

# Mendoza Law Office, LLC

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## **ELECTRONICALLY FILED**

June 12, 2014

Dr. Burl Haar  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
Saint Paul, MN 55101

Re: In re Petition of CenturyLink, Inc. for Waiver of Minnesota Rule Part 7810.5800

Dear Dr. Haar:

Enclosed for filing are the comments of the Minnesota Cable Communications Association (MCCA) in response to the Commission's Notice of Supplemental Comment Period.

Please contact me if you have any questions about this filing.

Very truly yours,

MENDOZA LAW OFFICE, LLC



Anthony S. Mendoza

Enc.

cc: Service List

**STATE OF MINNESOTA  
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

Beverly Jones Heydinger	Chair
Dr. David C. Boyd	Commissioner
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Betsy Wergin	Commissioner

In re Petition of CenturyLink, Inc. for Waiver of Minnesota Rule Part 7810.5800      MPUC Docket No.: P-421/AM-14-255

**COMMENTS OF MINNESOTA CABLE COMMUNICATIONS ASSOCIATION**

Comes now the Minnesota Cable Communications Association (the “MCCA”) and, pursuant to the Minnesota Public Utilities Commission’s (the “Commission’s”) Notice of Supplemental Comment Period – Petition of CenturyLink for Waiver of Minnesota Rule Part 7810.5800, submits these Comments in the above-captioned proceeding. The MCCA represents Minnesota’s cable communications companies who provide video, voice and high-speed data services to approximately 900,000 Minnesota residents pursuant to franchises issued in over 600 communities throughout Minnesota. For over thirty (30) years, the MCCA has played a leading role in advocating the rights of its members, including, since the opening of Minnesota’s local exchange market to competition, representing the interests of members’ telephone operating subsidiaries before the Commission on public policy matters affecting telecommunications in Minnesota.

**I. BACKGROUND.**

In its petition, CenturyLink sought a waiver of Minnesota Rule Part 7810.5800. CenturyLink’s waiver petition was opposed in comments filed by the Joint CLECs, the

Department of Commerce, and AARP/Legal Services Advocacy Project.<sup>1</sup> All of these parties argue that CenturyLink had not adequately demonstrated that its waiver request met the standards set forth in Minn. R. 7829.3200.<sup>2</sup> Rule 7829.3200 provides that the Commission may grant a waiver to a rule when the following three requirements are met:

1. Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
2. Granting the variance would not adversely affect the public interest; and
3. Granting the variance would not conflict with standards imposed by law.

Simultaneous with its petition for a waiver of Minn. R. 7810.5800, CenturyLink filed a petition for a rulemaking to revise the Commission's retail service quality rules. On May 22, 2014, the Commission issued its Order Detailing Disposition of Petition and Initiating Rulemaking Proceeding (herein the "Rulemaking Order").<sup>3</sup> In its Rulemaking Order, the Commission found that the extent to which technological advancements and the evolution of the competitive marketplace

require different rules to more accurately and effectively meet the current demands and needs of consumers is not known. Nor is it clear, based on the information in front of the Commission today, that the existing standards are irrelevant or discourage fair and reasonable competition. It is essential that substantive evidence be provided to demonstrate the need for rule changes that would more effectively implement the state's policy goals.<sup>4</sup>

The Commission then ordered that a Request for Comments be issued in the new rulemaking proceeding that would solicit substantive evidence supporting proposed changes to

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<sup>1</sup> Joint CLEC Comments filed April 30, 2014 at p. 2 ("Joint CLEC Comments"); Department of Commerce Comments filed April 30, 2014 p. 7 ("DOC Comments"); AARP/Legal Services Advocacy Project Reply Comments p.3 ("AARP/LSAP Comments").

<sup>2</sup> Joint CLEC Comments at p. 10; DOC Comments at pp. 6-9; AARP/LSAP Comments at p. 2.

<sup>3</sup> *In re Century Link, Inc. Petition for Rulemaking to Revise Service Quality Rules*, Order Detailing Disposition of Petition and Initiating Rulemaking Proceeding, Docket No. P-421-AM-14-256 p. 6 (May 22, 2014).

<sup>4</sup> *Id.* pp.5-6.

the rule as well as evidence of competition, how rule changes would impact retail and wholesale service quality, and any other relevant evidence in support of or in opposition to a rule change.<sup>5</sup>

On May 21<sup>st</sup>, 2014 (after the date of the Commission’s hearing on the petition for rulemaking), CenturyLink filed reply comments in the instant docket, seeking a variance of Rule 7810.5800 instead of a waiver of the rule.<sup>6</sup> Along with its reply comments, CenturyLink filed an Affidavit of Patrick Haggerty, Vice President of Government Affairs for CenturyLink.

