

# Minnesota Public Utilities Commission

## Staff Briefing Papers

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Meeting Date: **May 15, 2014** .....\*\*Agenda Item # 6

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**Company:** CenturyLink, Inc.

**Issue:** What action should the Commission take with regard to CenturyLink's petition for a rulemaking to repeal Minn. Rule parts 7810.4100 through 7810.6100, or at a minimum, parts 7810.5100 through 7810.5900?

**Docket No.** P421/AM-14-256  
In the Matter of CenturyLink's Petition for Rulemaking to Revise Service Quality Rules

**Staff:** Lillian A. Brion..... [lillian.brion@state.mn.us](mailto:lillian.brion@state.mn.us), 651-201-2216  
Kevin O'Grady.....[kevin.ogrady@state.mn.us](mailto:kevin.ogrady@state.mn.us), 651-201-2218

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### *Relevant Documents*

CenturyLink's Petition for a Rulemaking..... March 26, 2014  
Notice of Comment Period ..... April 2, 2014  
Comments  
    CenturyLink ..... April 14, 2014  
    Department of Commerce..... April 14, 2014  
    Frontier..... April 14, 2014  
    Joint CLECs ..... April 14, 2014  
Reply Comments  
    CenturyLink ..... April 25, 2014  
    Department of Commerce..... April 25, 2014  
    Minnesota Telecom Alliance ..... April 24, 2014  
    Minnesota Cable Communications Association ..... April 25, 2014  
    AARP MN and Legal Services Advocacy Project ..... April 28, 2014

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### ***Statement of the Issue***

What action should the Commission take with regard to CenturyLink's petition for a rulemaking to repeal Minn. Rule parts 7810.4100 through 7810.6100, or a minimum, parts 7810.5100 through 7810.5900?

### ***Procedural Background***

On March 26, 2014, CenturyLink, Inc. (on behalf of its affiliated companies) filed requests for Commission waiver of Minn. Rule Part 7810.5800 and a rulemaking proceeding for a comprehensive review of the Commission's service quality rules. The Waiver request is separately addressed in Docket 14-255.

On April 2, 2014, the Commission issued a Notice of Comment Period soliciting comments from all interested parties.

On April 14, 2014, the Commission received Comments from CenturyLink, Citizens Telecommunications Company of Minnesota, LLC and Frontier Communications of Minnesota, Inc. (Frontier), the Joint Competitive Local Exchange Carriers (Joint CLECs), and the Department of Commerce (Department). CenturyLink and Frontier note that rulemaking is needed to address the concerns that the rules are only applied to ILECs, while competitors are mostly exempt from the outdated requirements. The Joint CLECs have no position on Commission action, but indicate some concerns about protecting wholesale service quality in the event the Commission opens a rulemaking. The Department believes that a rulemaking is appropriate to address CenturyLink's concerns upon consideration of arguments from affected parties.

On April 25, 2014, Reply Comments were filed by the Department, CenturyLink, Minnesota Telecom Alliance (MTA), and Minnesota Cable Communications Association (MCCA). AARP MN and Legal Services Advocacy Project jointly filed Replies on April 28, 2014. No party has objected to Commission acceptance of AARP/LSAP's Replies and they are referenced in this Briefing Paper.

CenturyLink urges the Commission to address service quality first because it is the most problematic before it reviews other parts of Chapter 7810. The Department explains that, contrary to the arguments of CenturyLink and Frontier that service quality rules apply only to incumbent LECs, Minn. Rule 7812.0700 requires all local exchange providers including CLECs to comply with service quality rules. The Department also notes that service quality deficiencies

by the ILECs may directly affect the service quality provided by the CLECs to their retail customers. The MTA supports a comprehensive rulemaking involving Minn. Rules Chapter 7810. MCCA expresses no position on whether the Commission should open a rulemaking regarding service quality rules. But, if the Commission opens a rulemaking, that proceeding should be limited strictly to retail service quality. AARP/LSAP urge the Commission to base any decision eliminating critical consumer protections on substantive evidence, not on generalized statements contending that compliance with those protections is burdensome to industry interests.

### ***CenturyLink's Petition***

In this docket, CenturyLink asks the Commission to open a rulemaking docket to examine all of its service quality standards in Minn. Rules Parts 7810.4100 through 7810.6100, or at a minimum, Minn. Rules Parts 7810.4100 through 7810.6100. The Company believes that the Commission's service quality rules no longer apply given the current market conditions and structure. According to the Company, tremendous changes as described in the Company's petition have occurred in the marketplace since the service quality rules were adopted decades ago. CenturyLink indicates that compliance with the outdated rules is costly and burdensome. CenturyLink now only serves about 35 percent of the retail wireline telecommunications service market in Minnesota. Wireless companies and Facilities-based competitors (primarily cable companies) which have more customers than CenturyLink are either not subject to any service quality requirements or, at most, face scrutiny only if a customer files a complaint. CenturyLink's competitors are not required to make investments unless demanded by customers.

In its Comments, CenturyLink clarified that it seeks rulemaking to repeal Minn. Rule parts 7810.4100 through 7810.6100, or a minimum, parts 7810.5100 through 7810.5900. The Company also notes that while it agrees with the seeming theme of the Commission's Notice about the Commission's goals of maintaining or improving quality of service and ensuring consumer protections, it believes that the focus should be on the consumer and not the company providing service to the customer.

The Commission's service quality rules lay down specific requirements in Minn. Rules 7810.5100 to 7810.5900, but those rules are not consistently enforced or are applied only to a selective few carriers.

Instead of the outdated service quality rules, CenturyLink wants the Commission to adopt a complaint-triggered approach for service quality oversight similar to what is currently applied to CLECs. The CLEC rules, adopted since 2000, seem to be effective in protecting consumers. The Commission's CLEC rules provide that "...Except as provided otherwise in this part of other

commission rules, the Commission shall exercise its authority over a CLEC's local services only upon complaint under subpart 17...<sup>1</sup>

In its Reply Comments, CenturyLink notes that it does not oppose the Department's suggestion for a broad proceeding to review all of Chapter 7810, but expressed concern that such a broad proceeding could take a lot of time, and since the service quality part is the most problematic, it should be addressed first. CenturyLink opposes the Joint CLECs' suggestion to exclude consideration of rules related to service quality standards measured under the performance assurance plan. According to CenturyLink, the Joint CLECs' position does not square with its advocacy in other states, where wholesale measurements are not dependent upon specific retail performance standards in the past, and where the retail service quality standards vary significantly from one state to another. Also, Section 17.2 of the performance assurance plan provides the methodology to allow changes based on changes in Minnesota retail service quality standards. The time to consider the merits of the Joint CLECs' recommendation to narrow the scope of the proceeding is during, and not, before the rulemaking proceeding begins.

### ***Parties' Comments***

Frontier agrees with CenturyLink's description of the telecommunication marketplace and with the proposal for a rulemaking to review the service quality rules. Frontier supports the observation that the number of access lines provided by the ILECs has been shrinking. Of the about 7.6 million access lines in Minnesota in 2013, only 1.4 million lines are served by ILECs. The rest of the market is served by competitors who are effectively exempt from the service quality rules. In today's robust competitive market where customers have choices for their telecommunications needs, such disparate treatment is no longer appropriate. The market now dictates the provider's practices and policies and service provision. Frontier also notes that today's customers are more concerned with their broadband connection than their landline voice connection, yet the Commission's rules put high priority on voice service, rather than broadband service. The rules thus hamper Frontier's desire to prioritize resources to meet customer's immediate demands.

The Joint CLECs composed of Eschelon Telecom of Minnesota, Inc. d/b/a Integra, Integra Telecom of Minnesota, Inc. d/b/a Integra, twtelecom of Minnesota, llc, US Link Inc. d/b/a TDS Metrocom, and Velocity Telephone, Inc., purchase wholesale services from CenturyLink, which they use to provide telecommunications services to their end-user customers. The Joint CLECs do not take a position as to whether the Commission should open a rulemaking regarding service quality rules. If the Commission opens a rulemaking, the Joint CLECs request that the

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<sup>1</sup> Minn. Rule 7811.2210, Subpart 1.A.

