

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

121 Seventh Place East, Suite 350
St. Paul, Minnesota 55101-2147

Katie J. Sieben
Joseph K. Sullivan
Hwikwon Ham
Valerie Means
John A. Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

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

MPUC DOCKET NO. P-421/C-20-432

**PETITION FOR REHEARING,
RECONSIDERATION AND
CLARIFICATION**

INTRODUCTION

Pursuant to Minnesota Statutes Section 14.64 and Minnesota Rules 7829.3000, Qwest Corporation D/B/A CenturyLink In Minnesota (“CenturyLink” or “Company”) submits this Petition for Rehearing and Reconsideration (“Petition”) of the Minnesota Public Utilities Commission’s (“Commission”) September 17, 2024 Order Finding Breach of Service Quality Rules and Establishing Remedies (“Order”) in the above-referenced matter. The Order adopts in near entirety the Administrative Law Judge’s (“ALJ”) Findings of Fact, Conclusions of Law and Recommendation (the “ALJ Report”).¹ However, the ALJ

¹ The Order “adopts the Findings of Fact, Conclusions of Law and Recommendation of the Administrative Law Judge” in its entirety, with just two slight modifications – to Finding 95 and Conclusion of Law 8. Order at 23-24 (Ordering Paragraph 2). Given the Order’s wholesale adoption of the ALJ Report, this Petition refers throughout to the ALJ Report,

Report contains numerous findings that fail to have record support – and in some cases directly contradict the record -- and that include errors of law. By adopting all but one of the ALJ’s over 100 Findings, the Order perpetuates these errors, requiring reconsideration and modification.

At the same time, while the record and the law do not support the ALJ Report and Order, CenturyLink appreciates the concerns expressed in the Order regarding service quality to the Company’s remaining plain old telephone service (“POTS”) customers. Accordingly, attached to this Petition CenturyLink includes a proposed Minnesota Service Quality Plan (“MSQP”). Adopting the MSQP, rather than leaving in place the ALJ Report and Order, would allow all parties and the Commission to move forward to ensure the provision of safe and adequate telephone service in Minnesota, while also furthering the State’s ambitious broadband service goals. Alternatively, the Commission must significantly modify, and on several key issues reverse, its Order to make it consistent with the record in this case and the rules and statutes relied upon by the ALJ and Commission.

I. STANDARD FOR RECONSIDERATION.

Petitions for reconsideration provide the Commission an opportunity to correct an order prior to any appellate review. Such petitions are governed by Minn. R. 7829.3000, which requires that the petition “set forth specifically the grounds relied upon or errors claimed. A request for amendment must set forth the specific amendments desired and the reasons for the amendments.”

and the Findings and Conclusions in that Report, rather than to the Order, unless otherwise specified.

In determining whether to reverse or modify an order, the Commission has consistently indicated that it reviews any petition for reconsideration to determine whether it: (i) raises new issues, (ii) points to new and relevant evidence, (iii) exposes errors or ambiguities in the underlying order, or (iv) otherwise persuades the Commission that it should rethink its decision.²

This Petition focuses on the “errors or ambiguities in the underlying order,” by discussing the errors of law in the Order and demonstrating the failure of the ALJ Report, relied upon by the Commission, to be supported by substantial evidence in the record. Indeed, the ALJ Report ignored critical aspects of the record of this proceeding demonstrating:

1. The strong overall performance of the plain old telephone service (“POTS”) network operated by CenturyLink to provide landline phone service to its Minnesota customers.
2. CenturyLink already prioritizes its POTS voice service customers in Minnesota over other aspects of its business, counter to its long-term business interests, in a good faith effort to comply with the spirit of Minnesota rules.
3. Customers increasingly prefer wireless and broadband services over POTS service.
4. Competition in the industry and customer preference for wireless and broadband services has resulted in an ongoing loss of POTS customers of approximately 15 percent per year and causing an overall erosion in residential POTS customers for CenturyLink of approximately 90 percent over the past 20 years – from approximately 1.3 million customers in 2000 to approximately 113,000 at the end of 2022. This erosion in customer base drastically alters the

² See, e.g., *In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy to Recover February 2021 Natural Gas Costs*, Docket No. E-002/CI-21-610, Order Denying Petition for Reconsideration and Clarifying Prior Order at 2 (Jan. 6, 2023).

circumstances under which CenturyLink offers service and must be taken into account when applying Commission rules from a monopoly era.

