

September 2, 2014

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

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

Dear Dr. Haar:

Attached are the Comments of the Minnesota Department of Commerce (Department) in response to CenturyLink, Inc.'s Petition for Reconsideration in the following matter:

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

The petition for reconsideration was filed on August 21, 2014 by:

Jason Topp
Associate General Counsel
CenturyLink, Inc.
200 South 5th Street, Room 2200
Minneapolis, MN 55402

The Department recommends that the petition be denied and is available to answer any questions the Commission may have.

Sincerely,

/s/ KATHERINE DOHERTY
Rate Analyst

/s/ DIANE DIETZ
Rates Analyst

KD/DD/ja
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE

DOCKET NO. P421/AM-14-255

I. BACKGROUND

On March 26, 2014, CenturyLink, Inc. (CenturyLink), on behalf of its affiliated companies, filed a petition for a waiver of Minn. Rules pt. 7810.5800, which states, in part, that “[t]he minimum objective should be to clear 95 percent of all out-of-service troubles within 24 hours of the time such troubles are reported.” CenturyLink also asked the Commission to alter the associated terms in its AFOR Plan.

On April 2, 2014, the Minnesota Public Utilities Commission (Commission) issued a notice soliciting comments by April 30, 2014, and reply comments by May 21, 2014.

Between April 28 and April 30, 2014, several parties filed comments, including the AARP, Legal Services Advocacy Project, the Minnesota Department of Commerce (Department), CenturyLink and five CLECs filing jointly (Eschelon Telecom of Minnesota, Inc., Integra Telecom of Minnesota, Inc., TW Telecom of Minnesota, LLC, US Link, Inc., and Velocity Telephone, Inc. (the Joint CLECs)).

On May 21, CenturyLink filed reply comments requesting that the Commission grant either a full variance to the rule, or that it vary the rule to reduce the standard from 95% to 85%.

On May 23, the Commission issued a supplemental notice requesting comments on CenturyLink’s request to vary the rule.

On June 12, 2014, comments were filed by the Joint CLECs, the Minnesota Cable Association, MCCA, the Department and CenturyLink.

On August 11, 2014, the Commission issued an Order Denying the Variance Request.¹

¹ In the Matter of the Petition of CenturyLink for a Variance of Minnesota Rule 7810.5800, Docket No. P421/AM-14-255, *Order Denying Variance*, August 11, 2014.

On August 21, 2014, CenturyLink filed a Petition for Reconsideration.

II. CENTURYLINK'S PETITION

CenturyLink seeks reconsideration of the Commission's decision to deny the request for variance of Minn. Rule 7810.5800 based on the following:

1. The Commission's order fails to properly apply Minn. Stat. section 237.011.
2. CenturyLink has established that the rule imposes an excessive burden.
3. CenturyLink has established that a variance is in the public interest.
4. CenturyLink has established that the variance is consistent with applicable law.

III. DEPARTMENT RESPONSE

1. *The Commission did not Err in its Application of Minn. Stat. section 237.011.*

CenturyLink objects to the Commission's statement on page 2 of the Order that "direct oversight of service quality is a key policy objective of the Commission's regulatory responsibilities under Minn. Stat. section 237.011,"² because 1) "[t]he statute does not mention 'direct oversight'" and 2) "the Commission does not directly oversee the service quality of any Minnesota telecommunications provider other than for those companies that must agree to an Alternative Form of Regulation Plan in order to receive the same pricing flexibility its competitors receive."

It is unclear why CenturyLink relies on a broad statement by the Commission acknowledging its regulatory responsibility to consider maintaining or improving service quality to support its contention that the Commission's decision to deny CenturyLink's requested variance should be reconsidered.

The statute itself does identify "maintaining or improving quality of service" and "ensuring consumer protections are maintained in the transition to a competitive market for local telecommunications service" among the "goals that should be considered as the commission executes its regulatory duties with respect to telecommunication services." Clearly these are key policy objectives that the Commission should consider, particularly in considering a request, such as that of CenturyLink, to eliminate or vary a Commission rule designed to *maintain* quality of service and *ensure* consumer protections.

² Order, page 2.

Minn. Stat. section 237.011 does not mandate that the Commission consider every goal enumerated in MS 237.011, in every case, nor does the statute confine the scope of the Commission's authority to consider telecommunications issues that fall outside the confines of these enumerated goals.

