

**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street
Saint Paul, Minnesota 55101**

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East, Suite 350
Saint Paul, Minnesota 55101-2147**

**In The Matter Of Formal Complaint Regarding The Services Provided By The
Qwest Corporation D/B/A CenturyLink In Minnesota, On Behalf Of The
Communications Workers Of America**

OAH Docket No. 21-2500-38965

MPUC Docket No. P-421/C-20-432

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
RECOMMENDATION OF
QWEST CORPORATION D/B/A CENTURYLINK QC IN MINNESOTA**

February 7, 2024

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APPEARANCES

Jason Topp and Katie Wagner, Lumen Technologies, and Eric Swanson, Elizabeth Schmiesing, and Christopher Cerny, Winthrop & Weinstine, P.A., appeared on behalf of Qwest Corporation d/b/a CenturyLink QC in Minnesota (CenturyLink or Company).

Richard Dornfeld and Greg Mertz, Assistant Attorneys General, appeared on behalf of the Department of Commerce (Department).

Joseph Meyer, Erin Conti, and Travis Murray, Assistant Attorneys General, appeared on behalf of the Office of the Attorney General, Residential Utilities Division (OAG).

Sally Ann McShane and Marc Fournier appeared on behalf of the staff of the Minnesota Public Utilities Commission (Commission or Commission Staff).

Stanley Gosch, Rosenblatt & Gosch, PLLC, appeared on behalf of the Communication Workers of America (CWA).

STATEMENT OF ISSUES

Pursuant to the Joint Stipulation as to Issues in Dispute (Joint Stipulation), only the following issues remain disputed between the Parties:

1. Has CenturyLink violated the following Minnesota Rules: 7810.3300 (Maintenance of Plant and Equipment), 7810.5000 (Utility Obligations), or 7810.5800 (Interruptions of Service); and
2. If so, what is the appropriate remedy.¹

¹ Joint Stipulation as to Issues in Dispute at 2 dated January 3, 2024 (Joint Stipulation) and entered in eDockets January 4, 2024 (eDocket No. 20241-201849-01). The ALJ notes that CWA joined the Joint Stipulation but otherwise did not participate in the contested case process.

SUMMARY OF FACTS AND RECOMMENDATION

This docket began nearly four years ago, after CenturyLink initiated a three-month process, under its labor agreement, to reduce its technician headcount in Minnesota. In response, the CWA filed a letter with the Commission raising general concerns about alleged service quality issues and asking the Commission to seek an injunction preventing the Company from implementing those intended layoffs.

In the intervening years, the allegations of rule violations, and the remedies sought, have changed. And while CWA has not actively participated in this docket in the past few years, the two state agencies who have, the Department and OAG, have substantially narrowed their allegations against the Company.

The ALJ concludes that the Department and the OAG have failed to demonstrate that CenturyLink has violated Minnesota Rules 7810.3300, 7810.5000, and 7810.5800, and therefore no remedy is necessary. Moreover, the remedies proposed by the Department and OAG are not supported by the record, as there has been no analysis of their cost or benefits.

Based on the testimony and other evidence in the record, the ALJ makes the following:

FINDINGS OF FACT

I. INTRODUCTION

1. This docket began in April of 2020, after CenturyLink notified CWA that the Company intended to reduce its technician headcount in Minnesota, as required by the Company's and CWA's collective bargaining agreement (CBA).

2. During the three-month notification window provided by the CBA, CWA filed a letter with the Commission, stating that it "intend[s] this letter to serve as a formal complaint."² That letter raised general service quality issues, discussed the Company's potential headcount reduction and asked the Commission to seek an injunction preventing the Company from implementing those intended layoffs.³

² Letter from CWA dated April 22, 2020 (CWA Initial Letter) and entered in eDockets April 23, 2020 (eDocket No. 20204-162321-01). The Company noted, and the ALJ agrees, that despite the caption of this proceeding, no formal complaint meeting the requirements of the Commission's rules (Minn. R. 7829.1700 and Minn. R. 7812.2210, subp. 17A) has ever been filed in this docket.

³ CWA Initial Letter at 2.

3. CWA filed to withdraw its letter shortly thereafter, after CenturyLink indicated it would not be cutting all of the technician positions originally announced.⁴ In fact, while originally notifying CWA of its intent to reduce over 150 technicians in Minnesota, after working with CWA through the process set forth in the CBA, the Company laid off just five employees in May 2020.⁵ However, when the Company began a new three-month process later in 2020 to reduce its headcount in advance of the annual reduction in Minnesota work volumes it experiences in winter months, CWA filed another letter, again raising service quality issues and this docket has been open since that time.⁶

4. Over the ensuing two and a half years, the Company, the Department, and OAG filed multiple rounds of comments and engaged in settlement discussions, and the Company responded to significant discovery.⁷ Ultimately, the Commission determined that those efforts “left significant factual issues unresolved,” and that “while parties have labored long to find resolution to the matters raised in this docket, after almost three years it appears that they have reached an impasse.”⁸ Therefore, on January 30, 2023, the Commission referred this matter to the OAH for contested case proceedings to “develop a factual record, especially regarding the matters set forth in the Department’s and OAG’s August 30, 2021 joint recommendations” and designating the Company, Department, OAG and CWA (collectively, Parties) as parties to this proceeding.⁹ In the “joint recommendations,” the Department and OAG alleged non-compliance with nine different Minnesota Rules and recommended specific Commission actions to remedy those alleged infractions.¹⁰

5. Following several additional months of discovery, the Company, Department and OAG filed Direct, Rebuttal and Surrebuttal Testimony on September 1, November 1 and December 1, respectively, and on December 13, 2023, the Administrative Law Judge (ALJ) conducted the evidentiary hearing. This additional year of effort and the accompanying development of the record since the Notice and Order for Hearing substantially narrowed the issues in dispute, culminating in the Parties’ Joint Stipulation,

⁴ CWA Withdrawal Letter (May 1, 2020) (eDocket No. 20204-162752-01).

⁵ CenturyLink Letter (June 5, 2020) (eDocket No. 20206-163-766-01).

⁶ Letter from CWA dated August 18, 2020 (“CWA Second Letter”) (eDocket No. 20208-165981-01).

⁷ CWA also filed one set of comments on August 30, 2021 (eDocket No. 20218-177563-01), its only comments at any stage of this proceeding since the CWA Second Letter.

⁸ Notice of and Order for Public Hearing and Contested Case Hearing (“Notice of and Order for Hearing”) at 2-3 (Jan. 30, 2023) (eDocket No. 20231-192697-01).

⁹ Notice and Order for Hearing at 3, 5.

¹⁰ Joint Comments of the Department and OAG at 2-3 and Attachment A (Aug. 30, 2021) (eDocket No. 20218-17752-01).

filed January 4, 2024.¹¹ The Joint Stipulation removed six of the nine alleged rule violations from the scope of this proceeding.

II. PROCEDURAL HISTORY

6. On April 23, 2020, the CWA filed allegations CenturyLink had failed to meet service quality standards set forth in Commission rules.

7. On May 1, 2020, following negotiations with CenturyLink, CWA petitioned to withdraw its complaint.

8. On May 18, 2020, the Commission sent letters to both CenturyLink and CWA acknowledging that CWA had fulfilled the requirements for withdrawing its complaint—but directing the parties to document the service quality issues that prompted CWA’s complaint and how those issues have been resolved.

9. On August 16, 2022, CWA, the Department, and OAG recommended referring the matter to the Minnesota Office of Administrative Hearings (OAH) to assign an ALJ to convene a series of public hearings regarding CenturyLink's service quality.

10. On August 18, 2020, CWA petitioned the Commission to pursue an expedited investigation of CenturyLink's service quality.

11. By October 23, 2020, the Commission had received comments from CenturyLink, the Department, and OAG. CenturyLink filed additional comments on November 5.

12. On August 25, 2022, CenturyLink responded to the August 16, 2022 recommendation, demanding that any procedure comply with Commission rules and due process.

13. Since that time, the Commission has received comments from at least 24 customers directly, as well as comments made to the Commission’s Consumer Affairs Office.

14. By August 30, 2021, the Commission had received additional comments, revisions, and/or replies from all parties. In particular, on August 30, the Department and OAG filed joint Reply Comments including an Attachment A setting forth recommendations regarding alleged service quality lapses, and making the following procedural recommendation:

If the Commission determines that there is sufficient cause to find that CenturyLink has violated any rule, the Commission should establish a

¹¹ eDocket No. 20241-201849-01.

proceeding to determine the number of violations and the number of days of violation for referral of the matter to the office of the Attorney General to pursue civil penalties in district court [under Minn. Stat. §237.461]. If the Commission determines that significant factual issues remain, the Commission may refer the matter to the Office of Administrative Hearings to create a record upon which the Commission may make its determination.

15. Thereafter the parties pursued settlement negotiations and filed periodic reports on the status of those negotiations.

16. On January 5, 2023, the Commission met to consider the matter.

17. On January 30, 2023, the Commission referred this matter to the OAH for contested case proceedings to “develop a factual record, especially regarding the matters set forth in the Department’s and OAG’s August 30, 2021 joint recommendations” and designating the Company, Department, OAG and CWA as parties to this proceeding.¹² In the “joint recommendations,” the Department and OAG alleged non-compliance with nine different Minnesota Rules and recommended specific Commission actions to remedy those alleged infractions.¹³

18. On March 6, 2023, ALJ Kimberly Middendorf issued the First Prehearing Order and established the following schedule of proceedings:¹⁴

Milestone	Timing
Public Hearing — Thief River Falls	May 16, 2023 at 6:00 p.m.
Public Hearing — Hibbing	May 17, 2023 at 1:00 p.m.
Public Hearing — WebEx	May 19, 2023 at 10:00 a.m.
Public Hearing - WebEx	May 22, 2023 at 6:00 p.m.
Public Hearing — Marshall	May 24, 2023 at 6:00 p.m.
Public Hearing - Owatonna	May 25, 2023 at 1:00 p.m.

¹² Notice and Order for Hearing at 3, 5.

¹³ Joint Comments of the Department and OAG at 2-3 and Attachment A (Aug. 30, 2021) (eDocket No. 20218-17752-01).

¹⁴ *In the Matter of a Formal Complaint Regarding the Services Provided by the Qwest Corporation d/b/a CenturyLink in Minnesota, on Behalf of the Communications Workers of America*, MPUC Docket No. P-421/C-20-432, Amended First Prehearing Order at 2-3 (Mar. 6, 2023).

Milestone	Timing
Intervention	May 31, 2023 by 4:30 p.m.
All Parties' Pre-filed Direct Testimony	September 1, 2023
All Parties' Rebuttal Testimony	November 1, 2023
All Parties' Surrebuttal Testimony	December 1, 2023
Deadline for Completion of Discovery	December 6, 2023
Deadline for Objections to Admissibility of Pre-filed Testimony	December 6, 2023
Deadline for Filing Witness Lists, Exhibit Lists, and Exhibits	December 6, 2023
Deadline for Submission of Joint Statement of Stipulated Facts and Exhibits	December 6, 2023
Second Prehearing Conference	December 8, 2023 at 10:00 a.m.
Evidentiary Hearing: Public Utilities Commission 121 7 th Place East, Suite 350, St. Paul, MN	December 12-14, 2023
All Parties' Initial Briefs	January 17, 2024
All Parties' Reply Briefs and Proposed Findings of Fact and Conclusions of Law	February 7, 2024
Report of the Administrative Law Judge	March 25, 2024

III. RELEVANT LAW

19. While the issues in this proceeding have narrowed to three alleged Minnesota Rule violations, resolution of these issues must also consider the broader framework of applicable federal and state law as set forth in statutes, rules and controlling case law. This broader framework informs both matters of general importance, such as the public policy and public interest considerations implicated in this proceeding, and specific matters of importance, such as the burden of proof and the extent of the Commission's jurisdiction.