Instead, of acknowledging these facts, and the Company's efforts to provide safe, reasonable and adequate POTS service to its remaining POTS customers, the ALJ Report and now the Order purport to adopt *previously unarticulated measures* of service quality to find CenturyLink in violation of broad and general rules. Neither the record nor the law supports these findings.

Moreover, the ALJ Report and Order call for "remedies" wholly unsupported by the record. These "remedies" would require CenturyLink to spend untold millions of dollars to repair or replace copper plant that may or may not be the "cause" of the perceived service quality issues discussed in the record and that, in any event, will soon be stranded as customers continue to migrate to wireless and broadband services. As the record makes clear, these recommended "remedies" rely solely on speculation of their possible effectiveness from Department of Commerce ("Department") witnesses with no practical experience with telecommunications service and with little or no analysis.

Creating new service quality measures and then forcing the Company to make economically wasteful investments to *possibly* meet those new measures does not serve CenturyLink's customers or the public interest. Moreover, such mandates would only further tilt the competitive playing field against CenturyLink and further delay its ability to help Minnesota meet the aggressive universal broadband service goals established by the legislature. Such an approach runs directly contrary to the Commission's statutory

mandate to encourage “economically efficient deployment of infrastructure”³ and to act “in a competitively neutral regulatory manner.”⁴

These errors must be corrected for the Commission’s decision to comply with Minnesota law. Therefore, CenturyLink respectfully requests that the Commission reconsider and reverse its Order and find that CenturyLink has not been demonstrated to be in violation of Minnesota Rules Parts 7810.3300, 7810.5000 and 7810.5800. In the alternative, CenturyLink requests that the Order be modified by approving the MSQP, attached hereto, as a full resolution of the issues.

II. THE ALJ REPORT AND ORDER ERR IN FINDING THE COMPANY IN VIOLATION OF GENERAL RULES REGARDING OF PLANT MAINTENANCE AND TELEPHONE UTILITY OBLIGATIONS.

Minn. R. 7810.3300 provides, in its entirety:

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.

Minn. R. 7810.5000 provides, in relevant part:

³ Minn. Stat. § 237.011 (3).

⁴ Minn. Stat. § 237.011 (4).

7810.5000 UTILITY OBLIGATIONS.

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

The ALJ Report and Order interpret these provisions as applying on a line-by-line, customer-by-customer basis.⁵ Further, the Report creates two new measures of what constitutes “adequate service” for the purposes of applying these rules.⁶ In devising these findings, the ALJ Report errs in multiple ways. First, neither the plain language of Minnesota Rules nor prior Commission application of those rules support their application on a line-by-line, customer-by-customer basis. Second, the ALJ Report looks to the “volume of service issues”⁷ as support for the creation of a new standard, without recognizing that Minnesota Rules specifically set a standard for “volume of service issues” in Minn. R. 7810.5800. Third, in finding that the Company is not providing “adequate service” to certain customers, the ALJ Report states that “what constitutes adequate service must consider a variety of factors relating to the service quality that customers are

⁵ ALJ Report at Finding ¶ 55.

⁶ See ALJ Report at Findings ¶¶ 40, 57 and Recommendations ¶¶ 2, 3.

⁷ ALJ Report at Findings ¶ 57.

experiencing,”⁸ without explaining what those additional “factors” are or where they can be found in Minnesota Rules, while ignoring such statutory factors as the need to maintain just and reasonable rates and encouraging economically efficient deployment of infrastructure for higher speed telecommunication services and greater capacity for voice, video, and data transmission.⁹ Fourth, these findings trivialize the substantial record evidence that demonstrates CenturyLink’s strong overall network performance. Finally, creating and then applying a new standard to impose unsupported but potentially costly remedial measures raises serious due process concerns.

