

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
Nancy Lange
Dan Lipschultz
Matthew Schuerger
John A. Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Rulemaking to Consider
Possible Amendments to Minnesota Rules,
parts 7810.4100 through 7810.6100

ISSUE DATE: May 2, 2016

DOCKET NO. P-999/R-14-413

In the Matter of the CenturyLink, Inc. Petition
for Rulemaking to Revise Service Quality Rules

DOCKET NO. P-421/AM-14-256

ORDER CLOSING RULEMAKING
PROCEEDING AND INITIATING
STAKEHOLDER WORKGROUP
PROCESS

PROCEDURAL HISTORY

On March 26, 2014, CenturyLink, Inc. (CenturyLink) filed a petition under Minn. Stat. § 14.09, requesting that the Commission open a rulemaking proceeding to examine its service quality rules and consider repealing rules the company claims are burdensome and unnecessary in light of effective competition in the local telecommunications market.

On May 22, 2014, the Commission issued an order opening a rulemaking proceeding and directing Commission staff to prepare and publish in the *State Register* a Request for Comments on possible rule changes.

On August 4, 2014, the Commission published the Request for Comments in the *State Register*.

On December 4, 2014, the Commission received comments on possible rule changes from the following:

- CenturyLink
- Minnesota Cable Communications Association (MCCA)
- the Minnesota Telecom Alliance (MTA)
- the Office of the Minnesota Attorney General – Residential Utilities and Antitrust Division (the OAG)
- the Telecommunications Consumer and Small Business Coalition (the Coalition);
- Eschelon Telecom of Minnesota, Inc. d/b/a Integra, Integra Telecom of Minnesota, Inc. d/b/a Integra, twtelecom of Minnesota, llc, TDS Metrocom, LLC, and Velocity Telephone, Inc. (collectively, the Joint Competitive Local Exchange Carriers, or the Joint CLECs)

- Citizens Telecommunications Company of Minnesota, LLC and Frontier Communications of Minnesota, Inc. (collectively, Frontier).

On December 24, 2014, the Commission issued a notice seeking reply comments to the comments filed.

On March 13, 2015, the Commission received reply comments from the following:

- CenturyLink
- the Joint CLECS
- the MCCA
- the OAG
- Frontier
- the MTA
- the Coalition
- the Department of Commerce (the Department).

On April 7, 2016, the Commission met to consider the comments filed.

FINDINGS AND CONCLUSIONS

I. CenturyLink's Petition

In its rulemaking petition, CenturyLink stated that the Commission's service quality rules are outdated in light of competitive pressures forcing carriers to maintain high service quality. CenturyLink requested that the Commission consider repealing its rules governing service quality, including the following:

7810.4100. Access to test facilities.

This rule requires carriers to provide access to test facilities for determining technological capabilities.

7810.4300. Accuracy Requirements.

This rule requires that devices used by carriers to record data and prepare customers' bills be in good mechanical and electrical condition.

7810.4900. Adequacy of Service.

This rule requires that carriers establish procedures and maintain records to ensure that adequate service is provided to customers, including service to handle emergencies in any 24-hour period where regular service is unavailable.

7810.5000. Utility Obligations.

This rule requires carriers to provide service consistent with their tariffs and includes record-keeping requirements.

7810.5100. Telephone Operators.

This rule governs customer service, with the objective of providing efficient service to customers.

7810.5200. Answering Time.

This rule requires staffing levels to ensure that 95 percent of calls are answered within ten seconds. The rule also requires that 90 percent of repair service calls, and other calls, be answered within 20 seconds.

7810.5300. Dial Service Requirements.

This rule requires that equipment be in place to ensure that there is dial tone within three seconds on at least 98 percent of telephone calls, and that complete dialing of called numbers occurs on at least 97 percent of telephone calls without encountering an all-trunks busy condition within the central office.

7810.5400. Interoffice Trunks.

This rule requires that local interoffice trunks be provided so that at least 95 percent of telephone calls offered to the group will not encounter an all-trunks-busy condition.

7810.5500. Transmission Requirements.

This rule requires carriers to maintain adequate facilities to ensure clear voice quality.

7810.5800. Interruptions of Service.

This rule requires carriers to minimize interruptions of service by reestablishing service with the shortest possible delay, with a minimum objective to clear 95 percent of all out-of-service troubles within 24 hours of the time such troubles are reported.

7810.5900. Customer Trouble Reports.

This rule requires carriers to make adequate efforts to ensure that customer trouble reports can be made at any time, that adequate records are maintained, and that service is maintained to meet the objective that the average rate of all customer trouble reports in an exchange is no greater than 6.5 per 100 telephones per month. A rate of customer trouble reports of more than 8 per 100 telephones per month is a basis for investigation.

