at 8 (Ardoyno Surrebuttal).

¹³⁹ Ex. DOC-11 at 9 (Ardoyno Surrebuttal).

¹⁴⁰ Ex. DOC-11 at 5 (Ardoyno Surrebuttal).

underinvesting in maintenance, it would be expected that the Company's trouble rate would increase.¹⁴¹ However, the Company's trouble report rate has remained low throughout the period covered by this matter.¹⁴²

There is no requirement that a company must spend a certain proportion of its funds on preventative, as opposed to responsive, maintenance. In fact, the rules do not address spending in any way – they simply require that the utility adopt and pursue a maintenance program that results in the provision of safe and adequate telephone service.¹⁴³ This is what the Company has done and continues to do.

iii. The DOC's Contention that the Company Does Not Employ Enough Technicians is not Based on Minnesota Law and DOC has Failed to Demonstrate any Connection Between the Number of Technicians Employed and Network Performance.

The DOC is correct that the number of technicians employed by the Company has declined over the years. This is because with future landline customers, there is less work for technicians to perform. In fact, the number of the Company's POTS customers has declined more rapidly than the number of technicians.¹⁴⁴ The DOC relies on yet another extra-regulatory metric here, this one based on number of POTS repairs per technician, and contends that there has been an increase in the number of POTS repairs per technician over the past five years due to technician workforce reductions.¹⁴⁵ While there has been some

¹⁴¹ Ex. CTL-21 at ¶ 19 (Turner Surrebuttal).

¹⁴² Ex. CTL-6 at 5 (Ardoyno Direct); Ex. CTL-19, Sched. 1 at ¶ 88 (Turner Rebuttal); Ex. DOC-4 at 35 (Webber Direct).

¹⁴³ Minn. R. 7810.3300; Minn. R. 7810.5000.

¹⁴⁴ Ex. CTL-9 at 11 (Ardoyno Rebuttal).

¹⁴⁵ Ex. DOC-4 at 20-21 (Webber Direct).

increase, it is not “significant,” as the number of POTS repairs per technician has increased from [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] per week to [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS], keeping each technician at [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] POTS repair per day.¹⁴⁶ It is notable that at various times during the pendency of this matter, the Company has worked to hire more technicians with the appropriate skills to work on copper networks, including attempting to hire a lower-compensated and less-skilled group of workers to address less complicated jobs.¹⁴⁷ As Mr. Ardoyno notes, there are fewer technicians being trained on copper skills due to the increased and escalating installation of fiber networks as well as the public’s overall preference for fiber-based services.¹⁴⁸

The DOC points to yet another inapplicable statistic in connection with its claim that the Company is employing an insufficient number of technicians, tying a decrease in the number of technicians between May and June of 2020 to what he terms a failure to meet a “repair commitments performance metric.”¹⁴⁹ This metric is not set forth in Minnesota Rules, but was in place as part of the Company’s AFOR. Under the AFOR, the Company was expected to meet a 90% threshold for meeting repair commitments.¹⁵⁰ And, under Mr. Webber’s analysis, the Company would be meeting that metric, if it was in

¹⁴⁶ Ex. CTL-9 at 11 (Ardoyno Rebuttal).

¹⁴⁷ Ex. CTL-6 at 12-13 (Ardoyno Direct).

¹⁴⁸ Ex. CTL-6 at 12 (Ardoyno Direct).

¹⁴⁹ Ex. DOC-4 at 56 (Webber Direct).

¹⁵⁰ Ex. CTL-19, Sched. 1 at ¶105 (Turner Rebuttal).

effect. Mr. Webber, however, has chosen to apply the higher metric that is required of Frontier under its settlement agreement with the Commission, which has never been applied to the Company, so that he can claim that the Company does not meet the metric.¹⁵¹

Nothing in the applicable rules mandates that the Company employ more technicians than it requires, and the DOC's contentions here do not demonstrate any instance of noncompliance with the service quality rules.

2. The Company Continues To Make A Good Faith Effort To Meet The Objective Of The Out Of Service Restoration Rule.

As discussed above, Minn. R. 7810.5800 requires that “the utility shall reestablish service with the shortest possible delay,” and sets a minimum *objective* of clearing 95 percent of out-of-service troubles within 24 hours of the time such troubles are reported. The Company complies with the mandate that it reestablish service with “the shortest possible delay,” and continues to make efforts to meet the objective established by the rule. The realities of the current telecommunications landscape, however, have effectively moved the goalposts with respect to what is “possible” with respect to the time necessary to restore service in each case, and meeting the objective set forth by the rule has become substantially more difficult.

