

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

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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**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATIONS**

The Minnesota Public Utilities Commission (Commission) referred this matter to the Office of Administrative Hearings for a contested case proceeding in January 2023. Administrative Law Judge Kimberly Middendorf was assigned to the matter. The Commission directed the Judge to consider whether Qwest Corporation d/b/a CenturyLink QC (CenturyLink) is fulfilling the telephone service quality requirements of Minnesota Statutes chapter 237 and Minnesota Rules chapter 7810 and, if not, the appropriate remedy.

An evidentiary hearing was held on December 13, 2023 at the Minnesota Public Utilities Commission in St Paul, Minnesota. Initial briefs were filed on January 17, 2024. Reply briefs were filed on February 7, 2024, and the record closed.

Jason Topp and Katie Wagner, Lumen Technologies, and Eric Swanson, Elizabeth Schmiesing, and Christopher J. Cerny, Winthrop & Weinstein P.A., appeared on behalf of CenturyLink.

Richard Dornfeld and Greg Merz, Assistant Attorneys General, appeared on behalf of the Minnesota Department of Commerce (Department).

Erin Conti and Travis Murray, Assistant Attorneys General, appeared on behalf of the Office of the Attorney General, Residential Utilities Division (Office of the Attorney General or OAG-RUD).

Sally Ann McShane and Marc Fournier appeared on behalf of the Minnesota Public Utilities Commission staff (Commission).

STATEMENT OF THE ISSUES

1. Has CenturyLink violated the telephone service quality requirements contained in Minn. R. 7810.3300 (Maintenance of Plant and Equipment), Minn. R. 7810.5000 (Utility Obligations), or Minn. R. 7810.5800 (Interruptions of Service)?

2. If so, what is the appropriate remedy to address CenturyLink's failure to comply with the state's telephone service quality requirements?

SUMMARY OF RECOMMENDATIONS

1. The Commission should find that CenturyLink failed to provide adequate service, violating Minn. R. 7810.3300 and Minn. R. 7810.5000, when customers experienced multiple service outages or disruptions caused by deficient outside plant or equipment over an approximately four-and-a-half-year period. The Commission also should find that CenturyLink is violating Minn. R. 7810.5800, by failing to restore 95 percent of service outages within 24 hours. Each of these violations is continuing.

2. The Administrative Law Judge recommends that these violations be remedied by ordering CenturyLink to review and rehab certain plant and equipment identified as causing or contributing to repeated service outages or disruptions, to make periodic progress reports, and to reduce repair appointment windows from eight hours to four hours. These modest requirements are tailored to address the needs of customers most affected by the failure to comply with the telephone service quality rules.

Based on the evidence in the hearing record, the Judge makes the following findings:

FINDINGS OF FACT

I. PROCEDURAL HISTORY

1. On April 23, 2020, the Communication Workers of America (CWA) filed a complaint, alleging that CenturyLink had failed to meet service quality standards set forth in Commission rules.¹ On May 1, 2020, following negotiations with CenturyLink, CWA petitioned to withdraw its complaint.²

2. On May 18, 2020, the Commission sent letters to CenturyLink and CWA acknowledging that CWA had fulfilled the requirements for withdrawing its complaint—but directing the parties to document the service quality issues that prompted CWA's complaint and how those issues had been resolved.³

¹ Formal Complaint of the CWA (Apr. 23, 2020) (eDocket No. 20204-162321-01).

² CWA Withdrawal Letter (May 1, 2020) (eDocket No. 20204-162752-01).

³ Commission Letter to CWA (May 18, 2020) (eDocket No. 20205-163301-01); Commission Letter to CenturyLink (May 18, 2020) (eDocket No. 20205-163301-02).

3. On August 18, 2020, CWA renewed its formal complaint⁴ and petitioned the Commission to pursue an expedited investigation of CenturyLink's compliance with the state's telephone service quality requirements.⁵

4. By October 23, 2020, the Commission had received comments from CenturyLink, the Department, and Office of the Attorney General. CenturyLink filed additional comments on November 5.⁶ By August 30, 2021, the Commission had received additional comments, revisions, and replies from all parties. Those comments included the Department and Office of Attorney General's joint Reply Comments, which set forth recommendations regarding service quality lapses (Attachment A).⁷ Thereafter, the parties pursued settlement negotiations and filed periodic reports on the status of those negotiations.⁸

5. On August 16, 2022, CWA, the Department, and Office of the Attorney General recommended referring the matter to the Minnesota Office of Administrative Hearings to assign an administrative law judge to convene a series of public hearings regarding CenturyLink's service quality.⁹ On August 25, 2022, CenturyLink responded to the intervenor recommendations, requesting that any procedure comply with Commission rules and due process.¹⁰

6. On January 5, 2023, the Commission met to consider the matter. On January 30, 2023, the Commission referred the matter to the Office of Administrative Hearings for a contested-case proceeding. The Commission determined that the parties' settlement 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."¹¹ The Commission further requested that the assigned Judge hold one or more public hearings in CenturyLink's service territory to take public comment on potential rule violations identified in Attachment A.¹²

7. The Judge held in-person public hearings in Thief River Falls on July 18, 2023; Hibbing on July 19, 2023; Marshall on July 26, 2023; and Owatonna on July 27,

⁴ CenturyLink's contention that no "formal complaint" meeting the requirements of Minn. R. 7829.1700 and Minn. R. 7812.2210, subp. 17A, "has ever been filed" does not fairly characterize the record. See CTL Initial Br. at 2 (Jan. 17, 2024) (eDocket No. 20241-202264-02). Minn. R. 7812.2210 applies only to compliance with Minn. R. ch. 7812, which CenturyLink is not alleged to have violated. The CWA's April 23, 2020 and August 18, 2020 submissions contain all required elements of Minn. R. 7829.1700 and are properly viewed as formal complaints.

⁵ CWA Petition for Expedited Investigation (Aug. 18, 2020) (eDocket No. 20208-165981-01).

⁶ Comments of the Office of the Attorney General (Oct. 23, 2020) (eDocket No. 202010-167605-02); Comments of the Department (Oct. 23, 2020) (eDocket No. 202010-167574-01); Comments of CenturyLink (Nov. 5, 2020) (eDocket No. 202011-168068-01).

⁷ Joint Comments of the Department and OAG at 2-3 and Attachment A (Aug. 30, 2021) (eDocket No. 20218-17752-01).

⁸ See Notice and Order for Hearing at 2 (Jan. 30, 2023) (eDocket No. 20231-192697-01).

⁹ Joint Intervenor Letter (Aug. 16, 2022) (eDocket No. 20228-188384-01).

¹⁰ Centurylink Reply Letter (Aug. 25, 2022) (eDocket No. 20228-188592-01).

¹¹ Notice & Order For Hearing at 2-3.

¹² Notice & Order For Hearing at 6.

2023. The Judge also convened two virtual public meetings via WebEx, on July 21, 2023, and July 24, 2023.¹³

8. The Department, Office of the Attorney General, and CenturyLink filed direct testimony on September 1, 2023. The parties filed rebuttal testimony on November 1, 2023, and surrebuttal testimony on December 1, 2023. An evidentiary hearing was held on December 13, 2023.

9. On January 3, 2024, the Parties stipulated that only the following issues remained in dispute:

- a. Has CenturyLink violated the following Minn. R. 7810.3300 (Maintenance of Plant and Equipment), Minn. R. 7810.5000 (Utility Obligations), or Minn. R. 7810.5800 (Interruptions of Service); and
- b. If so, what is the appropriate remedy.¹⁴

10. The parties filed initial briefs on January 17, 2024, and reply briefs on February 7, 2024.¹⁵

II. BACKGROUND

A. History of Telecommunications Regulation

11. Historically, before Congress passed the Telecommunications Act of 1996, telephone service was regulated similarly to electric and gas utilities. Telephone companies had exclusive service territories and were subject to rate of return price regulation. This form of regulation ensured that high-cost areas (primarily rural communities) received service through implicit subsidies generated from above-cost long-distance, business, and urban rates.¹⁶ While independent providers existed, the AT&T Corporation (AT&T) dominated the industry for decades. AT&T's origins date back to 1876. By 1939, AT&T controlled 83 percent of U.S. telephones and 98 percent of long-distance telephone lines and manufactured 90 percent of all U.S. phone equipment.¹⁷ In 1974, the federal government brought an anti-trust lawsuit against AT&T. In 1982, AT&T agreed to divest itself of 22 regional operating companies that would become separate entities and operate local telephone networks.¹⁸ The regional Bell operating companies were reorganized and converted into seven regional phone companies.¹⁹

12. Following the 1982 divestiture, Minnesota was served by U.S. West, Inc., which absorbed three smaller regional operating companies, including the Northwestern

¹³ Second Prehearing Order at 1-2 (May 16, 2023) (eDocket No. 20235-195879-01).

¹⁴ Joint Stipulation (Jan. 4, 2024) (eDocket No. 20241-201849-01).

¹⁵ Order Modifying Hearing Schedule at 2 (Dec. 4, 2023) (eDocket No. 202312-200951-01).

¹⁶ Ex. DOC-1 at 4 (Gonzalez Direct) (Sept. 1, 2023) (eDocket No. 20239-198707-02).

¹⁷ Ex. DOC-1 at 4 (Gonzalez Direct).

¹⁸ *United States v. Am. Tel. & Tel. Co. (Modified Final Judgment)*, 552 F. Supp. 131 (D. D.C. 1982).

¹⁹ Ex. DOC-1 at 4 (Gonzalez Direct).

Bell Telephone Company. Northwestern Bell had been the Regional Bell Operating Company for Minnesota. In 2000, Qwest Communications purchased U.S. West. In 2011, it merged with CenturyLink. In 2020, the company changed its name to Lumen Technologies but still operates in Minnesota as Qwest Communications d/b/a CenturyLink QC.²⁰

13. In 1996, Congress enacted the Telecommunications Act, which significantly changed how telephone companies were regulated. The legislation attempted to replace the system of monopoly telephone companies with market competition. The Act was intended to facilitate a transition from regional monopolies to a competitive, deregulated industry.²¹ Congress theorized that competition would ultimately reduce prices, increase consumer choice, and facilitate the development of new and better services.²² Despite the intentions of Congress, the Telecommunications Act has not generated significant or lasting competition between incumbent telephone companies and new fixed-wire carriers. Any increase in competition is mostly attributable to technological developments, including mobile and broadband services.²³

B. CenturyLink's Minnesota Telephone Network

14. As a successor to the Northwestern Bell Telephone Company, CenturyLink retains service areas across Minnesota that span approximately 66,000 miles of copper cable and nearly 10,000 cross box locations.²⁴ In these service areas, CenturyLink remains the statutorily mandated "carrier of last resort."²⁵ CenturyLink possesses significant market share. CenturyLink has approximately 233,000 customer lines in Minnesota, or about 21 percent of all lines in the state.²⁶

15. CenturyLink provides telephone service using analog voice transmissions carried over twisted-pair copper wires. These copper wire pairs come bundled in cables of various sizes depending on the number of customers served. For traditional telephone service, each wire "pair" can serve one customer such that a 100-pair cable can serve up to 100 end users.²⁷ This type of service is commonly known as POTS.²⁸ The expected lifespan of POTS equipment is approximately 25 to 50 years.²⁹ When POTS facilities are buried underground, great care must be taken to keep them dry. Moisture causes copper

²⁰ Ex. DOC-1 at 5 (Gonzalez Direct).

²¹ Ex. DOC-1 at 5 (Gonzalez Direct).

²² Ex. DOC-1 at 5 (Gonzalez Direct).

²³ Ex. DOC-1, LG-D-10 (Gonzalez Direct) (Robert W. Crandall, *Competition and Chaos: U.S. Telecommunications Since the 1996 Telecom Act* 58 (2005)).

²⁴ Ex. DOC-5, JDW-R-10 at 3-4 (Webber Rebuttal) (Nov. 1, 2023) (eDocket No. 202311-200158-08); Ex. DOC-5, JDW-R-8 at 4 (Webber Rebuttal).

²⁵ Ex. DOC-4 at 16 (Webber Direct) (Sept. 1, 2023) (eDocket No. 20239-198707-07).

²⁶ Evid. Hrg. Tr. at 159-160 (Mohr); Ex. DOC-1 at 11 (Gonzalez Direct).

²⁷ Evid. Hrg. Tr. at 212 (Ardoyno).

²⁸ "Plain old telephone service." See Ex. DOC-1 at 7 (Gonzalez Direct).

²⁹ Ex. DOC-2 at 3-4 (Gonzalez Rebuttal) (Nov. 1, 2023) (eDocket No. 202311-200158-02) .

cables to corrode or call quality to deteriorate.³⁰ Telephone companies sometimes use underground air dryers to ensure that lines remain protected from excessive moisture.³¹

16. An industry best practice is to place greater emphasis on proactive rehab than “break/fix” maintenance.³² CenturyLink primarily relies on “break/fix” maintenance to keep its aging POTS network operating. “Break/fix” maintenance refers to the practice of waiting until broken, damaged, or deteriorated facilities cause customer service outages or impairments before making repairs.³³ The alternative to “break/fix” maintenance is proactive rehabilitation (commonly referred to as “rehab”) where “processes are established to anticipate the ‘break’ before it happens and take an appropriate action in advance.”³⁴ Rehab refers to proactive maintenance that a company performs on an aging or failing network component to reduce or avoid future service problems.³⁵

17. CenturyLink spends roughly [REDACTED] of its maintenance budget on reactive “break/fix” work.³⁶ CenturyLink’s reliance on “break/fix” maintenance has increased in recent years as the company cut back on proactive rehab and staffing. Between 2019 and 2021, CenturyLink cut its rehab spending by [REDACTED] from approximately [REDACTED].³⁷ In December 2021, CenturyLink eliminated approximately [REDACTED] field technician positions.³⁸ Technician workloads, in turn, have risen by [REDACTED] since 2021.³⁹

18. CenturyLink requires that repairs satisfy a five-year payback threshold for the company to complete them. Its technicians can identify potential rehabilitation projects through use of the plant maintenance request (PMR) tool. Technicians are required to submit PMRs identifying conditions that are unsafe and/or cannot be corrected immediately upon discovery. These projects are evaluated for funding out of capital funds, the transformation budget, or local expense funds. Any maintenance project that does not meet the five-year payback threshold must be funded out of the local expense budget.⁴⁰ However, CenturyLink does not have a local expense budget.⁴¹

³⁰ Evid. Hrg. Tr. at 219 (Ardoyno).