20. Under federal and state law, the Commission has limited jurisdiction over voice telephone service. Specifically, the Commission does not have jurisdiction over voice service provided by fixed and mobile wireless providers. Moreover, the Commission does not have jurisdiction over internet or data services, including voice service provided by Voice over Internet Protocol (“VoIP”).¹⁵ Thus, this proceeding concerns only the non-VoIP voice telephone service, referred to as plain old telephone service (“POTS”), provided by the Company to its Minnesota customers.

21. Moreover, because Minnesota does not regulate service quality for voice telephony provided by fixed or mobile wireless companies, VoIP providers, including cable companies, or satellite service companies, competition – not regulation, is the standard by which these providers operate.¹⁶ If a customer is not satisfied with the voice service provided by any voice provider, that customer generally has many other providers that she or he can choose from to receive service.¹⁷ In this way, the Company faces robust competition from these other voice providers across the exchanges it serves. That competition itself already incentivizes CenturyLink to provide quality voice service to its customers.

22. The Commission “may not impose . . . remedies absent express or implied statutory authority.”¹⁸ The Minnesota Supreme Court has been “[h]istorically . . . reluctant to find implied statutory authority in the context of the MPUC’s remedial power.”¹⁹ “[A]ny enlargement of express powers by implication must be fairly drawn and fairly evident from the agency objectives and powers expressly given by the legislature.”²⁰

A. Minnesota Statutes Set Out Telecommunications and Broadband Goals.

23. The Commission referred this matter to the OAH to develop a record regarding whether CenturyLink is fulfilling the service quality requirements of Minnesota Statutes Chapter 237 (the “Telecommunications Statutes”) and Minnesota Rules Chapter 7810 (the “Telephone Utilities Rules”).²¹

¹⁵ See *Vonage Holdings Corp. v. Minn. Pub. Util.*, 290 F. Supp. 2d 993 (D. Minn. 2003).

¹⁶ Ex. CTL-1 at 15-16 (Mohr Direct).

¹⁷ Ex. CTL-1 at 15-16 (Mohr Direct).

¹⁸ *Qwest Corp. v. Minn. Pub. Util. Comm’n*, 427 F.3d 1061, 1064 (8th Cir. 2005).

¹⁹ *In re Qwest’s Wholesale Service Quality Standards*, 702 N.W. 2d 246, 259 (Minn. 2005) (citing *In re Northern States Power Co.*, 414 N.W.2d 383, 387 (Minn. 1987)) (internal quotation marks omitted).

²⁰ *Peoples Nat. Gas Co. v. Minn. Pub. Util. Comm’n*, 369 N.W.2d 530, 534 (Minn. 1985).

²¹ Notice and Order for Hearing at 6.

24. No party has alleged violation of any of the Telecommunications Statutes. However, the Telecommunications Statutes set forth important public policy considerations that inform the consideration of the remaining issues.

25. For example, in 1997, the legislature set out Minnesota's telecommunications goals, stating in Minnesota Statutes, Section 237.011:

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.

26. Many provisions of the Telecommunications Statutes have changed or become obsolete since the 1997 establishment of these goals, as competition in the telecommunications marketplace has increased dramatically. For example, CenturyLink is no longer rate regulated under either traditional rate regulation, pursuant to Minn. Stat. § 237.075, or through an alternative form of regulation ("AFOR"), pursuant to Minn. Stat. § 237.76, et. seq. Rather, with the approval of the Commission, the Company now operates under the Competitive Market Regulation statute, passed in 2016.²² Under this statute, once CenturyLink demonstrated that certain competitive criteria had been met in its exchanges,

²² Minn. Stat. § 237.025.

it became regulated essentially as a competitive local exchange carrier (“CLEC”), meaning many of the provisions of Chapter 237 no longer apply to the Company.²³

27. Nonetheless, while some of the telecommunications goals of Minn. Stat. § 237.011 may have been superseded by subsequent legislation or competition, goals such as “encouraging economically efficient deployment of infrastructure for higher speed telecommunication services and greater capacity for voice, video, and data transmission” and “encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner” continue to be important public policy objectives, as does “maintaining or improving quality of service.”

28. More recently, the legislature also set out ambitious broadband goals for Minnesota, stating in Minnesota Statutes Section 237.012:

It is a state goal that:

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

(2) no later than 2026, all Minnesota businesses and homes have access to at least one provider of broadband with download speeds of at least 100 megabits per second and upload speeds of at least 20 megabits per second.

.....

It is a goal of the state that by 2022 and thereafter, the state be in:

(1) the top five states of the United States for broadband speed universally accessible to residents and businesses;

(2) the top five states for broadband access; and

(3) the top 15 when compared to countries globally for broadband penetration.

²³ Ex. CTL-1 at 22 (Mohr Direct); *see* Docket No. P-421/AM-16-496.

29. For Minnesota to continue making progress toward the goal of universal broadband access, these broadband goals must also be considered in telecommunications matters such as the current docket.

B. Telephone Utilities Rules.

30. While the Telecommunications Statutes have changed dramatically over the past 50 years, reflecting the change from a rate of return, fully-regulated, monopoly provider environment to today's competitive marketplace, the Telephone Utilities Rules have not. Minnesota's Telephone Utilities Rules remain in substantially the same form as they appeared in January of 1977, years before the first commercially available wireless phone and decades before the advent of VoIP service.²⁴ As provided in the Joint Stipulation, there are three Minnesota Rules at issue in this proceeding.²⁵

1. Minnesota Rule 7810.3300 (Maintenance of Plant and Equipment).

31. Minnesota Rule 7810.3300 concerns maintenance of plant and equipment and states:

Each telephone utility shall adopt and pursue a maintenance program aimed at achieving efficient operation of its system so as to permit the rendering of safe and adequate service. Maintenance shall include keeping all plant and equipment in good state of repair consistent with safety and adequate service performance. Broken, damaged, or deteriorated parts which are no longer serviceable shall be repaired or replaced. Adjustable apparatus and equipment shall be readjusted as necessary when found by preventive routines or fault location tests to be in unsatisfactory operating condition. Electrical faults, such as leakage or poor insulation, noise, induction, cross talk, or poor transmission characteristics, shall be corrected to the extent practicable within the design capability of the plant affected.

²⁴ See 1 S.R. 976-982 (Jan. 5, 1977) (publishing proposed Rule PSC 179, now Minnesota Rule 7810.1100, in the same form it exists today, and stating that PSC 170–178 and PSC 184–211, which included the predecessors to other Telephone Utilities Rules at issue here, remained the same). A review of subsequent State Registers reveals no substantive changes to the Telephone Utilities Rules since that time, with only minor formatting or agency name changes.

²⁵ Joint Stipulation at 2.

2. Minnesota Rule 7810.5000 (Utility Obligations).

32. Minnesota Rule 7810.5000 is a general statement of telephone utility obligations, providing, in part:

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.

3. Minnesota Rule 7810.5800 (Interruptions of Service).

33. Finally, Minnesota Rule 7810.5800 addresses interruptions and restoration of service and states, in part:

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.

C. Burden Of Proof.

34. OAH Rule, Minn. R. 1400.7300, subp. 5 provides: “the party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard.” While the Telecommunications Statutes provide that telephone companies bear the burden of proof in matters of rate setting or rate investigations,²⁶ neither the Telecommunications Statutes nor Telephone Utilities Rules address the burden of proof in a complaint proceeding such as this. Here, the Department and OAG urge the ALJ and Commission to take action, find that CenturyLink has violated certain Telephone Utilities Rules, and impose certain obligations on the Company going forward. As such, OAH Rules place the burden of proof

²⁶ See, e.g., Minn. Stat. §§ 237.075, subd. 4, and 237.28.

in this proceeding on the Department and OAG to support their allegations of rule violations by a preponderance of the evidence.

IV. THE MINNESOTA TELECOMMUNICATIONS MARKETPLACE AND CENTURYLINK'S PERFORMANCE

35. The Telephone Utilities Rules apply to POTS. CenturyLink provides POTS voice transmission over twisted-pair copper cables. Each pair can serve one customer such that a 100-pair cable can serve up to 100 customers.²⁷

36. CenturyLink, as a POTS voice provider, is nevertheless subject to competition from other voice transmission services, that do not rely on the same physical copper infrastructure.²⁸

A. The Competitive Landscape.

37. When the Telephone Utilities Rules were adopted, CenturyLink had a complete monopoly on the provision of voice service and was fully rate-regulated, with a guaranteed opportunity to earn a fair and reasonable rate of return on its investments.²⁹ Moreover, it had a “three legged stool” of support available to it, to effectively subsidize the provision of voice service to high-cost and low-density areas of the state via state-approved rates for metropolitan and business service customers that were set above cost, “access” charges paid by long-distance companies to terminate calls on the local network that were set above cost, and federal or state “universal service funds.”³⁰

38. Congress enacted the Telecommunications Act of 1996 with the aim of replacing the system of monopoly telephone companies with market competition.³¹ Yet, due to its history of operating as a monopoly, CenturyLink retains the physical infrastructure across its legacy service area in Minnesota, and thus remains the statutorily mandated “carrier of last resort.”³² CenturyLink continues to serve approximately 233,000 customer lines in Minnesota, or about 21% of landlines in the state.³³

²⁷ Evid. Hrg. Tr. at 212 (Ardoyno).

²⁸ Ex. CTL-1 at 9, 14 (Mohr Direct).

²⁹ See Ex. CTL-1 at 20-21, 24 (Mohr Direct).

³⁰ Ex. CTL-1 at 16 (Mohr Direct); Ex. CTL-19, Sched. 1 at ¶ 30 (Turner Rebuttal).

³¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); Ex. DOC-1 at 4-5 (Gonzalez Direct).

³² Ex. DOC-1 at 10-11 (Gonzalez Direct); Ex. DOC-4 at 16 (Webber Direct); Ex. DOC-5, JDW-R-10 at 3-4 (Webber Rebuttal); Ex. DOC-5, JDW-R-8 at 4 (Webber Rebuttal).

³³ Evid. Hrg. Tr. at 159-160 (Mohr); Ex. DOC-1 at 11 (Gonzalez Direct).