7810.6000. Protective Measures.

This rule requires carriers to exercise reasonable care to reduce the risk of hazards to employees, customers, and the general public.

7810.6100. Safety Program.

This rule requires carriers to adopt a safety program to protect employee safety at work.

II. Rulemaking Process

In response to CenturyLink's petition, the Commission initiated this proceeding, concluding that "a rulemaking proceeding would enable it to consider how to best promote a key policy objective of the regulatory framework, the duty to maintain and improve service quality."¹

A. Request for Comments

To begin considering possible changes to Minn. R. 7810.4100 to 7810.6100, the Commission published a Request for Comments in the *State Register*. The Commission's notice asked for comments on whether any of these rules should be modified, and if so, how they should be changed.

The notice asked persons commenting to provide the information set forth below:

1. Provide evidence of competition, including the level and scope of such competition in relation to different types of customers (large business, small business, residential, etc.) and geography, and the extent to which existing competition supports the rule changes being recommended. Such evidence and analysis should, at a minimum, reflect or be guided by the following:
 - a. Any market-power analysis should, at a minimum, address the analysis set forth in: (i) *Horizontal Merger Guidelines*, U.S. Department of Justice and Federal Trade Commission, August 19, 2010; and (ii) Memorandum Opinion and Order, *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*. Federal Communications Commission, WC Docket No. 09-135, June 22, 2010.
 - b. Commenters should provide evidence of whether wireless service is a substitute for and/or a complement to wireline local service in each relevant market and, if so, to what extent.
 - c. Relevant markets should, at a minimum, reflect (i) different customer segments, including but not necessarily limited to residential, small business (1-3 lines, suggested), medium business (4-200 lines, suggested) and large business (over 200 lines, suggested); and (ii) different geographic areas where customers face the same choice of competitive services (in some cases this may require defining the market at a level less than that covered by a wire center – for example where cable is offered in an urban area but not in the rural portion of the wire center).
 - d. Relevant substitutes for traditional landline service should exclude services provided by carriers affiliated with the traditional landline service provider.

¹ *In the Matter of the CenturyLink, Inc. Petition for Rulemaking to Revise Service Quality Rules*, Docket No. P-421/AM-14-256, Order Detailing Disposition of Petition and Initiating Rulemaking Proceeding, at 6 (May 22, 2014).

2. Provide proposed language for each rule change sought, and for each rule change provide:
 - a. A demonstration of how the recommended rule change would impact retail service quality and the extent to which service quality would be adequately protected by competition and/or the recommended rule change;
 - b. An analysis of how the change would, if at all, maintain or improve service quality;
 - c. An analysis and evidence of the impact any recommended change would potentially have on competition, local exchange carriers and wholesale service quality;
 - d. Any other relevant evidence, analysis and argument supporting any recommended rule change and the impact of such change on telecommunications consumers;
3. Provide arguments or evidence as to why rule changes should or should not be made regardless of evidence related to competition.

B. Horizontal Merger Guidelines

The *Horizontal Merger Guidelines (Guidelines)*, referred to in the Request for Comments, were developed by the U.S. Department of Justice and the Federal Trade Commission and describe the analytical techniques of these agencies in assessing mergers and acquisitions involving actual or potential competitors, and in conducting merger enforcement actions.²

The *Guidelines* provide a framework for identifying competitively harmful mergers by evaluating evidence to determine relevant markets and to decide whether product markets constitute relevant antitrust markets. To identify a market, the agencies analyze data on, for example, geographic location of customers, market participants, groups of products, and product pricing.

The data is then used to evaluate whether different products within a market are reasonably interchangeable and whether a potential merger would create market power that results in price increases, reduction in output, diminished innovation, or other harms that result from constraining competition.

C. FCC Phoenix Forbearance Order

The Federal Communication Commission's (FCC) *Phoenix Forbearance Order* is an order in which the FCC applied the *Guidelines* in evaluating a petition of CenturyLink (formerly Qwest) requesting forbearance from certain federal wholesale and retail regulations, under 47 U.S.C. § 251 (c)(3) and § 271 (c)(2)(B)(ii), that impose duties on incumbent local exchange carriers

² *Horizontal Merger Guidelines*, U.S. Department of Justice and the Federal Trade Commission (August 19, 2010).

(ILECs).³ The duties aim to open local markets to competition and include, for example, the requirement that ILECs make elements of their networks available on an unbundled basis to new entrants at cost-based rates.

