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

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 7th Place East  
Suite 350  
St. Paul, Minnesota 55101-2147**

**MPUC Docket No. P-421/C-20-432  
OAH Docket No. 21-2500-38965**

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***In the Matter of Formal Complaint Regarding the Services Provided  
by the Qwest Corporation d/b/a CenturyLink in Minnesota,  
on Behalf of the Communications Workers of America***

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**INITIAL BRIEF  
OF THE OFFICE OF THE ATTORNEY GENERAL—  
RESIDENTIAL UTILITIES DIVISION**

**January 17, 2024**

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## INTRODUCTION

For many years, customers and CenturyLink's own technicians have raised concerns about the service quality CenturyLink provides. Customers complain of long wait times, excessive outages, and decaying infrastructure that erodes their service quality and pollutes the local landscape. Technicians too report equipment in disrepair and orders from management to avoid costly replacements even when they are needed; they note CenturyLink has hollowed out the local workforce needed to repair and maintain copper wire landline telephone systems. At bottom, customers and professionals alike report that CenturyLink simply will not help them, having unofficially abandoned wireline customers to focus on customers and communities that offer the company a greater potential for profit. CenturyLink responds by claiming the service quality rules are outmoded and needlessly nitpicky: the majority of its customers, it says, are served just fine.

That CenturyLink would chafe at claims made under the service quality rules is unsurprising. For nearly a decade, CenturyLink has—vigorously and unsuccessfully—attacked the Commission's service quality rules as antiquated vestiges of bygone era. But the rules remain to protect *all* customers. All Minnesotans are entitled to a minimum standard of service when contracting for vital wireline telephone service, and CenturyLink is obliged to provide it. CenturyLink's customers are counting on the Commission to hold the company accountable for its failing performance and improve service quality.

## ARGUMENT

Wireline telephone service quality remains important in Minnesota—a State with diverse geography and remote populations that can be challenging to serve. The State Legislature has recognized landline telephone service remains a lifeline for many Minnesotans, and it has

repeatedly charged the Commission with ensuring and improving service quality for Minnesotans via promulgation and enforcement of service quality rules. To date, CenturyLink has fallen short of its obligations under the rules. Commission action is needed to ensure Minnesotans receive the service quality to which they are entitled.

**I. THE SERVICE QUALITY RULES SET BASELINE STANDARDS FOR ALL MINNESOTA CUSTOMERS.**

The Minnesota Legislature and the Commission have made clear their expectations that *all* Minnesota telephone customers will enjoy a base level of service quality. These commitments are enshrined in state statutes<sup>1</sup> and rules,<sup>2</sup> which establish minimum standards of performance to which customers are entitled. While statute and rule provide general standards of service, the Commission has repeatedly affirmed that the rules exist to ensure no customer is left behind: “having rules in place aims to ensure minimum uniformity for those governed by the rules.”<sup>3</sup> The rules promote statutory objectives and “protect against situations in which service quality standards are unjustifiably higher or lower for some customers than for others.”<sup>4</sup>

For nearly a decade, CenturyLink has sought the repeal or weakening of Minnesota’s telephone service rules. The company has repeatedly petitioned the Commission to revise or vary the rules, arguing that the existing rules are relics of a bygone era.<sup>5</sup> In answer to these

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<sup>1</sup> See Minn. Stat. §§ 237.011, 237.081, 237.16.

<sup>2</sup> See Minn. R. Chapter 7810.

<sup>3</sup> See *In the Matter of the Rulemaking to Consider Possible Amends. to Minnesota Rules, Parts 7810.4100 Through 7810.6100 in the Matter of the CenturyLink, Inc. Petition for Rulemaking to Revise Serv. Quality Rules*, MPUC Docket No. P-421/AM-14-256, ORDER CLOSING RULEMAKING PROCEEDING AND INITIATING STAKEHOLDER WORKGROUP PROCESS at 17 (May 2, 2016).