CenturyLink states that "the Commission should justify why it only implements [direct oversight of service quality] for a small percentage of Minnesota customers,"³ arguing that the Commission does not do so for facilities based competitive local exchange carriers, small incumbent providers, or large incumbent providers unless the provider agrees to an alternative form of regulation (AFOR) plan.

The Department believes that CenturyLink, rather than the Commission, erred in its application of Minn. Stat. section 237.011 to the current case.

First, in a proceeding such as this (i.e., a petition for a waiver under Minnesota Rules part 7829.3200), the burden of proof is on CenturyLink to demonstrate that the rule imposes an excessive burden, that a waiver of the rule is in the public interest, and that a waiver is consistent with applicable law. The Commission is not required to "justify" the rule in the current docket.

Second, CenturyLink's "unfairness" argument, alleging that the Commission's oversight of service quality is selectively applied to large incumbent providers who have chosen to be regulated under an AFOR plan, is not a new one. CenturyLink appears to object to the terms of the service quality plan in its AFOR plan, rather than to application of Minn. Rules part 7810.5800 itself. In its August 21, 2014 petition for reconsideration, CenturyLink takes issue with the fact that CenturyLink QC is required to track and annually report certain service quality results pursuant to its Alternative Form of Regulation (AFOR) Plan.⁴

This service quality reporting and tracking requirement stems from the provisions CenturyLink QC agreed to in its AFOR Plan, which is currently in force through December 31, 2016. A waiver of the rule will not affect the terms of the AFOR by which CenturyLink QC has elected to be regulated. No other CenturyLink company for whom the waiver is sought is subject to reporting because no other CenturyLink company has elected to be regulated pursuant to an AFOR plan.

There is no provision in the AFOR Plan that permits changes to the Service Quality Plan during the term of the plan. Minnesota Statutes applicable to AFOR Plans as well as the Commission's prior Orders, prevent the Commission from altering the terms of CenturyLink's AFOR plan. In 2013 CenturyLink QC made the decision to extend its existing AFOR plan,

³ August 21, 2014 petition for reconsideration of CenturyLink, page 3.

⁴ It is important to note that there are no monetary penalties associated with CenturyLink QC's failure to meet the 95% standard in the AFOR Plan to which CenturyLink has agreed.

rather than propose a new plan which would have allowed for renegotiation of the service quality plan as well as other provisions in the plan that may be outdated or not in the public interest.

For these reasons, the Department does not believe the August 11, 2014 Order reflects an error in the application of Minn. Stat. section 237.011.

2. CenturyLink Has Not Established that the Rule Imposes an Excessive Burden

In its August 21, 2014 petition, CenturyLink requests reconsideration of the Commission's decision that CenturyLink has not adequately demonstrated that the rule imposes an excessive burden.

In support of its request, CenturyLink states that 1) CenturyLink has presented evidence more powerful than an artificial quantification of cost in support of its petition, and 2) force majeure provisions in the AFOR do not fully address the problems caused by the standard.

While CenturyLink states that the evidence, already presented by the Company, provide the Commission "with a number of critical factors [which CenturyLink again lists in its Petition for Reconsideration], that cause this standard to impose an excessive burden," these factors have already been considered by the Commission and dismissed. CenturyLink has presented no new facts or evidence that would compel a different conclusion.

CenturyLink also objects to the Commission's conclusion that force majeure provisions in the AFOR ameliorate the impact of the 95% standard on CenturyLink, stating that "while force majeure language can be helpful in addressing the standard, such events do not account for the wide discrepancy in repair events reported pursuant to the metric."

In its petition for reconsideration, CenturyLink again fails to support its assertions with any new facts or evidence. In its August 11, 2014 Order, the Commission recognized that, "meeting the standard requires careful management and allocation of resources,"⁵ which includes accounting for variances in the volume and scope of repair events. CenturyLink does not explain in its petition for reconsideration why it should not carefully manage these resources to meet the standard.

3. CenturyLink has not established that a Variance is in the Public Interest

The Commission stated in its Order that:

CenturyLink did not argue that the standard itself harms consumers but rather that the cost to comply with the standard

⁵ Order page 8.

adversely affect the public interest by delaying other services, ...and by limiting [CenturyLink's] ability to allocate resources to deliver more desirable services such as broadband.