In that order, the FCC examined wholesale product markets, retail market services, geographic markets, competitors in the marketplace, and wholesale competition to determine whether wholesale or retail competitive conditions existed to justify the requested forbearance. The FCC concluded that there was no record of significant competition for wholesale products used to serve customers, in part because competitive providers of mass market retail services remained dependent on CenturyLink's network facilities. The FCC stated that the record failed to demonstrate that competitive barriers to market entry had been lowered to enable deployment by competitive carriers and concluded that CenturyLink, absent the regulations, would not be subject to effective retail competition for mass market customers.

The FCC also concluded that the company had failed to produce any analyses that estimated the cross-elasticity of demand between wireless and landline services. In other words, there was no evidence of competition with wireless services because there was no information showing that the company had reduced its prices for landline services or otherwise adjusted marketing for landline in response to changes in the price or demand of wireless service.⁴ The FCC concluded that the company had failed to demonstrate that there was sufficient competition to ensure that CenturyLink would be unable to raise prices, discriminate unreasonably, or harm consumers in the absence of the regulations.

III. Stakeholder Comments

A. CenturyLink

1. Rule Recommendations

In its comments, CenturyLink reiterated its initial position that the Commission's service quality rules should be repealed, clarifying that it would support retaining part 7810.6100 (governing employee safety) and modifying two other rule parts.

The company supported keeping one sentence of part 7810.5800 (governing utility obligations) that requires companies to provide service consistent with their tariffs and recommended replacing the phrase "telephone utility" in that rule part with "telecommunications provider." And the company recommended a technical correction to part 7810.5500 to replace the phrase "telephone utilities" with "telephone providers."

2. Comments

CenturyLink argued that the *Horizontal Merger Guidelines* and the FCC's *Phoenix Forbearance Order* are not relevant to this proceeding.

³ *In the Matter of the Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C § 160 (c) in the Phoenix, Arizona Metropolitan Statistical Area*, Federal Communications Commission, WC Docket No. 09-135 (June 22, 2010).

⁴ *Id.* at 32.

According to CenturyLink, a market power analysis is relevant to assessing antitrust issues in a proposed merger, not how prices should be set for an entire market. The *Guidelines* calculate marketplace concentration to gauge the impact of mergers but do not provide an indication of CenturyLink's market power or the competitive options available in Minnesota. And CenturyLink opposed using the test to disprove the existence of competition.

CenturyLink argued that the FCC's *Phoenix Forbearance Order* is not persuasive because that case examined the impact of deregulation of wholesale Unbundled Network Elements (parts of the telecommunications network made available to CLECs on an unbundled basis) on the retail market, not on the competitiveness of retail local exchange service provided to end users. CenturyLink also stated that the FCC's decision is limited to how forbearance would have impacted competition in the retail market by affecting mechanisms used by CLECs to compete.

CenturyLink claimed that a 2012 decision by the Arizona Corporation Commission is more relevant to questions at issue in this proceeding. In that case, the Arizona Commission did not require a cross-elasticity study to determine that it was in the public interest to provide pricing flexibility for CenturyLink's retail services, services that parties to a settlement agreement had identified as competitive.⁵ CenturyLink also cited academic research, published after the FCC's *Phoenix Forbearance Order*, stating that "a one percent decrease in the price of wireless service is estimated to decrease the demand for fixed-line service by approximately 1.2-1.3 %."⁶

Further, CenturyLink stated that in every exchange in Minnesota customers have a choice of more than one alternative provider of voice service and have a choice of both wireless and landline and that in customers' minds, cable telephony, Voice over Internet Protocol (VoIP, which uses internet protocol networks to provide voice and other services), CLEC voice, and wireless are viable competitive substitutes for CenturyLink's voice services.

Arguing that its market power has been significantly constrained, CenturyLink stated that it is no longer dominant in the telecommunications market and included a chart with percentages of market share as shown below:

CenturyLink	27.0 %
Comcast	14.9 %
Charter	6.8 %
Other Cable	4.5 %
CLECs	4.9 %
VoIP	1.3 %
Wireless Only	37.2 %
No Voice/Other	3.4 % ⁷

⁵ *In the Matter of the Application of Qwest Corporation dba CenturyLink-QC to Classify and Regulate Retail Local Exchange Telecommunications Services As Competitive and to Classify and Deregulate Certain Services as Non-Essential*, Docket T-01051B-11-0378 (August 21, 2012).

⁶ Initial Comments, CenturyLink at 14 (December 4, 2014).

⁷ Affidavit of Robert Brigham at 12 (December 4, 2014).

According to the company, it is reasonable to evaluate competition in Minnesota by considering, as products in the same market, all forms of communication, including voice and data because an email message is, for example, a substitute for voice calls. CenturyLink also filed maps of Minnesota to show where wireless, cable, and broadband coverage are available, arguing that nearly all areas in the state are served by competitors and that nearly all the areas not served are allegedly unpopulated.