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

<sup>5</sup> See *In the Matter of Rulemaking to Consider Possible Amends. to Minnesota Rules, Parts 7810.4100 Through 7810.6100 in the Matter of the CenturyLink, Inc. Petition for Rulemaking to Revise Serv. Quality Rules*, No. P-421/AM-14-256; *In the Matter of the Petition of CenturyLink, Inc. for a Variance to Minnesota Rules, Part 7810.5800*, No. P-421/AM-14-255; *In the Matter of the Petition for a Rulemaking Regarding Minnesota Rules Chapter 7810*, No. P-421/M-21-381.

entreaties, the Commission has undergone proceedings to examine whether loosening of the rules is advisable.<sup>6</sup> Each time, the Commission has concluded the rules remain necessary for the protection of Minnesota consumers.<sup>7</sup>

In 2016, after inviting CenturyLink to demonstrate the rules were no longer needed, the Commission concluded that, absent continuation of the rules, there was “no evidence that the market will adequately and uniformly protect customers.”<sup>8</sup> Specifically, the Commission expressed concern that without the rules, “it would be reasonable to expect changes in service quality that might affect some customers more than others, depending on customer demographics, geographic location, and the degree to which consumers have choices within specific markets.”<sup>9</sup> The Commission observed that “[u]nder lower service quality conditions, the health and safety of people, particularly those more reliant on landline service, could be jeopardized.”<sup>10</sup> The Commission concluded, “Reducing service quality levels creates real risks to individuals and communities with no countervailing benefit.”<sup>11</sup> The rules remain in force to guarantee baseline service levels for all who need them.

And the rules remain in force, even for a customer base that is in decline. In 2021, CenturyLink again argued to weaken the service quality rules, this time specifically on the basis

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<sup>6</sup> *See id.*

<sup>7</sup> *Id.*

<sup>8</sup> *In the Matter of the Rulemaking to Consider Possible Amends. to Minnesota Rules, Parts 7810.4100 Through 7810.6100 in the Matter of the CenturyLink, Inc. Petition for Rulemaking to Revise Serv. Quality Rules*, MPUC Docket No. P-421/AM-14-256, ORDER CLOSING RULEMAKING PROCEEDING AND INITIATING STAKEHOLDER WORKGROUP PROCESS at 17 (May 2, 2016).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

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

of increasing competition and decreasing landline customer counts to no avail.<sup>12</sup> In evaluating these arguments, the Commission concluded there was “no persuasive reason to engage in rulemaking likely to reduce the timeliness of landline service and repairs when, by CenturyLink’s logic, fewer resources will be necessary to address these issues each year.”<sup>13</sup> On the contrary, the Commission reasoned, the rules are of special importance to the landline customers who remain, since they are “the remaining landline-reliant customers who do not have other options for telecommunications service.”<sup>14</sup>

The rules remain in place as an important backstop to service quality slippage for captive landline customers. CenturyLink continues to be obligated to follow the rules, regardless of its subjective opinion that they are outdated. CenturyLink’s failure to provide service as the rules require has a serious and detrimental impact on landline customers, who are disproportionately older, more remote, and of more limited financial means.<sup>15</sup> CenturyLink’s performance must be brought into line with the service quality rules to ensure a base level of service for these customers.

## **II. CENTURYLINK HAS REPEATEDLY FAILED TO FOLLOW THE RULES THE COMMISSION WROTE TO PROTECT ALL MINNESOTA TELEPHONE CUSTOMERS.**

The Commission enjoys broad authority to investigate “[w]hensoever the commission believes that a service is inadequate.”<sup>16</sup> The Minnesota Legislature has empowered the Commission to exercise its regulatory duties with respect to telecommunication services to maintain or improve quality of service and to ensure consumer protections are maintained.<sup>17</sup>

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<sup>12</sup> See *In the Matter of a Petition for a Rulemaking Regarding Minnesota Rules Chapter 7810*, MPUC Docket No. P-421/M-21-381, ORDER DENYING PETITION at 5 (Aug. 5, 2021).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> DOC-1 at 6:9 - 9:16 (Gonzalez Direct)

<sup>16</sup> Minn. Stat. § 237.081.

<sup>17</sup> Minn. Stat. § 237.011 (5) & (7).

Specifically, the Commission is responsible for issuing rules that “ensure the provision of high-quality telephone services throughout the state.”<sup>18</sup> The evidence demonstrates that CenturyLink is violating the Commission’s rules with its poor maintenance practices, lax recordkeeping, and frequent disruptions.