39. Today, nearly two-thirds of Minnesota households do not have “landline” telephone service, relying solely on wireless for their voice service.³⁴ CenturyLink competes with cable companies, competitive local exchange carriers, fixed wireless providers and satellite service providers for customers.³⁵ Moreover, the three-legged stool of support for high-cost areas no longer exists.³⁶

40. Competition for voice service exists throughout all of CenturyLink’s Minnesota wire centers, as demonstrated by Table 1, below.³⁷

Table 1 (Competitor Summary)

Total Wire Centers (WCs)	WCs with Landline Competitors	WCs with Mobile Wireless Competitors	WCs with Fixed Wireless Competitors	WCs with Cable Competitors	WCs with Commercial Satellite Competitors
154	153	154	153	146	154

41. The Federal Communication Commission’s (“FCC”) 2022 Competition Report provides urban and rural breakdowns by county regarding wireline broadband availability as well as wireline and wireless broadband availability.³⁸ In Minnesota, 100% of urban and 98.5% of rural areas have access to 25Mbps/3Mbps broadband service, which is sufficient to use VoIP for voice services.³⁹ The FCC’s national broadband map notes that satellite service is available to all Minnesota locations for broadband in both urban and rural areas.⁴⁰

42. The Commission recognized this competition across the areas served by CenturyLink in the Company’s Competitive Market Regulation docket. In that docket, the Commission found that CenturyLink demonstrated it met the statutory criteria for competition in all but five of its exchange service areas in the State.⁴¹

³⁴ Ex. CTL-1 at 9, 14 (Mohr Direct).

³⁵ Ex. CTL-1 at 9, 14 (Mohr Direct).

³⁶ Ex. CTL-1 at 16-17 (Mohr Direct).

³⁷ Ex. CTL-1 at 17 (Mohr Direct).

³⁸ Ex. CTL-1 at 18 (Mohr Direct).

³⁹ Ex. CTL-1 at 18 (Mohr Direct).

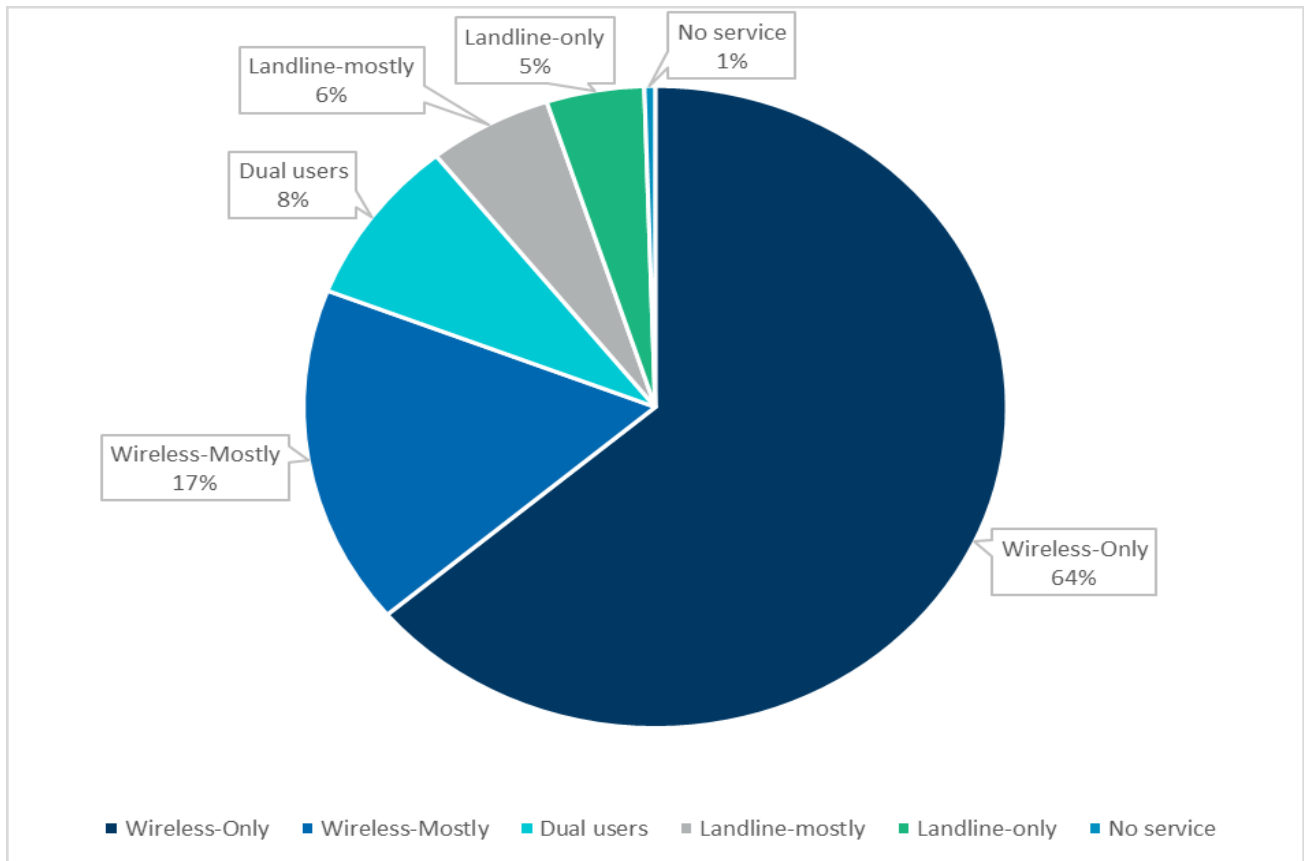
⁴⁰ Ex. CTL-1 at 18 (Mohr Direct).

⁴¹ Docket No. P-421/AM-16-496, Order Granting Petition in Part (May 22, 2017) (eDocket No. 20175-132109-02).

43. Two figures further demonstrate the impact of competition on POTS providers in Minnesota generally and on CenturyLink in particular. First, as shown in Figure 1, 2020 data from the National Center for Health Statistics, Centers for Disease Control and Prevention demonstrates that while two-thirds of Minnesota households had wireless-only service by that time, only five percent of Minnesota households relied exclusively on landline service.⁴²

Figure 1

Voice Technologies of Minnesota Households (2020)⁴³



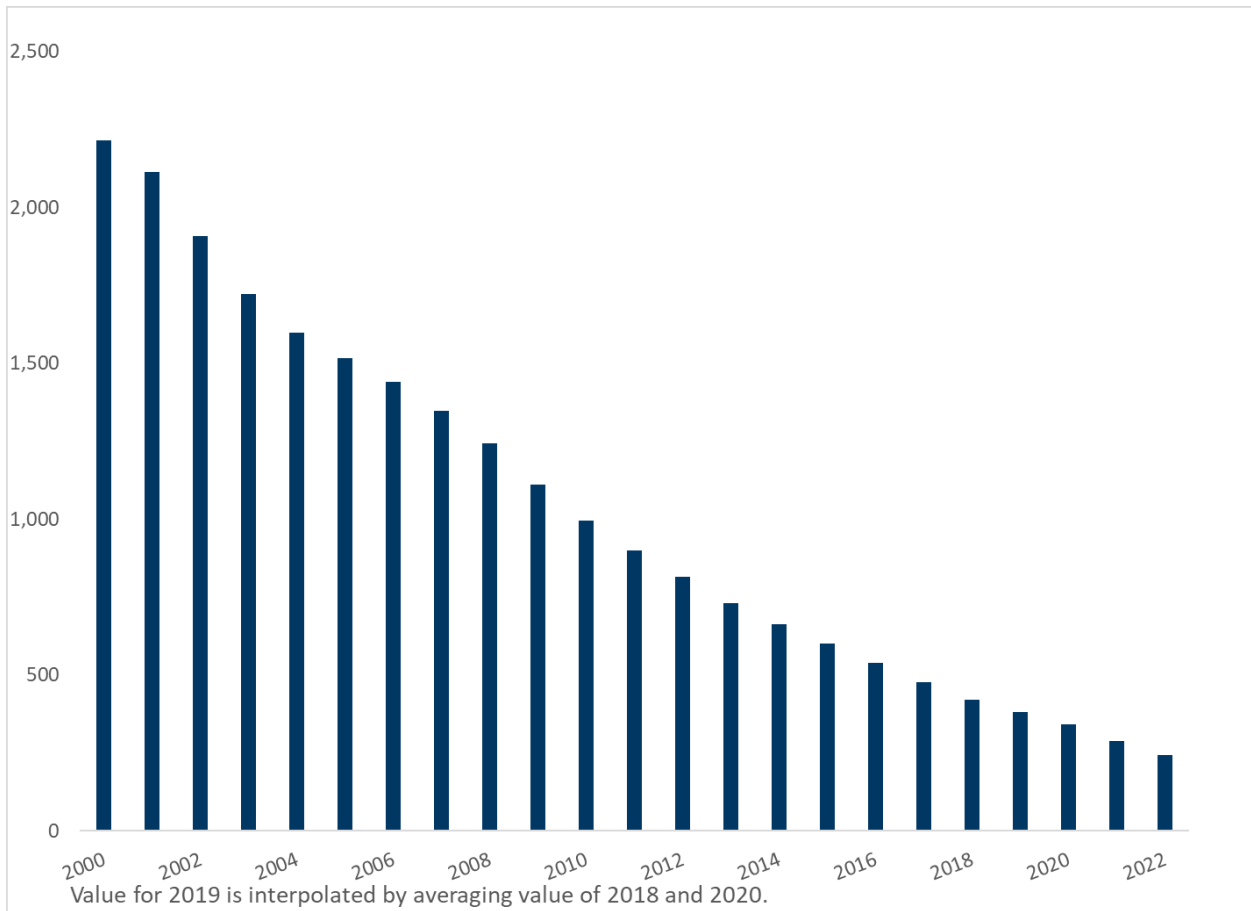
44. Second, this competition has caused a roughly 90 percent attrition of CenturyLink’s access lines in Minnesota over the past 20 years.⁴⁴

⁴² Ex. CTL-19, Sched. 1 at ¶ 25 (Turner Rebuttal).

⁴³ Ex. CTL-19, Sched. 1 at ¶ 25 (Turner Rebuttal).

⁴⁴ Ex. CTL-19, Sched. 1 at ¶ 31 (Turner Rebuttal).

Figure 2
CenturyLink Retail Switched Access Lines in Minnesota (000s)⁴⁵



45. Neither the existence of widespread competition from unregulated providers nor the collapse of the historic means of cost support for telephone utilities to enable service to high-cost and low-density areas changes the language of Minnesota’s legacy Telephone Utilities Rules.

46. CenturyLink argued that, to the extent these legacy rules are interpreted to require CenturyLink to focus its limited resources on POTS service, rather than broadband, that interpretation would direct resources away from the broadband services desired by customers and delay Minnesota’s ability to meet its broadband goals, which may not serve the broad public interest.⁴⁶

⁴⁵ Ex. CTL-19, Sched. 1 at ¶ 31 (Turner Rebuttal).

⁴⁶ See Ex. CTL-21, Sched. 1 at ¶ 28 (Turner Surrebuttal).

47. CenturyLink’s position is supported by the FCC. As the FCC wrote in 2019: “Given the sweeping changes in the communications marketplace since the passage of the 1996 Act... we find that *the public interest is no longer served* [emphasis added] by maintaining... legacy regulatory obligations and their associated costs.”⁴⁷ The FCC noted that these legacy requirements can trap “incumbent LECs into preserving outdated technologies and services at the cost of a slower transition to next-generation networks and services that benefit American consumers and businesses.”⁴⁸ The same document notes that the FCC has worked hard to “encourage and facilitate the ongoing technology transitions and to promote broadband deployment,” not least because POTS “voice service—particularly that provided over copper—is rapidly becoming obsolete.”⁴⁹

B. CenturyLink’s Performance Under Minnesota Telephone Utilities Rules.

48. The ALJ again notes that the Parties have stipulated that there are only three service quality rules presently at issue in this proceeding.⁵⁰ However, in their respective arguments, the parties otherwise rely on compliance with, or metrics and analyses relating to, service quality rules that CenturyLink is no longer alleged to have violated.