³¹ Evid. Hrg. Tr. at 219 (Ardoyno).

³² Ex. DOC-4 at 11 (Webber Direct) (citing the 2020 Schumaker & Company audit report).

³³ Ex. DOC-4 at 11 (Webber Direct).

³⁴ Ex. DOC-4 at 11 (Webber Direct) (citing the 2020 Schumaker & Company audit report).

³⁵ Ex. CTL-8 at 8 (Ardoyno Direct) (Sept. 1, 2023) (eDocket No. 20239-198700-03); Ex. DOC-2 at 2 (Gonzalez Rebuttal) (Nov. 1, 2023) (eDocket No. 202311-200158-01).

³⁶ Ex. DOC-6 at 4 (Webber Surrebuttal) (Dec. 1, 2023) (eDocket No. 202312-200911-04).

³⁷ Ex. DOC-4 at 17-18 (Webber Direct) (Sept. 1, 2023) (eDocket No. 20239-198707-03) .

³⁸ Ex. DOC-4 at 19 (Webber Direct); Evid. Hrg. Tr. at 182 (Ardoyno); Ex. DOC-19 at 2 (CenturyLink Response to Department Information Request No. 40) (eDocket No. 202312-201233-06).

³⁹ Ex. DOC-4 at 21, 51 (Webber Direct).

⁴⁰ Evid. Hrg. Tr. 184:18 – 186:12 (Ardoyno); Ex. DOC-20 (CenturyLink Response to OAG-RUD Information Request No. 145) (eDocket No. 202312-201233-08).

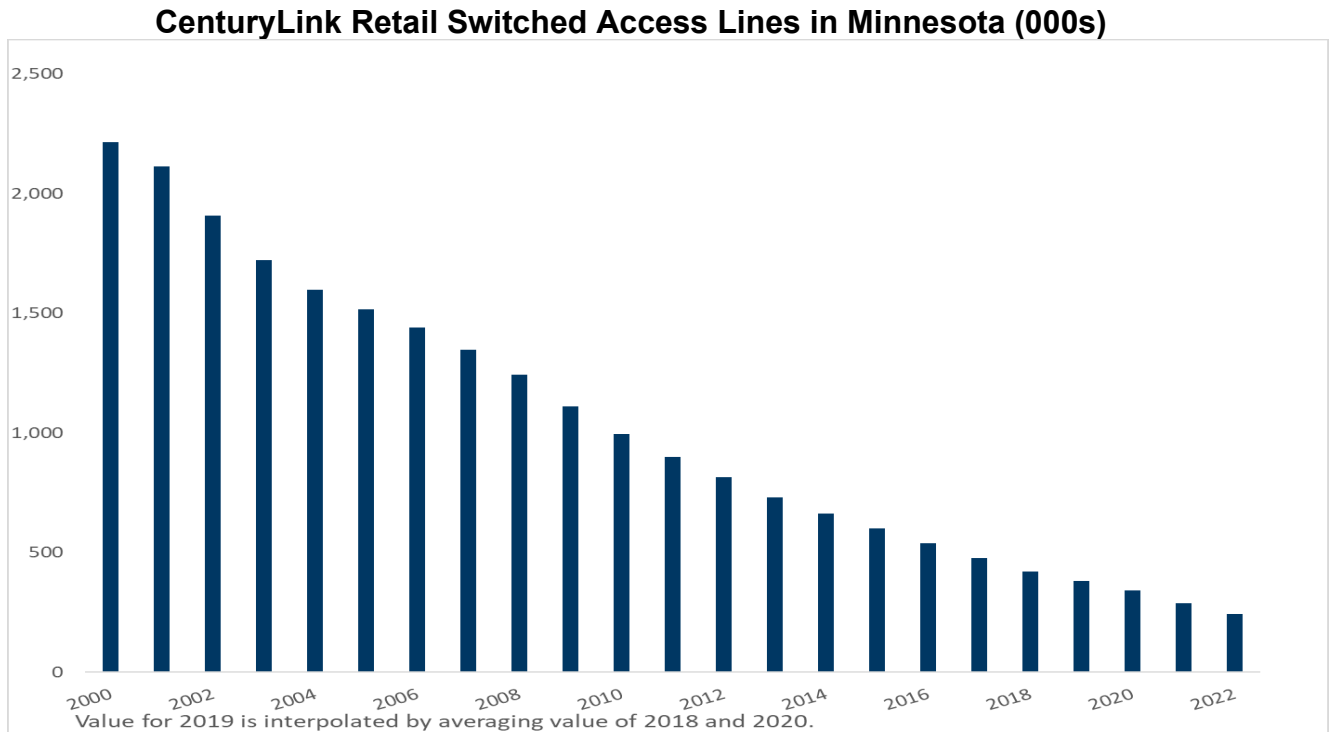
⁴¹ Evid. Hrg. Tr. 184:18 – 186:12 (Ardoyno); Ex. DOC-20 at 1; Ex. CTL-10 at 7 (Ardoyno Rebuttal) (eDocket No. 202312-200931-07).

C. Landline Telephone Usage and Alternatives

19. Many Minnesotans have transitioned to broadband and wireless phone service, when available and affordable. This trend appears to be at least partially driven by unreliable and inadequate landline service.⁴²

20. CenturyLink had an average of [REDACTED] telephone lines per mile of copper in 2000.⁴³ By 2022, the average is only [REDACTED] lines per mile.⁴⁴

21. The figure below depicts the roughly 90 percent erosion of CenturyLink's access lines in Minnesota over the past 20 years.⁴⁵



22. As shown below, 2020 data from the National Center for Health Statistics, Centers for Disease Control and Prevention demonstrates that five percent of Minnesota households relied exclusively on landline service.⁴⁶

⁴² See Exs. DOC-1 (Gonzalez Direct), OAG-1 (Lebens Direct) (eDocket No. 20239-198701-03); see also Hibbing Public Hrg. Tr. at 40 (July 19, 2023), Virtual Public Hrg. Tr. at 31-32 (July 21, 2023), Owatonna Public Hrg. Tr. at 22 (July 27, 2023).

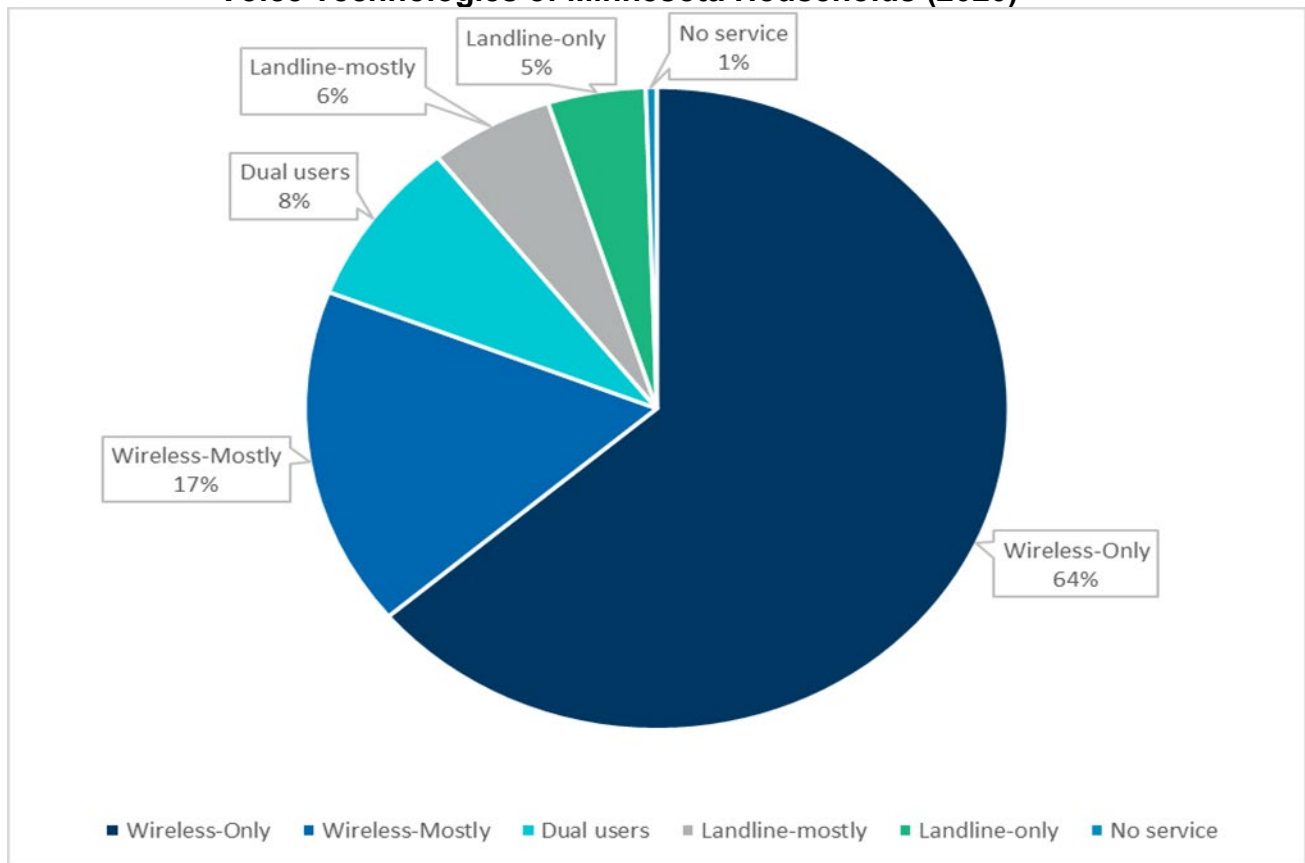
⁴³ Ex. CTL-19, Sched. 1 at 26, Fig. 5 (Turner Rebuttal).

⁴⁴ Ex. CTL-19, Sched. 1 at 26, Fig. 5 (Turner Rebuttal).

⁴⁵ Ex. CTL-19, Sched. 1 at ¶ 31 (Turner Rebuttal).

⁴⁶ Ex. CTL-19, Sched. 1 at ¶ 25 (Turner Rebuttal) (Nov. 1, 2023) (eDocket No. 202311-200163-02).

Voice Technologies of Minnesota Households (2020)⁴⁷



23. Older and lower-income Minnesotans tend to be more reliant on landline telephone than other consumers. The National Center for Health Statistics reports approximately 53 percent of Americans older than 65 continue to have landline service while approximately 29 percent between the ages of 45 and 64 have landlines.⁴⁸ According to a 2022 Wilder Foundation study of likely Minnesota landline users, 82 percent of users expect to continue using them and 77 percent report that landline access is either “very” or “somewhat” important to them.⁴⁹ The survey also confirms that landline users tend to be older and lower-income, as shown below.⁵⁰

⁴⁷ Ex. CTL-19, Sched. 1 at ¶ 25 (Turner Rebuttal).

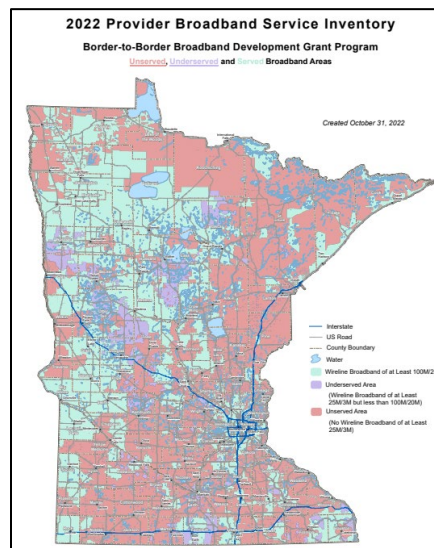
⁴⁸ Ex. DOC-1, LG-D-1 (Gonzalez Direct) (Stephen J. Blumberg and Julian V. Luke, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2022* at 1, National Center for Health Statistics (2023), www.cdc.gov/nchs/data/nhis/earlyrelease/wireless202305.pdf).

⁴⁹ Ex. DOC-1, LG-D-2 at 3, 6 (Gonzalez Direct) (Michelle Decker Gerrard and Anna Granias, *Assessment of Landline Telephone Access and Use in Minnesota*, Wilder Foundation Research (2022)).

⁵⁰ Ex. DOC-1, LG-D-2 at 9-10 (Gonzalez Direct).

	Percent
Age of respondent	
25-44	1%
35-49	8%
50-64	25%
65-75	35%
75 and older	31%
Household income (2021) before taxes	
Less than \$25,000	12%
\$25,000 to under \$50,000	25%
\$50,000 to under \$75,000	22%
\$75,000 to under \$100,000	16%
\$100,000 to under \$150,000	16%
\$150,000 or higher	9%

24. Broadband internet and mobile service are alternatives to traditional POTS telephone service for many customers. While they can be adequate substitutions and offer additional functionalities, these alternatives are not uniformly available across Minnesota. Broadband, for example, can be used to provide voice over internet protocol (VoIP) service as an alternative to traditional telephone service.⁵¹ The Minnesota Department of Employment and Economic Development (DEED) established that, as of 2022, many rural areas continue to lack access to broadband. The areas shaded in orange and purple in the map below are considered by DEED to be unserved or underserved based on the current definition of broadband, which is determined by download and upload capacity:⁵²



⁵¹ Ex. DOC-1 at 7 (Gonzalez Direct).

⁵² Ex. DOC-1 at 7-8 (Gonzalez Direct) (citing Minn. Dep't Employment & Econ. Dev., *Provider Broadband Service Inventory* (2022), https://mn.gov/deed/assets/infrastructure-grant_tcm1045-134198.pdf).

