


## Staff Briefing Paper

Meeting Date	July 22, 2021	Agenda Item 2**
Company	Qwest Corporation d/b/a CenturyLink QC	
Docket No.	<b>P-421/M-21-381</b>	
	<b>In the Matter of a Petition for a Rulemaking Regarding Minnesota Rules Chapter 7810</b>	
Issues	Should the Commission open a Rulemaking proceeding to modify or eliminate portions of Minnesota’s Telephone Service Quality Rules?	
Staff	Kevin O’Grady kevin.ograd@state.mn.us	651-201-2218

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 Relevant Documents	Date
<i>Order Detailing Disposition of Petition and Initiating Rulemaking Proceeding (14-413)</i>	May 22, 2014
Request for Comments (14-413)	August 4, 2014
<i>Order Denying Variance Request (14-413)</i>	August 11, 2014
<i>Order Closing Rulemaking Proceeding and Initiating Stakeholder Workgroup Process (14-413)</i>	May 2, 2016
Report of the Stakeholder Group (16-874)	May 24, 2017
CenturyLink: Petition for Rulemaking	June 7, 2021
Comments: CenturyLink	June 28, 2021

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

 **Relevant Documents**

	<b>Date</b>
Comments: CenturyLink (re: Stillwater Township)	June 28, 2021
Comments: Frontier/Citizens	June 28, 2021
Comments: Communications Workers of America	June 28, 2021
Comments: MN Office of the Attorney General	June 28, 2021
Comments: MN Department of Commerce	June 28, 2021
Comments: MN Chamber of Commerce	July 6, 2021
Reply: CenturyLink	July 8, 2021
Reply: Frontier/Citizens	July 8, 2021
Reply: Communication Workers of America	July 8, 2021
Reply: MN Department of Commerce	July 8, 2021
Public Comment: Jennifer Schneider	June 18, 2021
Public Comment: Stillwater Township Board of Supervisors	June 18, 2021
Public Comment: Jane Sweeney	June 21, 2021
Public Comment: John Sweeney	June 25, 2021
Public Comment: Tim and Mary Hassett	June 29, 2021
Public Comment: Cynthia Kindlien	June 30, 2021
Public Comment: Minnesota Retailers Association	June 30, 2021
Public Comment: Alice Bekke	July 2, 2021
Public Comment: Margot Avey	July 9, 2021

## I. Statement of the Issues

Should the Commission open a Rulemaking proceeding to modify or eliminate portions of Minnesota's Telephone Service Quality Rules?

## II. Background

**On June 7, 2021**, CenturyLink QC (CenturyLink) filed a petition to open a rulemaking procedure to either eliminate or modify Minn. R. 7810.5800 (interruptions of telephone service) and Minn. R. 7810.5200 (call center answering time) and to make any other modifications it deems appropriate.

**On June 28, 2021**, comments were submitted by CenturyLink, Citizens Telecommunications Company of Minnesota, LLC and Frontier Communications of Minnesota, Inc. (Frontier), the Communications Workers of America (CWA), the Office of the Attorney General – Residential Utilities Division (OAG), and the Department of Commerce (Department).

**On July 6, 2021**, the Minnesota Chamber of Commerce (MCC) submitted comments.

**On July 8, 2021**, replies were filed by CenturyLink, Frontier, CWA, and the Department.

**Between June 18 and July 9, 2021**, the Commission received public comments from eight CenturyLink customers (in Stillwater Township, Minneapolis, and St. Louis Park) and from the Stillwater Township Board of Supervisors and the Minnesota Retailers Association.<sup>1</sup>

## III. Minn. R. 7810.5200 and Minn. R. 7810.5800

The two Rules that are the focus of CenturyLink's petition state, in full:

### **7810.5200 ANSWERING TIME.**

Adequate forces shall be provided at local manual offices in order to assure that 95 percent of the calls will be answered within ten seconds. Ninety percent of repair service calls, calls to the business office, and other calls shall be answered within 20 seconds. An "answer" shall mean that the operator or representative is ready to render assistance and/or ready to accept information necessary to process the call. An acknowledgment that the customer is waiting on the line shall not constitute an answer.

### **7810.5800 INTERRUPTIONS OF SERVICE.**

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<sup>1</sup> Additional public comments may have been submitted after that date. If so, Staff will bring those comments to the Commission's attention.

Each telephone utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service with the shortest possible delay. The minimum objective should be to clear 95 percent of all out-of-service troubles within 24 hours of the time such troubles are reported. In the event that service must be interrupted for purposes of working on the lines or equipment, the work shall be done at a time which will cause minimal inconvenience to customers. Each utility shall attempt to notify each affected customer in advance of the interruption. Emergency service shall be available, as required, for the duration of the interruption.