At the Commission meeting, CenturyLink also reiterated claims it made earlier in its variance request petition that rule compliance makes it difficult to prioritize among installations, scheduled repairs, and out-of-service conditions.⁸ For example, prioritizing the restoration of landline service over the installation of other services such as broadband places the company at a competitive disadvantage.

CenturyLink argued that competitive pressures would better meet customer demands than specific rule criteria, particularly where the majority of consumers purchase service from providers that are either not subject to service quality regulation by the Commission or are not subject to the Commission's oversight or enforcement.

B. Frontier

1. Rule Recommendations

Frontier supported repealing the majority of rules or specific benchmarks in parts 7810.4100 to 7810.6100.

For rules without specific benchmarks, Frontier stated that it would be reasonable to retain one sentence, and otherwise repeal the language, in parts 7810.4300 (governing adequacy requirements) and 7810.5100 (governing telephone operators).

Frontier recommended no modifications to three other rules without specific benchmarks, including parts 7810.5000 (governing utility obligations), 7810.5500 (governing transmission requirements), and 7810.6000 (governing protective measures for employees).

2. Comments

Frontier stated that the federal *Horizontal Merger Guidelines* apply to mergers or acquisitions, which are not at issue in this case, but argued that evaluating markets based on competitor types, rather than individual competitors or geographic locations could be used to illustrate levels of competition using market shares. Under this approach, Frontier stated that the FCC's *Local Telephone Competition Status Report* as of June 20, 2013 shows that wireless carriers have the largest market share and the greatest amount of market power.⁹

⁸ *In the Matter of the Petition of CenturyLink, Inc., for a Variance to Minnesota Rules, part 7810.5800*, Docket No. P-421/AM-14-255.

⁹ Initial Comments of Frontier at 8 (December 4, 2014).

Frontier also downplayed the importance of considering, as the FCC did in the *Phoenix Forbearance Order*, whether wireless constrains the price of landline in evaluating competition. Frontier stated that an econometric analysis dismisses the significant role of wireless providers in the marketplace. Frontier stated that 58 percent of Minnesota households have both landline and wireless phones, that 37 percent of households are wireless-only, and that where the two are truly substitutes for each other, customers are between five and twelve times more likely to choose wireless service over landline.

Frontier also claimed that incumbents provide landline service to only a small fraction of the market but are encumbered with rigorous service quality rules, whereas there is less or no oversight of carriers with which incumbents compete. Frontier argued that in recent years, the company has experienced a 50 percent line loss and that those customers migrated to other carriers.

Frontier stated that eliminating rule standards would have little, if any, impact on the service quality received by customers.

C. The MTA

1. Rule Recommendations

The Minnesota Telecom Alliance (MTA) supported repealing the majority of rules or specific benchmarks in parts 7810.4100 to 7810.6100.

The MTA also concurred with CenturyLink that it would be reasonable to modify Minn. R. 7810.5000, governing utility obligations, to retain one sentence of the rule requiring that carriers provide service consistent with their tariffs. And the MTA recommended no modifications to three other rules, including parts 7810.5400 (governing interoffice trunks), 7810.5500 (governing transmission requirements), and 7810.6100 (governing employee safety programs).

2. Comments

The MTA did not address use of the *Horizontal Merger Guidelines* but did argue that the FCC's *Phoenix Forbearance Order* is not relevant, in part, because the decision is based on data from 2009, which is now outdated and not reflective of current market conditions.

The MTA stated that competitive alternatives, both wireless and VoIP, have grown significantly since the FCC's decision. The MTA stated that according to data from the FCC, there are at least four competitors throughout most of Minnesota.¹⁰

The MTA also echoed many of the arguments made by CenturyLink and Frontier, emphasizing that customers are increasingly subscribing to wireless-only telephone service, a service option that did not exist when the Commission's rules were initially adopted. The MTA included a table showing examples of various sized communities in Minnesota where customers have several

¹⁰ Reply Comments of MTA at 4 (March 13, 2015).

different options for telephone service and referred to an FCC *Local Telephone Competition Status Report* as evidence of competition. According to the MTA, the report shows that 42 percent of all landline service is provided by non-incumbent local exchange carriers.¹¹

The MTA recommended that the Commission utilize a complaint-based approach for regulation of retail services provided by all service providers subject to the Commission's jurisdiction.

D. Small Business Coalition

The Small Business Coalition (the Coalition) opposed rule changes that would repeal substantive service quality standards, including specific benchmarks.¹²

The Coalition disagreed with CenturyLink's claim that a decrease in access lines justifies repealing the Commission's rules, noting that CenturyLink remains the dominant local exchange provider in Minnesota with no other individual carrier having a larger market share. The Coalition stated that CenturyLink has an infrastructure advantage paid for by customers who would be adversely affected by reduced levels of service quality.