Commission protect wholesale service quality governed by CenturyLink's Performance Assurance Plan (CPAP, also called MPAP or Minnesota Performance Assurance Plan) by:

- 1) Clarifying that a rulemaking to address service quality applies solely to retail service quality, and that any changes to wholesale service quality plans must be made via the CPAP incorporated into a competitive carrier's interconnection agreement;
- 2) Refraining from allowing any changes in retail service quality rules for any retail service quality measure that is used as a comparison for a wholesale service quality measure in the Minnesota CPAP, unless and until CenturyLink and competitive carriers are able to negotiate acceptable protections for the wholesale service quality measure impacted.

### Department of Commerce

The Department cites the Commission's authority to adopt rules set forth in Minn. Stat. §§216A.05 and 216B.08. The Department also cites that the Commission is required under the Administrative Procedure Act, Minn. Stat. Chapter 14, to establish the need for the proposed rules by an affirmative presentation of facts.

In Reply Comments, the Department takes issue with positions taken by CenturyLink and Frontier that the quality of service rules in Minn. Rules Chapter 7810 apply only to incumbent local exchange carriers (ILECs).

The Department states that Minn. Rules part 7812.0700 General Service Quality Requirements) supt. 1 (Service to End-users) provides

The local services provided by a local service provider (LSP) must meet the standards in: A. applicable commission orders and rules, including parts 7810.0100 to 7810.6100 or their successor parts; and B. the local service provider's alternative regulation plan (AFOR), if the provider is operating under the AFOR.

Under this rule, all sections of Minn. Rules Chapter 7810, including the quality of service rules, are applicable to regulated CLECs to the same extent the rules are applicable to ILECs. Under Minn. Rules Chapter 7812.2210, subp. 17, a citizen, another carrier, or the Department may file a complaint against a CLEC alleging a compliance failure. Small ILECs are directly responsible for compliance with the quality of service rules in Minn. Rules Chapter 7810, just as are large ILECs. While small ILECs are not regulated under AFOR plans, they are regulated on a complaint basis pursuant to Minn. Stat. section 237.081. Under this section of Minnesota law, a complaint may be filed by a citizen, another carrier, or the Department. Thus, irrespective of whether a carrier is a large ILEC regulated under an AFOR plan, a CLEC, or small ILEC regulated on a complaint basis, the service quality rules in Minn. Rules Chapter 7810 are equally applicable to all regulated carriers.

While large ILECs may be regulated differently from small ILECs and CLECs, all ILECs and CLECs are obliged to comply with service quality rules in Chapter 7810. Large ILECs have an option under Minn. Stat. §237.76 to be regulated under an AFOR, which is intended to provide the company's customers with service quality consistent with commission rules at affordable rates, while allowing for more regulatory flexibility. For an AFOR to be approved by the Commission, it must contain a service quality plan that comports with the service quality rules in Chapter 7810.

The Department also asks the Commission to be mindful of any effect service quality changes may have on the level of service quality provided by ILECs to their wholesale customers. ILECs are subject to certain obligations pursuant to Federal law. Section 251 (c)(2) imposes an interconnection obligation on ILECs that is at least equal in quality to that provided by the LEC to itself or any affiliate. The Department agrees with the Joint CLECs that, to the extent CLECs are subject to the service quality provided by ILECs as their wholesale provider, service quality deficiencies by the ILECs may directly affect the service quality provided by the CLECs to their retail customers.

#### Minnesota Telecom Alliance

The Minnesota Telecom Alliance (MTA) is a trade association with over 80 small, medium, and large telecommunications companies throughout rural, suburban and urban Minnesota. In Reply Comments filed on April 25, 2014, the MTA supports a comprehensive rulemaking involving Minn. Rules Chapter 7810. MTA agrees that the current rules no longer reflect the needs and demands of today's communications consumer. A comprehensive review is consistent with Governor Dayton's directive to the state agencies for a review of policies, rules and statutes for outdated requirements. The MTA has undertaken a legislative initiative that is more aligned with the competitive marketplace.

#### Minnesota Cable Communications Association

The Minnesota Cable Communications Association (MCCA) represents Minnesota's cable communications companies providing video, voice and high-speed data services to about 900,000 Minnesotans in over 600 communities. In Reply Comments, MCCA expresses no position on whether the Commission should open a rulemaking regarding service quality rules. However, MCCA supports the Joint CLECs in the position that, if the Commission does open a rulemaking, that proceeding should be limited strictly to retail service quality. Any changes to wholesale service quality rules must be made through CenturyLink's performance assurance plan or through the interconnection agreement between the competitive carrier and the ILEC. MCCA also believes that CenturyLink's petition does not comply with Minn. Rule 1400.2040(B) because it did not identify which rules it seeks to change and how.

### AARP and Legal Services Advocacy Project

In Reply Comments, AARP, on behalf of its 652,000 members in Minnesota, and Legal Services Advocacy Project (LSAP) urge the Commission to base any decision eliminating critical consumer protections on substantive evidence, not on generalized statements contending that compliance with those protections is burdensome to industry interests.

AARP/LSAP caution that in this state of transition, evolving technologies and increasing reliance on wireless and other telecommunication options do not necessarily result in effective competition. AARP's clientele of older customers disproportionately maintain phone service through a traditional landline and may have fewer competitive options. AARP/LSAP note that there is no need to sacrifice important consumer protection unless and until there is evidence that effective competition exists in Minnesota. They maintain that all residents must share in the benefits of affordable rates and consumer protections by maintaining regulatory oversight and service quality measures.

### *Parties' Responses to Specific Topics*

The parties' responded to the following specific topics posed by Commission Staff:

- 1. Is a rulemaking necessary to address CenturyLink's concerns? Address alternatives that can possibly address the Company's concerns without the need for rulemaking.**

#### CenturyLink

CenturyLink believes that a rulemaking is necessary to address its concerns and that a comprehensive review of the rules is long overdue. It recognizes that rulemaking takes time and effort, and has simultaneously filed for a waiver to address the most draconian requirements of the current rules.

#### Frontier

There are other ways, such as legislation, that can change the Commission's rules, but rulemaking would be the most appropriate and efficient way to tailor the Commission rules to appropriate public policy objectives.

#### Joint CLECs

The Joint CLECs do not currently have a position regarding this question.

### Department of Commerce

The Department believes that a rulemaking is appropriate to address CenturyLink's concerns. For the most part, the rules have not undergone a detailed examination since they were promulgated decades ago.

### **2. How does CenturyLink's petition comport with Minn. Administrative Rules, specifically Parts 1400.2040 and 1400.2500 relating to the language of the requested rule changes or repeals proposed by the Company?**

#### CenturyLink

As required under Minn. Rule Part 1400.2040 and 1400.2500 that a rulemaking petition includes the specific language and changes sought, CenturyLink specifies that it proposes the repeal of Minn. Rules 7810.4100 through 7810.6100.

#### Frontier and the Department of Commerce

The filing comports with the requirements identified in Rules 1400.2040 and 1400.2500.

#### Joint CLECs and MCCA

The filing does not comport with 1400.2040 (b) which requires that the petition contain "the specific action (adoption, amendment, or repeal of an agency rule) requested by the petitioner." CenturyLink fails to include specific recommended changes to the rules.

### **3. How does the Company's petition support the Commission's telecommunication service goals of a) maintaining or improving quality of service, and b) ensuring consumer protections are maintained in the transition to a competitive market for local telecommunications service?**

#### CenturyLink

CenturyLink indicates that, in today's competitive marketplace, a complaint-based approach used by the CLECs for 14 years appears to be effective in protecting CLEC customers. CenturyLink believes its proposal will continue to protect customers and allow providers to deploy resources in a manner that meets customer demand.

#### Frontier

Frontier cites the full list of the Commission's statutory goals provided in Minn. Stat. §237.011 and indicates that the goals also include "encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner," which is adversely impacted by the current service quality rules. Frontier likewise notes that the telecommunications market has already transitioned to a competitive phase, and that competitive pressure of the market forces now in place drive carriers to provide the quality of service



demanded by customers. The “one size fits all ILECs” rules are a poor substitute for the options of an open market.

### Joint CLECs

The Joint CLECs note that without vibrant competition since some customers may not have a competitive choice, CenturyLink will have no incentive to maintain its existing service standards and will result in deterioration of service performance. CenturyLink’s reliance on wireless competition is troublesome as wireless service quality has been criticized for its poor signal, dropped calls, network busy signals, power issues, lack of coverage, and privacy issues.