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

## IV. CenturyLink Petition

In brief, CenturyLink holds that the Commission “should revisit its landline voice service rules, either eliminate or modify Minn. R. 7810.5800 and Minn. R. 7810.5200 and make any other modifications it deems appropriate.”<sup>2</sup> And, further, “[t]oday, policy considerations demand that broadband, and not legacy landline voice service, should be the priority in Minnesota.”<sup>3</sup> CenturyLink stresses the importance of broadband, citing statements by Senators Smith and Klobuchar, Governor Waltz and Lieutenant Governor Flanagan.<sup>4</sup>

### A. Changing Customer Demand

CenturyLink points to a number of changes in the telecom marketplace in recent decades:

- subscriptions to traditional landline voice service provided by Incumbent Local Exchange Carriers (LECs) has plummeted in the last 20 years at an annual rate of 13%,
- nearly 4/5 of voice connections are wireless,
- CenturyLink has lost nearly 85% of its voice telephone service access lines since 2001,
- only 4.4% of Minnesota households rely on landline for voice service, and
- in 2020, Century lost 15.8% of its remaining access lines.<sup>5</sup>

Simply put, CenturyLink argues, customers have chosen wireless and broadband services and the objective to repair 95% of outages within 24 hours requires CenturyLink to spend an inordinate amount of its technical resources on traditional landline service, nine times the technician time spent on repair and installation of broadband facilities.<sup>6</sup>

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<sup>2</sup> Petition, p. 20.

<sup>3</sup> Petition, p. 13.

<sup>4</sup> Petition, p. 21.

<sup>5</sup> Petition, pp. 2-4.

<sup>6</sup> Petition, p. 5.

## **B. Shifting State Policy**

CenturyLink argues that current telecom statutes are 30 to 40 years old and the rules drawn from those statutes have been in place at least since 1983.<sup>7</sup> CenturyLink points out changes in technology and in telecom regulation over the decades (e.g. the disappearance of payphones; rate-of-return regulation).<sup>8</sup>

CenturyLink also points to state policy goals enacted by the legislature in 2010 and 2016 (§ 237.012) establishing broadband speed goals (download and upload) and broadband access vis-à-vis other states.<sup>9</sup>

## **C. Some Rules Don't Promote the Public Interest**

The 95% objective (not a mandated standard) to clear trouble reports (Rule 7810.5800) comes at the expense of drawing resources away from customer priorities: broadband services. With respect to answering time (Rule 7810.5200) new digital options are now available to customers to address customer issues.<sup>10</sup>

## **D. Strong Service Quality**

CenturyLink argues that it continues to provide high quality service: (1) its trouble report rate for Minnesota was less than 1 report in 100 lines in 2020, (2) that rate has held steady for a number of years, and (3) that rate is one of the lowest in within its service area. CenturyLink also states that it has invested heavily in maintaining and upgrading its network.<sup>11</sup>

## **E. The 2014 Rulemaking Docket**

CenturyLink argues that none of the findings supporting the Commission's closure of the 2014 Rulemaking Docket "hold true today and none of which should prevent the narrow revisions to the rules sought in the current Petition."<sup>12</sup>

CenturyLink points out that, in 2017, the Commission determined that CenturyLink met the statutory criteria in the Competitive Market Regulation Docket and as such allowed CenturyLink to be regulated pursuant to a number of Competitive Local Exchange Carrier (CLEC) rules.<sup>13</sup> CenturyLink argues that data regarding market competitiveness is even more compelling today than it was 5 years ago: (1) CenturyLink continues to serve fewer lines and households, (2) the Commission has approved competitive market regulation for all but 5 of its wire centers, (3) wireless connections continue to increase, (4) more 911 calls are made over wireless and VOIP,

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<sup>7</sup> Petition, pp. 5-6 in reference to Minn. Stats. §§ 237.081 and 237.10.

<sup>8</sup> Petition, pp. 5-6.

<sup>9</sup> Petition, p. 7.

<sup>10</sup> Petition, p. 8.

<sup>11</sup> Petition p. 8.

<sup>12</sup> Petition, p. 10.

<sup>13</sup> Petition pp. 10-11. "Competitive Market Regulation Docket" refers to Docket 16-496.

(5) wireless coverage has increased to 99.91% across the state, (6) there is a proliferation of over-the-top services that offer voice service.<sup>14</sup>

CenturyLink also argues that, with the Commission's approval of its petition to operate as a CLEC, it no longer has the compliance flexibility that was afforded by its Alternative Form of Regulation (AFOR) Plan.<sup>15</sup>

#### **F. Minn. R. 7810.5800: Interruption of Service**

CenturyLink believes that .5800 is particularly onerous because it skews the technicians' workload toward voice services and away from broadband services in a manner that does not reflect customers' demand for broadband services. CenturyLink states that this problem is exacerbated by seasonal fluctuations: customer moves and increased rainfall in the late summer (60% higher than in winter).<sup>16</sup> "Maintaining sufficient technicians to handle peak load is not an economical option in today's marketplace," and in "order to meet the 95% goal ... a landline voice provider must either retain sufficient technicians for the sole purpose of handling peak load over a short term or prioritize voice customers over broadband customers."<sup>17</sup>

#### **G. Minn. R. 7810.5200: Answering Time**

CenturyLink argues that staffing call centers is challenging and that this rule no longer meets customer needs. Further, CenturyLink states, it is a metric that does not apply to call centers "operated by financial institutions, doctor's offices, airlines, state government and health insurance providers ... [e]ven the monopoly electric utilities in Minnesota have a less onerous call answering metric than CenturyLink faces ... ."<sup>18</sup> As examples, CenturyLink points to several state agencies: Vehicle Services (DMV), Employment and Economic Development (DEED), MNSURE, and the Office of the Attorney General (OAG). CenturyLink also notes that it is required to meet metrics not materially different from 9-1-1 call centers.<sup>19</sup>

CenturyLink also points out that the requirements of .5200 are more stringent than those it faced while under AFOR regulation.<sup>20</sup>

## **V. Party Comments**

### **A. CenturyLink Comments**

CenturyLink believes that its petition comports with Minnesota Rules 1400.2040 and 1400.2500 addressing the requirements for filing a rulemaking a petition. CenturyLink believes that a

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<sup>14</sup> Petition, pp. 11-12.