**A. CenturyLink’s Lackadaisical Maintenance Regime Violates Minnesota Rules 7810.3300.**

One of the ways the Commission makes sure all Minnesota telephone customers have reliable service is by requiring each telephone utility to “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.”<sup>19</sup> The rules outline specific elements of a maintenance program:

- “Maintenance shall include keeping all plant and equipment in good state of repair consistent with safety and adequate service performance.”<sup>20</sup>
- “Broken, damaged, or deteriorated parts which are no longer serviceable shall be repaired or replaced.”<sup>21</sup>
- “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.”<sup>22</sup>

Each of these elements is mandatory under the rules.

CenturyLink has repeatedly failed to adhere to the requirements of Minn. R. 7810.3300. The evidence shows that CenturyLink has systematically failed to repair its equipment, depleted the relevant workforce, and failed to adequately maintain its systems. These failures have led to substandard service for Minnesotans, several of whom participated in this docket via comments and public hearings.

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<sup>18</sup> Minn. Stat. § 237.16, subd. 8.

<sup>19</sup> Minn. R. 7810.3300.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

OAG witness Brian Lebens captured 93 pages of images of CenturyLink equipment that is “[b]roken, damaged, or deteriorated.”<sup>23</sup> The images, some of which are excerpted below demonstrate countless instances of wires left exposed to the elements, ragged metal exposed on the public right of way, and frankly conditions bordering on public nuisance<sup>24</sup>:



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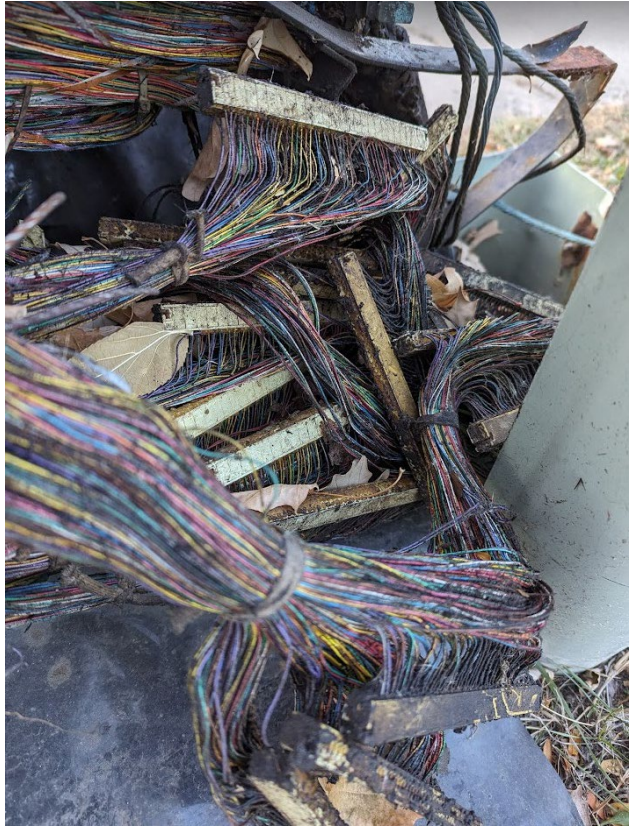
<sup>23</sup> See Trial Exhibits OAG-5, OAG-6, OAG-7, OAG-8, OAG-9.

<sup>24</sup> *Id.*









Even using the most generous definitions, there is no way that equipment decaying to the point of posing a safety hazard to children and animals in the public right of way can be characterized as “in good state of repair consistent with safety.”<sup>25</sup> Many of the photos show completely inadequate attempts at “quick fixes,” but placing a piece of plastic or a garbage bag over an exposed pedestal or other plant cannot be considered a “repair” under any fair reading of the rules. Instead, it shows that CenturyLink was likely made aware of the broken, damaged, and deteriorated plant and failed to take any meaningful action to fix the problem.