49. CenturyLink recommended that the ALJ and Commission consider the broader picture of the telecommunications marketplace, and the Company’s performance under the rules that were referred as a part of this proceeding, but for which the Department, OAG, and CWA have stipulated they are not alleging the Company has violated, to assess the Company’s overall performance in delivering traditional POTS voice service to its Minnesota customers. The Company argued that performance under the measurements no longer included in this proceeding nevertheless provides evidence of CenturyLink’s commitment to its customers and its compliance with the general rules still at issue.

50. As such, the ALJ addresses the Parties’ assertions with respect to these metrics and service quality rules.

1. Trouble Reports.

51. Company witness John Ardoyno stated, and the ALJ agrees, that the best indicator of a network’s performance is the number of trouble reports received.⁵¹ A trouble report is:

⁴⁷ Ex. CTL-19, Sched. 1 at ¶ 36 (Turner Rebuttal).

⁴⁸ Ex. CTL-19, Sched. 1 at ¶ 36 (Turner Rebuttal).

⁴⁹ Ex. CTL-19, Sched. 1 at ¶ 36 (Turner Rebuttal).

⁵⁰ Joint Stipulation (Jan. 4, 2024) (eDocket No. 20241-201849-01).

⁵¹ Ex. CTL-6 at 5 (Ardoyno Direct); Ex. CTL-7, Sched. 2 (Ardoyno Direct).

any oral or written report from a subscriber or user of telecommunications service relating to a physical defect or to difficulty or dissatisfaction with the operation of telecommunications facilities. One report shall be counted for each oral or written report received even though it may duplicate a previous report or merely involve an inquiry concerning progress on a previous report. Also, a separate report shall be counted for each telephone . . . reported in trouble when several items are reported by one customer at the same time, unless the group of troubles so reported is clearly related to a common cause.⁵²

52. “Trouble reports” encompass a wide range of potential issues and considers all duplicative reports or status inquiries. A company’s performance with respect to this metric thus indicates how frequently customers are reporting any trouble related to facilities. Minnesota Rule 7810.5900 establishes that “[i]t 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” and that a “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.”⁵³

53. No party in this proceeding now alleges a violation of Minnesota Rule 7810.5900.

54. The record demonstrates that CenturyLink has consistently met or exceeded this objective, achieving trouble reports of below 1.0 per 100 lines.⁵⁴ On a monthly average, the Company has maintained a level of service below 6.5 per 100 lines per month since January 2019, with only [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] instances of trouble report rates in excess of the objective in any exchange in any month, out of 8316 such measurements.⁵⁵ This amounts to a rate of [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] out of every [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] measurements—less than [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] percent.⁵⁶

55. Neither the Department nor the OAG dispute that CenturyLink’s trouble report rate meets the objective set forth in 7810.5900. Department witness Mr. Webber agreed that CenturyLink is meeting the objective of Minn. R. 7810.5900, and determined that the Company’s trouble report rate exceeded 6.5 per 100 lines only [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] percent and 8.0 per 100 lines only

⁵² Minn. R. 7810.0100, subp. 13 (emphasis added).

⁵³ Minn. R. 7810.5900.

⁵⁴ Ex. CTL-1 at 30 (Mohr Direct).

⁵⁵ Ex. CTL-6 at 5 (Ardoyno Direct).

⁵⁶ Ex. CTL-6 at 5 (Ardoyno Direct).

[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] percent.⁵⁷ In other words, when measured at the exchange level, Mr. Webber found that CenturyLink was meeting the trouble report objective of 6.5 per 100 lines [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] percent of the time and the objective of 8.0 per 100 lines [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] percent of the time.⁵⁸

56. However, the Department relied on CenturyLink trouble report data to develop and evaluate two additional metrics: “repeat troubles” and “chronic troubles.”⁵⁹ Repeat troubles are defined in CenturyLink’s last, and now-expired, AFOR plan as the same trouble on the same line within 30 days of the resolution of the first trouble.⁶⁰ Chronic troubles have never previously been defined or considered. Department witness Mr. Webber defines chronic troubles as customers who experienced four or more trouble tickets since 2019.⁶¹

57. The Department further relied on CenturyLink trouble report data, and specifically the “cause codes” input by CenturyLink technicians, to allege that 77% of all trouble reports relate to the cause code related to deteriorating of failing plant of equipment.⁶²

58. In response, CenturyLink argued that neither repeat troubles nor chronic troubles are metrics considered by the Minnesota Rules. CenturyLink further explained that repeat troubles, as established in the Company’s last AFOR plan, were analyzed on a statewide annual basis.⁶³ CenturyLink witness Mr. Ardoyno explained that the “cause code” identified by the Department is extremely broad and is used by technicians even when a more precise code is available.⁶⁴

2. Install Time.

59. Minnesota Rule 7810.2800 sets forth the objective that “ninety percent of the utility’s commitments to customers as to the date of installation of regular service orders shall be met excepting customer-caused delays and acts of God.”⁶⁵ However, as noted by

⁵⁷ Ex. DOC-4 at 35 (Webber Direct).

⁵⁸ Ex. CTL-19, Sched. 1 at ¶ 80 (Turner Rebuttal).

⁵⁹ Ex. DOC-4 at 36, 41 (Webber Direct).

⁶⁰ Ex. CTL-19, Sched. 1 at ¶¶ 89 (Turner Rebuttal).

⁶¹ Ex. DOC-5 at 19-20 (Webber Rebuttal).

⁶² Ex. DOC-4 at 48-49 (Webber Direct).

⁶³ Evid. Hrg. Tr. (Dec. 13, 2023) at 110-111 (Turner); see also Ex. CTL-19, Sched. 1 at ¶¶ 74-75, 90 (Turner Rebuttal).

⁶⁴ Ex. CTL-11 at 8 (Ardoyno Surrebuttal).

⁶⁵ Minn. R. 7810.2800.

CenturyLink, Minnesota Rule 7810.2800 does not provide a timeframe by which the ninety percent compliance objective is to be measured.

60. CenturyLink **[NOT PUBLIC DATA BEGINS** ⁶⁶ **NOT PUBLIC DATA ENDS]** The Company considers an installation commitment missed when the reason that the installation does not occur at the agreed-upon time is due to a Company-related issue.⁶⁷

61. No party in this proceeding now alleges a violation of Minnesota Rule 7810.2800.

62. The record demonstrates that CenturyLink has been meeting its installation commitments for new service orders from January 2018 to the present.⁶⁸ Department witness Mr. Webber concurred and stated that CenturyLink has achieved at least a **[NOT PUBLIC DATA BEGINS**

⁶⁹ **NOT PUBLIC DATA ENDS]**

63. CenturyLink contextualized its performance under Minnesota Rule 7810.2800 and explained that most of the missed appointments are related to the prioritization of POTS out-of-service calls and the inefficiencies that this prioritization causes with respect to the Company's system of assigning work to its technicians.⁷⁰

3. Call Answer Time.

64. Minnesota Rule 7810.5200 sets forth the objective that:

[n]inety 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."⁷¹

⁶⁶

⁶⁷ Ex. CTL-6 at 8 (Ardoyno Direct).

⁶⁸ Ex. CTL-9 at 2 (Ardoyno Rebuttal).

⁶⁹

⁷⁰ Ex. DOC-6 at 8 (Ardoyno Direct).

⁷¹ Minn. R. 7810.5200. The Rule also requires that "[a]dequate forces shall be provided at local manual offices to ensure that 95 percent of the calls will be answered within ten seconds." Minn. R. 7810.5200. However, this objective is significantly outdated, as it refers

65. No party in this proceeding now alleges a violation of Minnesota Rule 7810.5200.

66. The record demonstrates that CenturyLink is meeting the objective set out in Minnesota Rule 7810.5200. CenturyLink explained that, although the Rule does not require that ninety percent of calls be answered within twenty seconds on a monthly basis, CenturyLink tracks its compliance with the call answer time objective by month.⁷²

67. The record shows that, when measured on this monthly basis, CenturyLink has met the call answer time objective since April of 2022 excepting only two months—May 2022 at [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] percent and July 2023 at NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] percent.⁷³ When measured on an annual basis, as the Commission previously approved in the Company's last AFOR plan,⁷⁴ the Company met the call answer time objective in Minnesota Rule 7810.5200 with [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] percent of calls answered within twenty seconds year-to-date, and [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] percent on a rolling 12-month average, as of July 2023.⁷⁵

68. CenturyLink explained that its compliance with the call answer time objective is a result of significant efforts to ensure compliance with the twenty second objective in the Rule and to overcome disruption due to the COVID-19 pandemic.⁷⁶ CenturyLink stated that the Company prioritizes calls from Minnesota regulated voice telephone service customers, despite the risk of dissatisfaction from customers with competitive unregulated service who may not receive such a timely response.⁷⁷

V. ALLEGED VIOLATIONS

69. Pursuant to the Joint Stipulation, the remaining issue to be decided by the Commission is whether the Company is in compliance with three Minnesota Rules: 7810.3300 (Maintenance of Plant and Equipment), 7810.5000 (Utility Obligations), and 7810.5800 (Interruptions of Service). These rules all implicate the overall performance of the Company's POTS network in Minnesota. The Department and the OAG allege CenturyLink has and continues to violate these rules.

to manual operators that used to physically connect calls. Ex. CTL-13 at 5 (Rejanovinsky Direct).

⁷² Ex. CTL-13 at 7 and Sched. 1 (Rejanovinsky Direct).

⁷³ Ex. CTL-13 at 7 and Sched. 1 (Rejanovinsky Direct).

⁷⁴ Ex. CTL-15 at 4, n.7 (Rejanovinsky Rebuttal).

⁷⁵ Ex. CTL-13 at 7 and Sched. 1 (Rejanovinsky Direct).

⁷⁶ Ex. CTL-13 at 7 (Rejanovinsky Direct).

⁷⁷ Ex. CTL-13 at 8 (Rejanovinsky Direct); Ex. CTL-4 at 5-6 (Mohr Rebuttal).

A. Telephone Utilities Rules at Issue.

70. The Telephone Utilities Rules that remain at issue in this case contain general and broad language that require a provider to provide “safe and adequate service” (Minn. R. 7810.3300) or “adequate service” (Minn. R. 7810.5000) or make all reasonable efforts to prevent interruptions of service (Minn. R. 7810.5800). Determining compliance depends on an overall perspective of what could be considered “reasonable,” or “adequate.”

1. Minnesota Rule 7810.3300 and 7810.5000.

Minn. R. 7810.3300 provides:

7810.3300 MAINTENANCE OF PLANT AND EQUIPMENT.

Each telephone utility shall adopt and pursue a maintenance program aimed at achieving efficient operation of its system so as to permit the rendering of safe and adequate service. Maintenance shall include keeping all plant and equipment in good state of repair consistent with safety and adequate service performance. Broken, damaged, or deteriorated parts which are no longer serviceable shall be repaired or replaced. Adjustable apparatus and equipment shall be readjusted as necessary when found by preventive routines or fault location tests to be in unsatisfactory operating condition. Electrical faults, such as leakage or poor insulation, noise, induction, cross talk, or poor transmission characteristics, shall be corrected to the extent practicable within the design capability of the plant affected.