The Joint CLECs suggest that in order to ensure consumer protection, CenturyLink should not be allowed changes in retail service quality standards that are used for comparison for wholesale service quality. The petition could impact wholesale service quality performance and reporting since some of the wholesale measures within the CPAP are measured against CenturyLink’s retail performance. On page 6 of its Comments, the Joint CLECs listed the CPAP measures that have corresponding retail service quality standards, specifically the standards identified in Minn. Rules 7810.5400 on Interoffice Trunks, 7810.5500 on Transmission Requirements, 7810.5800 on Interruptions of Service, and 7810.5900 on Customer Trouble Reports. Relaxing the retail standards could result in a corresponding decrease in wholesale service quality performance; this should not be allowed until appropriate protections are worked out for wholesale service quality.

### Department of Commerce

Although many of the service quality rules are still relevant, the Department believes consumers would benefit from tailoring the existing service quality rules to meet the needs and demands of today’s consumers.

## **4. What should be the scope of any rulemaking proceeding?**

### CenturyLink

The rulemaking should address Rules 7810.4100 – 7810.6100, or a minimum, Rules 7810.5100 – 7810.5900.

### Frontier

Frontier agrees that limiting the rulemaking to Rules 7810.4100 through 7810.6100 would allow for a focused, efficient, and timely process.

### Joint CLECs and MCCA

If the Commission opens a rulemaking, the proceeding should be limited to retail service quality. In addition, it should be limited to retail service quality measures that are not used as comparable

standards in the wholesale service quality performance plans until such time that CenturyLink and the competitive carriers can work out protections for wholesale service quality.

Department of Commerce

The Department believes the rulemaking should address Minn. Rules part 7810.

MTA

MTA supports a comprehensive rulemaking involving Minn. Rules part 7810.

**5. What procedures should the Commission establish for any rulemaking proceeding?**

CenturyLink

The formal portion of the proceeding should follow the procedures set forth in Minn. Stat., Chapter 14, and its associated rules.

Prior to that, the Company suggests that the Commission 1) invite parties to make specific proposals for rules within the scope of the proceeding and 2) encourage participants to negotiate if possible. After that, the Commission should invite parties to file final proposed rules and file comments and responses to other parties' proposals. The Commission should then decide upon a set of rules, if any, that it would propose to publish in a Notice of Intent to Adopt Rules or Notice of Hearing pursuant to Minn. Rule 1400.2050.

Frontier

The Commission's normal rulemaking procedures would be appropriate.

Joint CLECs

They do not currently have a position regarding this question.

Department of Commerce

Minn. Stat. Chapter 14 (Administrative Procedure) provides detailed procedures and standards for promulgating rules and for substantiating the purpose and use of rules through the Statement of Need and Reasonableness. Minnesota law also allows for comments from interested parties.

**6. Should the Commission approve or deny CenturyLink's petition?**

CenturyLink, Frontier

CenturyLink and Frontier urge the Commission to approve the petition.

Joint CLECs, MCCA

The Joint CLECs and MCCA do not currently have a position on this.

Department of Commerce

The Department indicates that a rulemaking proceeding will allow Commission consideration of arguments and concerns by CenturyLink, the Department, other carriers, consumers and other interested parties.

AARP/LSAP

AARP/LSAP recommends that any elimination of critical consumer protections should be based upon substantive evidence, not generalized statements contending that compliance with those protections is burdensome to industry interests.

***Staff Analysis and Recommendation***

**A. Background**

Perhaps the single most undisputed point raised by CenturyLink is the observation that the telecommunications landscape has changed drastically in recent years. The availability of telecommunications products and the modes of delivery of those products have clearly increased. And it is this changed landscape that CenturyLink believes supports repealing Minn. Rules 7810.4100-7810.6100. To place CenturyLink's request in context it is useful to consider a broad and brief overview of the U.S. telecommunications market.

For many decades prior to the nineties traditional local telephone carriers operated in an environment that, if not highly lucrative, was at least an environment of assured markets and revenues. Markets were assured within geographic regions by state sanctioned grants of monopoly power; revenues were assured by implicit and explicit subsidies, where needed; and service quality was assured by standards embodied in rules. As such, the traditional local carriers were able to provide ubiquitous gold-standard quality telephone service at reasonable rates throughout the state. Clearly, today, that relatively simple market structure has been altered by new entrants and new technologies.

Today's market may be broken down into three main subsectors: (i) cable providers, (ii) wireless providers, and (iii) local exchange carriers (LECs; for the most part, incumbents (ILECs) and, to a lesser extent, competitive exchange carriers (CLECs)).

Cable providers have several advantages over traditional ILECs. Unlike traditional ILECs, cable providers are not required to serve large, sparsely populated high-cost areas, concentrating their efforts in urban areas. Additionally, with co-axial cable already in place, cable providers were better situated to capture the emerging broadband market, leaving traditional ILECs to scramble to catch up. Some cable providers possess valuable content such as sports franchises and

television stations allowing them to leverage those possessions in a way that traditional ILECs, who provide only voice network services, cannot (a situation which could be enhanced significantly by the FCC's proposed rules allowing carriers to discriminate among providers of content). And, relative to traditional ILECs, cable providers face fewer rate and service quality regulations.

Wireless carriers possess a particularly significant advantage over both cable carriers and LECs. That is, mobility. Furthermore, wireless carriers are subject to less rate and service quality regulation than are traditional ILECs, and wireless carriers are typically not required to serve all geographic areas within an exchange. Wireless carriers, too, are not burdened with the high cost of the last-mile wire loop.

With their substantial economic advantages the wireless and the cable providers have made significant inroads into the traditional ILEC markets, as have the CLECs. However, the ILECs are not without resources, not the least of which is the support derived from the federal high-cost universal service fund (in Minnesota in 2013 the annual high-cost support was estimated to be approximately \$102 million.)<sup>2</sup> Throughout the country ILECs have responded to the growth of CLECs, wireless and cable providers by using three main strategies. First, many ILECs have sought to shore up their line losses by offering new Internet Protocol services over their copper lines, by building out fiber, and by partnering with wireless carriers to offer a broader bundle of services. Second, some ILECs seek legislative changes to improve their competitive positions with respect to CLECs and some support legislative restrictions on the entry of new competitors, such as municipal broadband providers. And third, many ILECs have sought to reduce or repeal regulations that (i) require them to serve all customers within a geographic region, (ii) restrict rate increases and/or (iii) hold them to stringent service quality standards. It is this service quality issue that CenturyLink has placed before the Commission today. Note that there is one option that the ILECs in Minnesota do not appear to be pursuing. That is, to seek the implementation of a state universal service fund to support the provision of quality service to high-cost customers.

## **B. Response to Request for Repeal of Service Quality Rules**

Staff's chief recommendation is that the Commission should **not** open a rulemaking proceeding **if** the purpose of the proceeding is to repeal Rules 7810.4100 to 7810.6100 as requested by CenturyLink. However, a rulemaking of a lesser scope may be appropriate and will be addressed later in this paper.

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<sup>2</sup> Federal Communications Commission. *Universal Service Monitoring Report, 2013*. Supplementary Report Material. See: <http://transition.fcc.gov/wcb/iatd/recent.html>.

One of the chief arguments made by CenturyLink, and supported by Frontier, is that the marketplace is highly competitive today and therefore the rules should be repealed. In response to this argument it is important to note that the proponents of repeal (i) have not provided any evidence as to the competitiveness of the market and (ii) have not shown why competition, even if it does exist, would make Minnesota's consumer better off without some service quality protections.

### 1. Level of Competition

To get a sense of the level of true competition in Minnesota consider arguments made several years ago by CenturyLink (Qwest at that time). The Telecommunications Act, 47 U.S.C § 160, makes provision for incumbent local exchange carriers to seek forbearance from any regulation or provision of the Act if the FCC determines that (i) enforcement is not necessary to ensure that a carrier's rates and practices are just and reasonable and nondiscriminatory, (ii) enforcement is not necessary for consumer protection, and (iii) forbearance is consistent with the public interest. In April 2007, Qwest filed such a petition with the FCC arguing that there was significant competition in the Minneapolis St. Paul Metropolitan Statistical Area (MSP-MSA) to warrant a grant of forbearance.<sup>3</sup> In 2008, the Minnesota Commission filed comments with the FCC submitting evidence gathered by DOC and recommending that the FCC deny Qwest's petition.<sup>4</sup> In July 2008 the FCC rejected Qwest's petition in its entirety. Qwest appealed the decision to the D.C. Circuit Court and that Court remanded the matter to the FCC at the FCC's request.