The Company has made, and continues to make, efforts to meet this objective. Specifically, the Company has, throughout the time period spanned by this matter, prioritized POTS out-of-service tickets in the route optimizer that assigns ticket to

¹⁵¹ Ex. CTL-19, Sched. 1 at ¶105 (Turner Rebuttal).

technicians¹⁵² and places telephone calls from customers with POTS out-of-service at the head of the queue in its call center.¹⁵³ Prioritizing POTS out of service calls, however, cannot solve the primary challenge with restoration within 24 hours, which is the decline in the number of POTS customers and their geographic distribution.¹⁵⁴ As noted by Company witness Ardoyno:

Tasks are assigned using a route optimizer that generates job lists for each technician based on that technician's work load, skill set and location . . . [and because] POTS out of service calls are prioritized, the route optimizer that is used to spread out tasks among technicians cannot assign tasks in the most efficient way. The route optimizer may end up assigning a new POTS out of service call to a technician that is located far away for the customer needing service, because technicians who are closer may be fully booked, or may not have the proper skill set. And, because there are fewer and fewer POTS customers on the Company's geographically large network, the POTS out of service call needing attention on a given day may be very far apart and a technician can be required to travel a significant distance just to get to the customer's location. A repair that might take an hour to address at the customer's site may require 2 hours to get to the address, and another 2 hours to get to the technician's next job.¹⁵⁵

This is not an issue that can be solved simply by hiring more technicians. First, as discussed above, there are challenges with hiring additional personnel to do this work. Second, the Company's technician workforce is aligned with the amount of work that needs to be completed.¹⁵⁶ As a practical matter, the Company cannot employ technicians to be

¹⁵² Ex. CTL-9 at 4 (Ardoyno Rebuttal).

¹⁵³ Ex. CTL-13 at 8 (Rejanovinsky Direct).

¹⁵⁴ Minn. R. 7810.5800, like the others at issue in this proceeding, was adopted at a time when nearly everyone had a POTS line at their home or business, meaning those customers were more densely clustered than they are today.

¹⁵⁵ Ex. CTL-6 at 7 (Ardoyno Direct).

¹⁵⁶ Ex. CTL-9 at 12-13 (Ardoyno Rebuttal).

located at various places in the state, some with a very low number of customers spread out geographically, to simply sit idly waiting for out of service calls.¹⁵⁷ As Mr. Turner correctly observed, Mr. Webber presumes functionally infinite resources that could be invested in multiple strategic directions at once, which ignores the realities of actually operating the Company's business.¹⁵⁸ While the Company will continue to prioritize POTS out of service calls and make reasonable efforts to meet the 95% in 24 hours objective, due to the geographic spread of the Company's declining POTS customers, obtaining that objective will not always be within the realm of the "possible."

B. The Record Does Not Support The Accusations Of The Department And OAG Regarding CenturyLink's Performance Or Its Commitment To Minnesota Voice Customers.

Bereft of actual rule violations to point to, the Agencies resort to accusations and speculations which have no basis in fact and should be summarily dismissed.

1. There is No Record Support for Allegations that CenturyLink is "Milking" or "Harvesting" Its Business.

OAG witness Mr. Lebens speculates that CenturyLink "appears" to be "milking" its business, meaning that it is "extracting cash from its landline business partly by strategically allowing certain portions of the Company's physical plant to deteriorate."¹⁵⁹ There is simply no support in the record for this baseless assertion. Yet, instead of relying on the facts in the record, Mr. Lebens proposes speculative theories about CenturyLink's motivations. First, Mr. Lebens introduces the Boston Consulting Group's (BCG) "Growth

¹⁵⁷ Ex. CTL-6 at 13 (Ardoyno Direct); Ex. CTL-19, Sched. 1 at ¶ 102 (Turner Rebuttal).

¹⁵⁸ Ex. CTL-19, Sched. 1 at ¶ 102 (Turner Rebuttal).