25. Like broadband, mobile telephone service is an alternative for some consumers. Mobile coverage is not reliably available in all portions of Minnesota. Identifying the exact locations where coverage gaps exist is a challenge.⁵³ During an investigation of mobile carriers, the Federal Communications Commission (FCC) found that Verizon, U.S. Cellular, and T-Mobile coverage maps overstate the areas in which they provide service. According to the FCC report, these providers appeared to overstate coverage in their maps about 40 percent of the time.⁵⁴

26. As the Commission has consistently concluded, landlines continue to be necessary and useful to many Minnesotans. Even as CenturyLink argues that competition obviates the need for continued regulation because landlines are being phased out, nothing in the record establishes plans for upgrading the offerings in unserved or underserved rural areas to include broadband or other alternatives.

27. CenturyLink's Prior Challenges to the Telephone Service Quality Rules
CenturyLink has a history of unsuccessfully challenging the telephone service quality rules that spans a decade or more.⁵⁵

28. In 2014, CenturyLink filed a petition under Minn. Stat. § 14.09, requesting that the Commission repeal the telephone service quality rules, including Minn. R. 7810.5000 (Utility Obligations) and Minn. R. 7810.5800 (Interruptions of Service) (2014 Rule Petition). In that docket, CenturyLink claimed the telephone service quality rules were obsolete, burdensome, and unnecessary, considering competition in the local telecommunications market.⁵⁶

29. The Commission declined to repeal the rules, rejecting the same or similar arguments CenturyLink makes now about the lack of need for the service quality standards.⁵⁷ The Commission astutely observed:

[N]one of the entities supporting sweeping rule changes specifically identified how the marketplace would better protect customers, and they did not file any cost data to support claims that the rules are burdensome. Further, none of these companies has committed to maintaining service quality levels as set forth in the Commission's rules.

⁵³ Ex. DOC-1 at 9 (Gonzalez Direct).

⁵⁴ Ex. DOC-1 at 9 (Gonzalez Direct) (citing Rural Broadband Auctions Task Force, *Mobility Fund Phase II Coverage Maps Investigation Staff Report* (2019), <https://docs.fcc.gov/public/attachments/DOC-361165A1.pdf>).

⁵⁵ See *In the Matter of the CenturyLink, Inc. Petition for Rulemaking to Revise Service Quality Rules*, MPUC Docket No. P-421/AM-14-256; *In the Matter of the Petition of CenturyLink, Inc. for a Variance to Minnesota Rules, Part 7810.5800*, MPUC Docket 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.

⁵⁶ *In 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) (May 2, 2016) (eDocket No. 20165-120922-02).

⁵⁷ *Id.*

Without the existing standards in place, 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.

Under lower service quality conditions, the health and safety of people, particularly those more reliant on landline service, could be jeopardized. If outages become more frequent or last into several days, emergency situations could become more dangerous. And in a community-wide emergency, where wireless networks are interrupted, landline service could potentially be the only form of telecommunications service available, making contact with 911 or other information and responder services critically dependent on the quality of landline service. Reducing service quality levels creates real risks to individuals and communities with no countervailing benefit.

In addition, having rules in place aims to ensure minimum uniformity for those governed by the rules. In this case, the Commission's existing rules protect against situations in which service quality standards are unjustifiably higher or lower for some customers than for others. And without any quantification of the costs of rule compliance and no evidence that the market will adequately and uniformly protect customers, rules are a reasonable method of achieving statutory objectives.⁵⁸

30. CenturyLink also sought a variance from Minn. R. 7810.5800 in 2014.⁵⁹ CenturyLink contended that this "outdated" rule should be "waived" for the company because:

[t]he nature of the telecommunications industry has changed dramatically over the last several decades since these service quality metrics were adopted. Facilities-based competitors now serve more customers than does CenturyLink. A large segment of the population no longer uses a wireline phone and instead relies exclusively upon wireless service. The technology used to deliver telecommunications services has evolved from a traditional circuit switched network to wireless and internet protocol networks.⁶⁰

CenturyLink sought a complete waiver of the standard or, in the alternative, that the Commission lower the standard from 95 to 85 percent.⁶¹

⁵⁸ *Id.*

⁵⁹ See *In the Matter of the Petition of CenturyLink, Inc. for a Variance to Minnesota Rules, Part 7810.5800*, No. P-421/AM-14-255.

⁶⁰ *In the Matter of the Petition of CenturyLink, Inc. for a Variance to Minnesota Rules, Part 7810.5800*, No. P-421/AM-14-255 (PETITION) (Mar. 26, 2014) (eDocket No. 20143-97662-02).

⁶¹ *Id.*

31. The Commission denied CenturyLink's variance petition, concluding that CenturyLink failed to establish a variance would be appropriate. Among other things, the Commission rejected CenturyLink's claim that longer outages do not raise serious concerns because most customers do not experience outages and most have access to other forms of telecommunications service, such as cell phones. In rejecting the claim, the Commission noted that CenturyLink did not even "track whether a customer has access to other forms of telecommunications service."⁶²

32. Undeterred, CenturyLink petitioned the Commission to "modernize" the rules in 2021, again arguing the telephone service quality rules are obsolete, unnecessary, and burdensome.⁶³

33. Again, the Commission remained unpersuaded by CenturyLink's arguments against the telephone service quality rules.⁶⁴ The Commission reasoned:

The record does not show any compelling reason that the Commission should open a rulemaking to modify or eliminate Minn. R. 7810.5800 and 7810.5200. Although landlines are no longer the most advanced telecommunications technology on the market, many customers still rely primarily on landline phone service, often because they cannot access broadband or other options. These customers still depend on quality service in a timely manner to preserve access to basic communications services and to protect their health and safety. The Commission is skeptical that a reduction in service quality standards would better serve the public interest.

CenturyLink emphasized in its petition that there are few remaining landline customers and the number continues to decline. Based on this information, it stands to reason that CenturyLink will need to make fewer and fewer landline repairs as time goes on. There is 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. Rather, it is important to protect, in particular, the remaining landline-reliant customers who do not have other options for telecommunications service.

CenturyLink is free to invest in broadband deployment, repairs, and service standards consistent with Federal Communications Commission regulations. CenturyLink has not argued that the Commission's service quality standards harm customers, but rather, that the cost of compliance impinges on the Company's ability to provide broadband service. The

⁶² *In the Matter of the Petition of CenturyLink, Inc. for a Variance to Minnesota Rules, Part 7810.5800*, No. P-421/AM-14-255 (ORDER DENYING VARIANCE REQUEST) (Aug. 11, 2014) (eDocket No. 20148-102174-01).

⁶³ *In the Matter of the Petition for a Rulemaking Regarding Minnesota Rules Chapter 7810*, No. P-421/M-21-381 (PETITION) (June 7, 2021) (eDocket No. 20216-174848-01).

⁶⁴ *In the Matter of the Petition for a Rulemaking Regarding Minnesota Rules Chapter 7810*, No. P-421/M-21-381 (ORDER DENYING PETITION) (Aug. 5, 2021) (eDocket No. 20218-176852-01).

Company has not, however, quantified its costs to demonstrate that providing adequate landline service quality is a significant barrier to broadband access.

For these reasons, the Commission does not believe that modifying or eliminating landline service quality standards would be in the public interest and will deny the petition.⁶⁵

34. The evidence presented by the Department and the Office of the Attorney General in this docket establishes that the telephone service quality rules remain necessary to ensure the provision of adequate service in a timely manner, to preserve access to basic communications services, and to protect health and safety.

D. CenturyLink Customer Complaints.

35. Cook County residents reported approximately 100 CenturyLink service outages between September 2018 and August 2023.⁶⁶ These outages left residents without the ability to place telephone calls, including to contact emergency service providers. The problem has become so persistent that some local volunteer fire departments, at the Cook County Sheriff's recommendation, leave their fire halls unlocked or staff them continuously during telephone service outages, so that affected members of the public can drive to the fire halls and directly contact emergency dispatchers using fire department radio systems.⁶⁷ Although CenturyLink suggests that the number and duration of these outages may be exaggerated or inflated,⁶⁸ this pattern is highly concerning as, at a minimum, it erodes public trust in the emergency 911 system.

36. Between January 2021 and June 2023, the Department received at least 530 complaints from CenturyLink customers ranging from lengthy outages to repeatedly missed repair appointments.⁶⁹

37. The following excerpts are representative of customer complaints made during the comment period. One customer commented:

For the last three years, my mother's landline with Century Link has been going down on a regular basis. Each time she has to wait on hold for hours in order to request technician service, which sometimes takes days to come out, and sometimes they don't actually fix the problem, and she has to wait on hold again to re-request help. I am now very concerned, because a week ago she had a health emergency, and her phone service was down. Luckily, our neighbor was able to call 911. Please someone talk to CenturyLink

⁶⁵ *Id.*

⁶⁶ Ex. DOC-7 at 3 (Mielke Exhibit – Cook County Reported Phone Outages 2018-2023) (Dec. 1, 2023) (eDocket No. 202312-200911-06).

⁶⁷ Evid. Hrg. Tr. at 37-38 (Mielke).

⁶⁸ See Evid. Hrg. Tr. at 66-75 (Mielke).

⁶⁹ Ex. DOC-1 at 13-14 (Gonzalez Direct).

about fixing my mother's phone service. She is very tired constantly waiting on hold. Thank you.⁷⁰

Another customer shared the following:

Our phone service comes through Century Link. Phone service is frequently so contaminated by static, buzzing, and other impediments to conversation that it also is unreliable. Whenever we complain, Century Link sends out a technician, as the company did today, and the technician tried to find the source of the problem, and usually fails to do so, as happened today, and then he has to call on backup maintenance people who may come out days or a week later and finally find the source of the problem. All that time we are without usable phone service. Once phone service is restored, it lasts perhaps a week, perhaps two, but inevitably a new problem occurs, a new form of buzz or static or low volume making the other end inaudible, and then the process starts over. We feel as if we live in a third-world country when it comes to phone service, yet we have to pay every month as if our phone utility actually worked.⁷¹

A longtime CenturyLink customer reported:

I live in rural Minnesota and have relied on my landline since 1975. It has always been a reliable way to communicate. I am unable to get cell coverage on my property so I still use it for emergencies and day to day calls. Over the last couple years there have been frequent outages and intermittent static and clicking. The line quality is still an issue and my landline is currently out of service. It has been for three days now. It is the third outage this month, and I am told it will be a week before anyone comes to look at it. My neighbors phone is also out, and they are an elderly couple that frequently need medical help in the form of tele-appointments and emergencies. CenturyLink's customer service system is horrible. I first experienced this in 2020 after my husband passed away and I found he was being triple billed for our phone service and I found trying to get technical help during outages just as frustrating. Using chat or trying to navigate the phone menus is very time consuming and requires you to repeat the same information over and over again. In the last month I have spent well over 40 hours trying to deal with outages, appointments, trying to get status updates, etc. Several service appointments were either cancelled and pushed out or no-shows after taking work off to be home.⁷²

One Minnesota CenturyLink customer stated:

⁷⁰ Public Comment of Humphrey (Jan. 3, 2023) (eDocket No. 20231-191855-01).

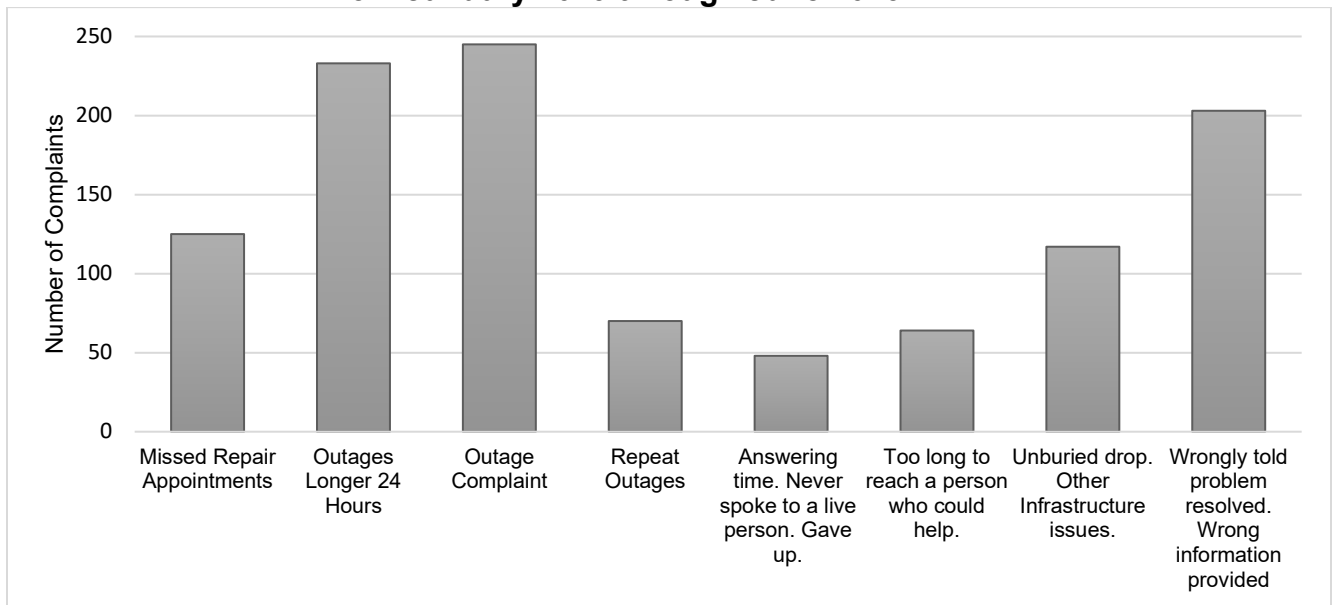
⁷¹ Public Comment of Paul and Jean Wulterkens (Aug. 8, 2023) (eDocket No. 20238-198078-01).

⁷² Public Comment of Terri Knutson (July 6, 2022) (eDocket No. 20227-187227-01).