In March of 2009, Qwest filed a forbearance petition in the Phoenix MSA.<sup>5</sup> That petition was rejected by the FCC in June of 2010 for failure to show sufficient competition. Less than two months later Qwest withdrew its petition for forbearance in the MSP-MSA. Of particular note here is that the FCC, appropriately, used a market power analysis that focused on answering questions of the form: does this specific type of customer (e.g. residential, small business, large business) have a significant array of service options (in a specific and relevant geographic area) such that no service provider holds sustainable substantial market power. This is the same type of market power analysis used by the Federal Trade Commission and the U.S. Department of Justice.

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<sup>3</sup> *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Minneapolis/St. Paul Metropolitan Statistical Area.* WC Docket No. 07-97.

<sup>4</sup> *In the Matter of the Minnesota Public Utilities Commission's Inquiry Regarding the Petition of Qwest Corporation, Filed with the Federal Communications Commission, for Forbearance Pursuant to 47 U.S.C. Section 160(c) in the Minneapolis - St. Paul Metropolitan Statistical Area.* Docket P-421/CI-07-661.

<sup>5</sup> *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area.* WC Docket No. 09-135. On June 15, 2010, the FCC rejected Qwest's petition for the Phoenix MSA because Qwest failed to show there was sufficient competition.

Clearly, Minnesota's ILECs face some rivalry from other carriers of telecommunications service in Minnesota. That is what CenturyLink, the MTA, and Frontier have characterized as competition, but the use of the term "competition" by these entities is used in the context of threats to their revenue streams, which is fundamentally different from a customer-based notion of "competition" that issues from economic theory. Consider this simple hypothetical setting as a means of distinguishing between rivalry for revenues and true competition. Consider that there are five telephone exchanges, all served by only one carrier with unrestrained market power, and that carrier derives twenty percent of its revenues from each exchange. Now, suppose new entrants are allowed into the market such that four new entrants each become the only supplier of services in one of the other exchanges. There are now five monopolists, each a single seller in its exchange. There is still no competition in these five exchanges, but the original incumbent faces a revenue loss of eighty percent.

To continue this line of thought, consider that Frontier makes reference to the large increase in cell phone subscription in recent years. That assertion stands firm, but its significance in terms of competition requires a more careful analysis. The FCC observed, in its Phoenix MSA analysis, that the presence of cell phones does not necessarily indicate a lack of market power.<sup>6</sup> Some customers have dropped their landlines in favor of cell phones but many customers choose to have both a cell phone and a landline phone and as such the cell phone does not compete with the landline for these customers. This is true for many residential users and for an even higher proportion of business users who need the security and quality associated with landline service.

The point of the above arguments is to say, first, that threats to a firm's bottom line are not necessarily an indication of the existence of a competitive market, characterized by sellers holding insignificant market power. Second, CenturyLink has offered no evidence that it does not hold market power for the relevant customers and geographic regions of Minnesota. Indeed, it withdrew such an argument from review by the FCC for even the most densely populated region of the state, the MSP-MSA. Third, even if a showing of stiff competition could be made in some areas of the state, the repeal of the rules would apply to **all** LECs in **all** regions of the state. It is difficult to comprehend how a rural customer subscribing only to landline service (or perhaps also carrying a cellphone with spotty service) would benefit by a repeal of the rules. Consumers vary widely in their needs and in their geographic locations, and it is possible that many consumers may have few service options available while, at the same time, a service provider may face substantial rivalry. This fact underpins standard analyses of market power which require a focus on specific products, specific customer needs, and specific geographical areas (not on a provider's state-level market share or financial health).

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<sup>6</sup> See the FCC's June 15, 2010, Order in WC Docket 09-135, ¶¶ 55-58.

## 2. Customer Concerns / Commission Goals

CenturyLink and Frontier have argued that some customers could benefit by a repeal of rules in that the resources currently focused on traditional landline service quality could be diverted to the benefit of consumers in other ways, in particular for the support of broadband. Frontier notes that Frontier's affiliates prioritize broadband service restoral over the restoral of lost voice service, and that Minnesota's rules would require the reverse prioritization. Frontier, argues that this runs counter to customers desires.

Two responses come immediately to mind. First, the traditional voice customer who receives a lower prioritization for restoral of service may not agree with Frontier's assessment of customer desires. And, more important, relinquishment of control over voice service quality may run counter to Commission goals. Minnesota statutes directly address the Commission's goals. Minn. Stat. § 237.011 states:

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. [Emphasis added]

If the Commission ultimately grants CenturyLink's request to repeal Parts 7810.4100 through 7810.6400 it would be changing the relative weight given to consumer protection, effectively abandoning direct oversight of local service quality for 1.4 million lines in Minnesota served by

ILECs and CLECs.<sup>7</sup> It is unlikely that market forces would provide the same level of quality to consumers as do the rules. It is important to remember that there is nothing inherent in the play of market forces that guarantees a particular level of product quality or availability. A market may be perfectly **efficient** but it need not be **effective** in meeting any particular fixed societal need. Indeed, it is this fact that underpins the role of government in the provision of many essential services, such as energy, water, highways, harbors, airports, and national security, as well as the setting of standards for construction and for the supply of food and health products and services.

If the quality of local telephone service should decline in the absence of the rules in question, customers may seek to migrate to other carriers if they can. Or, if offered, they may seek more costly (and higher margin) bundles of products from their current supplier of local service (one could speculate that this is one of the goals of some traditional ILECs in seeking regulatory relief). This could be a welcome benefit to some consumers but, no doubt, some would prefer low-price, high-quality plain old telephone service (POTS).

This issue places the Commission in a position of relinquishing quality control for those customers who prefer, or have little real alternative, to POTS service. Clearly, the ILECs' financial bottom line could be improved by a repeal of the service quality rules. And that could allow the ILECs to better position themselves with respect to cable and wireless providers and to divert more resources to broadband development (if they so choose), another stated goal of the Commission.

Finally, it should be stated that LECs may benefit, to some extent, from the existing service quality rules. Some customers may wish to retain POTS service with its high service quality.

### 3. All Regulated Local Service Providers are Subject to Service Quality Rules

Regarding CenturyLink's argument that its competitors are regulated differently, the Department has correctly noted that all ILECs and CLECs are subject to Commission rules and orders, including standards of the service quality rules, parts 7810.4100 through 7810.6100 pursuant to Minn. Rule 7811.0700 Subpart 1.A. As noted earlier, wireless and cable service providers do enjoy certain advantages over traditional ILECs.

#### **C. Commission Consideration of a Rulemaking of a Different Scope**

If approached with a more measured focus, the possibility of changing the language of the

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<sup>7</sup> See Table 9 of the FCC's *Local Telephone Competition: Status as of December 31, 2012*, at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-324413A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-324413A1.pdf).



service quality rules, or even of the entire Chapter 7810 , may be considered. Some rules contain archaic language that could be dropped or updated. Staff agrees that modernizing the language to reflect new technologies and processes could better serve the demands and needs of today's customers and service providers. If the Commission desires to open a rulemaking now, Staff recommends that such rulemaking be directed solely for the purpose of updating the language in the rules.

Beyond such language update, Staff believes that substantive changes require a more careful and fact-based review that may be better pursued in alternative forums. For one, a rulemaking does not allow for discovery rights imperative in the evaluation and production of data before any substantive changes can be made to the rules.

Staff believes that some service quality measures remain critically important in ensuring customer protection. Without the standards in these rules, there will be no benchmarks by which to measure what is adequate service, or even what can be expected from all other service providers. As indicated by the Joint CLECs, even customers of wireless companies measure service quality performance regarding metrics such as dropped calls, busy signals, power and coverage against these standards. Without them, as expressed by one party, "it becomes a race to the bottom." Before any consideration of changes to these service quality measures, the Commission should require a careful analysis of impacts on customers and documentation of any burden to the companies.

These standards are contained in:

- SQ 4 -7810.5000, Utility Obligations
- SQ 6 -7810.5200, Answering Time
- SQ 7 -7810.5300, Dial Service Requirements
- SQ 8 -7810.5400, Interoffice Trunks
- SQ 10 -7810.5800, Interruptions of Service, and
- SQ 11 -7810.5900, Customer Trouble Reports

Further, parties have not demonstrated with any substantive evidence that some other rules are considered burdensome or no longer relevant. Each rule is discussed in turn.