A. Minnesota’s General Service Quality Rules Apply on an Overall, Not Line-by-Line or Customer-by-Customer Basis.

The plain text of each rule suggests these rules apply to a telephone utility’s overall performance. Minn. R. 7810.3300 requires “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.” Minn. R. 7810.5000 requires “telephone service to *the public* in its service area in accordance with its rules and tariffs on file with the commission.” Similarly, Minn. R. 7810.5000 provides: “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.” The language of these rules plainly applies to performance of a provider overall and *not* with

⁸ ALJ Report at Finding ¶57.

⁹ Minn. Stat. § 237.011.

respect to an individual line or customer and neither the ALJ Report nor Order identify a single previous instance in which the Commission has applied these standards on a line-by-line basis.

To the contrary, the Commission has consistently applied its rules on an overall, system-wide basis. Specifically with regard to CenturyLink, the Company's Alternative Form of Regulation ("AFOR") plan included a service quality plan as Appendix B which specifically set forth its definition of "substantial compliance" with service quality standards, as follows:

Substantial compliance with retail service quality standards is satisfied if [CenturyLink] meets 6 out of 7 of its individual service quality standards each year. For purposes of determining substantial compliance, compliance with the individual service quality standards will be measured on an annual statewide basis. Qwest will not be in substantial compliance with the service quality standards if it fails to meet the same individual service quality standards for two consecutive years. Failure to substantially comply with the service quality standards for two consecutive years will require [CenturyLink] to meet and confer with the Department and OAG to negotiate a voluntary resolution to the matters. If successful resolution of the matter cannot be negotiated, [CenturyLink] will present the Department and OAG with a plan to bring service quality into compliance including specific actions the Company will take to remedy the situation. If the plan is not acceptable to the Department or OAG, the Department or OAG may file a complaint with the Commission for the purpose of determining whether reasonable additional customer remedies or other actions are warranted. [CenturyLink] shall not be deemed to be out of substantial compliance if failure to meet a standard is the result of circumstances as set forth in Section B.

“Substantial compliance” at least as measured by the Commission under the AFOR – a more heavily regulated regime than that under which the Company currently operates¹⁰ – was measured on a system-wide basis.

B. The ALJ Report and Order Create New Service Quality Standards Related to Trouble Reports, While Ignoring the Rule Specifically Addressing This Issue.

The ALJ Report and Order take two *qualitative* rules regarding the provision of “adequate service” and create and apply *two new quantitative measures* found nowhere in any Minnesota Rule or precedent. First, the ALJ Report and Order find that any individual customer that experienced four or more trouble tickets between 2019 and 2023 experienced “volume of service issues” standard that puts CenturyLink in violation of Minn. R. 7810.3300 and 7810.5000 as to that customer.¹¹ In doing so, the ALJ Report and Order ignore both the *actual* quantitative “volume of service issues” objective set forth in Minnesota Rules – the “customer trouble reports” objectives established in Minn. R. 7810.5900 – and the “repeat trouble” objective previously applied by the Commission in the Company’s AFOR.

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

¹⁰ Since 2017, all but five Company exchanges fall under Minn. Stat. § 227.025, Competitive Market Regulation, rather than under Minn. Stat. § 237.76, et seq., Alternative Regulation Plan. MPUC Docket No. P-421/AM-16-496, Order Granting Petition in Part (May 22, 2017).

¹¹ See ALJ Report at Findings ¶¶ 40, 57 and Recommendations ¶¶ 2, 3. The Company notes that Recommendations ¶ 2 incorrectly cites 7810.3000 (Directory Assistance), rather than 7810.3300, as error not corrected in the Order.