The precise reasons CenturyLink equipment is falling apart in plain view throughout the state are multifaceted, but CenturyLink testimony and IR responses point to some of the answers.<sup>26</sup> By the testimony of its own witnesses, CenturyLink appears to be financially starving repair efforts in remote areas. CenturyLink repairs generally must satisfy a five-year payback threshold for the company to complete them. CenturyLink witness Mr. Ardoyno explained that any maintenance project that does not meet the five-year payback threshold must be funded out of the local expense budget.<sup>27</sup> But Mr. Ardoyno’s later testimony and the company’s IR responses indicate that CenturyLink simply does not have a local expense budget.<sup>28</sup>

Adequate resources are not flowing to projects that would improve the reliability of service for customers. The impact of CenturyLink’s stingy maintenance efforts is felt throughout the state, but it is particularly acute in less dense areas, where customers indicate they report problems again and again, only to have the company continue to deny a long-term fix. For example, an individual who came to the Owatonna public hearing described how CenturyLink

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<sup>25</sup> See Minn. R. 7810.3300.

<sup>26</sup> See, e.g., Owatonna Pub. Mtg. Tr. at 19:15-22 (July 27, 2023); Marshall Pub. Mtg. Tr. at 19:8-14 (July 26, 2023).

<sup>27</sup> Evidentiary Hearing Transcript 184:18 – 186:12 (Ardoyno); DOC-20.

<sup>28</sup> *Id.*

infrastructure is decaying in plain sight throughout his community, and the impact to service quality is obvious.<sup>29</sup> Outages are significant, and the customer reported that with three-quarters of pedestals open to the elements, every time it rains the lines start to crackle and so badly he can “hardly hear anybody.”<sup>30</sup>

Another Owatonna resident reported a “pedestal that’s been left open for six to eight months” and a “pit that’s been dug to put in underground services that’s been left open all through the winter with no safety fences around it.”<sup>31</sup> In Marshall, too, customers noted frequent trouble with water getting into the lines because of plant in disrepair.<sup>32</sup> For example, one customer questioned why “in the spring of the year when we get rain, or a lot of rain or snow melt, our phone goes out. And sometimes we’re without a week, and you ask for a credit on your bill and you get it one month, but the next month they add it so you’re paying double.”<sup>33</sup>

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

**B. CenturyLink’s Lackluster Recordkeeping and Reactive Maintenance Practices Violate Minnesota Rules 7810.5000.**

Another method the Commission uses to ensure quality of service is requiring telephone utilities to proactively assess their service performance and maintain records. Specifically, each telephone utility must continually review its operations to assure adequate service and maintain

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<sup>29</sup> Owatonna Pub. Mtg. Tr. at 21–24 (July 27, 2023).

<sup>30</sup> *Id.*

<sup>31</sup> Owatonna Pub. Mtg. Tr. at 19:15-22 (July 27, 2023).

<sup>32</sup> *See, e.g.*, Marshall Pub. Mtg. Tr. at 19:8-14 (July 26, 2023).

<sup>33</sup> *Id.*



records of its operations “in sufficient detail” to allow for Commission’s review.<sup>34</sup> CenturyLink’s reactive maintenance regime and its incomplete recordkeeping violate this rule.

CenturyLink is not “continually reviewing its operations to assure the furnishing of adequate service,” so much, as it is occasionally (and inadequately) responding to one of every several complaints it received about service in a given area.<sup>35</sup> The record and CenturyLink’s words demonstrate CenturyLink’s maintenance is purely reactive: “the Company’s current program for maintenance of its outside plant is the creation of trouble tickets, whether by customers or internal triggers.”<sup>36</sup> In its own words, “CenturyLink doesn’t automatically or systematically run any proactive testing, only as part of an install or repair request.”<sup>37</sup> In fact, when asked for all documents pertaining to the company’s predictive maintenance program, CenturyLink responded that no such documentation exists.<sup>38</sup>

CenturyLink also appears to be violating the Rule with respect to its poor recordkeeping. The OAG asked for information about how CenturyLink’s maintenance practices comply with the rules, and the company claimed its “trouble report rates demonstrate that it has an effective maintenance program in place for keeping its plant in good order.”<sup>39</sup> Yet when asked for the trouble report in subsequent requests, CenturyLink did not produce the report, but instead explained, “This trouble report is not an Excel document or any normal report we look at each day. This is in our dispatch system and tickets are generated when three or more tickets are called in on a 100 pair group.”<sup>40</sup> This system serves customers poorly and leaves persistent

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<sup>34</sup> Minn. R. 7810.5000.