<sup>15</sup> Petition, p. 13.

<sup>16</sup> Petition, pp. 14-16.

<sup>17</sup> Petition, p. 15.

<sup>18</sup> Petition, p. 16.

<sup>19</sup> Petition, pp. 16-20.

<sup>20</sup> Petition, p. 18.

rulemaking is necessary, particularly for .5200 and .5800, although it would support a rulemaking to address the service quality rules .4900 through .6100.<sup>21</sup>

CenturyLink proposes that the Commission take a round of comments that suggest and support changes to the rules at which point the Commission could draft rules and proceed as required by Minn. Stat. Chapter 1400. CenturyLink also suggests the Commission examine what other states have done with respect to telephone service quality rules.

CenturyLink responded to a public comment the Stillwater Township Board of Supervisors noting that four out of five Board members list cell phones as their primary phone number, which illustrates how cell phones have replaced landlines as the primary means of communication.<sup>22</sup>

CenturyLink filed a separate comment focusing on Stillwater Township. CenturyLink described the challenges of providing broadband facilities in the Township and notes that a build-out of fiber to the home is cost prohibitive, even with a state broadband grant. CenturyLink states that the Township's comments "have little to do with voice services" and "the comments appear to be an effort to leverage this docket for improving broadband services."<sup>23</sup>

CenturyLink states that "[n]othing in this docket will change CenturyLink's obligation to repair service when a customer is experiencing trouble," and "this docket is about managing the workload ... and prioritizing work in the best interest of all customers ..."<sup>24</sup> CenturyLink also notes that the Commission, in 2016, found the Stillwater wire center to be competitive.

## **B. Frontier Comments**

Frontier supports CenturyLink's petition noting that customers prioritize broadband over voice services and the current service restoration rule (Rule 7810.5800) results in broadband repair taking a back seat to voice service repair. Frontier also believes that the answer time rule (Rule 7810.5200) is too stringent, even more stringent than requirements placed on monopoly electric companies.<sup>25</sup>

Frontier believes that a rulemaking is appropriate, that CenturyLink's petition conforms to filing requirements, and that the rulemaking should address only .5200 and .5800. Frontier recommends the Commission take a further round of comments to focus on specific changes and examine how other states have addressed the issue.<sup>26</sup>

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<sup>21</sup> CenturyLink Comments, number 3 on its list of comments.

<sup>22</sup> CenturyLink Comments, number 7 on its list of comments.

<sup>23</sup> CenturyLink Comments re Stillwater Township, p. 1.

<sup>24</sup> CenturyLink Comments re Stillwater Township, p. 2.

<sup>25</sup> Frontier Comments, pp. 1-2.

<sup>26</sup> Frontier Comments, p. 2.

### C. Communications Workers of America (CWA) Comments

CWA represents over 900 telecommunications technicians and customer service representatives in Minnesota (over 700 at CenturyLink, 86 at Frontier, and about 150 at several other carriers).<sup>27</sup> CWA states that the “Commission should deny CenturyLink’s petition and reiterate an unambiguous regulatory signal that it must continue to maintain its copper network on which its customers in most areas of the state still depend for their essential communications services.”<sup>28</sup> CWA argues that, although it is supportive of CenturyLink’s transition to a next-generation fiber network, the deployment is not being done rapidly or equitably. CWA states:

The universe of customers who continue to rely on CenturyLink’s landline services despite the purported availability of alternatives, of course, includes among them precisely the customers who lack reasonably comparable substitutes, perhaps because they live in the most remote or marginalized neighborhoods of the wire center service area. They continue to subscribe to CenturyLink’s basic local exchange service because they have no reasonable alternative and depend on CenturyLink for their connection to the public switched network.<sup>29</sup>

CWA states that CenturyLink has prioritized its investments favoring products for large enterprise customers over small business and residential customers. Further, CWA states that CenturyLink limits its fiber deployments to more economically privileged customers leaving low-income and rural customers without adequate access to broadband services. CWA states that 21% of Minnesota households only have access to Digital Subscriber Line (DSL), 25% have access to Very high-speed DSL (VDSL), and only 54% have access to fiber to the home (FTTH) and these figures may overstate fiber access given the method used by the FCC for reporting coverage.<sup>30</sup> Further, CWA argues, CenturyLink prioritizes upgrades for higher-income households at the expense of lower-income households.<sup>31</sup>

CWA further states that CenturyLink has reduced its Minnesota workforce by 52% in the last four years and that the “decline in CenturyLink’s Minnesota infrastructure is closely correlated with the decline in the number of trained, career employees in the field.”<sup>32</sup> CWA states that its members report that there is no longer a routine maintenance crew doing preventative work and its technicians report plans to “sharply reduce technician workforces in Rochester and Minneapolis and to eliminate technicians in Sibley, Nicollett, and Le Sueur counties, requiring any maintenance work to be covered by technicians in Northfield.”<sup>33</sup>

With respect to CenturyLink’s Minnesota plant, CWA provides photos that, it holds, document deteriorated plant (e.g. damaged pedestals and terminals, some protected only by plastic bags),

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<sup>27</sup> CWA Comments, p. 2.