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.” The undisputed record evidence in this proceeding demonstrates that the Company has maintained a monthly average *far* below 6.5 trouble reports per 100 telephones since January 2019,¹² meeting the objective set forth in Minn. R. 7810.5900. In fact, given this strong performance, both the Department and Office of the Attorney General (“OAG”) dropped their prior contention that the Company is not in compliance with the trouble report rule.¹³

Nonetheless, the ALJ Report and Order find that the “volume of service issues” experienced by certain individual customers has been high enough that the Company should be found in violation of the general rules regarding maintenance of the network of utility obligations. However, 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 – an increase notably absent in the trouble report data.¹⁴ It is also notable that the trouble report rule includes a specific trouble report rate level – 8.0 per 100 telephones – beyond which “investigative or corrective action” is warranted.¹⁵ As the record unequivocally establishes, the Company’s trouble reports are far below that rate. The fact that the Company’s performance is well in compliance with

¹² Exhibit (“Ex.”) CTL-6 at 5 (Ardoyno Direct); Ex. CTL-7, Sched. 2 (Ardoyno Direct).

¹³ See Joint Stipulation (Jan. 4, 2024) (eDocket No. 20241-201849-01).

¹⁴ Ex. CTL-9 at 6 (Ardoyno Rebuttal).

¹⁵ Minn. R. 7810.5900.

the objective set forth by this rule, and even further below the level at which regulatory action is suggested, should foreclose any finding that the Company is providing inadequate service.

While the Commission has never discussed “chronic trouble” or created a standard by which such “chronic trouble” should be judged, the Commission did include a “repeat trouble” report metric in CenturyLink’s AFOR, defined as follows:

POTS Repeat Trouble Report Rate - For all customers who report trouble on their access line, no more than 9.0% of total trouble reports may reflect the same trouble on the same line within 30 days of having the first trouble resolved. For instances of the same trouble reported on the same access line within 30 days, Qwest will credit individual residential customer(s) \$5 for each like-occurrence and business customer(s) \$10 for each like-occurrence. Compliance shall be determined by a 12-month annual statewide average of the performance for the measure. The company shall give priority repair commitments to customers who identify critical medical situations. Critical medical situations are identified as infants on monitor systems, life support systems, or other life threatening emergencies.¹⁶

As CenturyLink witness Steve Turner pointed out, CenturyLink has consistently met this quantitative measure of troubles as well.¹⁷

Rather than apply either the objective set forth in Minnesota Rules or the definition of “repeat trouble” adopted by the Commission in the AFOR, the ALJ Report and Order create an entirely new standard that no individual customer should have experienced four or more trouble tickets over the four and a half years running from January 2019 through June 2023, and then apply that standard by ordering the Company to take action on a customer-by-customer basis with respect to every customer meeting this definition. This

¹⁶ AFOR, Appendix B, p. 6 (included as Exhibit D).

¹⁷ Ex CTL-19, Sched. 1 at ¶¶ 89-91 (Turner Rebuttal).

new standard, a creation of Department witness Mr. Webber, goes far beyond any requirement contemplated under the Telephone Utilities Rules.¹⁸ Moreover, this proposed new “standard” could lead to a finding that “chronic troubles” exist on a line even if those troubles are fundamentally different kinds of problems, or are problems reported multiple years apart. As discussed in the record, because of the variation in the nature or kinds of trouble that can be experienced on a voice service line, this crude new standard that aggregates troubles across a period spanning multiple years provides no meaningful insights as to the quality of the service being provided.¹⁹

The ALJ Report and Order create a second entirely new service quality standard by finding that a certain volume of trouble reports on any given 100-pair cable also puts the Company in violation of Minn. R. 7810.3300 and Minn. R. 7810.5000.²⁰ Under this new standard, if a 100-pair cable had 10 closed trouble tickets in 12 months *and* 75% or more of the troubles on that cable were coded with CenturyLink’s general category of cause code 310, the Company is required to “review and rehab” that cable – presumably because such a number and coding again indicates “deteriorated plant.”²¹ However, CenturyLink witnesses Mr. Turner and Mr. Ardoyno both explained that cause code 310 is a widely-used and very general cause code that technicians tend to use as a “catch-all,” even when a more precise code could be used.²² Simply put, the use of cause code 310 does not, in

¹⁸ Ex. CTL-19, Sched. 1 at ¶¶ 92-94 (Turner Rebuttal).

¹⁹ Evidentiary Hearing (“Evid. Hrg.”) Transcript (“Tr.”) at 225 (Dec. 13, 2023) (Ardoyno).