Century Link customer service is non-existent. Our neighborhood lost service for two weeks and it took Century Link days to identify the problem. During that time the company scheduled repairs for me which never materialized and for which I waited all day / no one alerted me to the cancellation. When calling to complain I was told there was no one to receive my complaint / that there was no customer service department. The treatment I received from the repairs schedulers was abhorrent / I was put on hold continually and given wrong information more than once. Absolutely abysmal experience.⁷³

38. As shown in the chart below, many of the 530 customer complaints reviewed by the Department have involved more than one issue. For example, 46 percent of the complaints involved a service outage and 38 percent of the complaints reported that CenturyLink had wrongly claimed to resolve the customers' problem or otherwise gave the customer inaccurate information, while 15 percent of complaints involved both issues.⁷⁴

Complaints Received by the Department from January 2019 through June 2023.⁷⁵



39. CenturyLink's own "trouble report" data⁷⁶ corroborates the Department's findings regarding the prevalence and types of problems being experienced by some of CenturyLink's customers. CenturyLink's trouble report data from January 2019 through

⁷³ Public Comment of Gilbert Pellet (Nov. 1, 2022) (eDocket No. 202211-190305-01).

⁷⁴ Ex. DOC-1 at 13-14 (Gonzalez Direct).

⁷⁵ Ex. DOC-1 at 14 (Gonzalez Direct).

⁷⁶ See Minn. R. 7810.0100, subp. 13 (defining trouble report); see also Ex. DOC-5 (Webber Rebuttal) (Nov. 1, 2023) (eDocket Nos. 20202311-200158-06, 20202311-200158-07, 20202311-200158-08).

June 2023 (approximately [REDACTED] discrete trouble reports) reflects that 77 percent of all reports related to deteriorating or failing plant or equipment.⁷⁷

40. 4,460 CenturyLink customers experienced at least four troubles related to deteriorating or failing plant or equipment. For customers in the four-to-five troubles category, that is an average occurrence of at least one trouble every 10 to 13 months. For customers in the five-or-more category, that is approximately one trouble every seven months, or about twice a year for 4.5 years.⁷⁸

41. 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.⁷⁹ In addition, in its call center, CenturyLink prioritizes calls from Minnesota regulated voice telephone service customers.⁸⁰

42. Current and former CenturyLink customers provided comments that reinforce the findings from the Department’s investigation into the allegations against CenturyLink. Public hearings were held in July 2023, in Thief River Falls, Hibbing, Marshall, Owatonna, and remotely by WebEx.

43. At the public hearing in Hibbing, CenturyLink customer Mr. Travis Denzler described his recent experience with his landline, beginning with an outage on May 31 that continued through June and into July 2022. After many calls to CenturyLink, the problem was identified as a cable issue.⁸¹ Another customer, Mr. Thomas Fink, stated:

I’ve been up in northern Minnesota for a long time. I worked for the DNR and have gone through the same stuff [other customers] have. I also put ditto on all of it. But it’s very frustrating because nothing is getting done. For instance, the basis for those who have complained is identical in every way. Cable problems, no timely repairs, not enough service people for repairs, bad communication access to CenturyLink personnel. And, of course, lack of accountability for the CenturyLink people[.]⁸²

44. In Marshall, Mr. Joseph Larkin, a CenturyLink customer, offered the following regarding his landline service:

And what I’m wondering is 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 [service for] a week, and you ask for a credit on your bill and you get it one

⁷⁷ DOC Initial Br. at 12 (Jan. 17, 2024) (eDocket No. 20241-202270-02); Ex. DOC-5 at 19 (Webber Rebuttal).

⁷⁸ DOC Initial Br. at 12; Ex. DOC-5 at 19 (Webber Rebuttal).

⁷⁹ Ex. CTL-6 at 8 (Ardayno Direct) (Sept. 1, 2023) (eDocket No. 20239-198700-02).

⁸⁰ Ex. CTL-13 at 8 (Rejanovinsky Direct) (Sept. 1, 2023) (eDocket No. 20239-198700-05); Ex. CTL-4 at 5-6 (Mohr Rebuttal) (Nov. 1, 2023) (eDocket No. 202311-200163-06).

⁸¹ Hibbing Public Hrg. Tr. 22:4-24:12 (July 19, 2023).

⁸² Hibbing Public Hrg. Tr. 38:16-39:4 (July 19, 2023).

month, but the next month they add it so you're paying double. Why you don't get credit, that's what I want to know.⁸³

45. CenturyLink customer Mr. Clarence Schmit provided comments at the public hearing in Owatonna. Mr. Schmit reported experiencing a landline outage that began in February 2023 and lasted six days before a technician was sent to make the repair. His household experienced another outage of similar duration in April 2023.⁸⁴

46. Mr. Rowan Watkins, Cook County Director of Management Information Systems, offered the following:

Cook County as an organization has been trying to get help for engineers to get CenturyLink to improve their service to our residents, and we come at it from a public safety standpoint. I would echo what the other commenters have said about the incredible difficulty trying to get service from CenturyLink. Everywhere we can in our systems we have removed or replaced CenturyLink often with more expensive services, but the amount of time that it takes to get service and the unreliability makes that the correct decision.

But that's not an option for every system or for every resident in our county. And, you know, our sheriff's office receives reports of outages from CenturyLink that are impacting 911 callers in our area on a regular basis. As an example of this, in January, from January 21st to [...] June 9th, [...] so a little less than six months last year there were 11 widespread outages throughout our county. We had another resident that [. . .] was without phone service for 20 days.⁸⁵

III. LEGAL FRAMEWORK

47. Minn. Stat. ch. 237 and Minn. R. ch. 7810 are remedial statutes, adopted to further Minnesota's important public interests. Interpretation of these provisions requires consideration of the state's telecommunication goals. Goals implicated in this matter include supporting universal service; maintaining just and reasonable rates; encouraging economically efficient deployment of infrastructure; maintaining or improving quality of service; and ensuring consumer protections are maintained.⁸⁶

A. The Commission's Authority

48. The Commission exercises broad regulatory authority over telephone companies. If the Commission finds that any service is inadequate, the Commission may

⁸³ Marshall Public Hrg. Tr. 19:5-19:14 (July 26, 2023).

⁸⁴ Owatonna Public Hrg. Tr. 21:5-22:20 (July 27, 2023).

⁸⁵ Virtual Public Hrg. Tr. 31:13-32:12 (July 21, 2023).

⁸⁶ Minn. Stat. § 237.011 (1)-(3), (5), (7) (2022). See Minn. R. 7810.0200 (2023) ("The purpose of this chapter is to establish reasonable service standards to the end that adequate and satisfactory service will be rendered to the public.").

make orders respecting the act, omission, practice, or service that is just and reasonable.⁸⁷ The Commission “may not impose . . . remedies absent express or implied statutory authority.”⁸⁸ The Minnesota Supreme Court has been “[h]istorically . . . reluctant to find implied statutory authority in the context of the MPUC’s remedial power.”⁸⁹ “[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.”⁹⁰

49. The Commission has express authority, under Minn. Stat. § 237.081, “to make orders regarding the practices and services of telephone companies after affording the affected companies an opportunity to be heard.”⁹¹ Minn. Stat. § 237.461, subd. 1, authorizes the Commission to “compel performance” or take “other appropriate action” when a POTS provider violates an order or rule. Knowing and intentional violations of Minn. Stat. ch. 237 or of the Commission’s rules or orders are punishable by civil penalties of up to \$5,000 per day of violation.⁹² Reviewing the Commission’s authority, the Eighth Circuit Court of Appeals has explained, “these statutes give [the Commission] broad statutory authority to regulate the telecommunications market in Minnesota.”⁹³

50. Although the regulatory landscape has changed over time, the Commission continues to exercise authority over the issuance of certificates of authority which are necessary to operate in the state. The Commission also ensures that providers comply with Minnesota’s 9-1-1 emergency service requirements and telephone service quality standards.⁹⁴ Beyond these functions, the Commission is responsible for ascertaining the fitness of providers to serve as eligible telecommunications carriers – a designation necessary to obtain federal subsidies for broadband deployment and low-income customer programs, which include voice service and broadband access.⁹⁵

B. Minnesota Rules 7810.3300 (Maintenance of Plant and Equipment) and 7810.5000 (Utility Obligations) and the Meaning of Adequate Service

51. Minn. R. 7810.3300 requires that every telephone company “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.”⁹⁶ Minn. R. 7810.3300 further requires telephone companies to keep “all plant and equipment in good state of repair” and repair or replace any “broken, damaged, or deteriorated parts” necessary to assure

⁸⁷ Minn. Stat. § 237.081, subd. 4(2)-(3).

⁸⁸ *Qwest Corp. v. Minn. Pub. Util. Comm’n*, 427 F.3d 1061, 1064 (8th Cir. 2005).

⁸⁹ *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).

⁹⁰ *Peoples Nat. Gas Co. v. Minn. Pub. Util. Comm’n*, 369 N.W.2d 530, 534 (Minn. 1985).

⁹¹ *In re Deregulation of the Installation & Maint. of Inside Wiring*, MPUC Docket No. C-86-743, FINDINGS OF FACT CONCLUSION OF LAW & ORDER, 1986 WL 1299676, at *2 (Dec. 31, 1986).

⁹² Minn. Stat. § 237.461, subd. 2.

⁹³ *Qwest Corp. v. Minn. Pub. Utilities Comm’n*, 427 F.3d 1061, 1065 (8th Cir. 2005).

⁹⁴ Minn. R. 7812.0600 (2023).

⁹⁵ Minn. R. 7812.1400.

⁹⁶ Minn. R. 7810.3300.

adequate service.⁹⁷ Telephone companies also have an ongoing obligation under Minn. R. 7810.5000 to review their practices to assure the furnishing of adequate service.⁹⁸

52. Minn. R. 7810.3300 concerns maintenance of plant and equipment and states:

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. The rule imposes several mandatory obligations on a telephone service provider. First, it must have a maintenance program that includes “keeping” its plant and equipment in a good state of repair. This means that to comply with the rule, a company’s maintenance program must include a preventive or proactive component, typically referred to as “rehab.” The rehab component must be sufficient to ensure safety and adequate service performance, through “preventive routines” and “fault location tests” to determine plant and equipment operating condition. Second, the maintenance program must encompass the repair or replacement of broken or damaged parts, as well as parts that have deteriorated beyond serviceability. Adjustable apparatus and equipment must be readjusted and restored to satisfactory operating condition. Electrical faults must be corrected to the “extent practical” consistent with the affected plant’s design capability.

53. Minn. R. 7810.5000 provides:

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

⁹⁷ Minn. R. 7810.3300.

⁹⁸ Minn. R. 7810.5000.

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.

54. This rule requires a telephone utility to provide telephone service that meets or exceeds the standards in Minn. R. ch. 7810. The rule mandates that a telephone service provider continually review its operations for the purpose of assuring it is furnishing “adequate service.” It further requires the utility to maintain records that are sufficient to establish that adequate service is being provided.

55. Minn. R. 7810.3300 and 7810.5000 do not define “adequate service.” The term must be given its plain and ordinary meaning, taking into consideration the context in which it is used.⁹⁹ Minnesota courts consider dictionary definitions to determine a word’s plain meaning.¹⁰⁰ Here, adequate means “sufficient to satisfy a requirement or meet a need,” while service refers to “the provision to the public of something, especially a utility.”¹⁰¹ These definitions establish that adequate service requires that a telephone company satisfy each customer’s need for telephone service. Telephone is an essential service. As a result, to provide adequate service means that CenturyLink must supply its customers with near continuous telephone access with few disruptions.¹⁰²

56. Other jurisdictions have reached similar conclusions. While CenturyLink correctly notes that these decisions are not precedential and are not factually identical to the present matter, they are instructive. The Ohio commission, while resolving a customer complaint filed against AT&T, concluded that adequate service turned on several factors “including, but not limited to, the number, severity and duration of the service problems, whether the service could have been corrected, and whether the service problems likely are caused by telephone company facilities.”¹⁰³ In another consumer complaint case, a Pennsylvania hearing officer similarly concluded that “[e]ven if only one customer is served on a particular line, a utility is mandated to maintain its facilities and render reasonable service.”¹⁰⁴ In that case, the administrative law judge concluded that although

⁹⁹ *Troyer v. Vertlu Mgmt. Co.*, 806 N.W.2d 17, 24 (Minn. 2011); *Buzzell v. Walz*, 974 N.W.2d 256, 261 (Minn. 2022).

¹⁰⁰ *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016).

¹⁰¹ *Adequate*, American Heritage Dictionary (5th ed. 2022); *Service*, American Heritage Dictionary (5th ed. 2022).

¹⁰² See *In re Lifeline & Link Up Reform & Modernization Lifeline & Link Up Fed.-State Joint Bd. on Universal Serv. Advancing Broadband Availability Through Digital Literacy Training*, 27 F.C.C. Rcd. 6656, 6665 (2012) (“[V]oice service [is] a prerequisite for full participation in our economy and society.”).

¹⁰³ *Wilson v. AT&T Communications of Ohio*, No. 03-2294-TP-CSS, 2004 WL 1810707, at *6 (Ohio P.U.C. June 2, 2004).

¹⁰⁴ *Cynthia Mosco v. Verizon Pennsylvania LLC*, Docket No. C-2018-3006579, 2020 WL 1673955, at *16 (PA P.U.C. Mar. 9, 2020) (PA ALJ Initial Decision); *Cynthia Mosco v. Verizon Pennsylvania LLC*, No. C-2018-3006579, 2022 WL 1423613, at *12 (PA P.U.C. Apr. 25, 2022) (PA PUC Decision).

occasional outages do not necessarily constitute a violation, losing service on three occasions over 16 months amounted to inadequate service.¹⁰⁵

57. The Administrative Law Judge concurs that adequacy of service must be determined on an individual basis based on the volume of service issues and whether the provider takes reasonable steps to address the underlying problem. In other words, what constitutes adequate service must consider a variety of factors relating to the service quality that customers are experiencing. Given that most consumers require telephone service to conduct essential communications in emergency situations, to conduct their jobs or businesses, and to communicate with friends and family, adequate service means that service must be nearly continuous. Customers who regularly, repeatedly, or predictably lose service each year due to older or failing utility-maintained equipment cannot be receiving adequate service.