<sup>28</sup> CWA Comments, p. 3.

<sup>29</sup> CWA Comments, pp. 3-4.

<sup>30</sup> CWA Comments, pp. 4-5.

<sup>31</sup> CWA Comments, p. 5.

<sup>32</sup> CWA Comments, p. 6.

<sup>33</sup> CWA Comments, p. 6.



stating that “[s]hort term technician Band-Aid repairs have turned into a permanent solution ...”<sup>34</sup>

CWA believes that the Commission should retain the answering time rule (Rule 7810.5200) except, perhaps, for the first sentence referring to “manual offices.” Many customers are better served by live human representatives.<sup>35</sup>

If the Commission proceeds to open a rulemaking proceeding, CWA believes the Commission should form an advisory taskforce comprised of stakeholders and chaired by Commission staff. Prior to beginning, CenturyLink should provide:

- CenturyLink’s completed (for the past five years) and planned capital expenditures for maintenance of its copper plant
- The amount of money CenturyLink has invested in broadband deployment in the past five years separated by census block
- CenturyLink’s internal interruption of service and customer service answering time goals if the rules are modified or eliminated
- Copies of formal, informal, and internal customer complaints for the last five year (or at the very least aggregated summary statistics)
- CenturyLink’s plans for resolving internal complaints, especially when these rules are eliminated
- A detailed description of CenturyLink’s internal system for clearing trouble reports, including whether or not any trouble report get automatically closed and marked complete before completion of the work is verified by the customer, increasing the company’s rate of compliance with the rules.<sup>36</sup>

#### **D. Comments of the Chamber of Commerce (MCC)**

MCC supports the elimination of Rules 7810.5200 and .5800. It holds that landline and broadband customers should be placed on a more equal footing. MCC notes the changes in the industry with the advent of internet and wireless services. It argues the rules are outdated and should be modernized.

#### **E. Comments of the Office of the Attorney General (OAG)**

OAG believes the Commission should deny CenturyLink’s petition<sup>37</sup> and CenturyLink’s proposal to eliminate or modify rules should not override critical public policy.<sup>38</sup> Customers whose sole service is landline, even if relatively few, deserve quality service. OAG argues that the

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<sup>34</sup> CWA Comments, p. 7.

<sup>35</sup> CWA Comments, pp. 11-12.

<sup>36</sup> CWA Comments, pp. 12-13.

<sup>37</sup> OAG Comments, p. 4.

<sup>38</sup> OAG Comments, p. 2.

Commission does not prioritize CenturyLink's landline service. Its decisions are not mandated by the Commission. The Commission simply sets the standards for landline service. The Company chooses how to make its investments.<sup>39</sup>

OAG believes that CenturyLink has the resources to prioritize broadband investment: CenturyLink recorded a net profit of \$475 million in the first quarter of 2021, up from \$314 million in the first quarter of 2020.<sup>40</sup> OAG also believes there is no reason to believe that reduced telephone regulation will divert resources to broadband development, rather such resources may only go to investors.

If the Commission proceeds with a rulemaking, OAG states, the Commission should follow Minn. Stat. Chapter 14 (Administrative Procedures Act). The Act allows the Commission to adopt a rule following a public hearing conducted by an Administrative Law Judge. The Commission may adopt a rule without a public hearing unless 25 or more people request a public hearing.<sup>41</sup>

If the Commission proceeds with a rulemaking, OAG believe the Commission should examine (1) customer complaints about service quality, (2) the frequency, number and length of service interruptions, (3) issues related to the maintenance of copper facilities, (4) the number of landline customers with no other functional or affordable service option, and (5) the impact of a rule change on elderly, low-income, and rural customers.<sup>42</sup> The Commission should focus on enhancing protections and improving service, not weakening or abandoning protections.

OAG argues that CenturyLink hasn't met the recommended filing requirements of the Administrative Rules Part 1400.2500 which requires the filing to include a text of the rule showing strike-outs and deletions.<sup>43</sup>

#### **F. Comments of the Department of Commerce (Department)**

The Commission should not approve CenturyLink's petition until the matters in Docket 20-432 are resolved (i.e. the CWA Complaint against CenturyLink alleging violation of service quality rules). The Department believes that a significant number of Minnesotans continue to rely on landline telephone service to fill basic needs and some smaller cities rely on landline to provide fire alarms and deaf and hard of hearing services. The Department believes "[w]here you live and if you choose to use a landline telephone out of choice or necessity should not result in poor service and less access to consumer protections."<sup>44</sup>

If the Commission proceeds with the rulemaking it should contemplate strengthening those rules.<sup>45</sup> If the Commission proceeds with the rulemaking it would benefit from information

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<sup>39</sup> OAG Comments, p. 2.

<sup>40</sup> OAG Comments, p. 2.

<sup>41</sup> OAG Comments, p. 4.

<sup>42</sup> OAG Comments, p. 4.

<sup>43</sup> OAG Comments, p. 3.