²⁰ See ALJ Report at Recommendations ¶ 4.

²¹ *Id.*

²² Ex. CTL-21, Sched. 1 at ¶¶ 10, 11, 17, 26 (Turner Surrebuttal); Ex. CTL-11 at 8 (Ardoyno Surrebuttal).

and of itself, indicate “deteriorated plant” requiring rehab. Moreover, nothing in the Telephone Utilities Rules or any Commission precedent in the last 50 years suggests anything approximating an analysis of every 100-pair cable of a telephone utility, and determining which of those cables may have had certain number of trouble tickets tagged with a general code within the past 12 months, in order to determine a company’s compliance with Minn. R. 7810.3300 and Minn. R. 7810.5000, particularly given the explicit Minnesota Rules specific emphasis on trouble report *rates*.²³ This second new standard, also having no basis in Minnesota law, must also be rejected.

C. The ALJ Report and Order Represent Subjective, Not Objective, Analysis While Ignoring Cost and Other Relevant Factors.

The ALJ Report and Order also invite arbitrary and *ad hoc* application of the Telephone Utilities Rules by stating “adequate service must consider a variety of factors relating to the service quality that customers are experiencing.”²⁴ Neither the ALJ Report nor Order articulate the “variety” of factors which may be relevant leaving the Company and Minnesota’s other remaining telephone utilities at risk of being found in violation of the rules based on as yet further unpromulgated “standards.” However, at least in fashioning “remedies,” the ALJ Report and Order make clear what will not be considered. The ALJ Report and Order reject *any* analysis of the costs, benefits, economic efficiency or resulting impacts on customer rates or competition, as the parties supporting these “remedies” performed no such analyses and provided no evidence on these critical issues.

²³ Ex. CTL-21, Sched. 1 at ¶ 11 (Turner Surrebuttal).

²⁴ ALJ Report at Finding ¶ 57.

By nonetheless approving the parties' "remedies," both the ALJ Report and Order act contrary to Minnesota's telecommunications goals as articulated in statute.

Regarding costs, benefits, economic efficiency or resulting impacts on customer rates, the ALJ Report and Order misunderstand and misrepresent CenturyLink's position. The ALJ Report, in a Finding adopted in the Order, tries to flip the Company's argument on its head by claiming that "CenturyLink points to no law that conditions regulatory compliance on maximizing profitability."²⁵ CenturyLink pointed to no such law because *CenturyLink made no such argument*. Rather, CenturyLink correctly pointed to the telecommunications goals set forth in Minn. Stat. § 237.011 that call out the need to maintain just and reasonable rates and the need to encourage economically efficient deployment of infrastructure. Both goals require consideration of cost and resulting benefits, to avoid inefficient use of resources that do not serve the public interest.

To be clear, CenturyLink does believe the Commission *must* consider issues such as economic efficiency, costs, benefits, Minnesota's interest in leading the nation in broadband deployment and the broad public interest in interpreting rules that are now half a century old. Indeed, Minnesota Statutes call for the Commission to consider such factors in making decisions.

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:

²⁵ ALJ Report at Finding ¶ 103.

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.

While certain of these goals can at times conflict with each other – for example, “gold-plating” a network may improve quality of service while simultaneously leading to substantial rate increases – none can be ignored. And while the Order states that the Commission has considered and balanced all these goals,²⁶ at least in adopting the “remedies” supported by the Department, the Commission could not have considered them in any quantitative sense, as the Department provided no evidence as to the cost, benefits, impact on rates or impact on competition of its recommended remedies.

More recently, the legislature also set out ambitious *broadband* goals for Minnesota, stating in Minnesota Statutes Section 237.012. To meet these goals, Minnesota’s POTS service quality requirements must take into account (1) maintaining just and reasonable

²⁶ Order at 20.

rates; (2) deployment of broadband infrastructure and (3) “economically efficient deployment of infrastructure.” Spending unknown millions of dollars on infrastructure that is unlikely to be used for its useful life runs directly contrary to such requirements.

D. Creating, Applying and Enforcing Previously Unidentified Service Quality Standards Violates CenturyLink’s Due Process Rights.