The Coalition also disputed characterizations that landline service is anachronistic, stating that millions of Minnesotans have landline service, and that many of these customers are older and rely primarily on landline service. The Coalition argued that reliability plays a crucial role in whether someone is able to seek immediate medical help and that where wireless service is available, it might not be reliable. There can be locations within homes and communities where wireless signals are not strong enough to sustain the service, resulting in dropped calls or no service.

The Coalition also argued that there is no record support for vague assertions made by companies supporting rule repeal about what customers most value. For example, there is no evidence in the record demonstrating that customers prefer broadband service over high service quality or that customers view wireless as a substitute. The Coalition contended that wireless service acts more as a complement to, not a substitute for, landline service.

The Coalition argued that it is unrealistic to expect service quality levels to remain high if the rules are repealed. The Coalition noted that CenturyLink has stated that it would prefer to utilize its resources for other priorities, such as the deployment of broadband and other advanced services, rather than for meeting existing service quality standards. The Coalition stated that CenturyLink's promise to prioritize restoration of outages is incompatible with its stated goal to apply its resources elsewhere.

E. The OAG

The Office of the Minnesota Attorney General – Residential Utilities and Antitrust Division (the OAG) opposed repealing the Commission's service quality rules or otherwise rolling back the rules' substantive protections.

¹¹ Initial Comments of MTA at 4 (December 4, 2014).

¹² The Telecommunications Consumer and Small Business Coalition includes the following: AARP; the Institute for Local Self-Reliance; the Legal Services Advocacy Project; the Minnesota Community Action Partnership; and the Twin Cities Metro Independent Business Alliance.

The OAG argued that the *Horizontal Merger Guidelines* provide an economically sound basis for evaluating competition by addressing generally applicable antitrust principles, including defining a product, locating geographic markets, analyzing pricing information, and identifying market participants. The OAG stated that these principles are relevant to the Commission's analysis in this proceeding, as they have been used by economists and courts, as well as the FCC, to evaluate competition in contexts other than mergers.

The OAG also argued that the FCC's *Phoenix Forbearance Order* is relevant because the decision analyzed competition in both the wholesale and the retail voice service market, explaining that competition in either market could potentially justify forbearance from federal requirements. The FCC's conclusion that the record did not support a finding that wireless service constrains the price of wireline service and concluded that neither market was competitive is instructive here, according to the OAG, on how to analyze whether the market in Minnesota is competitive, as CenturyLink claims.

The OAG stated that the information filed by CenturyLink is insufficiently granular, arguing that it generalizes about Minnesota as a whole by assuming that all types of communication services are in the same product market without using established economic principles to support the claim. The OAG highlighted the need to account for differences throughout wire centers, cities, and regions and stated that CenturyLink oversimplified marketplace conditions in Minnesota by relying on conclusory statements instead of producing relevant data.

The OAG argued that the record lacks pricing data that would allow an analysis of the cross-elasticity of demand between wireless and other voice services. Relevant pricing data is used to analyze whether the pricing of one product (wireless) constrains the price of another product (wireline) and to determine whether two products occupy the same product market. Without this data, there is no evidence showing to what extent various carriers compete and how residential consumers are affected by, for example, competitive carriers' efforts to primarily obtain business customers.

The OAG also argued that analyzing whether competition exists requires information, such as localized data based on zip codes, to identify the areas where service, such as CenturyLink's, is available in comparison to that of any competitors and that there is no such data in the record.

The OAG stated that the Commission's rules form the foundational standards of telephone service and that without these standards in place, companies have no incentive to maintain adequate levels of service quality. The OAG argued that repealing the rules would apply to all local service providers statewide, which could have adverse effects on some customers more than others, depending on their geographic locations.

The OAG opposed substantive rule changes and recommended that any rule changes be limited to modernizing outdated rule language in a technology-neutral manner.

F. The Department

The Department of Commerce (the Department) opposed repealing the Commission's service quality rules and recommended that the Commission find that there is insufficient evidence to demonstrate that adequate service quality would be maintained absent the rules.

The Department concurred with the OAG that the *Horizontal Merger Guidelines* and the FCC's *Phoenix Forbearance Order* are relevant to this proceeding. The Department stated that the FCC applied the *Guidelines* in evaluating whether a sufficient number of wireline customers, in response to increases in the price of local service, would discontinue landline service and rely exclusively on wireless service rendering the price increase in landline unprofitable. The Department stated that the FCC's use of relevant analytical tools for analyzing competition is directly applicable to the issues in this proceeding.