<sup>44</sup> Department Comments, p. 1

<sup>45</sup> Department Comments, p. 4.

about (1) consumer complaints from state agencies, (2) information gleaned from public hearings and the Commission's SpeakUp feature (public comments), and (3) information about alternatives to landline throughout the state.<sup>46</sup>

If the Commission wishes to proceed with a rulemaking, the Department agrees with the OAG that the Commission should follow Minn. Stat. Chapter 14. Beyond that, the Department believes the Commission should encourage broad public participation across the state, including residents, businesses, and local governments.<sup>47</sup>

The Department notes that CenturyLink has not provided a red-lined text of the changes it seeks.<sup>48</sup>

### **G. Public Comments**

The Minnesota Retailers Association believes that the elimination or reduction of Rules 7810.5200 and .5800 may negatively affect the service quality of CenturyLink's data services – the copper wire infrastructure carries landline and data services. The Association argues that landline services are still used by individuals and businesses, especially in rural areas where landline remains the best option.<sup>49</sup> The Association notes that landline services are still used by businesses as the best option for emergency and fire services.

A senior resident of St. Louis Park asks the Commission to refrain from changing the rules. When ill, that resident experienced noise interference that prevented the use of the line. A neighbor attempting to help the resident had difficulty contacting CenturyLink and was routed through call centers in India and the Philippines. CenturyLink restored service more than two days later. The resident filed the comment in response to a recent newspaper article and questioned whether that article was the only communication about this issue.<sup>50</sup>

Seven residents of Stillwater Township, individually, filed comments in opposition to a change in the rules. They provide examples of substantial, prolonged, and frequent communication problems, prolonged repair times, and the lack of acceptable communication options.<sup>51</sup>

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<sup>46</sup> Department Comments, p. 4.

<sup>47</sup> Department Comments, p. 3.

<sup>48</sup> Department Comments, pp. 2-3.

<sup>49</sup> Public Comment, June 30, 2021.

<sup>50</sup> Public Comment, July 9, 2021.

<sup>51</sup> Public Comments, June 18 through July 8, 2021.

## VI. Reply Comments

### A. CenturyLink Reply

CenturyLink argues that the “marketplace punishes providers that deploy resources in a manner inconsistent with customer demand, which is exactly what Minnesota’s decades old rules require ....”<sup>52</sup>

CenturyLink takes issue with CWA’s contention that CenturyLink seeks to abandon some customers. CenturyLink states that it is not seeking to change its obligation to serve. CenturyLink also characterizes CWA’s criticism of its service as misleading, inaccurate, and fails to account for CenturyLink’s investment of \$millions in broadband deployment.<sup>53</sup>

CenturyLink argues that its petition comports with the filing requirements of Minnesota’s Administrative Rules, Parts 1400.2040 and .2500. Further, it restates its belief that a rulemaking should focus on Parts 7810.5200 and .5800. In the alternative, CenturyLink believes a review of Parts .4900 to .6100 would be appropriate. With respect to process, CenturyLink holds that the Commission should invite rule change proposals, with desired wording and supporting evidence.<sup>54</sup>

### B. Frontier/Citizens Reply

Frontier reminds the Commission that any rule changes will apply to all local exchange carriers, and that it would be inappropriate to focus on CenturyLink’s past service results in establishing rules. Frontier places emphasis on the need to design rules that fit the current state of the world.<sup>55</sup> Frontier disagrees with the Department that the Commission should initiate a series of public hearings if it decides to go forward with a rulemaking. Public meetings may not provide a reasonable cross-section of interest or opinion. Further, the general public has insufficient technical knowledge or experience to provide valuable insight.<sup>56</sup>

### C. CWA Reply

CWA agrees with OAG and the Department that CenturyLink’s business objectives should not override the critical policy of ensuring that all Minnesotans have access to quality voice services.<sup>57</sup> Further, CWA suspect’s CenturyLink’s petition is a tactic to avoid its current failure to meet required standards, the subject of CWA’s current complaint against CenturyLink. CWA urges the Commission to refrain from rulemaking until that complaint is resolved.<sup>58</sup>

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<sup>52</sup> CenturyLink Reply, p. 2.

<sup>53</sup> CenturyLink Reply, pp. 2-3.

<sup>54</sup> CenturyLink Reply, pp. 4-5.

<sup>55</sup> Frontier/Citizens Reply, pp. 1-2.

<sup>56</sup> Frontier/Citizens Reply, p. 2.

<sup>57</sup> CWA Reply, p. 2.

<sup>58</sup> CWA Reply, p. 3, referring to Docket 20-432.

CWA notes that the customer comments filed in this docket echo the experiences of CWA's field technicians and provide a glimpse into customer frustrations. CWA points to a letter filed by the Minnesota Retailers Association indicating that many retailers rely on landline service for business and emergencies.<sup>59</sup>

#### **D. Department Reply**

The Department continues to support its recommendation. It states:

[M]aintenance of CenturyLink's network is not a zero-sum game. CenturyLink's attention to one service does not necessitate diminution of another service, particularly when both telephone and broadband are provided over the same network. Pitting customers – who are each paying for a service in good faith - against each other as to who is more deserving of a minimum level of service is a false choice.<sup>60</sup>

The Department states that not all customers have a choice of service providers and any rule changes must recognize that there are vulnerable residential and business customers.