#### **D. Review of Minnesota Rules parts 7810.4100 through 7810.6100**

The following pages identify each service quality rule in Minn. Rule parts 7810.4100 through 7810.6100.

**SQ Rule 1: Part 7810.4100 ACCESS TO TEST FACILITIES.**

Each telephone utility shall provide or have access to test facilities which will enable it to determine the operating and transmission capabilities of circuit and switching equipment, either for routine maintenance or for fault location.

**Statutory Authority:**

*MS s 237.10*

Staff believes there is no evidence presented showing that the above rule is no longer relevant in today's environment or that the rule is unreasonably burdensome.

**SQ Rule 2: 7810.4300 ACCURACY REQUIREMENTS.**

All meters and/or recording devices used to record data and prepare customers' bills shall be in good mechanical and electrical condition, shall be accurately read, and shall not involve approximations. All meters and/or recording devices shall accurately perform the following.

For message rate service, where timing of length of message is not involved, the meter and/or recording device shall show accurately the number of completed messages sent by the station which it is measuring. For message rate and/or toll service when in addition to recording the calls it is necessary to time the calls, the meter and/or recording device shall show accurately the number of calls and the talking time involved in each call and the station making such call. When the recording equipment provides coded information that is used to automatically prepare customer bills, accurate interpretation of such coded information is required.

**Statutory Authority:**

*MS s 237.10*

Staff agrees that newer language may more appropriately reflect the process of collecting information needed to bill customers and will not oppose suggestions for Commission consideration of more appropriate language.

**SQ Rule 3: 7810.4900 ADEQUACY OF SERVICE.**

Each utility shall employ reasonable engineering and administrative procedures to determine the adequacy of service being provided to the customer. Traffic studies shall be made and records maintained to the extent and frequency necessary to determine that sufficient equipment and an adequate operating force are provided during the busy hour, busy season. Each telephone utility shall provide emergency service in all exchanges operated in which regular service is not available at certain periods during the 24 hours of the day. When service is not continuous for the full 24-hour day, proper arrangements shall be made for handling emergency

calls during the off-periods by the use of alarms maintained in proper conditions with someone conveniently available so that emergency calls will be given prompt attention.

Each utility shall employ adequate procedures for assignment of facilities. The assignment record shall be kept up to date and checked periodically to determine if adjustments are necessary to maintain proper balance in all groups.

**Statutory Authority:**

*MS s 237.081; 237.10*

Staff believes that this requirement for adequate facilities remains valid but agrees that some provisions (e.g. procedures for handling emergency calls during off-periods) are now outdated and no longer needed.

**SQ Rule 4: 7810.5000 UTILITY OBLIGATIONS.**

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

Where a telephone utility is generally operated in conjunction with any other enterprise, suitable records shall be maintained so that the results of the telephone operation may be determined upon reasonable notice and request by the commission.

**Statutory Authority:**

*MS s 237.081; 237.10*

Staff believes that this is a basic core requirement for utility obligations and the standards contained should be retained for the protection of the public.

**SQ Rule 5: 7810.5100 TELEPHONE OPERATORS.**

Suitable practices shall be adopted by each telephone utility concerning the operating methods to be employed by operators with the objective of providing efficient and pleasing service to the customers. Telephone operators shall be instructed to be courteous, considerate,

and efficient in the handling of all calls, and to comply with the provisions of the Communications Act of 1934 in maintaining the secrecy of communications. All operator-handled calls shall be carefully supervised and disconnects made promptly. When an operator is notified by a customer that the customer has reached a wrong number on a direct-dialed call, the customer shall be given a bill credit when the claim has been substantiated.

**Statutory Authority:**

*MS s [237.081](#); [237.10](#)*

CenturyLink characterized this provision as “quaint and out of date.” Staff agrees that while the expectations about telephone utility employees’ behavior remain, the language in this rule could be modernized to reflect applicable technologies.

**SQ Rule 6: 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.

**Statutory Authority:**

*MS s [237.081](#); [237.10](#)*

This is a key service provision, and is based on long-standing customer expectations of being able to immediately contact the utility’s service center for matters relating to repair, service provisioning, bills and other utility business. Staff believes that the core standard of speedy answer time for customer calls to the utility office should remain, and that any suggested change to delete or to downgrade the 20 seconds answer time should be backed with substantive evidence. Staff agrees however that the rule could be updated to remove references to obsolete facilities and to include language reflecting the applicability of newer technologies. For example, in CenturyLink’s AFOR plan, service center answering time metric in the Service Quality Plan was modified to start the clock after the last menu option is selected when using automated voice prompts.

**SQ Rule 7: 7810.5300 DIAL SERVICE REQUIREMENTS.**

Sufficient central office capacity and equipment shall be provided to meet the following minimum requirements during average busy season, busy hour:

A. Dial tone within three seconds on at least 98 percent of telephone calls. Dial tone delays of more than 2.6 percent of calls on a continuing basis indicates a need for investigative or corrective action.

B. Complete dialing of called numbers on at least 97 percent of telephone calls without encountering an all-trunks busy condition within the central office.

**Statutory Authority:**

*MS s 237.081; 237.10*

Staff believes that this core requirement remains valid and the standard should be retained.

**SQ Rule 8: 7810.5400 INTEROFFICE TRUNKS.**

Local interoffice trunks shall be provided so that at least 95 percent of telephone calls offered to the group will not encounter an all-trunks-busy condition. For toll connecting trunks, this figure shall be at least 97 percent. When the completion rate falls below 95 percent on a continuing basis investigative or corrective action should be initiated.

**Statutory Authority:**

*MS s 237.081; 237.10*

Staff believes that this core requirement remains valid and the standard should be retained.

**SQ Rule 9: 7810.5500 TRANSMISSION REQUIREMENTS.**

Telephone utilities shall furnish and maintain adequate plant, equipment, and facilities to provide satisfactory transmission of communications between customers in their service areas. Transmission shall be at adequate volume levels and free of excessive distortion. Levels of noise and cross talk shall be such as not to impair communications.

**Statutory Authority:**

*MS s 237.081; 237.10*

Staff believes that the parties have not shown evidence that the above rule is no longer relevant in today's environment nor that the rule is unreasonably burdensome.

**SQ Rule 10: 7810.5800 INTERRUPTIONS OF SERVICE.**

Each telephone utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service with the shortest possible delay. The minimum objective should be to clear 95 percent of all out-of-service troubles within 24 hours of the time such troubles are reported. In the event that service must be interrupted for purposes of working on the lines or equipment, the work shall be done at a time which will cause

minimal inconvenience to customers. Each utility shall attempt to notify each affected customer in advance of the interruption. Emergency service shall be available, as required, for the duration of the interruption.

Every telephone utility shall inform the commission, as soon as possible, of any major catastrophe such as that caused by fire, flood, and 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.

**Statutory Authority:**

*MS s [237.081](#); [237.10](#)*

Staff believes that this core requirement remains valid and the standard should be retained.

**SQ Rule 11: 7810.5900 CUSTOMER TROUBLE REPORTS.**

Arrangements shall be made to receive customer trouble reports 24 hours daily and to clear trouble of an emergency nature at all hours, consistent with the bona fide needs of the customer and personal safety of utility personnel.

Each telephone utility shall maintain an accurate record of trouble reports made by its customers. This record shall include appropriate identification of the customer or service affected, the time, date, and nature of the report, the action taken to clear trouble or satisfy the complaint, and the date and time of trouble clearance or other disposition. This record shall be available to the commission or its authorized representatives upon request at any time within the period prescribed for retention of such records.

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.

**Statutory Authority:**

*MS s [237.081](#); [237.10](#)*

Staff believes that this core requirement remains valid and the standard should mostly be retained.

**SQ Rule 12: 7810.6000 PROTECTIVE MEASURES.**

Each utility shall exercise reasonable care to reduce the hazards to which its employees, its customers, and the general public may be subjected. The utility shall give reasonable assistance

to the commission in the investigation of the cause of accidents and in the determination of suitable means of preventing accidents.

**Statutory Authority:**

*MS s 237.10*

Staff believes that the parties have not shown evidence that the above rule is no longer relevant in today's environment nor that the rule is unreasonably burdensome.