71. Minnesota Rule 7810.5000 provides in relevant part:

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.

72. The Department argued that CenturyLink is violating Minnesota Rules 7810.3300 and 7810.5000 by failing to provide all customers with “adequate service.” The Department maintains that adequate service means “near continuous telephone access without repeated disruptions.”⁷⁸ The Department states that adequacy of service “must be determined on an individual basis” and should be evaluated case-by-case.⁷⁹ The Department supports its argument with citations to decisions of other states’ public utilities commissions’ orders that articulate a near continuous access” standard.⁸⁰

73. The OAG did not define adequate service, but based much of its argument on the physical appearance of plant facilities.⁸¹ The OAG appears to take the position that Minnesota Rule 7810.3300 imposes a standard of maintaining network equipment in state of near-perfection, regardless of whether or not such maintenance is needed in order to provide the Company’s customers with safe and adequate service.

74. CenturyLink argued that Minnesota Rule 7810.3300 and 7810.5000 do not establish any specific metrics or objectives to be met and focuses instead on the provision of “adequate service” and equipment being maintained in “serviceable” or satisfactory “operating condition.”⁸² The Company defined “safe and adequate service” as used in Minnesota Rule 7810.3300 “to mean not posing a danger and capable of carrying voice service.”⁸³ The Company maintained that this is a more reasonable definition and that other, more delineated Telephone Utilities Rules, such as those governing trouble report rates or call answer times, provide the necessary context for determining whether the Company is meeting its general obligation of providing “safe and adequate” service.⁸⁴

75. As an initial matter, the ALJ disagrees with the Department and the OAG that “adequate service” requires the granular, customer-by-customer analysis that would be necessary to determine whether every customer receives near continuous telephone service. There is no support in the Telephone Utilities Rules, and in particular Minnesota Rule 7810.3300, for this interpretation. The ALJ is cognizant that telephone service is an essential service, however, the ALJ is persuaded that the Minnesota Rules do not establish near continuous service as an element of “safe and adequate service.” The ALJ agrees with CenturyLink that compliance with other Minnesota Rules that establish quantifiable metrics as evidence of “safe and adequate service” is the interpretation most supported by the plain language of the Telephone Utilities Rules.

⁷⁸ DOC Initial Br. at 10.

⁷⁹ DOC Initial Br. at 12.

⁸⁰ DOC Initial Br. at 11-12.

⁸¹ OAG Initial Br. at 5-10.

⁸² CTL Initial Br. at 33.

⁸³ CenturyLink Response to OAG Information Request 60 (b), included in the record at OAG Ex. 1, Sched. 9 at 2-3 (Lebens Direct).

⁸⁴ CTL Reply Br. at 8.

2. Minnesota Rule 7810.5800.

76. Minn. R. 7810.5800 provides:

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, 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.

77. The Department argued that Minnesota Rule 7810.5800 should be read to construe general words to be restricted in their meaning by preceding particular words. In this way, the Department argued that the term “objective” as limited or qualified by the term “minimum.” The Department stated that such limitation modified the otherwise permissible term “objective” and created a baseline requirement.⁸⁵

78. CenturyLink argued that Minnesota Rule 7810.5800 should be interpreted by its plain language which provides a requirement that “the utility shall reestablish service with the shortest possible delay,” and also provides a measurable objective that that 95 percent of out-of-service troubles are resolved within 24 hours.⁸⁶ In this way, CenturyLink distinguishes the mandatory “shall” in the second sentence of the rule from the permissive “objective” in the third sentence.

79. The ALJ agrees that Minnesota Rule 7810.5800 provides a requirement that a utility must reestablish service with the shortest possible delay, and provides an objective to resolve 95 percent of out-of-service troubles within 24 hours that is just that – an objective. The plain language of the rule demonstrates that if the Commission intended for the rule to create a mandatory requirement, it could have utilized language imposing such a mandate. The absence of an express mandate indicates that the 95 percent objective is a goal, not a requirement.

⁸⁵ DOC Initial Br. at 23.

⁸⁶ CTL Initial Br. at 35.

B. Neither the Department Nor OAG Have Demonstrated Violations of Minnesota Rules.

80. As discussed above, OAH Rules provide that the Department and OAG bear the burden of demonstrating, by a preponderance of the evidence, that CenturyLink has violated the Telephone Utilities Rules.⁸⁷

1. Allegations that CenturyLink Fails to Provide Adequate Service.

81. The Department alleges that CenturyLink is failing to provide adequate service under Minnesota Rules 7810.3300 and 7810.5000. In support of its argument, the Department relies on metrics established by its witness, Mr. Webber, utilizing CenturyLink’s trouble report data.⁸⁸

82. CenturyLink argued that the best indication of whether the Company is providing safe and adequate service, and is therefore in compliance with the general service quality objectives set forth in Minnesota Rules 7810.3300 and 7810.5000, is the Company’s compliance with the trouble report rate rule, Minnesota Rule 7810.5900. Company witness Mr. John Ardoyno stated that the low trouble report rate is indicative of strong network performance.⁸⁹

83. Company witness Mr. Turner explained:

Trouble report rates are a useful metric for evaluating the “efficient operation” and “adequacy” of CenturyLink’s copper-based telephone service, and the Company’s trouble report rates are unambiguously outstanding.⁹⁰

84. As previously discussed herein, the Company has maintained a monthly average of fewer than 6.5 trouble reports per 100 telephones since January 2019, with less than [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] of the objective on a monthly basis over that time period,⁹¹ meeting the objective set forth in Minnesota Rule 7810.5900. In fact, the Company’s monthly average of trouble reports has been at or below [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] report per 100 lines for the vast majority of the past 55 months, and has remained below [NOT

⁸⁷ Minn. R. 1400.7300, subp. 5.

⁸⁸ DOC Initial Brief at 12.

⁸⁹ Ex. CTL-6 at 5 (Ardoyno Direct); *see also* Ex. CTL-19 at ¶ 88 (Turner Rebuttal) (“CenturyLink’s compliance with Minnesota PUC Rule 7810.5900 regarding trouble report rates has been unambiguously strong between 2019 and 2023[.]”).

⁹⁰ Ex. CTL-21, Sched. 1 at ¶ 8 (Turner Surrebuttal).

⁹¹ Ex. CTL-6 at 5 (Ardoyno Direct).

PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] reports per month per 100 lines for the entirety of that time period.⁹²

85. Company witness Mr. Turner further noted that these “exceptionally low trouble report rates” demonstrate that “CenturyLink’s maintenance practices appear to support precisely the ‘efficient operation of its system,’” discussed in Minnesota Rule 7810.3300.⁹³

86. It is also notable that Minnesota Rule 7810.5900 includes a specific trouble report rate level – 8.0 per 100 telephones -- beyond which “investigative or corrective action” is warranted.⁹⁴ The Company’s trouble reports are well below that rate, demonstrating that no corrective action is required by rule with respect to the Company’s network performance.

87. The Department agreed that the Company has consistently met the trouble report rate objective,⁹⁵ and both the Department and OAG have agreed to drop any contention that the Company is in violation of Minnesota Rule 7810.5900.

88. However, the Department relied on trouble report rate data to argue that CenturyLink is failing to provide adequate service under Minnesota Rules 7810.3300 and 7810.5000 because some customers experience multiple troubles over a four-and-a-half year period.⁹⁶ The Department’s arguments are based on extrapolations of trouble report rate data. These extrapolations included the analysis of “repeat troubles” and “chronic troubles.”

89. The Department did not dispute that these standards it employed to demonstrate noncompliance are not based on the trouble report rate rule, but argued that the ALJ and Commission should consider these various calculations because they provide information that could be “worthwhile to consider” in determining whether the Company is in compliance with the service quality rules, Minnesota Rules 7810.3300 and 7810.5000.⁹⁷

90. Department witness Mr. Webber purported to analyze the Company’s performance with respect to “repeat troubles,” while admitting that “[c]hapter 7810 does not contain a specific rule or standard” addressing recurring trouble reports on the same service line.⁹⁸ Mr. Webber claimed that measured against the Company’s previous AFOR

⁹² Ex. CTL-6 at 5 (Ardoyno Direct).

⁹³ Ex. CTL-21, Sched. 1 at ¶ 34 (Turner Surrebuttal).

⁹⁴ Minn. R. 7810.5900.

⁹⁵ Ex. DOC-4 at 35 (Webber Direct).

⁹⁶ DOC Initial Br. at 12-13.

⁹⁷ Ex. DOC-4 at 28 (Webber Direct).

⁹⁸ Ex. DOC-4 at 36 (Webber Direct).

standard and the Commission’s settlement with Frontier, to which the Company is not a party, the Company is not performing well.⁹⁹

91. CenturyLink noted that Mr. Webber did not actually apply the AFOR standard, which called for a state-level, annual analysis, which he acknowledged on cross-examination.¹⁰⁰ Instead, Mr. Webber applied a month-by-month, wire center-by-wire center analysis.¹⁰¹ When applying the repeat trouble standard from the AFOR, CenturyLink is in complete compliance with the AFOR’s repeat trouble performance standards in each year for which data has been produced.¹⁰²

92. Department witness Mr. Webber also developed a new metric that he referred to as “chronic troubles.” This metric refers to troubles on a single line that are experienced “repeatedly over time . . . in non-consecutive months, or *even years*.”¹⁰³

93. In briefing, the Department did not refer to either of these metrics by name. However, the Department’s argument included an aggregate analysis of multiple troubles on a single line experienced over a four-and-a-half year period.¹⁰⁴ As Company witness Mr. Turner explained, this type of analysis goes far beyond any requirement imposed by or contemplated under the Telephone Utilities Rules.¹⁰⁵

94. The ALJ finds that the fact that the Company’s performance is well in compliance with the objective set forth by Minnesota Rule 7810.5900, and even further below the level at which regulatory action is suggested, demonstrates that the Company is taking the appropriate steps to maintain its network so that it provides safe and adequate service to its customers. The ALJ further finds that, when considered in light of the highly-inclusive definition of trouble report in the Minnesota Rules, and the potential for skewed results based on only a handful of trouble reports in exchanges with low customer counts, CenturyLink’s trouble report performance is strong evidence that the Company maintains its copper-based network in good repair.¹⁰⁶

95. Nothing in either the Department’s or OAG’s testimony disputes that the Company’s trouble report rates meet the objective set forth in Minnesota Rule 7810.5900. Department witness Mr. Webber directly acknowledged that the Company’s trouble report

⁹⁹ Ex. DOC-4 at 36-37 (Webber Direct).

¹⁰⁰ Evid. Hrg. Tr. (Dec. 13, 2023) at 110-111 (Turner); *see also* Ex. CTL-19, Sched. 1 at ¶¶ 74-75, 90 (Turner Rebuttal).

¹⁰¹ Ex. CTL-19, Sched. 1 at ¶ 90 (Turner Rebuttal).

¹⁰² Ex. CTL-19, Sched. 1 at ¶ 91 (Turner Rebuttal).

¹⁰³ Ex. DOC-4 at 41 (Webber Direct) (emphasis added).

¹⁰⁴ DOC Initial Br. at 12-13.