The Department stated that CenturyLink's filings focus mostly on the market for large business customers, while underemphasizing the need for service quality in the market for residential and small business customers. Deteriorating service quality could harm competition by driving residential and small business customers to higher-margin and higher-priced services. Additionally, the Department stated that CenturyLink has downplayed the needs of customers without any alternative, by describing those customers as residing in sparsely populated areas. This underestimates the need for, and the value customers place on, reliability.

The Department also stated that CenturyLink's line loss data does not account for lines that moved to other CenturyLink entities, such as CenturyLink Communications, LLC, a VoIP platform provider, rather than to competitors.

The Department argued that the recommendations for substantive changes are based on unsupported assumptions, such as the claim that customers generally have a choice between two wireless providers, or that VoIP service is available nearly everywhere. The Department concurred with the FCC's analysis in the *Phoenix Forbearance Order* that determining whether wireless services have a price constraining effect on landline is relevant in determining whether the two products are substitutes for each other and that this record lacks the data to conduct the necessary analysis.

The Department echoed comments of the OAG that CenturyLink has not made the threshold showing that its landline customers are willing and able to substitute wireless or VoIP service if circumstances warrant. The Department stated that CenturyLink has not demonstrated that effective competition, rendering the service quality rules unnecessary, exists.

Further, responding to service quality issues based on complaints without any benchmarks to use in analyzing those complaints could limit the Commission's authority to enforce service quality standards.

G. The Joint CLECs

Eschelon Telecom of Minnesota, Inc. d/b/a Integra; Integra Telecom of Minnesota, Inc. d/b/a Integra; twtelecom of Minnesota, llc; TDS Metrocom, LLC; and Velocity Telephone, Inc. (collectively, the Joint Competitive Local Exchange Carriers, or the Joint CLECs) stated that they do not propose any rule changes and are opposed to rule changes that have the potential to harm wholesale service quality.

The Joint CLECs stated that most wholesale products are purchased for resale under interconnection agreements with CenturyLink. Wholesale service quality is measured with a CenturyLink Performance Assurance Plan (CPAP) that uses specific benchmarks or

CenturyLink's retail service quality standards, depending on the product, to measure service quality performance. Specific rule standards provide baseline expectations, which are used to resolve disputes between carriers and are particularly important for competitive companies interconnecting with incumbent carriers that do not have a comprehensive wholesale service quality plan, such as the CPAP.

The Joint CLECs argued that rule changes affecting retail service quality would likely change the standards used to measure wholesale service quality. Eliminating specific benchmarks by repealing rules or relaxing standards could result in declining levels of wholesale service quality, which would harm the ability of competitive carriers to offer high quality service to end users. A loss of clear expectations not only could cause service quality to deteriorate but could result in limited recourse if CenturyLink, for example, has complied with relaxed standards.

H. The MCCA

The Minnesota Cable Communications Association (the MCCA) recommended against reducing or eliminating existing benchmarks without protecting wholesale service quality, and in fact, argued in favor of converting the parity standards contained in CenturyLink's CPAP to rule standards if the Commission considers substantive rule changes.¹³

The MCCA argued that the relevance of the FCC's *Phoenix Forbearance Order* is the emphasis it places on the need to carefully consider the dependence of wholesale markets on the dominant carrier and the potential damage to the proper functioning of retail markets caused by undermining the vibrancy of retail competition. Robust retail competition requires the preservation of properly functioning wholesale markets.

The MCCA disagreed with claims that the standards are not necessary in a competitive marketplace. The MCCA stated that because any reduction in service quality at the retail level is likely to affect wholesale service quality, damage to the competitive marketplace could be substantial and long-term. The MCCA argued that inadequate service quality protections have the potential to place a competitive carrier at a disadvantage with an incumbent carrier that is more focused on the prospect of gaining retail customers by providing higher-quality service to those customers.

While parity standards seek to ensure that wholesale service quality provided to a competitor is equal to the service provided by a local exchange carrier to itself, there is value in having fixed standards to protect competitive carriers.

For example, Minn. R. 7810.5400 governs local interoffice trunks and requires that "at least 95 percent of telephone calls offered to the group will not encounter an all-trunks-busy-condition." CenturyLink and Frontier recommended repealing this rule, but the MCCA stated that without a sufficient number of operating trunk lines, customers could experience more frequent "all-trunks-busy" conditions, or failed calls, and decide to switch carriers.

The MCCA recommended against rule changes, unless the Commission takes steps to ensure the protection of wholesale service quality.

¹³ The MCCA is a trade association of franchised cable television companies in Minnesota.

IV. Commission Action

The Commission concurs with the OAG and the Department that the record does not demonstrate that effective competition exists throughout Minnesota or that service quality would be maintained if the rule standards were repealed.