## **VII. Staff Analysis**

### **A. Previous Rulemaking Docket 14-413**

On March 26, 2014, CenturyLink petitioned the Commission to open a rulemaking to modify 13 Parts of MN Rules 7810, specifically the Service Quality Rules (including the parts at issue here).<sup>61</sup>

On May 22, 2014, the Commission opened a rulemaking proceeding “to consider possible changes” to the Rules.<sup>62</sup> In a 7-page decision the Commission recognized the state policy goal to maintain or improve service quality. It also recognized the significant technological and economic changes experienced by the industry since the Rules were written.<sup>63</sup> The Commission issued a request for comments seeking substantial, specific, and detailed evidence of market structure and potential impacts on service quality.<sup>64</sup>

Approximately two years later, on May 2, 2016, after reviewing party comments the Commission issued an 18-page order closing the rulemaking proceeding.<sup>65</sup> The Commission also asked the Department to convene a stakeholder workgroup to engage in further discussion

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<sup>59</sup> CWA Reply, pp. 4-5.

<sup>60</sup> Department Reply, p. 1.

<sup>61</sup> Docket 14-256.

<sup>62</sup> Order in Docket 14-413, p. 6.

<sup>63</sup> Order in Docket 14-413, pp. 5-6.

<sup>64</sup> Request for Comments, August 4, 2014.

<sup>65</sup> Order in Docket 14-413.

of possible rule changes and to submit a progress report within a year. That report indicated the industry was not likely to reach a consensus regarding Minn. R. 7810.5200 and .5800.<sup>66</sup>

## B. State Goals

Minn. Stat. § 237.011 states regulatory goals that expressly apply to the Commission.

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

- (1) supporting universal service;
- (2) maintaining just and reasonable rates;
- (3) encouraging economically efficient deployment of infrastructure for higher speed telecommunication services and greater capacity for voice, video, and data transmission;
- (4) encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner;
- (5) maintaining or improving quality of service;
- (6) promoting customer choice;
- (7) ensuring consumer protections are maintained in the transition to a competitive market for local telecommunications service; and
- (8) encouraging voluntary resolution of issues between and among competing providers and discouraging litigation.

Minn. Stat. § 237.012 sets out state broadband goals, although they do not expressly apply to the Commission.

Subdivision 1. **Universal access and high-speed goal.** It is a state goal that:

- (1) no later than 2022, all Minnesota businesses and homes have access to high-speed broadband that provides minimum download speeds of at least 25 megabits per second and minimum upload speeds of at least three megabits per second; and
- (2) no later than 2026, all Minnesota businesses and homes have access to at least one provider of broadband with download speeds of at least 100 megabits per second and upload speeds of at least 20 megabits per second.

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<sup>66</sup> Docket 16-874, May 24, 2017.

§Subd. 2. **State broadband leadership position.** It is a goal of the state that by 2022 and thereafter, the state be in:

- (1) the top five states of the United States for broadband speed universally accessible to residents and businesses;
- (2) the top five states for broadband access; and
- (3) the top 15 when compared to countries globally for broadband penetration.<sup>67</sup>

### C. Scope of Rulemaking

The Commission's Telephone Service Quality Rules comprise the following thirteen parts:

- 7810.4100 Access to Test Facilities
- 7810.4300 Accuracy Requirements
- 7810.4900 Adequacy of Service
- 7810.5000 Utility Obligations
- 7810.5100 Telephone Operators
- 7810.5200 Answering Time
- 7810.5300 Dial Service Requirements
- 7810.5400 Interoffice Trunks
- 7810.5500 Transmission Requirements
- 7810.5800 Interruptions of Service
- 7810.5900 Customer Trouble Reports
- 7810.6000 Protective Measures
- 7810.6100 Safety Program

Although CenturyLink has focused its arguments on .5200 and .5800, it appears to be open to examination of .4900 through .6100.<sup>68</sup> Frontier believes a rulemaking should address only .5200 and .5800.<sup>69</sup> In its report filed in 2017 after closure of the previous rulemaking proceeding,<sup>70</sup> the Department noted that the stakeholders reached a consensus regarding modification of .4100 (Access to Test Facilities), .4300 (Accuracy Requirements), .5100 (Telephone Operators), and .5300 (Dial Service Requirements)(including red-lined text). The stakeholders reached a consensus that .5000 (Utility Obligations), .5500 (Transmission Requirements), .6000 (Protective Measures), and .6100 (Safety Program) were largely appropriate and should be kept. The report noted that a consensus on the remaining five parts, including .5200 and .5800, was unlikely. Staff is unaware if there has been a change in the preferences of the stakeholders since 2017.

If the Commission wishes to proceed with a rulemaking it could confine the scope to .5200 and .5800 or expand it to include the other thirteen parts. The Department's report suggests that

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<sup>67</sup> Emphasis in original.

<sup>68</sup> CenturyLink Comments, number 3 on its list of comments.

<sup>69</sup> Frontier Comments, p. 2.

<sup>70</sup> Docket 16-874, May 24, 2017.

changes to .4900 (Adequacy of Service), .5400 (Interoffice Trunks), and .5900 (Customer Trouble Reports) would also be contentious.