¹⁰⁵ Ex. CTL-19, Sched. 1 at ¶¶ 92-94 (Turner Rebuttal).

¹⁰⁶ Ex. CTL-19 at 2 (Turner Rebuttal).

rates show that it is meeting the objective of this rule,¹⁰⁷ while OAG witness Mr. Lebens did not address the Company's trouble report rate performance at all.¹⁰⁸ And while the Department and OAG have dropped any contention that the Company is not in compliance with the trouble report rule, they still contend that the Company is violating the more general service quality rules based on metrics derived from trouble report rates. This overlooks the fact that, if the Company was actually failing to meet its responsibilities to maintain its equipment and remain attentive to the quality of service provided by its network, the number of troubles on the network would increase, leading to an increase in the trouble report rate.¹⁰⁹

96. The ALJ is thus persuaded that the Company's performance with respect to Minnesota Rule 7810.5900 provides strong evidence that the Company is "keeping all plant and equipment in good state of repair consistent with safety and adequate service performance," as discussed in Minnesota Rule 7810.3300, and that the Company's service meets or exceeds the standards set forth in Chapter 7810 and furnishes adequate service, as discussed in Minnesota Rule 7810.5000.

97. The Department and OAG have failed to show by a preponderance of the evidence that CenturyLink does not provide adequate service under Minnesota Rules 7810.3300 and 7810.5000.

2. Allegations that CenturyLink Does Not Perform Adequate Maintenance.

98. Broadly, the Department alleged that CenturyLink relies almost exclusively on "break/fix" maintenance practices instead of proactively rehabbing its network.¹¹⁰ "Break/fix" maintenance refers to the practice of waiting until broken, damaged, or deteriorated facilities cause customer service outages or impairments before making repairs.¹¹¹ Department witness Mr. Webber stated that this approach is not consistent with the requirements of Minnesota Rule 7810.3300, which requires a "rigorous program," of preventative maintenance.¹¹²

¹⁰⁷ Ex. DOC-4 at 35 (Webber Direct).

¹⁰⁸ Mr. Lebens only discussion of the Company's trouble report rate is limited to a misconception as to the Company's treatment of trouble reports, in which he claims, inaccurately, that the Company does not address troubles unless 3 or more reports are made on a 100-pair group. Ex. OAG-1 at 18 (Lebens Direct). Mr. Ardoyno corrected this misconception in his Rebuttal Testimony. Ex. CTL-9 at 3 (Ardoyno Rebuttal).

¹⁰⁹ Ex. CTL-9 at 6 (Ardoyno Rebuttal).

¹¹⁰ Ex. DOC-4 at 10-13 (Webber Direct); Ex. DOC-5 at 5-7 (Webber Rebuttal).

¹¹¹ Ex. DOC-15 at 11.

¹¹² Ex. DOC-1 at 11 (Webber Direct); Ex. DOC-1, JDW-D-2 at 1-2 (Webber Direct).

99. The Department further argued that CenturyLink only performs proactive maintenance on an ad-hoc basis and does not utilize any predictive data analysis to identify operational anomalies or potential equipment defects before failures occur.¹¹³ Department witness Mr. Webber asserts that Minnesota Rules 7810.3300 and 7810.5000 require a program of “*preventative maintenance* that is primarily focused on identifying and resolving potential OSP network failures *before* they have negative impacts on a telephone companies’ basic telephone service subscribers.”¹¹⁴

100. Company witness Mr. Turner disagreed with Mr. Webber’s interpretation. Mr. Turner stated that a more appropriate interpretation of Minnesota Rules 7810.3300 and 7810.5000 would be that the rules “ensure that a telephone company will provide genuinely dependable service to its customers by adopting a robust program of maintenance and repair.”¹¹⁵

101. The record shows that the Company does engage in proactive or preventative maintenance. As discussed by Company witness Ardoyno, the Company engages in proactive rehabilitation projects, which are projects that are not related to a particular trouble report.¹¹⁶ The Company identifies necessary proactive maintenance projects in a number of ways, primarily through its technicians, who are working on the network every day. Technicians are able to identify potential projects through the use of the plant maintenance request (PMR) tool. Technicians are required to submit PMRs to identify conditions that are unsafe and/or cannot be corrected immediately upon discovery.¹¹⁷ Technicians also have the authority to identify and immediately address maintenance needs through the submission of company demand tickets (as opposed to customer trouble tickets). Third parties are also able to call the Company about conditions that they observe, which may also be handled through a company demand ticket.¹¹⁸

102. The Department contends that not all of the projects identified by technicians are completed.¹¹⁹ However, this ignores the fact that there could be any number of reasons why a project does not go forward. Further, although the Department identified multiple technician-identified projects that were not completed, the Department did not demonstrate that the equipment issues that these projects would correct were related to any troubles or other performance issues on the Company’s network.¹²⁰

¹¹³ DOC Initial Br. at 17.

¹¹⁴ Ex. DOC-4 at 11 (Webber Direct) (emphasis in original).

¹¹⁵ Ex. CTL-21, Sched. 1 at ¶ 13 (Turner Surrebuttal).

¹¹⁶ Ex. CTL-6 at 9-10 (Ardoyno Direct).

¹¹⁷ Ex. CTL-9 at 5 (Ardoyno Rebuttal).

¹¹⁸ Ex. CTL-9 at 5 (Ardoyno Rebuttal).

¹¹⁹ DOC Initial Br. at 18-21.

¹²⁰ DOC Initial Br. at 19-20.

103. Both the Department and OAG rely on photographs taken by OAG witness Mr. Brian Lebens alleged to depict CenturyLink equipment that is “broken, damaged, or deteriorated.”¹²¹ Mr. Lebens took 93 photographs over a five day period in November 2023.¹²² The Department and OAG alleged that these photographs demonstrate a failure to keep all plant and equipment in a good state of repair.

104. However, when questioned with respect to the photographs he took, Mr. Lebens admitted that he did not know whether some of the equipment belonged to CenturyLink, that he did not know whether any of the equipment was still serving customers, that he did not have any information regarding the equipment other than observing its physical appearance, that he did not conduct any testing of the equipment to determine whether it was in good working order, and that he had no evidence that the condition of any of the equipment he photographed resulted in a customer trouble report.¹²³

105. The Department’s and OAG’s reliance on the photographs as evidence of a failure in the Company’s plant maintenance program is misplaced. Although the photographs appear to show plant and equipment that is “broken, damaged, or deteriorated,” the Department and OAG fail to demonstrate that the physical appearance of the plant and equipment is related to any identifiable issues. There is no evidence in the record that the photographed plant and equipment is currently in use and serving customers, much less contributing to any network problems.

106. The Department and OAG have failed to show by a preponderance of the evidence that CenturyLink’s maintenance program is insufficient and violates Minnesota Rules 7810.3300 and 7810.5000.

3. Allegations that CenturyLink Does Not Adequately Fund Maintenance.

107. The Department and OAG contend that the Company is not spending enough money on preventative maintenance, otherwise known as proactive rehabilitation.¹²⁴ The Department alleges that between 2019 and 2021, CenturyLink cut its rehab spending by [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] from approximately [NOT PUBLIC DATA BEGINS NOT

¹²¹ OAG Initial Br. at 23; DOC Initial Br. at 14; Exs. OAG-5, BPL-S-6 through OAG-9, BPL-S-6 (Lebens Surrebuttal).

¹²² Evid. Hrg. Tr. at 120-121 (Lebens).

¹²³ Evid. Hrg. Tr. Vol. 1 (Dec. 13, 2023) at 121-23 (Lebens).

¹²⁴ DOC Initial Br. at 5, 22; OAG Initial Br. at 9.

PUBLIC DATA ENDS].¹²⁵ OAG alleges that CenturyLink “appears to be financially starving repair efforts in remote areas.”¹²⁶

108. CenturyLink explained that during the time period under consideration in this matter, proactive rehabilitation projects have been funded in a number of different ways. Such work, including cable replacement, line repair or pedestal repair, can be funded by the Company’s capital budget, the Company’s transformation budget, or local expense funds.¹²⁷ The Company maintained that it does not track the amount of capital funds or local expense funds spent on proactive maintenance as opposed to work done to address specific trouble tickets, nor is it required to under Minnesota Rules.¹²⁸ That does not mean, however, that the Company failed to expend capital or local expense funds on proactive maintenance

109. The record shows that the Department based its funding arguments on the Company’s transformation budget, to the exclusion of other means of funding maintenance projects. The transformation budget is a specific fund within the Company that funds a limited pool of projects.¹²⁹ Those projects are funded under the transformation budget if they will yield a positive payback within five years.¹³⁰ And, in the past, transformation projects had a minimum cost of \$1000 (that limit is no longer applied).¹³¹ The Department’s restrictive view on the funds expended on such projects is misleading.

110. The Department’s and OAG’s attempts to demonstrate noncompliance by focusing on an alleged lack of preventative rehabilitation misses the point – as noted by Company witness Turner, if the Company truly was underinvesting in maintenance, it would be expected that the Company’s trouble rate would increase.¹³² However, the Company’s trouble report rate has remained low throughout the period covered by this matter.¹³³

111. Further, there is no requirement that a company must spend a certain proportion of its funds on preventative, as opposed to responsive, maintenance. In fact, the rules do not address spending in any way – they simply require that the utility adopt and

¹²⁵ Ex. DOC-4 at 17-18 (Webber Direct).

¹²⁶ OAG Initial Br. at 9.

¹²⁷ Ex. DOC-9 at 5 (Ardoyno Rebuttal); Evid. Hrg. Tr. Vol. 1 (Dec. 12, 2023) at 229 (Ardoyno); Ex. DOC-11 at 5 (Ardoyno Surrebuttal).

¹²⁸ Ex. DOC-11 at 5 (Ardoyno Surrebuttal).

¹²⁹ Ex. DOC-11 at 9 (Ardoyno Surrebuttal).

¹³⁰ Ex. DOC-11 at 8 (Ardoyno Surrebuttal).

¹³¹ Ex. DOC-11 at 9 (Ardoyno Surrebuttal).

¹³² Ex. CTL-21, Sched. 1 at ¶ 19 (Turner Surrebuttal).

¹³³ Ex. CTL-6 at 5 (Ardoyno Direct); Ex. CTL-19, Sched. 1 at ¶ 88 (Turner Rebuttal); Ex. DOC-4 at 35 (Webber Direct).

pursue a maintenance program that results in the provision of safe and adequate telephone service.¹³⁴

112. The Department's and the OAG's arguments as to the Company's monetary investment in its copper network, which is offered as a proxy for analyzing the Company's performance under the service quality rules, are not related to network performance.

113. The Department and OAG have failed to show by a preponderance of the evidence that CenturyLink's funding of its maintenance program is insufficient to provide safe and adequate service under Minnesota Rules 7810.3300 and 7810.5000.

4. Allegations that CenturyLink Does Not Maintain an Adequate Workforce.

114. The Department and OAG alleged that the Company fails to maintain a workforce sufficient to maintain its network, resulting in inadequate service or the failure to maintain its plant and equipment under Minnesota Rules 7810.3300 and 7810.5000.¹³⁵ In particular, the Department argued that CenturyLink cut its workforce nearly **[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS]** field technician position in December 2021.¹³⁶

115. The record shows that the number of technicians employed by the Company has declined over the years, but not nearly at the rate argued by the Department. In fact, the number of the Company's POTS customers has declined more rapidly than the number of technicians.¹³⁷ This resulted in a fairly stable technician to retail access line ratio over the relevant time period, as shown below.¹³⁸

¹³⁴ Minn. R. 7810.3300; Minn. R. 7810.5000.