**SQ Rule 13: 7810.6100 SAFETY PROGRAM.**

Each utility shall adopt and execute a safety program, fitted to the size and type of its operations. As a minimum, the safety program should:

- A. require employees to use suitable tools and equipment in order that they may perform their work in a safe manner;
- B. instruct employees in safe methods of performing their work; and
- C. instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation, or drowning, in accepted methods of artificial respiration.

**Statutory Authority:**

*MS s 237.10*

Staff believes that the parties have not shown evidence that the above rule is no longer relevant in today's environment nor that the rule is unreasonably burdensome.

**E. Other Factors for Commission Consideration**

1. Service Quality Rules Linked to Provision of Wholesale Service

As suggested by several parties, the Commission should consider any effect that CenturyLink's request will have on the level of service quality provided by ILECs to their wholesale customers. To the extent CLECs are subject to the service quality provided by ILECs in the provision of wholesale services, any deficiencies in the ILECs' service quality may directly affect the service quality provided by the CLECs to their retail customers.

The Department indicates that ILECs are subject to obligations pursuant to federal law, in particular § 251 (c)(2), which imposes interconnection obligations on ILECs to provide services that are at least equal in quality to that provided by a LEC to itself or any affiliate.

The Joint CLECs purchase wholesale services from CenturyLink which they rely upon along

with their own network investments to provision final products to end user customers. There are standards developed in the MPAP which are linked to retail service standards. The MPAP is the result of years of tedious, industry-wide work and negotiations that were addressed in multiple dockets. Attachment 1 summarizes the background history of MPAP that produced the current wholesale service quality standards. Attachment 2 is taken from the Joint CLECs' Comments and lists the Minnesota MPAP Measures with the Corresponding Retail Service Standards. The Joint CLECs urge the Commission not to relax service quality standards in the affected rules. The referenced standards are contained in

- SQ 8 7810.5400 - Interoffice Trunks
- SQ 9 7810.5500 - Transmission Requirements
- SQ 10 7810.5800 - Interruptions of Service, and
- SQ 11 7810.5900 - Customer Trouble Reports.

## 2. AFOR Covenant

CenturyLink has elected to be governed under an alternative regulation plan (or AFOR plan). Minn. Stat. §237.76 states that the purpose of AFOR Plans is three-fold:

- To provide a telephone company's customers with service of a quality consistent with Commission rules at affordable rates;
- To facilitate the development of telecommunications alternatives for customers, and
- To provide, where appropriate, a regulatory environment with greater flexibility than is available under traditional rate-of-return regulation.

For the Commission to approve an AFOR plan, the Company must have a Commission-approved service quality plan or settlement for retail customers, or demonstrate that the company is in substantial compliance with Commission service quality rules. This service quality plan is based on the service quality rules that CenturyLink now wants repealed.

For example, one standard contained in Qwest Current AFOR Plan<sup>8</sup> is:

It shall be the Company's objective to clear 95% of out-of-service trouble report conditions within 24 hours of the time such troubles are reported.

This standard is based on SQ 10- 7810.5800 – Interruptions of Service. Without the rules, it is not known how the current AFOR Plan will be impacted nor if there are any reliable

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<sup>8</sup> Order Approving Qwest's Alternative Regulation Plan as Modified dated December 23, 2009, *In the Matter of a Petition by Qwest Corporation for Approval of its Second Revised Alternative Form of Retail Regulation (AFOR) Plan*, Docket No. P421/AR-09-790.



measurements by which to compare any future AFOR service quality plans.

### 3. Rulemaking Logistics

Rulemakings are long and complex processes. There are requirements for substantive and procedural details, opportunities for public and stakeholder inputs, and for resource commitments from the Commission. In-house legal staff spearheads the rulemakings. Today, there are four open rulemakings at the Commission: Chapters 7849 and 7850 (Certificate of Need/Siting and Routing, Chapter 7810 (White Pages Directories) and Chapter 7829 (Practice and Procedure). According to recent estimates, a rulemaking proceeding may cost anywhere from about \$10,000 for a noncontroversial procedural proceeding to \$287,000 for a major rulemaking<sup>9</sup>

### 4. Other Avenues for a Substantive Review of the Rules

If the Commission wishes to consider a substantive review of evidence for any changes other than language updates of the rules, it may instead want to open a Commission investigation or some other avenue of review. This approach will allow discovery and production of data related to the rule changes which otherwise may be constrained in a rulemaking proceeding.

### 5. Petition's Conformance with Minn. Rule 1400.2040 (B)

The rule requires that "A petition to an agency requesting rulemaking under Minn. Stat. section 14.09, must contain the following information:

...B. the specific action (adoption, amendment, or repeal of an agency rule) requested by the petitioner....."

CenturyLink's March 26, 2014 filing was not very clear on specific actions requested related to the rulemaking. The Joint CLECs and MCCA both suggested that the filing does not comport with the rule requiring the specific action requested by the petitioner.

With its Comments filed on April 14, 2014 CenturyLink specified that it wants the rulemaking to repeal Minn. Rule parts 7810.4100 through 7810.6100, or at minimum, parts 7810.5100 through 7810.5900.

With the clarification, Staff agrees that CenturyLink has specified the action requested for the rulemaking.

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<sup>9</sup> Minnesota Rulemaking Manual: A Reference Book for the Practitioner, Appendix Cost-Inf, page 242; issued on September 13, 2013; edited by Patricia Winget and Dave Orren.

## 6. Rulemaking Procedures

In the event the Commission decides to open a rulemaking proceeding, the procedures in Chapter 14 and associated rules should apply.

### **F. Scope of Rulemaking**

In the event the Commission decides to open a rulemaking proceeding, it should be clear as to the scope of such rulemaking. The options include the following:

#### **1. Review of Entire Chapter 7810**

The Department and MTA support a comprehensive rulemaking involving Minn. Rules part 7810. Other parties indicate that such a comprehensive review, although eventually may be needed, is not currently a priority.

Attachment 3 contains the Table of Contents for Chapter 7810. In addition to the service quality rules shown in 7810.4100 through 7810.6100, the Chapter also covers topics such as Records and Reports, Customer Billing; Deposit and Guarantee Requirements, Disconnection of Service; Service Delays, and Filing Requirements.

If the Commission wants to open a Rulemaking on Chapter 7810, it may want to:

- a. Do a rulemaking immediately for the purpose of updating archaic language and to reflect new technologies and procedures.
- b. Postpone the decision to open a rulemaking until after review of substantive evidence to support any changes.
- c. Other action determined by the Commission.

#### **2. Review of Minn. Rule parts 7810.4100 through 7810.6100**

If the Commission wants to review Minn. Rule parts 7810.4100 through 7810.6100, it may want to:

- a. Do a rulemaking immediately for the purpose of updating archaic language and to reflect new technologies and procedures.
- b. Postpone the decision to open a rulemaking until after review of substantive evidence to support any changes.
- c. Specify that any rule changes do not include standards contained in SQ 8 - 7810.5400 - Interoffice Trunks, SQ 9 – 7810.5500 – Transmission Requirements, SQ 10 -7810.5800 - Interruptions of Service, and SQ 11-

- 7810.5900 - Customer Trouble Reports, as requested by the Joint CLECs.  
d. Other action determined by the Commission.

**3. The repeal of Minn. Rule parts 7810.4100 through 7810.6100**

This is the scope and change as petitioned by CenturyLink.

**4. The repeal of Minn. Rule parts 7810.5100 through 7810.5900**

This is the scope and change as alternatively petitioned by CenturyLink.

**Commission Options**

**A. What action should the Commission take with regard to CenturyLink’s proposal to repeal Minn. Rule parts 7810.4100 through 7810.6100, or a minimum, parts 7810.5100 through 7810.5900?**

A.1. Deny CenturyLink’s petition for rulemaking to repeal Minn. Rule parts 7810.4100 through 7810.6100, or a minimum, parts 7810.5100 through 7810.5900.

A.2. Deny, without prejudice, CenturyLink’s petition for rulemaking to repeal Minn. Rule parts 7810.4100 through 7810.6100, or a minimum, parts 7810.5100 through 7810.5900. Open a Commission Investigation (CI) docket. Delegate authority to the Executive Secretary to establish procedures and timetable. Solicit more information including specific language suggestions and substantive evidence for each suggested rule change in Chapter 7810, or at a minimum in Minn. Rule parts 7810.4100 through 7810.6100.

A.3. Open a rulemaking proceeding. Specify the scope as review of Chapter 7810 for the purpose of updating archaic language and to reflect new technologies and procedures.