As noted above and discussed in more detail in CenturyLink’s Initial Brief and Reply Brief, Minnesota Rules Parts 7810.3300 and 7810.5000 both contain extremely broad and vague language concerning the need for a telephone utility to provide “adequate service.” The ALJ Report and Order now take this broad and undefined term and creates two new measures of what is (or, in this case, is not) “adequate service” – (1) service to a single customer on whose line there are four or more trouble tickets created in a four and a half year time frame, and (2) a 100-pair cable on which there are ten closed trouble tickets in 12 months and on which 75 percent or more of those troubles were coded with CenturyLink’s general category of cause code 310.

Prior to this proceeding, the Commission has never articulated either of these standards or suggested that anything approximating them would be applied to a voice telephone service provider to determine compliance with Minnesota Rules. Nonetheless, the ALJ Report and Order not only adopt them, but apply them, judge CenturyLink to be in violation of them, and order specified “remedies” of an undetermined cost and providing undetermined benefits, if any, to address these “violations.” In doing so, the ALJ Report and Order raise serious due process issues.

Certainly, if the Commission wishes to establish new service quality standards, it can do so by following the proper process. First, the Commission could open a rulemaking proceeding to amend Minnesota Rules Chapter 7810. Second, the Commission could conduct a generic proceeding and announce its new standards. Critically, though, either of these avenues result in the new standards being adopted *prior* to attempting to apply and enforce them. This puts all providers on notice of the standards to which they will be held. As courts have held, when acting in an enforcement capacity, an agency “has the responsibility to state with ascertainable certainty what is meant by the standards [it] has promulgated.”²⁷ Courts “ask whether by reviewing the regulations and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform.”²⁸ Moreover, a regulation’s “underlying purpose cannot provide the fair notice required by due process. Before an agency can sanction a company for its failure to comply with regulatory requirements, the agency must have either put this language into the regulation itself, or at least reference this language in the regulation.”²⁹ In this case, CenturyLink had no basis to identify, with ascertainable certainty, that it would be found in violation of Minnesota rules on the basis of a review of customer-by-customer trouble report data over a four and a half year period or on the basis of review of 100-pair cable

²⁷ *Diamond Roofing Co. v. OSHRC*, 528 F.2d 645, 649 (5th Cir. 1976).

²⁸ *Trinity Broad. of Fla., Inc. v. F.C.C.*, 211 F.3d 618, 628 (D.C. Cir. 2000).

²⁹ *Id.* at 631.

trouble reports over a twelve month period – particularly when the Company fully complied with the only trouble report metric mentioned in Minnesota Rules.

The record of this case demonstrates unequivocally that the Company complied with Minnesota’s “Customer Trouble Reports” rule, Minn. R. 7810.5900. Moreover, the record demonstrates the Company’s compliance with the only “repeat trouble” metric ever applied to it – the metric developed for CenturyLink’s AFOR. If the Commission now wishes to create *new* metrics, it may do so prospectively, but it cannot find CenturyLink to have violated “standards” that have never before existed.

III. THE ORDER CONTRADICTS THE RECORD EVIDENCE IN FINDING THE COMPANY IN VIOLATION OF THE GENERAL REQUIREMENTS OF MINN. R. 7810.5800.

The ALJ Report recommended that the Commission find the Company in violation of Minn. R. 7810.5800. That rule provides:

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. (Emphasis added.)

The Company has acknowledged throughout this proceeding that it is not currently meeting this *objective*. However, to find CenturyLink in violation of this rule, the ALJ Report recommended that the Commission turn this objective into a requirement, finding:

...although typically an “objective” would not be mandatory given the plain meaning of the word, a fair reading of the rule indicates that restoring service to 95 percent of customers within 24 hours is a “minimum” requirement, or a floor on CenturyLink’s performance....³⁰

³⁰ ALJ Report at Finding ¶ 95.