<sup>35</sup> *Id.*

<sup>36</sup> Evidentiary Hearing Transcript 192:8-12 (Ardoyno).

<sup>37</sup> Evidentiary Hearing Transcript 194:18-24 (Ardoyno).

<sup>38</sup> Evidentiary Hearing Transcript 199:5 – 200:1 (Ardoyno).

<sup>39</sup> OAG-2 (Lebens Direct Schedule D-4 at 1-2 ) (quoting CenturyLink response to OAG IR 29).

<sup>40</sup> OAG-4 at 8:8-22 (Lebens Surrebuttal).

troubles unaddressed.<sup>41</sup> In the evidentiary hearing, CenturyLink Witness Ardoyno and Department of Commerce Counsel discussed several instances of customers experiencing repeat troubles over several years with no resolution.<sup>42</sup> These chronic problems slip through the cracks of CenturyLink's current system.

Given CenturyLink's minimalist response to the OAG's request for maintenance documentation, it is difficult for OAG to get a comprehensive picture of CenturyLink's internal operations. The Department witnesses, however, painted a stark picture of how CenturyLink is failing Minnesota customers with its inadequate and reactive maintenance and monitoring.<sup>43</sup> Department witness Webber explained in his testimony why this approach is so inadequate. Webber noted that the Commission already determined reactive maintenance is inadequate under the rules.<sup>44</sup> In particular, he noted, that in the Frontier matter, Frontier had primarily relied upon customer reports of outages to engage in "break/fix" maintenance, and this was ultimately found by the Commission to be inadequate.<sup>45</sup> The Commission ultimately required Frontier to implement a more proactive maintenance plan that would avert problems rather than relying upon customer failure reports.<sup>46</sup> This precedent strongly suggests CenturyLink's current performance is inadequate under the rules.

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<sup>41</sup> Evidentiary Hearing Transcript 223:9 – 226:22 (Ardoyno).

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

<sup>43</sup> *See, e.g.*, DOC-4 at 10-16 (Webber Direct)

<sup>44</sup> *See id.*

<sup>45</sup> *Id.* at 12:1 – 13;2.

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

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

One of the most important elements of the Commission’s service quality rules is the protection against extended outages and emergency service disruptions.<sup>47</sup> The Rule requires each telephone utility to “make all reasonable efforts to prevent interruptions of service,” and, when interruptions occur to “reestablish service with the shortest possible delay.”<sup>48</sup> The Rule further provides that the “minimum objective should be to clear 95 percent of all out-of-service troubles within 24 hours of the time such troubles are reported” and “[e]mergency service shall be available, as required, for the duration of the interruption.”<sup>49</sup>

CenturyLink is not performing to the standard set by the Rule. The record is replete with information about customers who languish without service for days, county emergency service providers who are repeatedly inconvenienced by outages, and homeowners who have experienced repeated service interruptions only to have a technician report the company will never pay to fix their problem.<sup>50</sup>

The clearest example of CenturyLink’s repeated failings came from an individual who works in emergency response. In portions of Cook County, for example, telephone outages have become so routine that the lead dispatcher for the Public Safety Answering Point testified locals are habituated to knowing they can drop by the local fire station if their phone service is out and they need an emergency responder.<sup>51</sup> Keeping the fire station staffed so that locals can physically go there to secure an emergency dispatch is straining local resources.<sup>52</sup>

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<sup>47</sup> See Minn. R. 7810.5800.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> See generally DOC-1 at 13:6 – 19:17 (Gonzalez Direct).

<sup>51</sup> Evidentiary Hearing Transcript at 32:5-15 and 38:3 – 39:17 (Mielke Direct).

<sup>52</sup> *Id.*

And state agencies frequently hear from frustrated CenturyLink customers. The Department of Commerce and the Consumer Affairs Office of the Public Utilities Commission have fielded 530 complaints from CenturyLink customers during the pendency of these proceedings.<sup>53</sup> A whopping 46 percent of people calling to complain reported service outages.<sup>54</sup> In one instance, the Department received a call from the daughter of an elderly woman living in Anoka whose service had been out for ten days.<sup>55</sup> The woman was desperate to have service restored, because her mother had a heart condition that required remote monitoring over her landline, but CenturyLink had scheduled and missed five repair appointments during the 10 day outage.<sup>56</sup>

The evidence clearly demonstrates CenturyLink is failing its wireline telephone customers and denying them the service the rules obligate the company to provide. The impact of CenturyLink's failings is felt throughout the state, and it is imposing negative consequences on businesses, emergency responders, and some of the state's most vulnerable households.