58. The Department and the Office of the Attorney General Established that CenturyLink's Performance Violated Minn. R. 7810.3300, .5000, and .5800.

59. In broad strokes, CenturyLink argued that, to the extent the telephone service quality 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.¹⁰⁶

60. The Commission has repeatedly rejected CenturyLink's complaints about the telephone service quality rules since 2014, when CenturyLink began its campaign to relieve itself of the regulatory burden of providing compliant landline service to all Minnesotans. The broad public interest is to ensure that all Minnesotans have reliable means of telecommunication, and the record establishes that landline service continues to be a necessary service for many Minnesotans.

1. The Results of the Investigations by the Department and the Office of the Attorney General.

61. CenturyLink is failing to provide all customers with adequate service due to its excessive reliance on "break/fix" maintenance that leaves customers without service for extended periods of time. CenturyLink's trouble report data from January 2019 through June 2023 reflects that 77 percent of all problems related to deteriorating or failing plant or equipment.¹⁰⁷

¹⁰⁵ *Cynthia Mosco v. Verizon Pennsylvania LLC*, Docket No. C-2018-3006579, 2020 WL 1673955, at *11 (PA P.U.C. Mar. 9, 2020).

¹⁰⁶ See Ex. CTL-21, Sched. 1 at ¶ 28 (Turner Surrebuttal), CTL Initial Br. (Jan. 17, 2024) (eDocket No. 20241-202264-03).

¹⁰⁷ DOC Initial Br. at 12; Ex. DOC-5 at 19 (Webber Rebuttal).

62. The Department identified [REDACTED] CenturyLink customers with recent four or more reports to CenturyLink of troubles related to deteriorating or failing plant or equipment.¹⁰⁸

63. The Department identified this customer group by taking approximately 4.5 years of CenturyLink's trouble report data and counting the number of outages or other problems that each customer had experienced. As shown in the table below, the [REDACTED] CenturyLink customers are individuals falling into the "4-5 troubles" and "5+ troubles" rows.

**Basic Telephone Service – Outside Plant Troubles
(January 2019 to June 2023)¹⁰⁹**

Customers with:	# of Customers in each Category	Total # of Tickets for each Category	Average # of Tickets Per Customer
1 Trouble	[REDACTED]	[REDACTED]	[REDACTED]
2-3 Troubles	[REDACTED]	[REDACTED]	[REDACTED]
4-5 Troubles	[REDACTED]	[REDACTED]	[REDACTED]
5+ Troubles	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	

64. The Department also pointed to individual customer experiences. For example, an Austin resident experienced 14 troubles caused by deteriorated CenturyLink equipment between April 2019 and May 2023.¹¹⁰ CenturyLink's director of network operations acknowledged that he would not consider a customer in Austin who experienced multiple disruptions a year to be receiving adequate service.¹¹¹

65. CenturyLink witness John Ardoyno admitted that the best indicator of a network's performance is the number of trouble reports received.¹¹² A trouble report is:

[a]ny 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

¹⁰⁸ DOC Initial Br. at 12; Ex. DOC-5 at 19 (Webber Rebuttal).

¹⁰⁹ Ex. DOC-5 at 19 (Webber Rebuttal).

¹¹⁰ Evid. Hrg. Tr. at 224 (Ardoyno); Ex. DOC-29 at 5.

¹¹¹ Evid. Hrg. Tr. at 224-225 (Ardoyno); DOC Initial Br. at 13.

¹¹² Ex. CTL-6 at 5 (Ardoyno Direct); Ex. CTL-7, Sched. 2 (Ardoyno Direct) (Sept. 1, 2023) (eDocket No. 20239-198700-04).

same time, unless the group of troubles so reported is clearly related to a common cause.¹¹³

66. CenturyLink's failure to provide all customers with adequate service stems from deficient maintenance practices. There are two reasons for why the company's maintenance is deficient. First, CenturyLink does not engage in sufficient proactive rehab work despite the size and age of its network. Second, the company does not timely complete the small number of proactive rehab projects that it does identify.

67. CenturyLink's proactive rehab procedures are inadequate. The record overwhelmingly establishes CenturyLink performs this work on a mostly ad-hoc basis. CenturyLink's director of network operations conceded that the company "doesn't automatically or systematically run any proactive testing." Instead, network testing only occurs incidentally to service installations or repairs.¹¹⁴

68. CenturyLink also does not use any predictive data analysis to identify operational anomalies and potential equipment defects before failures occur. Instead, the company relies on a monthly "manual process" to identify potentially high trouble areas.¹¹⁵ Additionally, CenturyLink's regional managers receive no regular reporting on service quality or performance problems; company management is only informed on an "as needed" basis.¹¹⁶ Finally, CenturyLink's only current program for maintaining its outside plant is creating trouble tickets.¹¹⁷ In sum, CenturyLink typically waits until a field technician identifies a problem while doing something else or a customer reports a problem. The Department and Office of the Attorney General contended that this practice was neither proactive nor sufficient to meet the requirements of Minn. R. 7810.3300. CenturyLink's process still involves waiting until enough problems with a particular piece of plant or equipment accrue before addressing it, if at all, and is best viewed as "break/fix" maintenance.¹¹⁸ CenturyLink's prioritization of POTS repairs is not an acceptable substitute for the proactive maintenance necessary to meet the minimum requirements of Minn. R. 7810.3300.

69. Beyond the company's procedures, the Department also established that CenturyLink is performing little proactive rehab work:

70. In its "Proactive Rehab Tracking Tool" records, CenturyLink technicians identified only **[REDACTED]** potential rehab projects between January 2019 and June 2023 for the entire state. The Department argued that is far too little work given that CenturyLink's statewide network spans approximately 66,000 miles of copper cable and nearly 10,000 cross box locations.¹¹⁹ Even though CenturyLink only identified a small number of projects, the company still has only pursued half of them to date. Of the

¹¹³ Minn. R. 7810.0100, subp. 13.

¹¹⁴ Ex. DOC-22 at 4; Evid. Hrg. Tr. at 194 (Ardoyno).

¹¹⁵ Ex. DOC-25 at 2; Evid. Hrg. Tr. at 200 (Ardoyno).

¹¹⁶ Ex. DOC-23 at 2; Evid. Hrg. Tr. at 196 (Ardoyno).

¹¹⁷ Ex. DOC-2, LG-R-1 (Gonzalez Rebuttal).

¹¹⁸ DOC Initial Br. at 17-18.

¹¹⁹ Ex. DOC-5, JDW-R-10 at 3-4 (Webber Rebuttal); Ex. DOC-5, JDW-R-8 at 4 (Webber Rebuttal).

remaining projects, the Department's expert found that at least [REDACTED] of them relate to correcting deficiencies with CenturyLink's traditional copper network.¹²⁰ In some instances, CenturyLink allowed rehab projects identified by technicians to languish for years.¹²¹

71. CenturyLink's "100 Pair Cable Live Tracking Report" records showed a similar pattern. In the report, CenturyLink tracked [REDACTED] different cables across Minnesota.¹²² Yet CenturyLink identified just [REDACTED] potential rehab jobs and completed only [REDACTED] of them.¹²³ The report, however, shows that 210 100-pair cables were responsible for ten or more trouble tickets – 75 percent of which CenturyLink technicians diagnosed as being caused by deteriorated cable. The Department's expert reasoned that these cables marked a "conservative" starting place for investigation and possible rehab.¹²⁴ CenturyLink's own witness, its director of network operations, agreed that cable groups contained in the list with 29 or 31 troubles over a 12-month span had not performed adequately.¹²⁵

72. Regardless of how CenturyLink becomes aware of the need to rehab its outside plant and equipment, it is performing little rehab work. Since 2019, CenturyLink has only replaced about [REDACTED] of cable out of approximately 66,000 miles in the state.¹²⁶ It likewise cut its annual rehab spending by 51 percent from approximately [REDACTED].¹²⁷ Over the past three years, CenturyLink only spent [REDACTED] of its total outside plant budget on rehab work.¹²⁸ CenturyLink's practice of placing POTS out-of-service troubles as the highest repair priority does not satisfy its obligation to keep its plant and equipment in safe and working repair or to provide adequate service.

73. CenturyLink's practice of undertaking maintenance projects only if the project satisfies a five-year payback period threshold leads to interruptions of service, broken or deteriorated equipment and plant, impairing CenturyLink's ability to fulfill its obligations under Minn. R. 7810.3300, .5000, and .5800. CenturyLink is required to maintain its equipment in a state of good repair regardless of whether the payback period of the investment needed to make that repair is financially attractive to CenturyLink.¹²⁹

¹²⁰ Ex. DOC-5 at 10-11 (Webber Rebuttal).

¹²¹ DOC Initial Br. at 18-20.

¹²² Ex. DOC-5 at 15 (Webber Rebuttal).

¹²³ Ex. DOC-5 at 16 (Webber Rebuttal).

¹²⁴ Ex. DOC-5 at 16 (Webber Rebuttal).

¹²⁵ Evid. Hrg. Tr. at 212-213 (Ardoyno).

¹²⁶ Ex. DOC-2 at 3 (Gonzalez Rebuttal).

¹²⁷ Ex. DOC-4 at 17-18 (Webber Direct).

¹²⁸ Ex. DOC-5 at 10 (Webber Rebuttal).

¹²⁹ Ex. OAG-2 at 14-15 (Lebens Direct) (Sept. 1, 2023) (eDocket No. 20239-198701-02).

74. The Office of the Attorney General’s expert witness Brian Lebens captured 93 pages of images of CenturyLink equipment that is “[b]roken, damaged, or deteriorated.”¹³⁰ The images, some of which are reproduced below, show numerous instances of wires left exposed to the elements, ragged metal exposed on the public right of way, and other unsafe conditions:



a.

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¹³⁰ Ex. DOC-5 at 10 (Webber Rebuttal).

¹³¹ OAG-5 at 9 (Lebens Surrebuttal Schedule 6 Part 1) (Dec. 1, 2023) (eDocket No. 202312-200925-01).



b.

132



c.

133

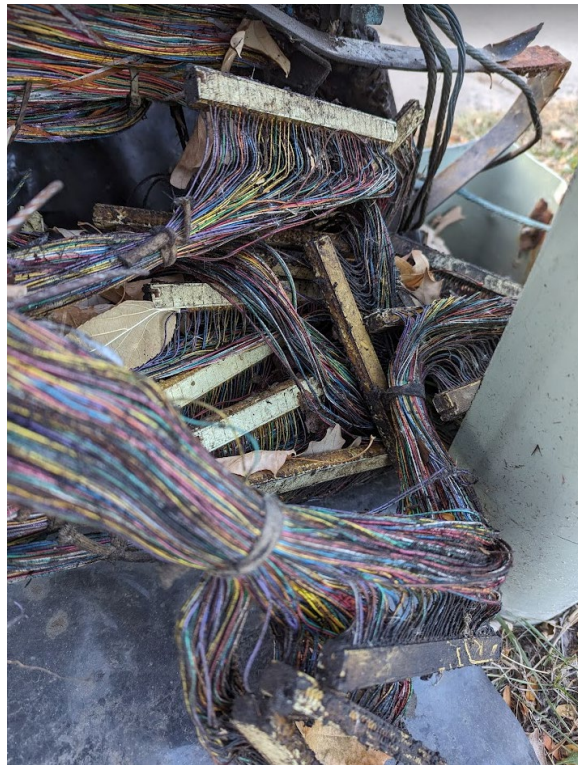
¹³² OAG-5 at 14 (Lebens Surrebuttal Schedule 6 Part 1).

¹³³ OAG-6 at 30 (Lebens Surrebuttal Schedule 6 Part 2) (eDocket No. 202312-200928-01).



d.

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e.

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¹³⁴ OAG-6 at 26 (Lebens Surrebuttal Schedule 6 Part 2).

¹³⁵ OAG-6 at 26 (Lebens Surrebuttal Schedule 6 Part 2).



f.



g.

136

¹³⁶ OAG-6 at 35 (Lebens Surrebuttal Schedule 6 Part 2).



h.

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75. Mr. Lebens was able to gather the 93 pages of images simply driving around the twin-cities metro area over the Thanksgiving holiday, which was a few weeks prior to the evidentiary hearing in this matter.¹³⁸

76. The logos for CenturyLink, along with its predecessors Qwest and Bell, are visible in many of Mr. Lebens' photographs.¹³⁹

77. In several of the photos, exposed wires and pedestals were wrapped in plastic or subject to other quick concealments that cannot be considered a "repair" under any fair reading of the rules.¹⁴⁰

¹³⁷ OAG-6 at 35 (Lebens Surrebuttal Schedule 6 Part 2).

¹³⁸ Evid. Hrg. Tr. at 120-121 (Lebens).

¹³⁹ See *generally* OAG-5 (Lebens Surrebuttal Schedule 6 Part 1); OAG-6 (Lebens Surrebuttal Schedule 6 Part 2); OAG-7 (Lebens Surrebuttal Schedule 6 Part 3) (eDocket No. 202312-200927-01); OAG-8 (Lebens Surrebuttal Schedule 6 Part 4) (eDocket No. 202312-200929-01); OAG-9 (Lebens Surrebuttal Schedule 6 Part 5) (eDocket No. 202312-200930-01).

¹⁴⁰ OAG-5 (Lebens Surrebuttal Schedule 6 Part 1); OAG-6 (Lebens Surrebuttal Schedule 6 Part 2); OAG-7 (Lebens Surrebuttal Schedule 6 Part 3) (eDocket No. 202312-200927-01); OAG-8 (Lebens Surrebuttal Schedule 6 Part 4) (eDocket No. 202312-200929-01); OAG-9 (Lebens Surrebuttal Schedule 6 Part 5) (eDocket No. 202312-200930-01).