A.4. Open a rulemaking proceeding. Specify the scope as review of Minn. Rule parts 7810.4100 through 7810.6100 for the purpose of updating archaic language and to reflect new technologies and procedures.

A.5. Open a rulemaking proceeding. Specify the scope as repeal of Minn. Rule parts 7810.4100 through 7810.6100.

A.6. Open a rulemaking proceeding. Specify the scope as repeal of Minn. Rule parts 7810.4100 through 7810.6100, excluding 7810.5400 - Interoffice Trunks, 7810.5500 – Transmission Requirements, 7810.5800 - Interruptions of Service, and 7810.5900 - Customer Trouble Reports.

A.7. Open a rulemaking proceeding. Specify the scope as repeal of Minn. Rule parts 7810.5100 through 7810.5900.

A.8. Open a rulemaking proceeding. Specify the scope as repeal of Minn. Rule parts 7810.5100 through 7810.5900, excluding 7810.5400 - Interoffice Trunks, 7810.5500 – Transmission Requirements, 7810.5800 - Interruptions of Service, and 7810.5900 - Customer Trouble Reports.

A.9. Other action determined by the Commission.

**B. In the event the Commission opens a rulemaking, what qualification, if any, should the Commission make?**

B.1. Clarify that any rulemaking only applies to retail service quality.

B.2. Take no other action.

***Staff's Recommendation***

Staff recommends Option A.1. Alternatively, either Options A.2 or A.3.

In the event the Commission decides to open a rulemaking, Staff recommends Option B.1.

## **Attachment 1**

### **Historical Background of the Minnesota Performance Assurance Plan (MPAP)**

The Federal Telecommunications Act of 1996 (the Act) generally prohibited an incumbent Regional Bell Operating Company (RBOC) such as Qwest Corporation (now CenturyLink) from providing interLATA long distance services within the service area in which the RBOC is the incumbent local service provider. (See 47 U.S.C. § 271(a)). The Act's § 271 provided for an RBOC to petition the Federal Communications Commission (FCC) for permission to enter the interLATA long distance market in its service area (state) if certain requirements were fulfilled in that state. These requirements established whether the RBOC had irreversibly opened its local service markets to competition.

Qwest's Minnesota Performance Assurance Plan (MPAP) arose from the FCC's requirement that the RBOC provide a plan to protect against "backsliding," (i.e., to ensure that once opened, the local service markets would remain open after a grant of authority to provide in-region interLATA service). The MPAP is a self-effectuating performance assurance plan and was evaluated by the Minnesota Public Utilities Commission (Commission) initially in Docket No. P421/AM-01-1376 (the MPAP Docket) as part of the Commission's Section 271(d)(2)(B)1 responsibility to provide guidance to the FCC in its determination of whether to grant or deny Qwest's request to provide interLATA service within Minnesota.

On July 29, 2002, in the MPAP docket, the Commission issued an Order provisionally approving an MPAP submitted by Qwest and setting a further procedural schedule. On November 26, 2002, the Commission issued an Order on Reconsideration Amending the Performance Assurance Plan. Qwest submitted revised plans on February 18, 2003 and April 8, 2003, and submitted a final compliance filing, incorporating all changes ordered by the Commission, on April 30, 2003. While the Commission did not act to approve the April 30, 2003 PAP filing, Qwest submitted the April 30, 2003 PAP filing to the FCC for consideration in WC Docket No. 03-90. The FCC subsequently released its order granting Qwest interLATA in-region long distance authority in Minnesota on June 26, 2003. The MPAP went into effect on August 1, 2003.

The Commission has approved several modifications to the MPAP since the effective date of August 1, 2003. Since the MPAP went into effect and 2013, Qwest made seven filings to its MPAP. All of these filings were made by Qwest under Docket No. P 421/CI-01-1374, "In the Matter of Qwest's Statement of Generally Available Terms (SGAT) pursuant to Section 252(f) of the Telecommunications Act of 1996." SGAT is a statement of generally available terms that Qwest offers to CLECs as part of an interconnection agreement. Currently the MPAP and PIDs

are included as Exhibits B & K in Qwest's (aka Qwest Corporation dba CenturyLink QC (CenturyLink)) negotiations template.

On June 17, 2013, the Colorado Public Utilities Commission (CPUC) approved a settlement that was negotiated between CenturyLink and several CLECs with respect to modifying the PAP and PIDs (Settlement Agreement). As an integral part of the Settlement Agreement, participating competitive local exchange carriers ("CLECs") and CenturyLink agreed that the redesigned PAP and PIDs in Colorado should be proposed for adoption in the 13 other Qwest Bell Operating Companies (RBOC) states, including Minnesota. The CLECs that were parties to the Colorado Settlement either directly, or through an affiliate, are CLECs in Minnesota.

Several other CLECs participated in the Colorado PAP proceeding, but did not sign the Settlement Agreement. These CLECs include Access Point, Inc., Liberty Bell Telecom, McLeodUSA Telecommunications Services, Inc. dba PAETEC Business Services (now Windstream), and XO Communications Services, Inc. None of the participants opposed the Colorado Settlement, or expressed concerns with the modifications. All of these CLECs also have ICAs in Minnesota.

On August 20, 2013, CenturyLink filed a petition, in Docket No. P-421/AM-13-733, to modify the Minnesota Performance Assurance Plan to make it consistent with the Colorado Settlement Agreement. Specifically, on page 6 of its petition, CenturyLink requested that the Commission:

- 1) Approve the redesigned MPAP and Performance Indicator Definitions (PIDs) with an effective date of January 1, 2014, and;
- 2) Deem all interconnection agreements that currently contain the MPAP and PIDs be modified to incorporate these revisions, without the need for further filings or approvals, effective January 1, 2014.

These latest changes were approved by the Commission in an Order dated October 25, 2013.

**Attachment 2**

**Table 1: List of Minnesota CPAP Measures with Corresponding Retail Service Quality Standard**

<b>Minnesota CPAP Measure</b>	<b>Products with Retail Comparison</b>	<b>Related Minnesota Administration Rule</b>
MR-5 – Troubles Cleared within Specified Intervals	DS1 Loops, DS1 EELs and LIS Trunks	7810.5800 INTERRUPTIONS OF SERVICE
MR-5 – Troubles Cleared within Specified Intervals (Diagnostic)	Sub-loops and Resale Business Single Line Service	7810.5800 INTERRUPTIONS OF SERVICE
MR-6 – Mean Time to Restore	Resale Residential Single Line Service, Sub-loops, LIS Trunks, analog loop, 2-wire non-loaded loop, xDSL capable loop, ADSL capable loop, DS1 Loop, and DS1 EEL	7810.5800 INTERRUPTIONS OF SERVICE
MR-7 – Repair Repeat Report Rate	Resale Residential Single Line Service, Sub-loops, LIS Trunks, analog loop, 2-wire non-loaded loop, xDSL capable loop, ADSL capable loop, DS1 Loop, and DS1 EEL	7810.5900 CUSTOMER TROUBLE REPORTS
MR-8 – Trouble Rate	Resale Residential Single Line Service, Sub-loops, LIS Trunks, analog loop, 2-wire non-loaded loop, xDSL capable loop, ADSL capable loop, DS1 Loop, and DS1 EEL	7810.5900 CUSTOMER TROUBLE REPORTS
MR-9 – Repair Appointments Met (Diagnostic)	Residential Single Line Service	7810.5800 INTERRUPTIONS OF SERVICE
NI-1 – Trunk Blocking (Diagnostic)	LIS Trunks	7810.5400 INTEROFFICE TRUNKS
OP-3 – Installation Commitments Met	Residential Single Line Service, LIS Trunks and DS1 Loops	N/A



OP-4 – Installation Interval	Residential Single Line Service and LIS Trunks	7810.5500 TRANSMISSION REQUIREMENTS
OP-5 – New Service Installation Quality	Resale Residential Single Line Service, Sub-loops, LIS Trunks, analog loop, 2-wire non-loaded loop, xDSL capable loop, ADSL capable loop, DS1 Loop, and DS1 EEL	7810.5900 CUSTOMER TROUBLE REPORTS
OP-15 – Interval for Pending Orders Delayed Past Due Date (Diagnostic)	Resale Residential Single Line Service, Sub-loops, LIS Trunks, analog loop, 2-wire non-loaded loop, xDSL capable loop, ADSL capable loop, DS1 Loop, and DS1 EEL	7810.5500 TRANSMISSION REQUIREMENTS
PO-9 – Timely Jeopardy Notices (Diagnostic)	Non-Designed Services, Unbundled Loops, LIS Trunks	N/A
BI-2 – Invoices Delivered within 10 days (Diagnostic)	UNEs and Resale Residence (combined)	N/A
BI-4 – Billing Completeness (Diagnostic)	UNE Loops and Resale Residence (combined) and Reciprocal Compensation	N/A

Source: Comments filed by Joint CLECs, April 14, 2014.

