

June 28, 2021

Will Seuffert Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East Suite 350
St. Paul, MN 55101-2147

RE: Comments of the Minnesota Department of Commerce
Docket No. P421/M-21-381

Dear Mr. Seuffert:

Attached are the comments of the Minnesota Department of Commerce (Department) in response to the Minnesota Public Utilities Commission's (Commission's) June 11, 2021 Notice for Comment in the following matter: A Petition for Rulemaking Regarding Minnesota Rules Chapter 7810.

Sincerely,

/s/ DIANE DIETZ
Rate Analyst

/s/ JOY GULLIKSON
Rate Analyst

/s/ LISA GONZALEZ
Telecom Analyst

DD/JG/LG/ar
Attachment



Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce

Docket No. 421/R-21-381

I. BACKGROUND

On June 7, 2021, Qwest Corporation dba CenturyLink QC (CenturyLink) filed a petition requesting that the Commission eliminate or modify certain landline telephone service rules under Minnesota Rules chapter 7810 (Petition). Specifically, CenturyLink requested that the Minnesota Public Utilities Commission (Commission) eliminate, amend, or modify Minn. R. 7810.5200 (Answering Time) and Minn. R. 7810.5800 (Interruptions of Service).

On June 11, 2021, the Commission issued a Notice for Comment in the current docket requesting parties to comment on the following issues:

1. Is a rulemaking necessary to address CenturyLink's concerns? Describe alternatives that can possibly address the Company's concerns without the need for rulemaking.
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?
3. What should be the scope of any rulemaking proceeding related to Minn. Rules Ch. 7810?
4. What procedures should the Commission establish for any rulemaking proceeding?
5. What additional information and analysis should the Commission seek if it considers proceeding with a rulemaking?
6. Should the Commission approve or deny CenturyLink's petition for rulemaking?
7. Are there other issues or concerns related to this matter?

The Department of Commerce files these comments in response to the Commission's June 11, 2021 Notice for Comment.

II. DEPARTMENT COMMENTS

If the Commission chooses to undertake rulemaking, as is sought by CenturyLink, it should be for the purpose of creating appropriate expectations of telephone companies and providing reasonable service standards. The Department recognizes that over recent years, there have been changes in the marketplace and in the technology delivering telecommunications. Yet, a significant number of Minnesota residents and businesses continue to rely on their landline telephone service to fulfill their basic communications needs.¹ Smaller cities in Greater Minnesota often have no choice but to use traditional telephone service to provide basic services like fire alarms or to provide deaf and hard of hearing services.² Where you live and if you continue to use a land line telephone out of choice or necessity should not result in poor service and less access to consumer protections.

¹ [Voice Telephone Services Report | Federal Communications Commission \(fcc.gov\)](#). FCC data as of June, 2019 indicates that there were 934,000 switched access lines in Minnesota. 704,000 of those switched access lines were served by incumbent telephone companies.

² See Guerry, Matthew. "Landlines cling to life in MN. Cell signals not everywhere yet." TwinCities.com, Dec. 23, 2019,

Rulemaking should not be conducted with the sole objective of reducing standards. However, if the Commission's intent is to improve the rules, including modifications and/or additional requirements to improve performance that will serve the public interest, rulemaking is an appropriate path.

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

In order to address CenturyLink's concern that it should be relieved of its obligations under Minn. R. 7810.5200 and Minn. R. 7810.5800, it is the Department's view that rulemaking is necessary. Barring rulemaking, the only alternative is for the Commission to grant CenturyLink variances to the two rules, however, CenturyLink has not requested a variance, nor is this alternative viable.

Minn. R. 7829.3200 provides the circumstances under which the Commission shall grant a variance. One requirement is that the variance would not adversely affect the public interest.³ The Department doubts that weakening consumer protections "would not adversely affect the public interest."⁴ Also, the Commission would likely be asked to grant every other telephone company a similar variance. Yet, granting waivers to all comers would be to adopt a generally applicable policy inconsistent with Commission regulations and could invite an unpromulgated rulemaking challenge.⁵ Accordingly, the Department has no recommended alternative that would relieve CenturyLink from the requirements in the rules.