78. These photos document instances of CenturyLink being aware of broken, damaged, and deteriorated plant while failing to remediate the problem as required under Minn. R. 7810.3300.¹⁴¹

2. CenturyLink's Response

79. CenturyLink argued that Minn. R. 7810.3300 and Minn. R. 7810.5000 contain extraordinarily general and broad language that does not define adequate service. As a result, CenturyLink considers the best indication of whether it is providing safe and adequate service and is therefore in compliance with these general service quality rules, to be whether the company's trouble report rate complies with Minn. R. 7810.5900.¹⁴²

80. Minn. R. 7810.5900 provides: "It shall be the objective to so 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. A customer 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."

81. CenturyLink points out that it has significantly bettered this objective, consistently achieving trouble reports of below 1.0 per 100 lines. 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 **[REDACTED]** instances of trouble report rates in excess of the objective in any exchange in any month, out of 8,316 such measurements.¹⁴³ This amounts to a rate of **[REDACTED]** out of every **[REDACTED]** measurements—less than **[REDACTED]** percent.¹⁴⁴ CenturyLink asserted, 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,¹⁴⁵ the company's performance is a strong indicator of a healthy network.¹⁴⁶

82. CenturyLink's compliance with Minn. R. 7810.5900 cannot be used as a proxy for assessing adequate service under Minn. R. 7810.3300 and Minn. R. 7810.5000. The canons of construction did not permit such a substitution because it would fail to give each of the rules a distinct meaning.¹⁴⁷ It would lead to absurd results, for example, if the same seven customers out of 100 reported once a month, every month, that they lack service, to conclude nevertheless that CenturyLink is in compliance with Minn. R. 7810.5900, and therefore providing adequate service under Minn. R. 7810.3300 and

¹⁴¹ See *id.*

¹⁴² 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[.]").

¹⁴³ Ex. CTL-6 at 5 (Ardoyno Direct).

¹⁴⁴ Ex. CTL-6 at 5 (Ardoyno Direct).

¹⁴⁵ Ex. CTL-1 at 28 (Mohr Direct).

¹⁴⁶ Ex. CTL-7, Sched. 2 (Ardoyno Direct).

¹⁴⁷ DOC Reply Br. at 2-3 (Feb. 7, 2024) (eDocket No. 20242-203180-01); Minn. Stat. § 615.16 (2022); *Eclipse Architectural Grp., Inc. v. Lam*, 814 N.W.2d 692, 701 (Minn. 2012).

Minn. R. 7810.5000, even as those customers would continuously lack the ability to place or receive calls.¹⁴⁸

3. A Preponderance of the Evidence Establishes that CenturyLink Violated Minn. R. 7810.3300 and .5000.

83. Without discounting its network-wide performance, it remains the case that CenturyLink's compliance with Minn. R. 7810.5900 is not material to the allegations against it. The Administrative Law Judge concurs with the Department and Office of the Attorney General that basic principles of legal interpretation preclude CenturyLink's argument that its performance under Minn. R. 7810.5900 can be used as a proxy for adequate service under Minn. R. 7810.3300 and Minn. R. 7810.5000.

84. Adequacy of service must be assessed on a customer-by-customer basis because customers receive service on an individual basis, not in the aggregate. Use of the trouble report rate as a proxy would aggregate adequate service into a singular statewide figure instead of treating customers individually and renders the rules duplicative. It would be unreasonable to define adequate service in a manner that even CenturyLink employees agree would leave a percentage of its customers with inadequate, unreliable service. Likewise, CenturyLink's interpretation would render the Commission powerless to ensure adequate landline service for a population that depends upon it, so long as this failure is experienced by fewer than five percent of customers.

85. The reasonable interpretation of these three rules is that Minn. R. 7810.3300 requires telephone companies to provide each customer with adequate service, Minn. R. 7810.5000 requires telephone companies to regularly assess whether their procedures are delivering such service to each customer, and Minn. R. 7810.5900 measures overall network health. Each of these rules reflects a distinct aspect of the regulatory framework.

86. In this instance, the record shows that while CenturyLink's overall statewide network performs satisfactorily, certain customers—most commonly located in the rural periphery—are not receiving adequate service. CenturyLink serves approximately 233,000 customer lines in Minnesota.¹⁴⁹ About 4,460 of them are receiving inadequate service, which is two percent of CenturyLink's landline customers.¹⁵⁰ These Minnesotans are among the population for whom the Commission rejected, out of concern for the public interest, CenturyLink's prior attempts to escape its regulatory obligations.

87. The Administrative Law Judge further concludes that to the extent CenturyLink has proactive maintenance practices, those minimal efforts are insufficient to provide all customers with adequate service with any reasonable consistency. The Department and the Office of the Attorney General established that industry best practices require telephone companies to proactively identify plant and equipment that is

¹⁴⁸ DOC Reply Br. at 4-5.

¹⁴⁹ Evid. Hrg. Tr. at 159-160 (Mohr); Ex. DOC-1 at 11 (Gonzalez Direct).

¹⁵⁰ Ex. DOC-5 at 19 (Webber Rebuttal); Ex. DOC-2 at 8-9 (Gonzalez Rebuttal).

likely to fail and make the necessary repairs or replacements necessary to prevent disruption or otherwise poor telephone transmission (crackling, static, muffled calls) performance.¹⁵¹ In this case, the Department established that CenturyLink devotes few resources to proactive rehabilitation work and lacks procedures for systematically or comprehensively evaluating the performance of its POTS network.¹⁵² CenturyLink's insignificant "proactive" maintenance programs still rely on customers or technicians reporting enough problems associated with a specific piece of equipment before any action is taken.¹⁵³ Even after a piece of plant or equipment is identified, CenturyLink does not take timely action – sometimes allowing proposed projects to linger unresolved for years at a time.¹⁵⁴ Mr. Lebens' photographs, and the many comments made by CenturyLink customers, underscore the inadequacy of CenturyLink's maintenance programs.

C. A Preponderance of the Evidence Establishes that CenturyLink Violated Minnesota Rule 7810.5800

88. The third rule at issue in this proceeding is Minn. R. 7810.5800. The rule states "that 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."

89. In interpreting the rule, the words and phrases contained within it should be construed according to rules of grammar and according to their common and approved usage. General words must be restricted in their meaning by preceding particular words.¹⁵⁵

90. The Department argued that, in the rule's third sentence, "objective" is qualified or limited by "minimum." An objective is "something worked toward or striven for; a goal."¹⁵⁶ A minimum, on the other hand, is the "lowest possible amount or degree permissible or attainable."¹⁵⁷ In turn, the Department argued that an otherwise permissive "goal" is modified to set a floor or set a baseline requirement that the company should aim to exceed. The Department and Office of the Attorney General argued that this reading is consistent with the rule as a whole. The second sentence makes clear that companies should restore service "with the shortest possible delay" and, therefore, companies should aim to not merely meet but exceed the 95 percent requirement.

¹⁵¹ Ex. DOC-4 at 8-9 (Webber Direct) (citing the 2020 Schumaker & Company audit report).

¹⁵² Ex. DOC-4 at 17-18 (Webber Direct); Ex. DOC-22 at 4; Ex. DOC-23 at 2; Ex. DOC-25 at 2; Evid. Hrg. Tr. at 194, 196, 200 (Ardoyno).

¹⁵³ Ex. DOC-1, LG-R-1 (Gonzalez Direct).

¹⁵⁴ Ex. DOC-5 at 10-13 (Webber Rebuttal).

¹⁵⁵ Minn. Stat. § 645.08(1), (3) (2022).

¹⁵⁶ *Objective*, American Heritage Dictionary (5th ed. 2022).

¹⁵⁷ *Minimum*, American Heritage Dictionary (5th ed. 2022).

91. Minn. R. 7810.0200 provides that “[t]he purpose of this chapter is to establish reasonable service standards to the end that adequate and satisfactory service will be rendered to the public.” There are two service standards in 7810.5800: (1) the provider must reestablish service with the minimum possible delay and (2) the provider should maintain an objective to clear 95 percent within 24 hours. The second standard is the “reasonable service standard” alluded to in .0200 adopted to ensure adequate service. As such, it is a reasonable indicator (but not necessarily the exclusive means), for evaluating whether service is adequate and satisfactory. Specifically, it is an indication of whether the utility is making “all reasonable efforts to prevent interruptions of service.” A utility consistently failing to meet the “minimum objective,” without a variance, is both failing to satisfy the rule’s plain language (i.e., not maintaining an objective) and, it follows from .0200, presumptively not providing adequate service.

92. The parties do not dispute that CenturyLink’s performance fell below the 95 percent minimum objective level in [REDACTED] and has remained below that level for all but [REDACTED] months through June 2023, as shown below.

Out-of-Service Restorations within 24 Hours¹⁵⁸

Year	2019	2020	2021	2022	2023
January	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
February	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
March	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
April	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
May	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
June	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
July	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
August	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
September	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
October	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
November	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
December	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Annual Average	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED

93. The Department suggested that CenturyLink’s declining performance was likely caused by its decision to lay off about [REDACTED] of its Minnesota field technician workforce, causing per technician workloads to spike [REDACTED] since 2021.¹⁵⁹ No evidence suggests CenturyLink’s performance will improve without Commission intervention.

¹⁵⁸ Ex. DOC-4 at 51 (Webber Direct).

¹⁵⁹ Ex. DOC-4 at 20-21 (Webber Direct); Ex. DOC-2 at 17 (Gonzalez Rebuttal).

94. In response to the Department’s position, CenturyLink claimed that the rule only sets an “objective” and is therefore “not a mandatory standard.”¹⁶⁰ CenturyLink also stated that it recognizes that it is struggling to clear 95 percent of all out-of-service troubles within 24 hours.¹⁶¹ However, CenturyLink’s difficulty in complying with the rule is primarily, if not entirely, a function of fewer and fewer POTS customers on the Company’s geographically expansive network.¹⁶² This inevitably results in a larger and larger geographic dispersion of customers. CenturyLink had an average of [REDACTED] telephone lines per mile of copper in 2000.¹⁶³ By 2022, the average is only [REDACTED] lines per mile. According to the company, 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.¹⁶⁴ 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.¹⁶⁵

95. The Administrative Law Judge finds that CenturyLink is in violation of Minn. R. 7810.5800 because the company has not come reasonably close to meeting the minimum standard set forth in the rule. Although typically an “objective” would not be mandatory given the plain meaning of the word, a fair reading of the rule indicates that restoring service to 95 percent of customers within 24 hours is a “minimum” requirement, or a floor on CenturyLink’s performance. Much of CenturyLink’s argument addressing Minn. R. 7810.5800 relates to why the company has not met or come reasonably close to meeting the standard. The rule, however, does not provide any exemptions for the geographic and workforce shortage barriers that the company has identified. CenturyLink’s argument that it cannot find enough qualified technicians is particularly ironic, given that it laid off about half of its technician workforce at almost the same time its performance dropped. As such, CenturyLink’s noncompliance with Minn. R. 7810.5800 is at least partially a self-inflicted injury.

¹⁶⁰ Ex. CTL-8 at 5 (Ardoyno Direct). This testimony is at odds with CenturyLink’s 2014 variance request, where it sought the Commission’s approval to lower the standard from 95 to 85 percent. A variance would be entirely unnecessary to avoid an aspirational objective. This inconsistency necessarily diminishes the witness’s credibility.

¹⁶¹ Ex. CTL-1 at 30 (Mohr Direct).

¹⁶² Ex. CTL-6 at 7 (Ardoyno Direct).

¹⁶³ Ex. CTL-19, Sched. 1 at 26, Fig. 5 (Turner Rebuttal).

¹⁶⁴ Ex. CTL-19, Sched. 1 at 26, Fig. 5 (Turner Rebuttal).

¹⁶⁵ Ex. CTL-6 at 6-7 (Ardoyno Direct).

IV. THE DEPARTMENT'S AND OFFICE OF THE ATTORNEY GENERAL'S RECOMMENDED REMEDIES

96. After establishing that CenturyLink was not providing adequate service to 4,460 customers, the Department and Office of the Attorney General recommended that the Commission require the company to take certain remedial steps. Specifically, CenturyLink should be required to timely investigate and promptly rehab deficient plant and equipment identified by the Department's expert, implement a preventative "Plant Pride" program to prevent future network deterioration, and use shorter repair appointment windows.¹⁶⁶

97. The remedies urged by the Department and OAG are consistent with the remedies agreed to by the parties, and approved by the Commission, in Frontier Communications.¹⁶⁷

98. The Commission summarized the Frontier matter in relevant part as follows:

The proposed settlement provides three main remedies to customers. First, it provides a proposed process under which Frontier will offer customer remedies for past service quality lapses, from the period of the AFOR plans until 90 days following this order. Second, it establishes steps Frontier will take to improve future service quality, customer service, and billing practices, including regular reporting. Third, it provides for ongoing service quality performance with metrics that provide for customer remedies if the standards are not met.

99. In particular, the proposed settlement sets forth customer-specific remedies for the following issues:

[. . .]

- Delays in fixing phones that are out of service;

[. . .]

- Missed repair appointments;
- Failure to make timely permanent repairs of electrical faults or poor transmission characteristics;
- Problem on a line recurring within 30 days; [and],
- Failure to maintain records of customer's problems[.]¹⁶⁸

¹⁶⁶ Ex. DOC-2 at 27-28 (Gonzalez Rebuttal).

¹⁶⁷ *In the Matter of a Commission Inquiry into the Service Quality, Customer Service, and Billing Practices of Frontier Communications*, Docket No. P-407, 405/CI-18-122, 2020 WL 409127 (Minn. P.U.C.).

¹⁶⁸ *In the Matter of a Commission Inquiry into the Service Quality, Customer Service, and Billing Practices of Frontier Communications*, MPUC Docket No. P-407, 405/CI-18-122, ORDER APPROVING SETTLEMENT AS MODIFIED (JAN. 22, 2020) (eDocket No. 20201-159433-01).