#### **D. Cost of Rulemaking**

In deliberating CenturyLink's request for a rulemaking proceeding, the Commission may wish to consider the cost to the Commission and others. It has been estimated that an agency can expect to spend, roughly, \$46,000 for a small rulemaking; \$133,000 for a medium rulemaking, and \$310,000 for a major rulemaking. These costs include agency staff time, agency counsel, and costs for services provided by the Office of Administrative Hearings. These figures do not account for the cost to industry stakeholders.<sup>71</sup>

#### **E. Ubiquity of Rules**

The Service Quality Rules apply to all Local Exchange Carriers (LECs) in Minnesota and there are more than 100 LECs in Minnesota. To date the Commission has only heard from CenturyLink and Frontier. Although those two LECs are relatively large and comprise some areas of dense population, the larger number of other LECs serve an expansive, relatively rural, geographical area. Some of CenturyLink's arguments are based upon its own experiences in its own service territory and may not be characteristic of all areas.

That few members of the public have expressed an interest may be due to a lack of awareness of the open docket. The Notice of Comment Period was not widely distributed to the general public, local governments, or legislators.

#### **F. Geography, Density, and Cost**

Perhaps the single most undisputed point raised by CenturyLink and others is the observation that the telecommunications landscape has changed substantially in recent years. Many people have wireless phones, and many others have both wireless and landline phones, reflecting both the utility of mobility and the fact that wireless service does not satisfy all needs for all customers in all locations in the state. A lesser number of Minnesotans have only landline voice service. And, increasingly, Minnesotans are looking to broadband facilities to provide access to high-speed internet protocol (IP) services.

The discussion in the comments often references competition, drawing conclusions that there is, or there isn't, a competitive telecommunications market in Minnesota. However, understanding the state of competition in Minnesota requires both a broader and a more nuanced examination. Consider, that threats to a carrier's revenue streams from other carriers are not a complete measure of competition. Variations in geography and customer density are fundamental, and largely inescapable, cost considerations in the provision of

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<sup>71</sup> *Minnesota Rulemaking Manual: A Reference Book for the Practitioner, 25th Edition*, August 15, 2020, Patricia Winget, editor, p. 282.

<https://www.health.state.mn.us/data/rules/manual/docs/manual2020.pdf>



telecommunications service, whether the service be provided by copper, fiber, or co-axial cable. Consider, too, there is nothing inherent in the nature of competition that will ensure customers, at all locations, receive a particular level of service, at a particular price. Although, it *is* in the nature of a profit maximizing entity to seek to increase revenues and/or cut costs.

Minnesota is a large area, of varied geography, with a wide variation in the distribution of its population and, as such, a wide variation in the cost to provide service. It is less costly to serve 50 customers in a single building in Minneapolis than it is to serve 50 rural farmsteads. Regulators have understood this cost disparity and recognized that carriers are hesitant to provide land-line service in high-cost areas in the absence of cost supports. Over many decades, and sanctioned by regulators, LECs have used rates in dense areas to support rates in sparse areas, have used business rates to provide support for residential services, and have sold access to their networks to long-distance carriers at rates substantially above cost. For much of the history of Minnesota's telephone industry, regulators have protected ILEC monopolies. One can speculate that an unfettered market would not have delivered the gold-standard voice services provided by Minnesota's LECs for many decades. Further, consider that Minnesota carriers continue to receive high-cost support. Minnesota carriers received over \$1 billion from the federal universal service high-cost fund over the five-year period of 2015 to 2019.<sup>72</sup>

Thus, to state that the Minnesota telecommunications market is competitive is to focus on inter-firm rivalry in lucrative market areas, ignoring the regulatory structure and subsidy mechanisms that have built, and continue to build, Minnesota's telecommunications industry. The basic cost structure, characterized by varied geography and density, has not changed. In general, although an unfettered market can deliver quality services to some customers, it can also encourage cost-cutting to the detriment of other customers. Further, the provision of services with a higher profit margin can be more attractive to carriers than those services with a lower profit margin. With the opening of local monopolies to competitors in the mid-1990s, competitors have been attracted to low-cost, high-value markets, leaving regulators to use carrots and/or sticks to ensure the provision of quality service in the less attractive markets (typically rural).

The ability of broadband facilities to carry high-speed communication services is attractive to many customers. However, the Commission has no authority over the rates and quality of those IP services. As such, shifting carrier resources from traditional voice service to the provision of high-speed services could be characterized as shifting regulated resources to support unregulated services and, to some extent, as shifting resources from sparse areas to more dense areas.

### **G. Rules as Floor**

Minnesota's rules provide a floor to protect customers where local competition will not. CenturyLink has asked the Commission to lower that floor. One could summarize Rules

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<sup>72</sup> More precisely, \$1,008,945,000. See Table 1.9 in each of the *Universal Service Monitoring Reports* for 2016 through 2020 (Federal-State Joint Board Monitoring Reports); <https://www.fcc.gov/general/federal-state-joint-board-monitoring-reports>

7810.5800 and .5200 as requiring LECs to “fix it when its broke ... fast” and “listen to your customers ... now.”<sup>73</sup> As such these rules are keystones of the service quality rules. To eliminate them reduces, disproportionately, customer protections. To eliminate those two rules can have a much greater effect on overall service quality than would elimination of two other rules.

For example, Rule 7810.5900 requires LECs to receive customer trouble reports 24 hours daily and to try to keep reports to no greater than 6.5 per 100 telephones per month in an exchange. Should .5200 (call answering time) be eliminated, .5900 may be weakened if a LEC does not receive or answer calls in a timely manner.