The Commission also concurs with the OAG and the Department that the FCC's decision in the *Phoenix Forbearance Order*, and the agency's application of the *Horizontal Merger Guidelines*, are relevant to the issues in this proceeding and instructive to the Commission in evaluating whether there is sufficient data to support claims that there is effective competition in Minnesota.

A. Relevant Data

CenturyLink's argument that all communications services – including wireless, voice, and data – occupy the same market is not based on sound economic theory. In fact, that argument runs counter to established economic principles that identify markets not based on general assumptions but on detailed information about geographic location of customers, groups of products, and pricing information. In this case, granular data is central to identifying relevant markets and evaluating customer options.

Companies supporting rule repeal mainly rely on generalized information and theories about what is available to customers. CenturyLink filed maps of Minnesota showing the presence of cable and wireless carriers, as well as broadband coverage and stated that it would be safe to assume, for example, that cable providers also offer voice service. But the maps do not show what services are actually offered.

There is also no data in the record showing whether certain markets offer local exchange service to business customers but not to residential customers; whether some markets require customers to bundle services as a condition of obtaining service; or whether the price of landline service in Minnesota is constrained by the availability or pricing of wireless service. And CenturyLink stated that it could not account for the number of business customers that have migrated to the company's VoIP platform provider, CenturyLink Communications, LLC.

Furthermore, the academic research cited by CenturyLink as evidence that the price of landline service is constrained by wireless also states that a majority of consumers have both services, calling into question the claim that the two are substitutes. And missing from the research cited is consideration of market conditions in Minnesota, pricing data for CenturyLink and other carriers, and how consumers in this state would be affected by the repeal of service quality standards.

The customer perspective is also relevant to understanding the importance of service quality, but the record does not include views of consumers on factors such as the cost of wireless compared to landline, the effect of terms of service for wireless, and the levels of reliability and availability in urban versus rural areas. The majority of households still subscribe to landline service.¹⁴ For those still relying on landline service for reliability, quality, and price, the repeal of service quality standards could be harmful.

¹⁴ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2015*.

And even if CenturyLink, Frontier, and the MTA demonstrate that certain areas of the state are competitive, these providers have not explained how the service quality rules constrain their competitiveness or how service quality would be maintained without the rules. In denying CenturyLink's petition for a variance to Minn. R. 7810.5800, which states that "the minimum objective should be to clear 95 percent of all out-of-service troubles within 24 hours of the time such troubles are reported," the Commission stated:

The Commission does not dispute that meeting the standard requires careful management and allocation of resources, but a lack of any quantification of associated costs undermines the company's claim that the standard imposes extraordinary costs and reduces the company's competitiveness.¹⁵

CenturyLink declined to provide cost data, arguing that a cost estimate based on assumptions about how repair resources are allocated to competing demands would be artificial. The Commission is not, however, persuaded by that argument. CenturyLink has not shown that rule compliance imposes high costs and harms the company's competitiveness.

B. Potential Harm to Competition

The Commission also concurs with the Joint CLECs and the MCCA that it advances competition to have clearly articulated rule standards, both for ease of monitoring and enforcement, and to prevent competitive carriers from losing customers as a result of poor service quality.

The Commission's rules establish certainty about the levels of service quality competitive carriers can rely on when selling their products and about the level of service quality customers can expect from their providers. Consistent and high levels of service quality protect the ability of competitive carriers to compete, and the Commission is not persuaded that market forces would more effectively encourage competition.

C. Rule Enforcement

CenturyLink, Frontier, and the MTA challenged the fairness of rule enforcement, arguing that competitive carriers are only subject to complaint-based enforcement. But rule compliance by an incumbent carrier, such as CenturyLink, is also directly tied to a service quality plan contained within the company's alternative regulation plan (also called an alternative form of regulation plan, or AFOR) proposed by the company and approved by the Commission.

The purpose of an AFOR is set forth in Minn. Stat. § 237.76, which states:

A telephone company may petition the commission for approval of an alternative regulation plan under sections 237.76 to 237.774. The purpose of an alternative regulation plan is to provide a telephone company's customers with service of a quality consistent with commission rules at affordable rates, to facilitate the development

¹⁵ *In the Matter of the Petition of CenturyLink, Inc., for a Variance to Minnesota Rules, part 7810.5800*, Docket No. P-421/AM-14-255, Order Denying Variance Request at 8 (August 11, 2014).

of telecommunication alternatives for customers, and to provide, where appropriate, a regulatory environment with greater flexibility than is available under traditional rate-of-return regulation as reflected in other provisions of this chapter.