## **II. CENTURY LINK’S PETITION FOR A WAIVER OR VARIANCE SHOULD BE DENIED AND TAKEN UP AS PART OF THE RULEMAKING PROCEEDING.**

Given the Commission’s strong desire for substantive evidence about competition in the telecommunications industry, how proposed rule changes would impact retail and wholesale service quality, and other relevant factors, MCCA believes CenturyLink’s waiver or variance petition should be addressed as part of the comprehensive rulemaking docket just ordered by the Commission. While certainly relevant to the factors identified in the Rulemaking Order, MCCA does not believe an affidavit from CenturyLink’s Vice President of Government Affairs, which for the most part repeats factual assertions made in CenturyLink’s initial petition and reply comments, was the kind of comprehensive and substantive record the Commission is seeking as a basis for rule changes.

CenturyLink’s reply comments assert that enforcement of the rule places a “severe burden” on the company.<sup>7</sup> However, CenturyLink attempts to support this claim by speaking on behalf of consumers. CenturyLink claims the 95% metric: (a) provides little or no meaningful protection to customers;<sup>8</sup> and (b) undermines rather than supports retail service quality.<sup>9</sup> While

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<sup>5</sup> *Id.* p. 6.

<sup>6</sup> Century Link Reply Comments at p. 2 filed May 21, 2014 (“CenturyLink Reply”)

<sup>7</sup> *Id.* at p. 2.

<sup>8</sup> *Id.* at p. 3.

<sup>9</sup> *Id.* at pp. 3-8.

these claims may turn out to be valid, these are precisely the kinds of questions that can be addressed in the rulemaking docket where all interested parties will have an opportunity to comment and provide substantive evidence in support of their claims. It is worth noting that CenturyLink's concerns for customers are not apparently shared by the Department of Commerce or the AARP/Legal Services Advocacy Project.<sup>10</sup>

The only burden on CenturyLink asserted by CenturyLink in its reply comments is the claim that because the total number of out-of-service conditions has gone down, the number of misses CenturyLink can experience and still comply with the rule has also decreased.<sup>11</sup> But CenturyLink fails to explain how having approximately 9,000 fewer out-of-service experiences to attend to in 2014, as compared to 2007 data, increases the burden of compliance with the rule on CenturyLink. Hence, CenturyLink's petition on this point lacks the kind of substantive evidence contemplated in the Rulemaking Order.

### **III. WHOLESALE SERVICE QUALITY MUST BE PROTECTED.**

CenturyLink's initial comments and reply comments also make several unsubstantiated factual assertions about competition and regulatory parity, and make an unfair accusation about the MCCA.<sup>12</sup> CenturyLink essentially accuses the MCCA of not really caring at all about wholesale service quality, and deliberately slowing down CenturyLink's request for relief from the 95% out-of-service rule.<sup>13</sup>

CenturyLink apparently does not know that many MCCA members are indeed wholesale customers of CenturyLink. MCCA would not be participating in these dockets if it did not have significant and important concerns about the impact that CenturyLink's rule change proposals

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<sup>10</sup> See AARP/LSAP Comments; DOC Comments p. 9.

<sup>11</sup> CenturyLink Reply at p. 4-5.

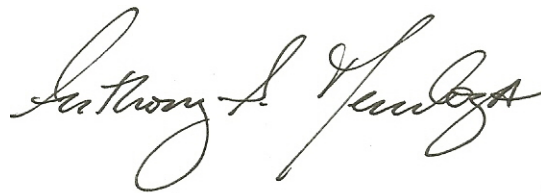
<sup>12</sup> Century Link Initial Comments, p. 2 (herein "Century Link Initial Comments").

<sup>13</sup> *Id.*

will have on wholesale service quality. In fact, all CenturyLink would have to do to allay the concerns of MCCA members is agree that any change to Rule 7810.5800 will apply only to retail service quality, and that any changes to wholesale service quality plans be made in accordance with the CPAP incorporated into CLEC interconnection agreements. CenturyLink's reply comments downplay the significance that the proposed waiver or variance would have on wholesale service quality ("eliminating or modifying the 95% standard will have little or no impact on wholesale performance measurements").<sup>14</sup> If CenturyLink truly believes this, then it should have no problem immediately agreeing to limit the impact of the proposed rule variance to retail service quality and agree that any changes to wholesale service quality plans be made in accordance with the CPAP incorporated into CLEC interconnection agreements. But apparently the excessive burden CenturyLink claims it carries because of Rule 7810.5800 isn't heavy enough to compel CenturyLink to agree to address concerns about wholesale service quality – concerns CenturyLink blithely asserts are non-issues.

Dated: June 12, 2014

MINNESOTA CABLE COMMUNICATIONS  
ASSOCIATION



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<sup>14</sup> CenturyLink Reply Comments, p. 7.

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