¹⁵⁹ Ex. OAG-1 at 10-12 (Lebens Direct).

Share Matrix” (Matrix) to support his position and to provide an explanation for how CenturyLink may view its landline business.¹⁶⁰ Relying on the BCG Matrix, Mr. Lebens makes various allegations about how companies *may* operate generally, and how CenturyLink *may* treat its legacy landline business either as a “cash cow” or a “pet.”¹⁶¹ However, nowhere in his testimony does Mr. Lebens point to any evidence that CenturyLink knows about, much less relies on, the BCG Matrix, nor does he support his allegations that CenturyLink is “extracting cash” from its landline business. This is pure supposition.

Next, Mr. Lebens speculates that statements made on earnings calls by Mr. Chris Stansbury, Chief Financial Officer of CenturyLink’s parent company Lumen, Inc. (Lumen), and by Ms. Kate Johnson, Chief Executive Officer of Lumen, and that a September 2022 Value Line Report, show that the Company is “harvesting” its legacy voice telephone customers.¹⁶² Yet again, Mr. Lebens does not point to anything in the record concerning CenturyLink’s practices or operations in Minnesota, and instead takes statements out of context to make unsubstantiated allegations. The Lumen executive comments and the September 2022 Value Line Report both concern Lumen’s Enterprise operations (referred to as the “Business Segment” in executive comments), not the Mass Market operations serving residential and small business customers that are the focus of

¹⁶⁰ Ex. OAG-1 at 7-8 (Lebens Direct).

¹⁶¹ Ex. OAG-1 at 8-9 (Lebens Direct). Mr. Lebens states that the BCG Matrix explains that “cash cows” should be “milk[ed]” for cash to reinvest and that “pets” should be “liquidate[d], divest[ed], or reposition[ed].” Ex. OAG-1 at 9 (Lebens Direct).

¹⁶² Ex. OAG-3 at 10-13 (Lebens Direct).

this docket.¹⁶³ As the Company explained in its response to OAG Information Request No. 43 directly addressing questions related to a Lumen earnings call in August of 2023:

Business Segment revenues accounted for 79% of Lumen revenues during the 2023 second quarter. As such, most of Ms. Johnson’s comments to the Wall Street community relate to the Business Segment, which includes services offered to *large national/international corporations and to the federal government and some state governments.*¹⁶⁴

It bears repeating that Mr. Lebens provides no support or analysis of evidence, but instead speculates based on information that CenturyLink has clarified *in the record* does not pertain to the issues in this matter.

Finally, Mr. Lebens states, with no evidence whatsoever to justify such a statement, “that CenturyLink is essentially harvesting or milking its landline business, but not specifically discussing it or disclosing it in SEC filings.”¹⁶⁵ The speculation and conjecture Mr. Lebens engages in across all his testimony does not assist the ALJ or Commission in determining whether CenturyLink is complying with the Minnesota Rules.¹⁶⁶ The lack of any record evidence supporting Mr. Lebens’ claims demonstrates that his allegations are backed by nothing more than his apparent belief that it may be possible.¹⁶⁷

2. Photographs of Plant Equipment in OAG Witness Testimony Do Not Demonstrate a Violation of Minnesota Rules.

OAG witness Mr. Lebens also alleges that he documented CenturyLink equipment that he “encountered in the public view,” and included dozens of photographs and

¹⁶³ Ex. CTL-4 at 20 (Mohr Rebuttal).

¹⁶⁴ Ex. CTL-4 at 20 (Mohr Rebuttal).

¹⁶⁵ Ex. OAG-3 at 13 (Lebens Rebuttal).

¹⁶⁶ Ex. CTL-4 at 21 (Mohr Rebuttal).

¹⁶⁷ Ex. CTL-4 at 21 (Mohr Rebuttal).

screenshots of plant equipment that he took over a five day period in November 2023.¹⁶⁸ Mr. Lebens asserts that the physical condition of the plant equipment is evidence of CenturyLink's failure to maintain its equipment in a good state of repair.¹⁶⁹ However, when questioned with respect to the photographs he took, Mr. Lebens admitted that he did not know whether some of the equipment belonged to CenturyLink, that he did not know whether any of the equipment was still serving customers, that he did not have any information regarding the equipment other than observing its physical appearance, that he did not conduct any testing of the equipment to determine whether it was in good working order, and that he had no evidence that the condition of any of the equipment he photographed resulted in a customer trouble report.¹⁷⁰ Mr. Leben's assertion that the plant equipment he photographed is evidence of a failure in the Company's plant maintenance program lacks *any* factual support.