Further, the Commission stated that:

Concluding that the public interest would not be adversely affected by granting the variance requires finding that the company is correct in its assertions that it cannot both meet the standard and effectively allocate resources in a manner that best serves consumers and best protects service quality.⁶

CenturyLink did not dispute the validity of the above statements in its Petition for Reconsideration, but objected to the Commission's conclusion that:

Based on the record in this case, ...there is not sufficient information or other data to draw [the] conclusion that, as noted above, the company cannot both meet the standard and effectively allocate resources in a manner that best serves consumers and best protects service quality.⁷

While CenturyLink objects to the Commission's statement, it provides no compelling reason why the Commission should reconsider its decision, stating only that "the only sworn evidence in the case establishes not only that the standard causes a misallocation of resources, but also that the standard disadvantages consumers by delaying the availability of new services and by delaying repair of non-outage conditions," referring to the affidavit of Patrick Haggerty.

While Mr. Haggerty did make these claims in his affidavit, neither he nor CenturyLink has provided quantifiable evidence to support Mr. Haggerty's statements. Further, the Commission has clearly considered Mr. Haggerty's claims⁸ in reaching its conclusion. Again, CenturyLink presents no new facts to justify reconsideration of the Commission's Order.

IV. CONCLUSION

The Commission's decision with respect to CenturyLink's Petition for Variance was well-informed, reasoned, and appropriate. In its Petition Requesting Reconsideration of the

⁶ Order, page 8.

⁷ Id.

⁸ See Order, pages 4 and 8.

Commission's Order, CenturyLink has presented no new arguments, new evidence, or information that justify reconsideration of the August 11, 2014 Order and compels a different conclusion than that presented in the Order. The arguments, evidence and information presented by CenturyLink in its August 21, 2014 petition have already been considered and rejected by the Commission.

V. COMMISSION OPTIONS

- A. Deny CenturyLink's Petition for Reconsideration.
- B. Find that one or more of the issues cited by CenturyLink requires reconsideration, and proceed to reconsider the August 1, 2014 Order.

VI. DEPARTMENT RECOMMENDATION

The Department recommends option A. The Commission should deny CenturyLink's request for reconsideration of the Commission's August 11, 2014 Order.

/ja

CERTIFICATE OF SERVICE

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

MINNESOTA DEPARTMENT OF COMMERCE – COMMENTS

Docket Nos. **P421/AM-14-255**

Dated this **2nd** day of **September, 2014**.

/s/Linda Chavez

| First Name | Last Name | Email | Company Name | Address | Delivery Method | View Trade Secret | Service List Name |
|------------|-----------|-------------------------------|------------------------------------|--|--------------------|-------------------|------------------------|
| Julia | Anderson | Julia.Anderson@ag.state.mn.us | Office of the Attorney General-DOC | 1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134 | Electronic Service | Yes | OFF_SL_14-255_Official |
| Linda | Chavez | linda.chavez@state.mn.us | Department of Commerce | 85 7th Place E Ste 500 Saint Paul, MN 55101-2198 | Electronic Service | No | OFF_SL_14-255_Official |
| Ron | Elwood | relwood@mnsap.org | Mid-Minnesota Legal Aid | 2324 University Ave Ste 101 Saint Paul, MN 55114 | Electronic Service | No | OFF_SL_14-255_Official |
| Burl W. | Haar | burl.haar@state.mn.us | Public Utilities Commission | Suite 350 121 7th Place East St. Paul, MN 551012147 | Electronic Service | Yes | OFF_SL_14-255_Official |
| JoAnn | Hanson | joann.hanson@centurylink.com | CenturyLink | 200 S 5th St Ste 2200 Minneapolis, MN 55402 | Electronic Service | No | OFF_SL_14-255_Official |
| John | Lindell | agorud.ecf@ag.state.mn.us | Office of the Attorney General-RUD | 1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130 | Electronic Service | Yes | OFF_SL_14-255_Official |
| William | Phillips | wphillips@aarp.org | AARP | 30 E. 7th St Suite 1200 St. Paul, MN 55101 | Electronic Service | No | OFF_SL_14-255_Official |
| Jason | Topp | jason.topp@centurylink.com | CenturyLink | 200 S 5th St Ste 2200 Minneapolis, MN 55402 | Electronic Service | No | OFF_SL_14-255_Official |
| Kim | Wagner | Kim.Wagner@integratelecom.com | Integra Telecom | 6160 Golden Hills Drive Golden Valley, MN 55110 | Electronic Service | No | OFF_SL_14-255_Official |