### **III. THE COMMISSION MUST ACT TO ENSURE MINNESOTANS BENEFIT FROM THE PROTECTIONS THE RULES ENSHRINE AND CUSTOMERS RECEIVE THE SERVICES THEY RICHLY PAY FOR.**

The Commission is a refuge for customers receiving subpar telephone service, and the Commission has emphatically embraced its responsibility to protect consumers:

The Commission takes service quality seriously. Especially outside of Minnesota's large metropolitan areas, the landline service provided by local exchange carriers remains a citizen's crucial and life-sustaining link to the rest of the world. Home-bound patients relying on remote health monitors, business requiring constant availability to their

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<sup>53</sup> DOC-1 at 13:6 – 14:5 (Gonzalez Direct)

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 15:16-20.

<sup>56</sup> *Id.*



customers, and friends exchanging greetings are all entitled to reliable service from a responsive public utility.<sup>57</sup>

It is imperative the commission take action when, as here, a telephone utility is failing to provide the bare minimum level of service to its most vulnerable customers.

In contrast, CenturyLink has been fighting the Commission's service quality rules for nearly a decade.<sup>58</sup> In the past, as is the case now, CenturyLink has "not argue[d] that the standard itself harms consumers, but rather, that the cost to comply with the standard adversely affects the public interest by delaying other services, such as installations and scheduled repairs, and by limiting its ability to allocate resources to deliver more desirable services, such as broadband."<sup>59</sup> But the Commission has previously rejected these arguments, recognizing that maintaining adequate service quality remains an important public priority for customers throughout CenturyLink's territory and for the legislature, which has codified the Commission's responsibility to maintain or improve service quality.<sup>60</sup>

As it has done previously, the Commission must enforce the telephone rules, which some of the most vulnerable and isolated Minnesotans continue to rely upon. CenturyLink continues

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<sup>57</sup> *In the Matter of a Commission Inquiry into the Service Quality, Customer Service, and Billing Practices of Frontier Communications*, MPUC Docket No. P-405/CI-18-122, ORDER APPROVING SETTLEMENT AS MODIFIED at 6 (Jan. 22, 2020).

<sup>58</sup> *In the Matter of the Petition of CenturyLink, Inc. for A Variance to Minnesota Rules, Part 7810.5800 In the Matter of the CenturyLink, Inc. Petition for Rulemaking to Revise Serv. Quality Rules In the Matter of a Rulemaking to Consider Possible Amends. to Minnesota Rules, Parts 7810.4100 Through 7810.6100*, MPUC Docket No. P-421/AM-14-255, ORDER DENYING VARIANCE REQUEST at 8 (Aug. 11, 2014).

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

<sup>60</sup> *Id.* ("Further, the Legislature has recognized the continuing importance of service quality by requiring each AFOR to prioritize service quality and by directing the Commission to consider, in its oversight of telecommunications services, maintaining or improving service quality. For all these reasons, the Commission concludes that CenturyLink has not met the requirements for a variance under Minn. R. 7829.3200.")

to ignore the baseline service requirements the rules enshrine. It is critical the Commission bring CenturyLink into compliance and impose remedial actions.

### **CONCLUSIONS AND RECOMMENDATIONS**

The thousands of Minnesotans who rely on CenturyLink's landline telephone service are relying upon enforcement of the Commission's service quality rules. Lacking better options, they depend upon the minimum standards set in the rules to keep their vital wireline telephone service functioning. For these consumers, and for all the reasons given above, the OAG recommends the following:

- Require CenturyLink to adequately repair or replace the most troubled outside plant.
- Prohibit CenturyLink from sidelining maintenance projects that do not satisfy the five-year payback.
- Implement a Plant Pride program.
- Implement such other appropriate policies or remedial measures the Department may recommend or the Commission may deem appropriate.

Dated: January 17, 2024

Respectfully submitted,

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