The Department notes that CenturyLink's petition seeks revisions to Minn. R. 7810.5200 and Minn. R. 7810.5800. These rules pertain to prompt service restoration and reasonable answering times for customer calls to the Company's service representatives. CenturyLink's compliance with Minn. R. 7810.5200 and Minn. R. 7810.5800 is currently under investigation in Docket 20-432, which commenced when the Communication Workers of America (CWA) filed a complaint alleging that CenturyLink has failed to meet these and other rules.

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?

A rulemaking petition must include the petitioner's name and address, the requested action, and an explanation for the request.⁶ Minnesota Rules chapter 1400.2500 also provides an optional template for rulemaking petitions. Here, CenturyLink's petition provides its name and address.⁷ In terms of requested action, CenturyLink's petition seeks to "either eliminate or modify Minn. R. 7810.5800 and Minn. R. 7810.5200 and make any other modifications [the Commission] deems

updated Dec. 24, 2019, <https://www.twincities.com/2019/12/23/landline-phones-cling-to-life-in-minnesota/> accessed June 27, 2021, discussing copper landlines in use of 911 and businesses in rural areas with no mobile phone service.

³ Minn. R. 7829.3200.

⁴ *Id.*, subp. 1(b).

⁵ See generally *Cable Commc'ns Bd. v. Nor-W. Cable Commc'ns P'ship*, 356 N.W.2d 658, 667-68 (Minn. 1984) ("Where an agency adopts policy inconsistent with its regulations, without following MAPA procedures, the court invalidates the agency action.")

⁶ Minn. R. 1400.2040, subp. 1 (2019).

⁷ Petition at 1.

appropriate.”⁸ While CenturyLink suggests that modifications may be appropriate, it has not provided the text of new or revised rules, provided a redlined copy of the existing rules, or provided a detailed description of proposed changes.

With respect to need for the requested action, CenturyLink makes several claims to support its rulemaking petition. While the Department does not agree with CenturyLink’s claims, the company appears to have satisfied the Minn. R. 1400.2040, subp. 1(C), requirement.

3. What should be the scope of any rulemaking proceeding related to Minn. Rules Ch. 7810?

If the Commission grants CenturyLink’s current petition for rulemaking, the proceeding should provide interested parties with the opportunity to offer and comment on proposed amendments to “modernize” all subparts of Minnesota Rules chapter 7810, not just the two subparts described in CenturyLink’s petition. For example, advocates for the elderly may seek rules or rule changes to better ensure consumers’ ability to make emergency calls. Such a proceeding should provide all parties the opportunity to recommend proposals to add new sections and amend other sections, to establish rules that serve the public interest.⁹

If the Commission grants CenturyLink’s current petition for rulemaking, all telecommunications providers subject to the Commission’s jurisdiction are impacted and their participation in the proceeding should be encouraged.

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

The Commission must “make a specific and detailed reply in writing as to its planned disposition of the request and the reasons for its planned disposition of the request” within 60 days.¹⁰ If the Commission’s planned disposition is to pursue rulemaking, the Commission must observe the procedures provided by the Minnesota Administrative Procedure Act and Minnesota Rules chapter 1400.¹¹ Beyond these requirements, the Department recommends that the Commission devote particular attention to encouraging broad participation by telephone service customers, as it did in the Frontier matter, particularly by those located in areas with few or no alternatives to their current telephone provider.¹² Nearly a million access line would be affected, including residents, businesses, and local units of government, if a rulemaking commences. These consumers would all be impacted by any changes in telephone service rules, and therefore it is appropriate that the Commission establish avenues for Minnesotans to participate.

⁸ *Id.* at 22.

⁹ Public Interest, Black’s Law Dictionary (11th ed. 2019) (“1. The general welfare of a populace considered as warranting recognition and protection. 2. Something in which the public as a whole has a stake; esp., an interest that justifies governmental regulation.”).