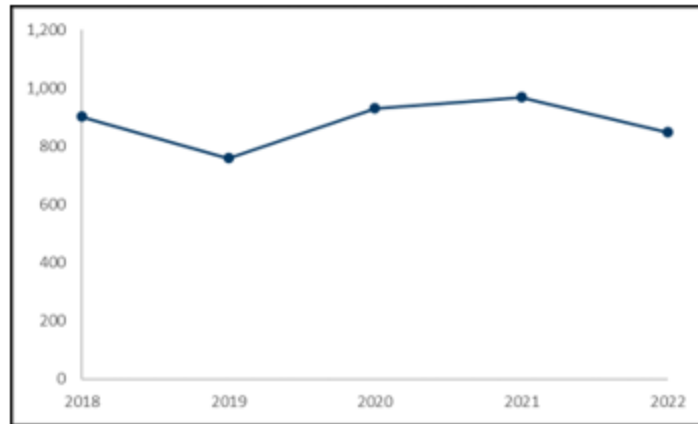
¹³⁵ DOC Initial Br. at 6; OAG Initial Br. at 5.

¹³⁶ Ex. DOC-4 at 19; Ex. DOC-19 at 2.

¹³⁷ Ex. CTL-9 at 11 (Ardoyno Rebuttal).

¹³⁸ Ex. CTL-19, Sched. 1 at ¶ 101 (Turner Rebuttal).

Retail Access Lines per CenturyLink Technician



116. The record further demonstrates that CenturyLink’s workforce is reasonable in light of the workload. Although there has been some increase in the number of repairs per technician, it is not “significant,” as the number of POTS repairs per technician has increased from [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] per week to [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS], keeping each technician at [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] POTS repair per day.¹³⁹

117. It is notable that at various times during the pendency of this matter, the Company has worked to hire more technicians with the appropriate skills to work on copper networks, including attempting to hire a lower-compensated and less-skilled group of workers to address less complicated jobs.¹⁴⁰ As Company witness Mr. Ardoyno noted, there are fewer technicians being trained on copper skills due to the increased and escalating installation of fiber networks as well as the public’s overall preference for fiber-based services.¹⁴¹

118. At various stages of this proceeding, the Department also claimed that the Company employed an insufficient number of technicians, tying a decrease in the number of technicians between May and June of 2020 to what Department witness Mr. Webber termed a failure to meet a “repair commitments performance metric.”¹⁴² This metric is not set forth in Minnesota Rules, but was in place as part of the Company’s AFOR. Under the AFOR, the Company was expected to meet a 90% threshold for meeting repair

¹³⁹ Ex. CTL-9 at 11 (Ardoyno Rebuttal).

¹⁴⁰ Ex. CTL-6 at 12-13 (Ardoyno Direct).

¹⁴¹ Ex. CTL-6 at 12 (Ardoyno Direct).

¹⁴² Ex. DOC-4 at 56 (Webber Direct).

commitments.¹⁴³ Under Mr. Webber’s analysis, the Company would be meeting that metric, if it was in effect. Mr. Webber, however, instead applied the higher metric that is required of Frontier under its settlement agreement with the Commission, which has never been applied to the Company.¹⁴⁴

119. Nothing in the applicable rules mandates that the Company employ more technicians than it requires, and the DOC’s contentions here do not demonstrate any instance of noncompliance with the service quality rules.

120. The Department and OAG have failed to show by a preponderance of the evidence that CenturyLink’s does not maintain a workforce sufficient to maintain its network in violation Minnesota Rules 7810.3300 and 7810.5000.

5. The Company Continues To Make A Good Faith Effort To Meet The Objective Of The Out Of Service Restoration Rule.

121. Minnesota Rule 7810.5800 establishes 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.”¹⁴⁵

122. When Minnesota Rule 7810.5800 was adopted, POTS was the industry standard in telecommunications, and virtually every home and business had a traditional telephone line. As a result of the significant changes to the telecommunications landscape, due in no small part to the modern importance of internet service as recognized by the state of Minnesota’s broadband policy, there are far fewer overall POTS customers today, and they are no longer necessarily located in close proximity to one another.¹⁴⁶

123. CenturyLink recognized that it is struggling to meet the objective of clearing 95 percent of all out-of-service troubles within twenty-four hours.¹⁴⁷ Nevertheless, CenturyLink explained that POTS out-of-serve restorations are, and will continue to be, the top priority in how the Company allocates technician availability.¹⁴⁸ In effort to meet this objective, the Company prioritizes out-of-service restorations, which are allocated to technicians before installation requests or repairs of broadband services.¹⁴⁹

¹⁴³ Ex. CTL-19, Sched. 1 at ¶ 105 (Turner Rebuttal).

¹⁴⁴ Ex. CTL-19, Sched. 1 at ¶ 105 (Turner Rebuttal).

¹⁴⁵ Minn. R. 7810.5800 (emphasis added).

¹⁴⁶ Ex. CTL-6 at 3 (Ardoyno Direct).

¹⁴⁷ Ex. CTL-1 at 30 (Mohr Direct).

¹⁴⁸ Ex. CTL-6 at 6 (Ardoyno Direct).

¹⁴⁹ Ex. CTL-6 at 6 (Ardoyno Direct).

124. CenturyLink explained that its difficulty in meeting this objective is primarily, if not entirely, a function of fewer and fewer POTS customers on the Company's geographically expansive network.¹⁵⁰ This inevitably results in a larger and larger geographic dispersion of customers. CenturyLink had an average of [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] telephone lines per mile of copper in 2000.¹⁵¹ By 2022, the average is only [NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS] lines per mile.¹⁵² CenturyLink attempts to reduce the impact of this geographic dispersion by utilizing a route optimizer to generate job lists for each technician based on many variables that include the technician's location, the proximity of various tasks to one another, and the technician's skill set—some technicians are skilled in copper networks and others are not.¹⁵³

125. Despite CenturyLink's attempts to minimize the effects of this geographic dispersion, due to the Company's prioritization of POTS out-of-service restorations above all other technician tasks, the route optimizer does not always assign tasks in the most efficient way, i.e., to the technician closest to a certain task or by grouping geographically clustered tasks together.¹⁵⁴ Instead, the route optimizer may end up assigning a new POTS out-of-service restoration to a technician that is located far away because the technicians who are closer may not have the proper skillset or were fully-allocated to other jobs by the time the out-of-service call came in.¹⁵⁵

126. Thus, due to the Company's geographically large network, yet declining number of customers, POTS out-of-service restorations needing attention on any given day may be very far apart, requiring technicians to travel significant distances to get to the customer's location.¹⁵⁶ A repair that might only take an hour to address may require two hours of travel just to get to the location, and then another two hours to get to the technician's next assignment.¹⁵⁷ Simply put, this customer dispersion along the legacy copper network leads to inefficiencies, as the ratio of technician travel time to the amount of hands-on repair time for a POTS repair significantly increases.¹⁵⁸

¹⁵⁰ Ex. CTL-6 at 7 (Ardoyno Direct).

¹⁵¹ Ex. CTL-19, Sched. 1 at 26, Fig. 5 (Turner Rebuttal).

¹⁵² Ex. CTL-19, Sched. 1 at 26, Fig. 5 (Turner Rebuttal).

¹⁵³ Ex. CTL-6 at 6-7 (Ardoyno Direct).

¹⁵⁴ Ex. CTL-6 at 7 (Ardoyno Direct).

¹⁵⁵ Ex. CTL-6 at 7 (Ardoyno Direct).

¹⁵⁶ Ex. CTL-6 at 7 (Ardoyno Direct).

¹⁵⁷ Ex. CTL-6 at 7 (Ardoyno Direct).

¹⁵⁸ Ex. CTL-6 at 7, 14 (Ardoyno Direct).

127. This problem is further exacerbated by competition from competitive unregulated services. When newly installed cable or fiber optic connections become prevalent, particularly in urban areas, the competitive impacts of these technologies are most acutely felt by legacy providers in areas of greatest subscriber density and has significant impacts on technician efficiency.¹⁵⁹

128. Workforce issues contribute to CenturyLink's challenges in meeting this objective. The Company explained that it is simply not feasible for the Company to maintain qualified technicians in geographically dispersed locations across the state in the same manner it did in the past when it had ten or more times the number of customers and was guaranteed a rate-of-return.¹⁶⁰ POTS customers and POTS trouble tickets have and continue to decline year-to-year, meaning there is less work for the Company's technicians to perform.¹⁶¹ For example, CenturyLink had approximately 420,000 total landline voice subscribers at the end of 2018.¹⁶² The number of subscribers fell to approximately 240,000 by the end of 2023, a reduction of more than 40 percent over four years.¹⁶³ Similarly, the number of POTS installs and troubles tickets has declined, with a total of approximately **[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS]** POTS installs and repairs completed in 2021, **[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS]** in 2022, and, at the time the record was created (September 1, 2023), 2023 was on track for approximately **[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS]**.¹⁶⁴

129. CenturyLink stated that there is a limit to the resources that the Company can responsibly spend on its technician workforce to complete this declining number of jobs needed to serve a declining number of customers.¹⁶⁵

130. As discussed, the evidentiary record demonstrates the Company continues to retain an appropriate number of technicians. For example, the number of CenturyLink technicians has declined at a slower rate than the number of POTS customers.¹⁶⁶ In the four year time period that CenturyLink's subscriber count fell by 42.2 percent, the full-time equivalent copper field technician count only reduced by **[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS]** percent.¹⁶⁷ As a result, the Company continues to

¹⁵⁹ Ex. CTL-19, Sched. 1 at ¶ 100 (Turner Rebuttal).

¹⁶⁰ Ex. CTL-1 at 30 (Mohr Direct).

¹⁶¹ Ex. CTL-9 at 11 (Ardoyno Rebuttal); Ex. CTL-6, Sched. 2 (Ardoyno Direct).

¹⁶² Ex. CTL-19, Sched. 1 at ¶ 53 (Turner Rebuttal).

¹⁶³ Ex. CTL-19, Sched. 1 at ¶ 53 (Turner Rebuttal).

¹⁶⁴ Ex. CTL-6 at 14 (Ardoyno Direct).

¹⁶⁵ Ex. CTL-6 at 13 (Ardoyno Direct).

¹⁶⁶ Ex. CTL-9 at 11 (Ardoyno Rebuttal).