This legal analysis cannot withstand scrutiny and the Order properly struck this sentence from the ALJ Report.³¹ However, the Order nonetheless finds the Company in violation of this rule, focusing on the more general and vague language of the rule and stating that the Company “has failed to make ‘all reasonable efforts to prevent interruptions of service’ and to reestablish service ‘with the shortest possible delay.’”³²

How, exactly the Company’s performance under was judged to be in violation of this rule or how that question may be answered in the future remains a mystery. However, uncontradicted evidence in the record establishes the Company’s provision of strong and reliable service to its Minnesota customers and its prioritization of service restoration for POTS customers.

Regarding whether the Company is making all reasonable efforts to prevent interruptions of service, the best evidence in this record is the Company’s history regarding trouble reports. Company expert witness Mr. Steven Turner has over 35 years of experience in the telecommunications industry, including work in a variety of engineering and operating positions and being responsible for designing and engineering AT&T’s local networks across a five-state region.³³ As 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.³⁴

³¹ Order at 18.

³² *Id.*

³³ Ex. CTL-19, Sched. 1 at ¶ 2 (Turner Rebuttal).

³⁴ Ex. CTL-21, Sched. 1 at ¶ 8 (Turner Surrebuttal).

Specifically, while Minnesota’s trouble report rule provides an *objective* of maintaining service so that the average rate of all customer trouble reports in an exchange is no greater than 6.5 per 100 telephones per month,³⁵ CenturyLink’s statewide annual average trouble report rates were *0.85% for 2019; 0.77% for 2020; 0.78% for 2021; and 0.69% for 2022.*³⁶ Moreover, when measured *monthly* at the *wire-center* level, CenturyLink is meeting the trouble report rate objective well over *99 percent* of the time.³⁷ Mr. Turner noted the 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 7810.3300.³⁸ Moreover, the lack of trouble on CenturyLink’s Minnesota network demonstrates that the Company *is* making reasonable efforts to prevent the interruption of service.

Regarding the Company’s efforts to restore service “with the shortest possible delay,” undisputed record evidence establishes that CenturyLink prioritizes POTS out-of-service restorations before all other technician work, including installation requests or repairs of broadband services.³⁹ The Company utilizes 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 to most efficiently

³⁵ Minn. R. 7810.5900.

³⁶ Ex. CTL-19, Sched. 1 at ¶ 81 (Turner Rebuttal); Ex. CTL-21, Sched. 1 at ¶ 8 (Turner Surrebuttal).

³⁷ Ex. CTL-19, Sched. 1 at ¶ 80 (Turner Rebuttal).

³⁸ Ex. CTL-21, Sched. 1 at ¶ 34 (Turner Surrebuttal).

³⁹ Ex. CTL-6 at 6 (Ardoyno Direct).

dispatch its technicians skilled in voice service repair to those repair sites.⁴⁰ The requirement that POTS out-of-service restoration jobs are prioritized above all other technician works means that the route optimizer does not always assign tasks in the most efficient way from an overall system perspective.⁴¹ However, this prioritization demonstrates the Company's commitment to its POTS voice customers and to working to reestablish service with the shortest possible delay, given the current reality of a diminished and dispersed POTS customer base.⁴²

IV. THE ALJ REPORT AND ORDER GO FAR BEYOND SERVICE QUALITY REGULATION BY DICTATING COMPANY INVESTMENT DECISIONS AND DO SO ON THE BASIS OF AN INACCURATE FINDING.

The ALJ Report and Order misstate the Company's maintenance practices by claiming that CenturyLink only fixes service when the repair meets a five-year payback calculation, stating:

CenturyLink's practice of *undertaking maintenance projects only if the project satisfies a five-year payback period* threshold leads to interruptions of service, broken or deteriorated equipment and plant, impairing CenturyLink's ability to fulfill its obligations under Minn. R. 7810.3300, .5000, and .5800.⁴³

The ALJ Report provides no citation to the record in support of this claim and the finding is simply wrong. The finding is presumably based on allegations made by the Department and OAG in Direct Testimony about the Company's use of a payback threshold that the Company *directly and unequivocally refuted* in Rebuttal Testimony. As

⁴⁰ Ex. CTL-6 at 6-7 (Ardoyno Direct).

⁴¹ Ex. CTL-6 at 7 (Ardoyno Direct).