Rule .5800 (restoration of service) may be the most important rule from the customers’ perspective. Customers are less likely to care about interoffice trunks (.5400), transmission requirements (.5500), accuracy requirements (.4300), or utility obligations (.5000). In one sense .5800 could be considered an “indicator rule.” That is, if something breaks and doesn’t get fixed quickly it is a sign of something going wrong somewhere in the LEC’s operations. Further, in the absence of .5800, should there be service trouble, the focus will be placed on determining what is wrong – perhaps a long, contentious process. With .5800 in place the conversation goes directly to “just fix it,” without bogging down debates with “what went wrong, where, why, and when.”

## H. Data

The parties have referred to some data going to the degree of competition in the state. Some of CenturyLink’s quoted figures reflect its own experience and not necessarily the experience of other LECs. CenturyLink referenced the ubiquity of wireless service in the state, noting that wireless coverage has increased to 99.91% across the state. That number bears some scrutiny. Does it mean that wireless carriers will sell service for 99.91% of the state, or that a customer can make or receive calls of sufficient quality in all areas of the state except for a small area of .09%? CenturyLink refers the Center for Disease Control’s estimate that 56.2% of Minnesotans rely entirely on wireless for voice service. This suggests that 43.8% do not rely entirely on wireless for voice services.<sup>74</sup>

CenturyLink cites the FCC stating that 85% of 911 calls are made using wireless and VOIP services.<sup>75</sup> This figure may only reflect that many emergencies do not happen at home and that a single fender-bender, say on I-94, may result in numerous duplicative calls.

CenturyLink cites the FCC stating that in 20 years traditional land-line voice subscriptions in the US has declined at an annualized rate of 13%.<sup>76</sup> This figure begs the question as to whether that rate will continue, or has the decline bottomed out?

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<sup>73</sup> These terms are not part of the Rules text. Rather, they are Staff’s colloquial interpretation.

<sup>74</sup> Petition, p. 12.

<sup>75</sup> Petition. P. 12.

<sup>76</sup> Petition, p. 2.

The point here is to say that empirical determination of the level of competition is complex and requires both a detailed, geographically-nuanced analysis and the adoption of a standard to determine when enough is enough. Further, the question arises as to whether such an analysis may appropriately substitute for directly asking customers what they experience.

### I. Legislation

As discussed above, Staff believes that Rules 7810.5200 and .5800 are keystones of the service quality rules. The Commission may wish to consider whether a rulemaking by the PUC is the appropriate forum to dismantle regulation that comports with its statutory goal of “maintaining or improving quality of service” notwithstanding another statutory goal of “encouraging economically efficient deployment of infrastructure for higher speed telecommunication services and greater capacity for voice, video, and data transmission.”<sup>77</sup>

Clearly, legislators have acknowledged the importance of encouraging the development of broadband facilities to deliver highspeed services. It is not clear that legislators would support that such growth be gained at the expense of traditional service quality. Elimination of key protections may approach deregulation by rule.

### J. Options

One option is to deny CenturyLink’s petition, outright. Another option is to seek additional information before deciding whether to proceed with a rulemaking. Yet another option is to grant CenturyLink’s petition and proceed with the rulemaking process. In the 14-413 docket, the Commission opened a rulemaking docket, sought additional information before proceeding further, and then terminated the proceeding upon review of that information.

If the Commission seeks additional information regarding the state of competition and service quality throughout the state it can, as it did in the 14-413 docket, seek specific and detailed comments.<sup>78</sup> Alternatively, or perhaps additionally, the Commission can seek comments directly from customers throughout the state by way of public hearings. The Commission may also explore customer satisfaction through a well-constructed, broadly-distributed, and extensively-noticed, survey.

## VIII. Decision Options

The following list of elements can be combined to tailor a variety of options:

1. Deny CenturyLink’s petition. (CWA, Department, OAG)
2. Open a rulemaking proceeding. (CenturyLink, Frontier/Citizens, Chamber of Commerce)

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<sup>77</sup> Minn. Stat. 237.011(3) and (5).

<sup>78</sup> See the Request for Comments, Docket 14-413, August 4, 2014.

3. Seek additional information before considering whether to open a rulemaking docket.

### **Scope** (if DO 2 or DO 3 is adopted)

4. Limit the scope of any on-going discussion to 7810.5200 and 7810.5800. (CenturyLink, Frontier/Citizens, Chamber of Commerce)
5. Expand the scope of any on-going discussion to 7810.4900 through 7810.6100, inclusive. (CenturyLink alternative)
6. Expand the scope of any on-going discussion to 7810.4100 through 7810.6100, inclusive.

### **Procedural Steps**

7. Seek comments regarding proposed textual changes in the rules. (CenturyLink, Frontier/Citizens)
8. Follow the procedures set out in Minnesota's Administrative Procedure Act (Minn. Stat. Ch. § 14). (Department, OAG, alternative)
9. Form an advisory taskforce comprised of stakeholders and chaired by Commission staff. Grant the Executive Secretary the authority to determine the size and composition of the Committee. (CWA)
10. Seek additional information by way of written comments responding to questions modeled on those issued by the Commission on August 4, 2014 in Docket 14-413. Grant the Executive Secretary the authority to modify the questions as appropriate.
11. Seek additional information by way of public hearings. Seek comments regarding the number and location of those meetings. (OAG, Commerce, alternative)
12. Seek additional information by way of a customer survey. Seek comments regarding the structure and breadth of that survey.
13. Grant the Executive Secretary authority to establish timelines as appropriate.
14. Take other/additional action.