100. To remedy the issues, Frontier agreed to file a maintenance plan, training materials, and ongoing reports about ten measures of service quality. Frontier also agreed to send each subscriber a self-addressed, prepaid postal form for reporting current or past service quality problems, to send a similar form via email, and to provide a bill insert informing customers of these opportunities to seek redress. Finally, Frontier agreed to establish a 1-800 telephone number for taking Minnesota-specific service quality complaints.¹⁶⁹

101. The settlement called for the Department to review those filings, and to ask the Commission to suspend the filings and take other remedial action as appropriate. The settlement permitted the Commission to require reports to be audited, at Frontier's expense, to verify accuracy.¹⁷⁰

102. In support of its modification and approval of the proposed resolution of the Frontier matter, the Commission observed:

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 customers, and friends exchanging greetings are all entitled to reliable service from a responsive public utility.¹⁷¹

103. CenturyLink claims that the remedies recommended by the opposing parties cannot be ordered because no cost-benefit analysis has been performed. This argument should be summarily rejected, as CenturyLink points to no law that conditions regulatory compliance upon maximizing profitability. While the Judge appreciates the challenges CenturyLink faces as communication technology is in a period of transition, this does not allow a POTS provider to violate the rules or render the Commission powerless to remedy violations.

104. The Department and Office of the Attorney General proposed remedies are reasonably calculated – and well within the Commission's power - to redress the problems persisting in CenturyLink's landline services.

A. Rehab of Plant and Equipment

105. To resolve the existing violations of Minn. R. 7810.3300 and Minn. R. 7180.5000, the Department recommended that the Commission require CenturyLink to review and rehab all outside plant and equipment that serves customers who have had four or more deteriorated plant trouble tickets since 2019, as identified by the

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 3-4.

¹⁷¹ *Id.* at 5.

Department's expert, within 24 months of the final order in this matter.¹⁷² The Commission also should require CenturyLink to file quarterly reports on its progress, on a customer-by-customer basis. The Department stressed that this recommendation is narrowly targeted to improve service for the approximately 4,460 customers who are not currently receiving adequate service. In support of this contention, the Department established that these customers represent only six percent of all customers with a deteriorated plant related problem, but they are responsible for 21 percent of all deteriorated plant related problems.¹⁷³

106. In addition, the Department recommended that the Commission require CenturyLink to review and rehab, within 24 months, the 210 100-pair cables that the Department's expert identified as driving troubles.¹⁷⁴ The Department again stressed that this recommendation is narrowly targeted for several reasons. First, the Department concluded that it is likely that there is significant overlap between the plant and equipment directly serving the 4,460 customers who are not receiving adequate service and these 210 cables, lessening the incremental volume of additional work. Second, the Department noted that these 210 cables amount to fewer than **[REDACTED]** of all cables contained in CenturyLink's tracking report.¹⁷⁵ In the Department's view, requiring CenturyLink to promptly rehab its worst performing plant and equipment would be a reasonable step to ensure adequate service on ongoing basis. The Office of the Attorney General supports the recommendation.¹⁷⁶

107. In response, CenturyLink asserted that the Department's recommendations have no basis in Minnesota statutes or rules and no precedent in case law, leading company witness Mr. Turner to describe it as "an extraordinary new regulatory regime."¹⁷⁷ To the contrary, the Commission has broad authority to regulate traditional POTS service under Minn. Stat. § 237.02. The Commission and its predecessors have regulated telephone service since 1915.¹⁷⁸ State law authorizes the Commission to make orders regarding the "practices and services of telephone companies" and authority to "compel

¹⁷² Ex. DOC-5 at 19-20 (Webber Rebuttal).

¹⁷³ Ex. DOC-5 at 19 (Webber Rebuttal).

¹⁷⁴ Ex. DOC-5 at 15-16 (Webber Rebuttal); Ex. DOC-2 at 8-9 (Gonzalez Rebuttal).

¹⁷⁵ CenturyLink's report identifies approximately 9,500 total cables. Ex. DOC-5 at 15 (Webber Rebuttal).

¹⁷⁶ OAG Initial Br. (Jan. 17, 2024) (eDocket No. 20241-202281-02).

¹⁷⁷ Ex. CTL-21 at ¶ 28 (Turner Surrebuttal).

¹⁷⁸ Minn. Stat. § 237.02 (vesting the public utilities commission "with the same jurisdiction and supervisory power over telephone and telecommunications companies doing business in this state as the commission's predecessor, the railroad and warehouse commission, had over railroad and express companies" prior to the 1967 replacement of the railroad and warehouse commission, Minn. Laws 1967, ch. 864, with the department of public service); see, e.g., Minn. Stat. § 237.04-.05 (1965) (authorizing the railroad and warehouse commission to issue orders compelling telephone companies to remove or reconstruct any telephone wires inconsistent with its regulations governing maintenance and operation of paralleling lines); Minn. Stat. § 237.16 (1965) (vesting the railroad and warehouse commission with exclusive authority to prescribe the terms and conditions for the construction telephone lines and exchanges). The railroad and warehouse commission was originally created in 1871, Minn. Laws. 1871, ch. 22, and has regulated telephone service since 1915. Minn. Laws. 1915, ch. 152.

performance” or “other appropriate action.”¹⁷⁹ Additionally, the Commission could condition CenturyLink’s ongoing possession of a certificate of authority upon compliance with any remedy ordered in this matter.¹⁸⁰

108. The Department and Office of the Attorney General also cited examples of other state commissions taking similar regulatory actions, including several examples involving CenturyLink’s parent company or affiliates.¹⁸¹

109. In 2020, the Pennsylvania commission fined Verizon for failure to consistently provide a single customer with adequate service. In that case, the customer reported instances of losing service, the inability to receive incoming calls, a lack of dial tone, or static or noise that interfered with service.¹⁸² The administrative law judge report largely adopted by the Pennsylvania commission explained that Verizon was obligated to maintain its copper network to provide adequate and reliable service.¹⁸³

110. In 2020, following several wildfires that knocked out telephone service, the Oregon commission ordered several Lumen subsidiaries to “restore basic telephone service to all customers who requested service in the company’s service territory” by December 1, 2020, either by repairing or replacing its own facilities or by providing comparable voice service to affected customers at no additional cost.¹⁸⁴

111. In 2018, the Wyoming commission ordered Lumen affiliates to rehab its outside plant where customers are not receiving adequate service. The commission found that customers were experiencing ongoing service problems and ordered Qwest Corporation to timely address all maintenance and repair requests in particular communities and file quarterly reports on the proactive upgrading being done, all maintenance and service-related activities, and all other resolutions of problems being undertaken.¹⁸⁵

¹⁷⁹ Minn. Stat. §§ 237.081, subd. 4(2)-(3), .461, subd. 1; *In re Deregulation of the Installation & Maint. of Inside Wiring*, MPUC Docket No. C-86-743, FINDINGS OF FACT CONCLUSION OF LAW & ORDER, 1986 WL 1299676, at *2 (Dec. 31, 1986).

¹⁸⁰ Minn. Stat. § 237.16, subd. 1(b) (“No person shall provide telephone service in Minnesota without . . . a certificate of authority from the commission under terms and conditions the commission finds to be consistent with . . . the provision of affordable telephone service at a quality consistent with commission rules, and the commission's rules.”).

¹⁸¹ DOC Initial Br. at 29-31.

¹⁸² *Cynthia Mosco v. Verizon Pennsylvania LLC*, Docket No. C-2018-3006579, 2020 WL 1673955, at *16 (PA P.U.C. Mar. 9, 2020); *Cynthia Mosco v. Verizon Pennsylvania LLC*, No. C-2018-3006579, 2022 WL 1423613, at *12 (PA P.U.C. Apr. 25, 2022).

¹⁸³ *Cynthia Mosco v. Verizon Pennsylvania LLC*, Docket No. C-2018-3006579, 2020 WL 1673955, at *11 (PA P.U.C. Mar. 9, 2020).

¹⁸⁴ See, e.g., *In re Qwest Corp.*, No. 20-431, 2020 WL 6886274, at *1 (Nov. 18, 2020). The original commission order was eventually replaced with a settlement that granted Lumen two additional months to restore service. *In re United Tel. Co. of the Nw. (Um 2127)*, *Centurytel of Oregon (Um 2128)*, *Qwest Corp. (Um 2129)*, No. 20-486, 2020 WL 7767794, at *1 (Dec. 23, 2020).

¹⁸⁵ *In re Compl. Filing of Karen King Against Qwest Corp. Requesting A Formal Hearing on the Alleged Probs. with Her Telecomm'cns Serv.*, Docket No. 70000-1269-TC-06, 2008 WL 9895044 (WY P.S.C. May 9, 2008); *In re Formal Compl. of Ron & Alyce Carter Against Qwest Corp. d/b/a Centurylink QC*

112. The Administrative Law Judge recommends that the Commission require CenturyLink to promptly review and remedy equipment and plant serving 4,460 customers who are not receiving adequate service, the equipment identified by the Office of the Attorney General's witness, Mr. Lebens, and the 210 100-pair cables identified as responsible for the most chronic service disruptions. The Administrative Law Judge concludes that it is within the Commission's authority and a reasonable solution to remedy the continual service problems experienced by a small segment of customers who have not received the adequate service to which they are entitled. Minn. Stat. §§ 237.02; 237.081, subd. 4(2)-(3); and .461, subd. 1, grant the Commission ample authority to order a telephone company to fix problems with POTS facilities that are responsible for inadequate service following a contested case hearing.

B. Implementation of a "Plant Pride" Program

113. Beyond promptly restoring adequate service where it is presently lacking, the Department and Office of the Attorney General recommended that the Commission also should take steps to ensure that CenturyLink engages in sufficient proactive rehab work to avoid future backlogs.¹⁸⁶ Specifically, the Department recommended that the Commission should:

114. Require CenturyLink to modify its existing Proactive Rehab Tracking procedures or create new procedures to "resolve" all plant rehab reports received from field technicians within 90 days.

115. Define the term "resolve" to mean "the repair; replacement; or a reasonable alternative resolution, including the possibility of no action, as determined by the company in consultation with CWA."

116. Require that the field technician who initially submitted the report receive notification of how the report was ultimately resolved.

117. Require CenturyLink's director of network service operations for Minnesota and applicable regional leaders to meet with the CWA's area/district leadership on a quarterly basis to review all reports from the quarter.

118. Require CenturyLink to educate field technicians about these new procedures and keep them informed of the results through communications at the garage level, including through dedicated space to post local results (e.g., before and after photos).

Alleging Unreliable & Intermittent Tel. Serv. in Zone 3 of the Lusk, Wyoming Exch., No. 70000-1633-TC-16, 2017 WL 4552156, at *9 (WY P.S.C. Oct. 6, 2017).

¹⁸⁶ Ex. DOC-2 at 9-15 (Gonzalez Rebuttal).

119. Encourage CWA's area/district leadership to educate their members on a regular basis about these new procedures and champion robust participation.¹⁸⁷

120. The Department modeled this recommendation on the "Plant Pride" programs adopted in New York and Pennsylvania.¹⁸⁸ Those programs similarly allow technicians to submit plant conditions needing additional maintenance and require the applicable telephone company to promptly review the submissions. In New York, for example, Verizon must resolve 75 percent of all technician submissions within 90 days. These programs also place great emphasis on collaboration between the company and its workers. In New York, meetings occur on a quarterly basis, while they happen semi-annually in Pennsylvania.¹⁸⁹

121. The Department and Office of the Attorney General argued that quarterly meetings with CWA's area/district leadership are appropriate for several reasons. First, it was necessary to temper the significant discretion by the Department's proposed definition of "resolve." If company and union representatives agree that a delay or other alternative resolution is appropriate, that should typically be a satisfactory outcome from a regulatory perspective as well. Second, an important part of the proposal is empowering workers to identify rehab projects and stated that involving union representatives in the process would facilitate greater buy-in and participation.¹⁹⁰

122. Regarding the quarterly filings, the Department recommended that the Commission require CenturyLink to make quarterly filings with the Commission that list: (a) each reported issue; (b) the approximate location of the plant; (c) the date it was reported; (d) the date it was resolved, if applicable; and (e) the status of whether or how it was resolved. To the extent that CenturyLink and the CWA disagreed about how to resolve a particular report, the quarterly filing should expressly note it. This would allow the Department or any other interested party to seek additional Commission action as necessary.¹⁹¹

123. The purpose of this quarterly reporting is to allow regulators to monitor service quality, and not to resolve disputes between CenturyLink and CWA over how any particular proposed rehab project was resolved. Instead, if any troubling trends developed, the Department would be able to take action to involve the Commission as appropriate.¹⁹²

124. A Plant Pride program would improve CenturyLink's performance long-term. The Department pointed to improved outcomes for Verizon customers in New York and Pennsylvania where similar programs exist as shown in the graphs below. Since the New York and Pennsylvania settlements were respectively implemented in 2016 and

¹⁸⁷ Ex. DOC-2 at 12-13 (Gonzalez Rebuttal).

¹⁸⁸ Ex. DOC-2 at 9 (Gonzalez Rebuttal).

¹⁸⁹ Ex. DOC-2 at 9-10 (Gonzalez Rebuttal).

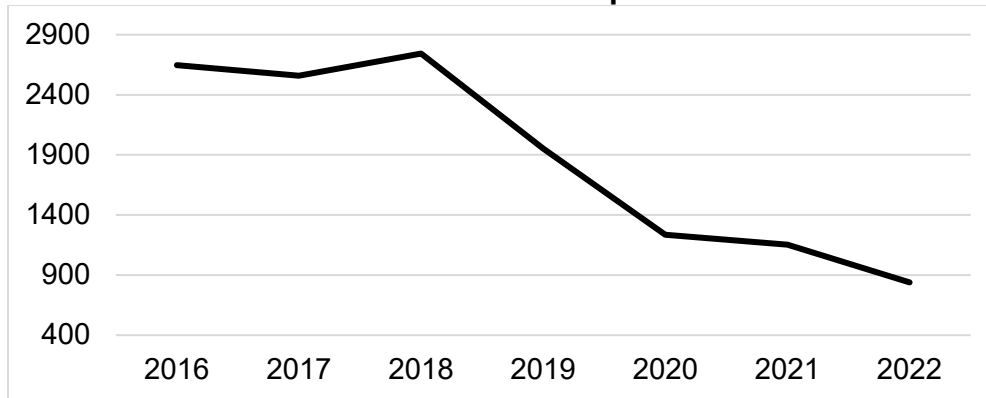
¹⁹⁰ Ex. DOC-2 at 14 (Gonzalez Rebuttal).