¹⁶⁷ Ex. CTL-19, Sched. 1 at ¶ 53 (Turner Rebuttal).

maintain a technician workforce level that is appropriate with respect to the number of POTS customers and POTS trouble tickets and repairs.¹⁶⁸

131. The Company further explained that even if the economic reality of servicing this large geographic area with dwindling customer counts was not an issue, the Company struggles to hire qualified technicians with the skills needed to address repairs on the Company's legacy copper network.¹⁶⁹ This is in part due to the fact that trade schools that train technicians for telecommunications work focus on skills needed to install and repair fiber networks, rather than copper.¹⁷⁰ CenturyLink must train most new hires on copper-related skills in-house, which means that new hires cannot be immediately deployed to address POTS issues.¹⁷¹ Additionally, contract resources generally lack the necessary skills to work on copper networks.¹⁷²

132. The Department and OAG maintain that Minnesota Rule 7810.5800 establishes a requirement, not an objective, that all POTS out-of-service troubles are cleared within 24 hours.¹⁷³ The Department alleges that CenturyLink's difficulty in meeting the 24 hour clearance is "likely caused" by reductions in workforce.¹⁷⁴

133. However, as CenturyLink witness Mr. Turner correctly observed, maintaining greater technician counts despite a drop trouble tickets presumes functionally infinite resources that could be invested in multiple strategic directions at once, which ignores the realities of actually operating the Company's business.¹⁷⁵ Although the Company prioritizes POTS out of service calls and make reasonable efforts to meet the 95% in 24 hours objective, due to the geographic spread of the Company's declining POTS customers, obtaining that objective will not always be within the realm of the "possible."

134. The ALJ agrees that the Company has made, and continues to make, efforts to meet this objective. Specifically, the Company has, throughout the time period spanned by this matter, prioritized POTS out-of-service tickets in the route optimizer that assigns ticket to technicians¹⁷⁶ and places telephone calls from customers with POTS out-of-service at the head of the queue in its call center.¹⁷⁷ Prioritizing POTS out of service calls,

¹⁶⁸ Ex. CTL-9 at 11 (Ardoyno Rebuttal); Ex. CTL-4 at 7 (Mohr Rebuttal).

¹⁶⁹ Ex. CTL-1 at 30 (Mohr Direct); Ex. CTL-6 at 12 (Ardoyno Direct).

¹⁷⁰ Ex. CTL-6 at 12 (Ardoyno Direct).

¹⁷¹ Ex. CTL-6 at 12 (Ardoyno Direct).

¹⁷² Ex. CTL-6 at 12 (Ardoyno Direct).

¹⁷³ DOC Initial Br. at 23; OAG Initial Br. at 13.

¹⁷⁴ DOC Initial Br. at 24.

¹⁷⁵ Ex. CTL-19, Sched. 1 at ¶ 102 (Turner Rebuttal).

¹⁷⁶ Ex. CTL-9 at 4 (Ardoyno Rebuttal).

¹⁷⁷ Ex. CTL-13 at 8 (Rejanovinsky Direct).

however, cannot solve the primary challenge with restoration within 24 hours, which is the decline in the number of POTS customers and their geographic distribution.¹⁷⁸

135. As discussed above, the ALJ finds that Minnesota Rule 7810.5800 requires that “the utility shall reestablish service with the shortest possible delay,” and sets a minimum *objective* of clearing 95 percent of out-of-service troubles within 24 hours of the time such troubles are reported. The ALJ now finds that the Company complies with the mandate that it reestablish service with “the shortest possible delay,” and continues to make efforts to meet the objective established by the rule. The realities of the current telecommunications landscape, however, have effectively disrupted what is “possible” with respect to the time necessary to restore service in each case, and meeting the objective set forth by the rule has become substantially more difficult.

136. Accordingly, the Department and OAG have failed to show by a preponderance of the evidence that CenturyLink does not reestablish service with the shortest possible delay, the only requirement in Minnesota Rule 7810.5800.

C. Neither The Record Nor Minnesota Law Support The Actions Recommended By The Department or OAG.

137. As discussed above, the record of this proceeding demonstrates that the Department and OAG have failed to show, by a preponderance of the evidence, that CenturyLink has not provided adequate service or maintained its network in compliance with Minnesota Rules 7810.3300 and 7810.5000. The record also demonstrates that CenturyLink has met the requirement of Minnesota Rule 7810.5800 that it reestablish service with the shortest possible delay, and is taking steps to meet the objective of clearing POTS out-of-service troubles within 24 hours.

138. Nonetheless, the Department recommended that the Commission order a series of obligations on CenturyLink that appear aimed at specific customers, specific cable rehabilitation jobs and other specific aspects of the Company’s business operations in Minnesota, where the Department believes the Company could be doing a better job.¹⁷⁹

¹⁷⁸ Minn. R. 7810.5800, like the others at issue in this proceeding, was adopted at a time when nearly everyone had a POTS line at their home or business, meaning those customers were more densely clustered than they are today.

¹⁷⁹ Ex. CTL-5 at 10 (Mohr Surrebuttal).

139. The Department recommends that Commission should:

- require CenturyLink to review and rehab all outside plant and equipment that serves customers who have had four or more deteriorated plant trouble tickets since 2019, as identified by the Department’s expert, within 24 hours of the final order in this matter;¹⁸⁰
- require CenturyLink to modify its existing Proactive Rehab Tracking procedures or create new procedures to “resolve” all plant rehab reports received from field technicians within 90 days;¹⁸¹
- define the term “resolve” to mean the repair; replacement; or a reasonable alternative resolution, including the possibility of no action, as determined by the company in consultation with the Communications Workers of America (“CWA”);¹⁸²
- require that the field technician who initially submitted the report receive notification of how the report was ultimately resolved;¹⁸³
- require CenturyLink’s director of network service operations for Minnesota and applicable regional leaders to meet with the CWA’s area/district leadership on a quarterly basis to review all reports from the quarter;¹⁸⁴
- require CenturyLink to educate field technicians about these new procedures and keep them informed of the results through communications at the garage level, including through dedicated space to post local results (e.g., before and after photos);¹⁸⁵
- encourage CWA’s area/district leadership to educate their members on a regular basis about these new procedures and champion robust participation;¹⁸⁶
- require CenturyLink to adopt a program with similar procedures to the “Plant Pride” programs adopted in New York and Pennsylvania;¹⁸⁷ and
- require CenturyLink to reduce repair appointment windows from eight hours to four hours.¹⁸⁸

¹⁸⁰ DOC Initial Br. at 26.

¹⁸¹ DOC Initial Br. at 27.

¹⁸² DOC Initial Br. at 27.

¹⁸³ DOC Initial Br. at 28.

¹⁸⁴ DOC Initial Br. at 28.

¹⁸⁵ DOC Initial Br. at 28.

¹⁸⁶ DOC Initial Br. at 28.

¹⁸⁷ DOC Initial Br. at 28-29.

¹⁸⁸ DOC Initial Br. at 29.

140. This customer-by-customer or cable job-by-cable job approach to regulation has no basis in Minnesota statutes or rules and no precedent in case law.¹⁸⁹

141. Moreover, the Department did not attempt to estimate the cost and other impacts of implementing these recommendations.¹⁹⁰ As Company witness Ms. Susan Mohr testified, “[t]he Company operates in a competitive business and cannot simply subsidize these costs but must recover them from customers. Moreover, to the extent these recommendations require significant investments in the legacy copper network, that leaves less funds available to assist Minnesota in meeting its broadband goals.”¹⁹¹

142. Company witness Mr. Turner explained that these recommendations, if ordered on the Company,

would ultimately create economic waste, requiring the Company to expend significant financial resources to continue augmenting a copper network that is no longer the voice service preference of the vast majority of Minnesotans. CenturyLink would be unable, then, to use those limited resources to deploy newer technologies that customers largely prefer, and which also support the universal broadband access goals of the Minnesota Legislature.¹⁹²

143. Further, the Department’s recommendation would have the State insert itself into the Company’s relationship with its collective bargaining partner, the CWA. The Department cites no authority it or the Commission possesses that would allow the State to require the Company to take specific actions with respect to its collective bargaining partner.

144. Moreover, the Department seemed unaware of the extensive communication already occurring between the Company and CWA. As Mr. Ardoyno explained:

With respect to communications with CWA, the Company and CWA have already developed a robust cadence of formal meetings and less formal contacts. Specifically, I meet with Christy Kuehn, President, and Brian Tyler, Area Vice President, of the St. Paul local 7201, along with Lisa Markegard, President, and Tom Laabs, Area Vice President, of the Minneapolis local 7200, at a face-to-face meeting once a month in St. Paul. The agenda for this monthly meeting is driven by the CWA representatives, and often includes discussion of customer service levels and plant quality, including potential rehab projects. I also participate in broader quarterly meetings via Teams

¹⁸⁹ Evid. Hrg. Tr. (Dec. 13, 2023) at 86-88 (Gonzalez); Ex. CTL-21, Sched. 1 at ¶ 28 (Turner Surrebuttal).

¹⁹⁰ Ex. CTL-5 at 11 (Mohr Surrebuttal).

¹⁹¹ Ex. CTL-5 at 11 (Mohr Surrebuttal).

¹⁹² Ex. CTL-21, Sched. 1 at ¶ 28 (Turner Surrebuttal).

along with network, engineering and construction managers of regional operations in order to respond to CWA's questions and concerns. Finally, I am in regular communication with local leadership on an ongoing and ad hoc basis on a variety of issues, including new products, promotions, and other information regarding the Company and its operations, and addressing any other questions that CWA may have.¹⁹³

145. The ALJ finds that the Department's failure to perform a cost-benefit analysis of the proposed recommendations weighs heavily against it. The record does not demonstrate whether any of the proposed recommendations would ultimately resolve any of the issues of which the Department complains. As noted with respect to the Department's various arguments, many of the alleged violations are only tangentially related to the objectives imposed by the three remaining rules at issue in this proceeding. The ALJ reiterates that the Department, not the Company, bears the burden of proving not only the violations by a preponderance of the evidence, but also that the proposed remedies are appropriate. Further, even assuming the remedies did improve service quality, the Department failed to quantify the costs of implementing these remedies. As such, the record does not support imposing remedies of unknown efficacy at unknown costs.

146. Alternatively, the OAG recommends that the Department should:

- require CenturyLink to adequately repair or replace the most troubled outside plant;
- prohibit CenturyLink from sidelining maintenance projects that do not satisfy the five-year payback;
- implement a Plant Pride program; and
- implement such other appropriate policies or remedial measures the Department may recommend or the Commission may deem appropriate.¹⁹⁴

147. The ALJ similarly finds that the OAG failed to demonstrate that these remedies would address the alleged violations, and failed to quantify the costs.

CONCLUSIONS OF LAW

1. The Commission and the Administrative Law Judge have jurisdiction over this proceeding pursuant to Minn. Stat. § 237.081 and Minnesota Rules Chapter 7810.

2. The Commission has complied with all procedural requirements of law and rule, and the parties have had notice and an opportunity to fully participate in this

¹⁹³ Ex. CTL-11 at 11 (Ardoyno Surrebuttal).

¹⁹⁴ OAG Initial Br. at 16.

proceeding. Therefore, this matter is properly before the Commission and the Administrative Law Judge.

3. The burden to prove that CenturyLink violated the Telephone Utilities Rules rests on the Department and OAG, as “the part[ies] proposing that certain action be taken,” based on a preponderance of the evidence standard.¹⁹⁵

4. The Department and OAG have failed to establish, by a preponderance of the evidence, that CenturyLink has violated Minnesota Rules 7810.3300, 7810.500, or 7810.5800.

5. The record does not support the remedies proposed by the Department and OAG.

Based upon the Findings of Fact and Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

1. CenturyLink is in substantial compliance with the Telephone Utilities Rules.
2. The Commission should close this docket without further action.

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¹⁹⁵ Minn. R. 1400.7300, subp. 5.