3. There is No Record Support for Allegations that CenturyLink Treats Its Regulated Voice Customers as Second-Class Citizens.

Department witness Mr. Webber similarly makes an unwarranted and unsupported statement regarding CenturyLink's treatment of its legacy landline customers. Relying only on the declining number of legacy landline customers, Mr. Webber misrepresents CenturyLink's request to update the Commissions telephone service quality rules to reflect the modern telecommunications industry as an effort to treat landline customers as

¹⁶⁸ Ex. OAG-3 at 9 and Sched. 6 (Lebens Surrebuttal); Evid. Hrg. Tr. Vol. 1 (Dec. 12, 2023) at 120 (Lebens).

¹⁶⁹ Ex. OAG-3 at 9-10 (Lebens Surrebuttal).

¹⁷⁰ Evid. Hrg. Tr. Vol. 1 (Dec. 13, 2023) at 121-23 (Lebens).

“second-class” citizens.”¹⁷¹ Mr. Webber further alleges that the Company made a “change in policy reprioritizing service calls by elevating Gigabit Passive Optical Networks (GPON) (i.e., repair calls involving optical fiber optic fiber-based service) calls above [telephone service] repairs.”¹⁷²

Much like Mr. Lebens’ unfounded accusations, Mr. Webber’s assertion is not supported by the record. The evidence in the record shows that, contrary to Mr. Webber’s allegations, the Company prioritizes its Minnesota voice customers ahead of broadband customers with respect to both repairs (prioritizing voice telephone out-of-service before installation or repair of broadband service) and in its handling of customer calls to the Company’s call center (prioritizing calls associated with regulated voice telephone service).¹⁷³ These are not the actions of a Company treating its customers as “second-class” citizens.¹⁷⁴

C. Neither The Record Nor Minnesota Law Support The Actions Recommended By The Department or OAG.¹⁷⁵

As discussed above, the record of this proceeding demonstrates that CenturyLink has taken reasonable steps to meet the objective of one rule (Minn. R. 7810.5800) whose

¹⁷¹ Ex. DOC-4 at 26-27 (Webber Direct).

¹⁷² Ex. DOC-4 at 53 (Webber Direct).

¹⁷³ Ex. CTL-4 at 5-6 (Mohr Rebuttal).

¹⁷⁴ Ex. CTL-4 at 6 (Mohr Rebuttal).

¹⁷⁵ Given the narrowing of issues in the Joint Stipulation, CenturyLink is unsure which of the Department’s network-related recommendations, as set forth in Ms. Gonzalez’s Rebuttal Testimony (Ex. DOC-2 at 8-9, 13-14, 19) the Department continues to support. The Company is similarly unsure what recommendations the OAG currently supports. Therefore, the Company anticipates more fully addressing the Agencies’ recommendations in its Reply Brief.

objective it is struggling to meet. Nonetheless, in its Rebuttal Testimony, the Department recommended the Commission order a series of obligations on CenturyLink that appear aimed at specific customers, specific cable rehabilitation jobs and other specific aspects of the Company's business operations in Minnesota, where the Department believes the Company could be doing a better job.¹⁷⁶ This customer-by-customer or cable job-by-cable job approach to regulation has no basis in Minnesota statutes or rules and no precedent in case law, leading Company witness Mr. Turner to accurately describe it as "an extraordinary new regulatory regime."¹⁷⁷ Moreover, the Department did not even attempt to estimate the cost and other impacts of implementing these recommendations.¹⁷⁸ As Ms. Mohr testified, "The Company operates in a competitive business and cannot simply subsidize these costs but must recover them from customers. Moreover, to the extent these recommendations require significant investments in the legacy copper network, that leaves less funds available to assist Minnesota in meeting its broadband goals."¹⁷⁹ And as Mr. Turner discussed, these recommendations, if ordered on the Company,

would ultimately create economic waste, requiring the Company to expend significant financial resources to continue augmenting a copper network that is no longer the voice service preference of the vast majority of Minnesotans. CenturyLink would be unable, then, to use those limited resources to deploy newer technologies that customers largely prefer, and which also support the universal broadband access goals of the Minnesota Legislature.¹⁸⁰

¹⁷⁶ Ex. CTL-5 at 10 (Mohr Surrebuttal).