On November 20, 2013, the Commission approved CenturyLink's request to extend its AFOR, including its service quality plan, for three years. CenturyLink's AFOR service quality plan states:

Substantial compliance with retail service quality standards is satisfied if Qwest meets 6 out of 7 of its individual service quality standards each year. . . . Failure to substantially comply with the service quality standards for two consecutive years will require Qwest to meet and confer with the Department and OAG to negotiate a voluntary resolution to the matters. If successful resolution of the matter cannot be negotiated, Qwest will present the Department and OAG with a plan to bring service quality into compliance including specific actions the Company will take to remedy the situation. If the plan is not acceptable to the Department or OAG, the Department or OAG may file a complaint with the Commission for the purpose of determining whether reasonable additional customer remedies or other actions are warranted.

The company's AFOR also addresses outages beyond the company's control, stating that no customer remedy will be required for missed restoration of service due to force majeure events beyond the company's control.¹⁶ Further, the AFOR protects the company against complaints by the Department or OAG for non-compliance if failure to meet a standard is the result of circumstances beyond the company's control.¹⁷

D. Policy Considerations

Minn. Stat. § 237.011 sets forth telecommunications goals the Commission is to consider when executing its regulatory duties with respect to telecommunications services. These goals include "maintaining or improving quality of service," a policy objective reinforced by subsequent legislative measures.

The Legislature strengthened the state's emphasis on service quality when it directed the Commission to establish, in the process of developing rules governing competitive entry into the local telecommunications market, standards for service quality.¹⁸ As a result, the reach of the Commission's authority over service quality extends to all local service providers, not only some.

¹⁶ *In the Matter of the Petition of Qwest Corporation for Approval of its Second Revised Alternative Form of Retail Regulation Plan*, Docket No. P-421/AR-09-790, Second Revised AFOR, Retail Service Quality Plan, Appendix B, at 5.

¹⁷ *Id.* at 2.

¹⁸ Minn. Stat. § 237.16, subd. 8.

The Legislature then underscored the state's commitment to service quality by requiring each AFOR plan to include an existing service quality plan approved by the Commission.¹⁹

Companies favoring rule repeal argued that there is no longer a need for service quality standards because companies will be held to high standards of service quality by the market. But none of the entities supporting sweeping rule changes specifically identified how the marketplace would better protect customers, and they did not file any cost data to support claims that the rules are burdensome. Further, none of these companies has committed to maintaining service quality levels as set forth in the Commission's rules.

Without the existing standards in place, it would be reasonable to expect changes in service quality that might affect some customers more than others, depending on customer demographics, geographic location, and the degree to which consumers have choices within specific markets.

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

In addition, having rules in place aims to ensure minimum uniformity for those governed by the rules.²⁰ In this case, the Commission's existing rules protect against situations in which service quality standards are unjustifiably higher or lower for some customers than for others. And without any quantification of the costs of rule compliance and no evidence that the market will adequately and uniformly protect customers, rules are a reasonable method of achieving statutory objectives.

Finally, some comments supported revising the rules to clarify outdated language. But housekeeping changes are not ordinarily the driving force for amending rules. Rulemaking proceedings are costly, and agencies prioritize their projects based on numerous factors, including the need for substantive changes, as well as the effect of legislative changes on existing rules. Without the need for substantive rule changes, the Commission is not persuaded that this rulemaking proceeding should continue at this time.

For all these reasons, the Commission will close this rulemaking docket.

V. Stakeholder Workgroup

The Commission will also, however, ask the Department to convene a stakeholder workgroup to engage in further discussion of possible changes to the Commission's rules. Continuing stakeholder interest in updating the existing rules persuades the Commission to encourage interested parties to more fully explore the possibility of achieving consensus on rule changes, considering the potential effects on consumers.

¹⁹ Minn. Stat. § 237.765.

²⁰ Minn. R. Ch. 14.

The Commission will ask the Department and all participants in that process to attempt to reach consensus, to the extent possible, on changes to the Commission's rules, consistent with the current marketplace, state of the industry, and the interests of consumers. The Commission will ask the Department to seek participation in the process from the Office of the Attorney General and to reach out to other groups representing consumers, including low income consumers, to request their participation.

The Commission will ask that the Department report back to the Commission within a year on the progress made and any decisions or consensus reached.

ORDER

1. The Commission hereby closes this rulemaking docket.
2. The Commission requests that the Department convene a stakeholder workgroup to engage in further discussion of possible rule changes.
3. The Commission requests that the Department and all participants in the process attempt to reach consensus, to the extent possible, on changes to the Commission's rules consistent with the current marketplace, state of the industry, and the interests of consumers.
4. The Commission requests that the Department seek participation in the process from the Office of the Attorney General and reach out to other groups representing consumers, including low income consumers, to request their participation.
5. The Commission requests that the Department report back to the Commission within a year on the progress made and any decisions or consensus reached.
6. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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