¹⁰ Minn. Stat. § 14.09 (2020).

¹¹ See Minn. Stat. §§ 14.05–.28; Minn. R. 1400.2000 –.2240. Also The Commission also may wish to review the Minnesota Rulemaking Manual maintained by the Department of Health, www.health.state.mn.us/data/rules/manual/docs/manual2020.pdf

¹² *In the Matter of a Commission Inquiry into the Service Quality, Customer Service, and Billing Practices of Frontier Communications*, Docket No. P405,407/CI-18-122.

If the Commission believes a rulemaking may be appropriate, but CenturyLink's petition is not sufficiently definite or additional information is needed to initiate a rulemaking, the Commission can deny the petition and initiate an investigation into the chapter 7810 rules. Following the investigation, the Commission could initiate a new rulemaking informed by this investigation.¹³ If the Commission chooses to investigate the chapter 7810 rules, the Department recommends that the Commission, or the Office of Administrative Hearings on its behalf, hold public meetings across the state.¹⁴ In particular, these meetings should be held in communities with limited telephone service choices, with local units of government and businesses who rely on landline service, and in areas with populations that are more reliant on telephone service.

5. What additional information and analysis should the Commission seek if it considers proceeding with a rulemaking?

If the Commission proceeds with the proposed rulemaking, the Commission would likely benefit from the following information:

- Consumer complaints received by any of the State agencies and the Consumer Affairs Office of the Public Utilities Commission.
- Information shared by consumers at public hearings and through the Commission's SpeakUp venue.
- Information about competitive alternatives to landline service in all parts of the state.

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

The Commission should not approve CenturyLink's petition for rulemaking until the matters raised in Docket No. P421/C-20-432 are resolved. It would be premature to engage in a rulemaking proceeding while the related allegations raised by the CWA are before the Commission. Attempting to change its rules, at the same time that the Commission is investigating alleged violations of those same rules, could result in needless confusion and delay.

If the Commission does proceed with rulemaking, the Commission should make clear that its intent is to modify and improve the rules, which could include modification and/or additional requirements to improve performance, that will serve the public interest. The Commission should seek to avoid what transpired in the 2014 rulemaking proceeding (Docket No. P999/R-14-413) where the telecommunications industry refused to discuss anything other than reducing or eliminating consumer protections.

¹³ Minn. Stat. § 14.101, subd. 1.

¹⁴ Minn. Stat. § 237.081, subd. 1.

7. Are there other issues or concerns related to this matter?

After CenturyLink's current petition was filed, local newspaper articles prompted some consumers to contact the Department and Commission to express their concerns about the impact of a potential reduction in service quality rules and regulatory oversight on CenturyLink's landline service.¹⁵ These consumers shared their experiences with CenturyLink's service, relevant to the landline telephone service rules under Minnesota Rules chapter 7810 including interruptions of service and answering time. As noted earlier, if the Commission chooses to consider rulemaking, it also may wish to hold public hearings in urban, suburban, and rural areas, as it chose to do in the Frontier proceeding, to gather evidence on what may be appropriate modifications or additions to the rules.

/ar

¹⁵ As of June 25, 2021, 2 members of the public and the Stillwater Township Board have filed comments. Additionally, 2 customers sent emails about this matter in response to the survey questions sent as part of P421/C-20-432.

CERTIFICATE OF SERVICE

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

**Minnesota Department of Commerce
Comments**

Docket No. P421/M-21-381

Dated this 28th day of June 2021

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_21-381_M-21-381
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-381_M-21-381
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_21-381_M-21-381
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th PI E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-381_M-21-381
Eric	Swanson	eswanson@winthrop.com	Winthrop & Weinstine	225 S 6th St Ste 3500 Capella Tower Minneapolis, MN 554024629	Electronic Service	No	OFF_SL_21-381_M-21-381
Jason	Topp	jason.topp@lumen.com	CenturyLink Communications, LLC	200 S 5th St Ste 2200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-381_M-21-381