¹⁷⁷ Evid. Hrg. Tr. (Dec. 13, 2023) at 86-88 (Gonzalez); Ex. CTL-21 at ¶ 28 (Turner Surrebuttal).

¹⁷⁸ Ex. CTL-5 at 11 (Mohr Surrebuttal).

¹⁷⁹ Ex. CTL-5 at 11 (Mohr Surrebuttal).

¹⁸⁰ Ex. CTL-21 at ¶ 28 (Turner Surrebuttal).

The Department also recommended that the State insert itself into the Company's relationship with its collective bargaining partner, the CWA, asking the Commission to order: (1) that the Company cannot consider a trouble report "resolved" until the Company determines that it meets *the Department's* proposed definition of a resolution and *does so in consultation with CWA*; and (2) that the Company's director of network service operations for Minnesota and "applicable regional leaders" meet with CWA's area and district leadership *on a quarterly basis* to review all field rehabilitation reports from the quarter.¹⁸¹ Again, the Department cites no authority it or the Commission possesses that would allow the State to require the Company to take specific actions with respect to its collective bargaining partner. Moreover, the Department seemed unaware of the extensive communication already occurring between the Company and CWA. As Mr. Ardoyno explained:

With respect to communications with CWA, the Company and CWA have already developed a robust cadence of formal meetings and less formal contacts. Specifically, I meet with Christy Kuehn, President, and Brian Tyler, Area Vice President, of the St. Paul local 7201, along with Lisa Markegard, President, and Tom Laabs, Area Vice President, of the Minneapolis local 7200, at a face-to-face meeting once a month in St. Paul. The agenda for this monthly meeting is driven by the CWA representatives, and often includes discussion of customer service levels and plant quality, including potential rehab projects. I also participate in broader quarterly meetings via Teams along with network, engineering and construction managers of regional operations in order to respond to CWA's questions and concerns. Finally, I am in regular communication with local leadership on an ongoing and ad hoc basis on a variety of issues, including new products, promotions, and other information regarding the Company and its operations, and addressing any other questions that CWA may have.¹⁸²

¹⁸¹ Ex. DOC-2 at 12-13 (Gonzalez Rebuttal).

¹⁸² Ex. CTL-11 at 11 (Ardoyno Surrebuttal).

With all due respect, the Company does not need the Department's advice, or a Commission order, regarding how to manage its ongoing working relationship with the CWA, in accordance with the collective bargaining agreement between them.

The OAG's recommendations appear even more disconnected from Minnesota rules, and the Commission's authority, than the Department's. In his Surrebuttal Testimony, OAG witness Mr. Lebens concludes by stating:

I recommend that CenturyLink both (1) refrain from using a payback period as a part of deciding whether to complete projects and (2) cease using a cost threshold as a part of its decision-making process.¹⁸³

Whether this is just Mr. Lebens' "advice" to CenturyLink, or whether he intends the Commission to order the Company to change its business practices is unclear. Either way, it is inconceivable that the OAG would ever make such a recommendation for a rate regulated utility. The OAG would understandably complain loud and long if a rate regulated entity, with a guaranteed opportunity to earn its required rate of return, could "gold plate" its network by making its investment decisions without considering cost thresholds or payback periods. Investment dollars are not free and they are not endless. The fact that CenturyLink is no longer rate of return regulated, due to the existence of a competitive telecommunications marketplace, does not hand the OAG, or Commission, the authority to dictate the Company's decision-making process or enable it to require uneconomic investment.

¹⁸³ Ex. OAG-3 at 11 (Lebens Surrebuttal).

CONCLUSION

After four years of investigation, the time has come to close this docket. The record demonstrates CenturyLink's provision of safe, reasonable and adequate voice telephone service, in compliance with Minnesota rules. Creating new service quality measures and then forcing the Company to make economically wasteful investments to address those new service quality measures does not serve CenturyLink's customers or the public interest and will only further delay Minnesota's ability to meet the aggressive universal broadband service goals established by the legislature.

Dated: January 17, 2024

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