**Attachment 3**

**MINNESOTA ADMINISTRATIVE RULES  
CHAPTER 7810, TELEPHONE UTILITIES  
PUBLIC UTILITIES COMMISSION – TABLE OF PARTS**

<b>Part</b>	<b>Title</b>
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<a href="#">7810.0200</a>	SCOPE.
<a href="#">7810.0300</a>	STATUTORY AUTHORITY.
	<b>RECORDS AND REPORTS</b>
<a href="#">7810.0400</a>	RETENTION OF RECORDS.
<a href="#">7810.0500</a>	DATA TO BE FILED WITH THE COMMISSION.
<a href="#">7810.0600</a>	REPORT TO COMMISSION ON SERVICE DISRUPTION.
<a href="#">7810.0700</a>	[Repealed, L 2004 c 261 art 3 s 1]
<a href="#">7810.0800</a>	[Repealed, L 2008 c 173 s 1]
<a href="#">7810.0900</a>	LOCATION OF RECORDS.
	<b>CUSTOMER RELATIONS</b>
<a href="#">7810.1000</a>	INFORMATION AVAILABLE TO CUSTOMER AND PUBLIC.
<a href="#">7810.1100</a>	COMPLAINT PROCEDURES.
<a href="#">7810.1200</a>	RECORD OF COMPLAINT.
<a href="#">7810.1300</a>	[Repealed, L 2008 c 173 s 1]
	<b>CUSTOMER BILLING; DEPOSIT AND GUARANTEE REQUIREMENTS</b>
<a href="#">7810.1400</a>	CUSTOMER BILLING.
<a href="#">7810.1500</a>	DEPOSIT AND GUARANTEE REQUIREMENTS.
<a href="#">7810.1600</a>	DEPOSIT.
<a href="#">7810.1700</a>	GUARANTEE OF PAYMENT.

**DISCONNECTION OF SERVICE; SERVICE DELAY**

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<a href="#">7810.1900</a>	PERMISSIBLE SERVICE DISCONNECTIONS WITHOUT NOTICE.
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<a href="#">7810.2300</a>	NOTICE REQUIREMENTS.
<a href="#">7810.2400</a>	BILL DISPUTES.
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<a href="#">7810.2800</a>	DELAY IN INITIAL SERVICE OR UPGRADE.

#### **DIRECTORIES**

<a href="#">7810.2900</a>	CONTENT OF DIRECTORIES.
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<a href="#">7810.3200</a>	CONSTRUCTION OF TELEPHONE PLANT.
<a href="#">7810.3300</a>	MAINTENANCE OF PLANT AND EQUIPMENT.
<a href="#">7810.3400</a>	Repealed by subpart
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<a href="#">7810.3600</a>	[Repealed, L 2004 c 261 art 3 s 1]
<a href="#">7810.3700</a>	[Repealed, L 2004 c 261 art 3 s 1]
<a href="#">7810.3800</a>	[Repealed, L 2004 c 261 art 3 s 1]
<a href="#">7810.3900</a>	EMERGENCY OPERATIONS.
<a href="#">7810.4000</a>	[Repealed, L 2008 c 173 s 1]

#### **INSPECTIONS, TESTS, SERVICE REQUIREMENTS**

<a href="#">7810.4100</a>	ACCESS TO TEST FACILITIES.
<a href="#">7810.4200</a>	[Repealed, L 2004 c 261 art 3 s 1]

[7810.4300](#) ACCURACY REQUIREMENTS.

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[7810.5400](#) INTEROFFICE TRUNKS.

[7810.5500](#) TRANSMISSION REQUIREMENTS.

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[7810.5800](#) INTERRUPTIONS OF SERVICE.

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[7810.6100](#) SAFETY PROGRAM.

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#### **ACCOUNTING**

[7810.6400](#) UNIFORM SYSTEM OF ACCOUNTING.

[7810.6500](#) [Repealed, L 2008 c 173 s 1]

#### **LOBBYING EXPENDITURES**

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<a href="#">7810.7000</a>	[Repealed, L 2000 c 436 s 3]
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<a href="#">7810.7300</a>	[Repealed, L 2000 c 436 s 3]
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<a href="#">7810.7600</a>	[Repealed, L 2000 c 436 s 3]
<a href="#">7810.7700</a>	[Repealed, L 2000 c 436 s 3]
<a href="#">7810.7800</a>	[Repealed, L 2000 c 436 s 3]
<a href="#">7810.7900</a>	[Repealed, L 2000 c 436 s 3]
<a href="#">7810.8000</a>	[Repealed, L 2000 c 436 s 3]

#### **FILING REQUIREMENTS**

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<a href="#">7810.8200</a>	DEFINITIONS.
<a href="#">7810.8300</a>	SCOPE.

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<a href="#">7810.8500</a>	NEW SERVICE OFFERINGS.

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<a href="#">7810.8600</a>	NOTICE.
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<a href="#">7810.8620</a>	JURISDICTIONAL FINANCIAL SUMMARY SCHEDULE.
<a href="#">7810.8625</a>	RATE BASE SCHEDULES.
<a href="#">7810.8630</a>	OPERATING INCOME SCHEDULES.
<a href="#">7810.8635</a>	SUPPLEMENTAL FINANCIAL INFORMATION.

[7810.8640](#) RATE OF RETURN, COST OF CAPITAL SCHEDULES.  
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[7810.8665](#) EXPERT TESTIMONY AND SUPPORTING EXHIBITS.  
[7810.8670](#) RATE BASE SCHEDULES.  
[7810.8675](#) OPERATING INCOME SCHEDULE.  
[7810.8680](#) CAPITAL STRUCTURE AND RATE OF RETURN.  
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[7810.8690](#) RATE DESIGN.

**OTHER RATE OR TARIFF CHANGES**

[7810.8700](#) OTHER RATE CHANGE NOTICE.  
[7810.8705](#) OTHER RATE CHANGE PETITION.  
[7810.8710](#) MISCELLANEOUS TARIFF CHANGE.  
[7810.8715](#) NONCOMPETITIVE SERVICE; LANGUAGE CHANGE.  
[7810.8720](#) NONCOMPETITIVE SERVICE; COST INCREASE.  
[7810.8725](#) NONCOMPETITIVE SERVICE; RATE REDUCTION.  
[7810.8730](#) NONCOMPETITIVE SERVICE; CHANGE IN SERVICE.  
[7810.8735](#) INDIVIDUALLY PRICED NONCOMPETITIVE SERVICE.  
[7810.8740](#) [Repealed, 26 SR 1438]  
[7810.8745](#) [Repealed, 26 SR 1438]  
[7810.8750](#) [Repealed, 26 SR 1438]  
[7810.8755](#) [Repealed, 26 SR 1438]  
[7810.8760](#) [Repealed, L 2004 c 261 art 3 s 1]  
[7810.8800](#) [Repealed, 26 SR 1438]

**RECLASSIFICATION**

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<a href="#">7810.8805</a>	SERVICE SUBJECT TO EMERGING COMPETITION.
<a href="#">7810.8810</a>	SERVICE SUBJECT TO EFFECTIVE COMPETITION.
<a href="#">7810.8815</a>	NONCOMPETITIVE SERVICE.
<a href="#">7810.8900</a>	[Repealed, 26 SR 1438]
<a href="#">7810.8905</a>	[Repealed, 26 SR 1438]
<a href="#">7810.8910</a>	[Repealed, 26 SR 1438]
<a href="#">7810.8915</a>	[Repealed, 26 SR 1438]
<a href="#">7810.8920</a>	[Repealed, 26 SR 1438]
<a href="#">7810.8925</a>	[Repealed, 26 SR 1438]
<a href="#">7810.8930</a>	[Repealed, 26 SR 1438]
<a href="#">7810.8935</a>	[Repealed, 26 SR 1438]
<a href="#">7810.8940</a>	[Repealed, 26 SR 1438]