¹⁹¹ Ex. DOC-2 at 14 (Gonzalez Rebuttal).

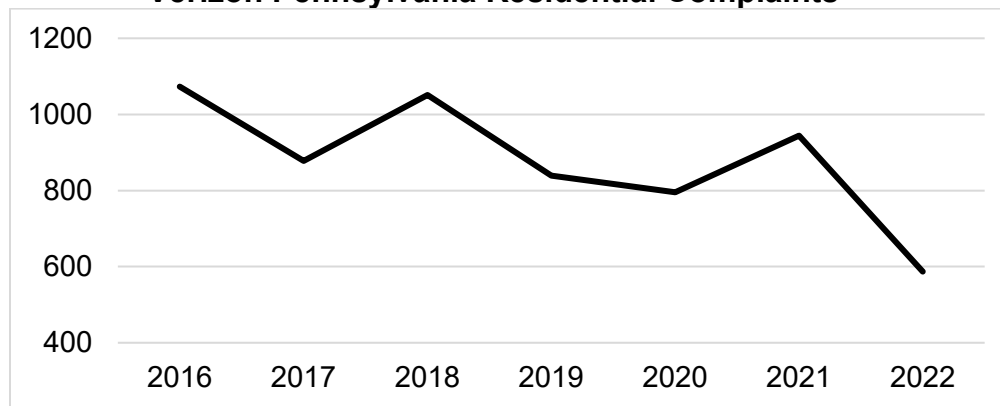
¹⁹² Ex. DOC-2 at 15 (Gonzalez Rebuttal).

2017, the states have seen significant drops in filed complaints. In New York, the number of annually filed complaints has dropped by approximately 68 percent. In Pennsylvania, the number of annually filed complaints has dropped 45 percent.¹⁹³

Verizon New York Complaints¹⁹⁴



Verizon Pennsylvania Residential Complaints¹⁹⁵



125. CenturyLink opposed the Plant Pride program recommendation. CenturyLink also asserted that the Department and Commission lack authority to insert themselves “into the Company’s relationship with its collective bargaining partner.”¹⁹⁶ The Administrative Law Judge disagrees.

126. The Department countered CenturyLink’s assertion that a Plant Pride program would inappropriately intrude upon the company’s collective bargaining relationship with the CWA. The Department noted that it had neither made any hiring recommendations, nor has it attempted to force changes to other collective bargaining issues, including wages and compensation, disciplinary rules and procedures, job protection provisions, or grievance and arbitration procedures.¹⁹⁷ The Department also

¹⁹³ Ex. DOC-2 at 10-11 (Gonzalez Rebuttal).

¹⁹⁴ Ex. DOC-2 LG-R-3 at 1 (Gonzalez Rebuttal) (Tab 1).

¹⁹⁵ Ex. DOC-2 LG-R-3 at 2 (Gonzalez Rebuttal) (Tab 2).

¹⁹⁶ CTL Initial Br. at 53.

¹⁹⁷ DOC Reply Br. at 12; National Labor Relations Act, 29 U.S.C. § 158(a)(5), (d) (2022) (identifying wages, hours, and other terms and conditions of employment as subject to mandatory bargaining).

asserted the quarterly meetings between CenturyLink and CWA to discuss proactive rehab projects identified by field technicians would not be particularly onerous given CenturyLink's representations that it already meets with CWA officials on a regular basis.¹⁹⁸

127. CenturyLink would remain ultimately responsible for determining how to resolve proposed rehab projects identified by field technicians under the Department's Plant Pride program recommendation. Regular meetings with the CWA would result in a consensus outcome, but if not, the Department's recommendation would only require CenturyLink to note the disagreement with CWA in the quarterly reporting to the Commission.¹⁹⁹ The purpose of the reporting is not for the Commission or the Department to then mediate disputes between CenturyLink and the CWA as to specific proposed rehab projects. Instead, the Department would use this information to monitor CenturyLink's performance and raise any concerning trends to the Commission's attention.²⁰⁰

128. The Administrative Law Judge recommends that the Commission adopt the Department's Plant Pride program proposal. The experiences of other states with similar programs establish that a Plant Pride program will improve CenturyLink's proactive maintenance practices and thereby reduce customer complaints long-term. In several respects the Department's proposal is merely a modest extension of CenturyLink's existing practices. First, CenturyLink asserted during this proceeding that it had procedures that permit field technicians to propose proactive rehab projects. The Department's proposal would ensure that the company takes some sort of definitive action within 90 days, including affirmatively deciding to take no action, for each proposal. It also would ensure that the submitting field technician is made aware of the outcome. Second, CenturyLink already meets with CWA leadership on a regular basis. The Department's proposal would formalize these meetings and direct CenturyLink to discuss how it intended to resolve each proposed rehab project from the prior quarter with CWA leadership. Third, CenturyLink maintains some records about what proposed rehab projects are under evaluation or completed by the company. The Department's proposal would require similar records to be filed with the Commission so that regulatory agencies could better track trends with CenturyLink's performance. The Administrative Law Judge finds that these proposals are appropriate given the inadequate service received by some customers and the record evidence establishing that CenturyLink allows proposed rehab projects to languish in an uncertain or undecided state indefinitely. The Administrative Law Judge also finds that requiring a Plant Pride program for POTS service falls firmly within the Commission's jurisdiction.

¹⁹⁸ Ex. CTL-11 at 11 (Ardoyno Surrebuttal) (Dec. 1, 2023) (eDocket No. 202312-200931-07); CTL Initial Br. at 54.

¹⁹⁹ Ex. DOC-2 at 15 (Gonzalez Rebuttal).

²⁰⁰ Ex. DOC-2 at 15 (Gonzalez Rebuttal).

C. Shorter Service Repair Windows

129. Lastly, the Department recommended that the Commission require CenturyLink reduce repair appointment windows from eight hours to four hours. CenturyLink's Minn. R. 7810.5800 performance demonstrates that it struggles to timely restore service.²⁰¹ In the Department's view, shorter repair windows are necessary to ensure customer time is respected and force CenturyLink to focus its attention on meeting repair obligations.

130. In response, CenturyLink stated that the company assigns repair tickets to technicians through a route optimizer that assigns tickets based on priority (with POTS out-of-service tickets at the highest priority), geography, workload, and skill sets. CenturyLink argued that adding an additional restriction based on a four-hour repair window would be a Minnesota-specific or manual adjustment that will add more complexity to the routing system and negatively impact the efficient assignment of tickets. CenturyLink also argued that with a narrower repair window, more appointments, not fewer appointments, will be missed. In CenturyLink's view, restricting the repair window will not address the main challenge in addressing repairs in a timelier manner – the geographic spread of its POTS customers.²⁰²

131. The Administrative Law Judge concurs with the Department and the Office of the Attorney General that shorter repair windows of four hours are appropriate given CenturyLink's admitted poor performance in restoring service within the 24-hour window required by Minn. R. 7810.5800. CenturyLink's customers who have been most affected by the company's maintenance and staffing decisions should not be forced to spend inordinate amounts of their time waiting for the company to provide the service for which they pay.

132. Any Finding of Fact more appropriately designated a Conclusion of Law is hereby adopted as such.

Based on the foregoing Findings of Fact and the record in this proceeding, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Commission and the Administrative Law Judge have jurisdiction over the subject of the proceeding pursuant to Minn. Stat. § 237.081, subd. 1 (2022), Minn. R. 7810.0200 (2023), and Minn. Stat. §§ 14.57–.62 (2022).

2. CenturyLink received proper and timely notice. All relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge and the Commission.

²⁰¹ Ex. DOC-2 at 18-19 (Gonzalez Rebuttal).

²⁰² Ex. CTL-11 at 12 (Ardoyno Surrebuttal).

3. The Department and Office of the Attorney General bear the burden to demonstrate by a preponderance of the evidence that CenturyLink violated the telephone service quality requirements contained in Minnesota Statutes chapter 237 and Minnesota Rules chapter 7810.²⁰³ The preponderance of the evidence standard requires that to establish a fact, it must be more likely than not that it exists.²⁰⁴

4. The Commission has broad authority to regulate POTS telecommunications service, including ample authority to order the remedies recommended by the Department and Office of the Attorney General. Whenever the Commission finds that any service is inadequate, the Commission shall make an order respecting the act, omission, practice, or service that is just and reasonable.²⁰⁵ The Commission has authority under Minn. Stat. § 237.081 “to make orders regarding the practices and services of telephone companies after affording the affected companies an opportunity to be heard.”²⁰⁶ Minn. Stat. § 237.461, subd. 1, authorizes the Commission to “compel performance” or “other appropriate action.”

5. Minn. Stat. § 237.02 vests the Commission “with the same jurisdiction and supervisory power over telephone and telecommunications companies doing business in this state as the commission's predecessor, the Railroad and Warehouse Commission, had over railroad and express companies” prior to the 1967 replacement of the Railroad and Warehouse Commission with the Department of Public Service.²⁰⁷ The Railroad and Warehouse Commission broad authority to issue orders, for example, compelling telephone companies to remove or reconstruct any telephone wires inconsistent with its regulations governing maintenance and operation of paralleling lines, and to prescribe the terms and conditions for the construction of telephone lines and exchanges.²⁰⁸ Collectively, the Eighth Circuit Court of Appeals has explained, “these statutes give [the Commission] broad statutory authority to regulate the telecommunications market in Minnesota.”²⁰⁹

6. The Administrative Law Judge concludes that Minn. R. 7810.3000 and Minn. R. 7810.5000 require telephone companies to provide customers with adequate service and to continually review their operations to assure the furnishing of adequate service on an ongoing basis. Adequate service requires that telephone companies provide each customer receiving POTS telephone service near continuous telephone access without repeated disruptions.

²⁰³ Minn. R. 1400.7300, subp. 5 (“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.”).

²⁰⁴ *City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1, 4 (Minn. 2004).

²⁰⁵ Minn. Stat. § 237.081, subd. 4(2)-(3).

²⁰⁶ *In re Deregulation of the Installation & Maint. of Inside Wiring*, MPUC Docket No. C-86-743, FINDINGS OF FACT CONCLUSION OF LAW & ORDER, 1986 WL 1299676, at *2 (Dec. 31, 1986).

²⁰⁷ Minn. Laws 1967, ch. 864.

²⁰⁸ Minn. Stat. § 237.04-.05, .16 (1965).

²⁰⁹ *Qwest Corp. v. Minn. Pub. Utilities Comm'n*, 427 F.3d 1061, 1065 (8th Cir. 2005).

7. The Department and Office of the Attorney General demonstrated by a preponderance of the evidence that CenturyLink violated Minn. R. 7810.3300 and Minn. R. 7810.5000 by failing to provide approximately 4,460 customers with adequate service.

8. The Department and Office of the Attorney General demonstrated by a preponderance of the evidence that CenturyLink violated Minn. R. 7810.5800 by failing to restore 95 percent of service outages within 24 hours.

9. The remedies recommended below are firmly within the Commission's authority to redress CenturyLink's violations.

Any of the forgoing Conclusions of Law more properly designated as Findings of Fact are hereby adopted as such.

RECOMMENDATIONS

Based upon these Findings of Fact and Conclusions of Law, the Administrative Law Judge recommends:

1. The Commission adopt the Findings of Fact, Conclusions of Law, and Recommendations as set forth above.

2. The Commission find that CenturyLink is failing to provide adequate service, violating Minn. R. 7810.3000 and Minn. R. 7810.5000, when customers experience multiple service disruptions caused by the same deficient outside plant or equipment over an approximately four-and-a-half year period.

3. The Commission require CenturyLink to review and rehab all outside plant and equipment that serves customers who have had four or more deteriorated plant trouble tickets between January 2019 and June 2023, as identified by the Department's expert, within 24 months of the final order in this matter.²¹⁰ The Commission also should require CenturyLink to file quarterly reports on its progress, on a customer-by-customer basis.

4. The Commission require CenturyLink to review and rehab the 210 100-pair cables that the Department's expert identified as driving troubles within 24 months.²¹¹

5. The Commission order CenturyLink to make repairs promptly to all equipment depicted in Mr. Leben's photographs.²¹²

6. The Commission prohibit CenturyLink from sidelining maintenance projects for mere failure to satisfy its five-year payback requirement.

²¹⁰ Ex. DOC-5 at 19-20 (Webber Rebuttal).

²¹¹ Ex. DOC-5 at 15-16 (Webber Rebuttal); Ex. DOC-2 at 8-9 (Gonzalez Rebuttal).

²¹² Exs. OAG-4-9 (Lebens Surrebuttal and Schedule 6).

7. The Commission find that CenturyLink is violating Minn. R. 7810.5800 by failing to restore 95 percent of service outages within 24 hours. To reduce the harm caused by CenturyLink's non-compliance, the Commission should also require CenturyLink to reduce repair appointment windows from eight hours to four hours.

8. The Commission consider whether, having failed to secure a variance from Minn. R. 7810.5800 in 2014, CenturyLink's subsequent violation of that rule is knowing and intentional, and subject to civil penalties of up to \$5,000 per day of violation.

Dated: March 13, 2024


KIMBERLY MIDDENDORF
Administrative Law Judge

NOTICE

Notice is hereby given that exceptions to this Report, if any, by any party adversely affected must be filed under the time frames established in the Commission's rules of practice and procedure, Minn. R. 7829.1275, .2700 (2023), unless otherwise directed by the Commission. Exceptions should be specific and stated and numbered separately. Oral argument before a majority of the Commission will be permitted pursuant to Minn. R. 7829.2700, subp. 3. The Commission will make the final determination of the matter after the expiration of the period for filing exceptions, or after oral argument, if an oral argument is held.

The Commission may, at its own discretion, accept, modify, or reject the Administrative Law Judge's recommendations. The recommendations of the Administrative Law Judge have no legal effect unless expressly adopted by the Commission as its final order.