⁴² Ex. CTL-6 at 3 (Ardoyno Direct).

⁴³ ALJ Report at Finding ¶ 73.

Company witness Mr. Ardoyno explained, the Company evaluates identified potential maintenance project for funding from a variety of sources – capital funds, the transformation budget, or by local expense funds.⁴⁴ Mr. Ardoyno further explained that “the five-year payback threshold is *only* applied to projects that are under consideration as *transformation* projects. Projects that do not meet the five-year payback measure *may be done* out of a local expense budget and assigned through the construction maintenance system (CMS).”⁴⁵

Having misunderstood or misstated the Company’s funding of maintenance projects and the variety of sources used to provide the necessary funds, the ALJ Report and Order then purport to direct the Company to “end its practice of declining to complete maintenance projects for failure to satisfy a five-year payback threshold.”⁴⁶ The Company does not decline to do maintenance projects for this reason. To the extent that the ALJ Report and Order attempt to dictate how and when the Company deploys capital on transformation projects, neither the Report nor Order explain any source of Commission authority to dictate the Company’s business practices in this manner.

V. THE COMMISSION SHOULD REJECT FINDING 14 OF THE ALJ REPORT.

The ALJ Report, in a finding adopted by the Commission in its wholesale adoption of that Report, gratuitously found that CenturyLink is a “*statutorily mandated* ‘carrier of

⁴⁴ Ex. CTL-9 at 5 (Ardoyno Rebuttal).

⁴⁵ Ex. CTL-9 at 8 (Ardoyno Rebuttal) (emphasis added).

⁴⁶ ALJ Report Order at 24.

last resort.’’⁴⁷ The ALJ Report cites no legal authority for such a statement, but instead cites erroneous testimony from an outside witness hired by the Department.⁴⁸ “Carrier of last resort” is an industry legal term referring to specific rights and obligations that exist in some states. *Minnesota statutes do not impose carrier of last resort designations or obligations.*⁴⁹ Because this proceeding relates to service quality rules and not the scope of any “carrier of last resort” obligations, the thorny legal issues that can arise from such a designation are *not relevant* to this proceeding and have not been addressed by the parties, either in testimony, in briefing, or at oral argument. Because this issue does not need to be decided in the current case, the Commission should strike this portion of the ALJ Report, so that further legal action on this matter is not required.⁵⁰

VI. THE “REMEDIES” SET FORTH IN THE ALJ REPORT AND ORDER GO BEYOND THE COMMISSION’S LEGAL AUTHORITY AND LACK FACTUAL SUPPORT.

A. The “Remedies” Related to Repairing Plant Lack Any Reasonable Factual Foundation.

The ALJ Report and Order rely on the testimony of Department witness Ms. Gonzalez for the “remedies” imposed on the Company, including the customer-by-

⁴⁷ ALJ Report at Finding ¶ 14.

⁴⁸ *Id.*

⁴⁹ Minn. Stat. 237.025, Subd. 9, mentions the concept but only in terms of preserving the status quo: “Nothing in this section affects the obligation of a local exchange carrier that petitions the commission to be regulated under this section to provide service to customers, when requested, in accordance with this chapter, commission rules, and its duly authorized tariffs.

⁵⁰ In its Exceptions, the Company specifically reserved its right to appeal if the Commission adopted this finding from the ALJ Report. Exceptions of Qwest Corporation d/b/a CenturyLink QC in Minnesota at 41, fn. 116 (April 2, 2024).

customer and the 100-pair cable review and rehabilitation requirements.⁵¹ Ms. Gonzales has never been responsible for designing, operating or maintaining a network and does not claim expertise on such matters.⁵² Similarly, Ms. Gonzalez has never been responsible for managing a technician workforce.⁵³ Moreover, in developing her recommendations, Ms. Gonzalez did not attempt to determine the cost of the actions she recommends be required of the Company.⁵⁴ To the extent her recommendations apply on a customer-by-customer basis, Ms. Gonzalez did not attempt to determine whether that customer has the option of taking voice service from another provider.⁵⁵ Finally, nothing in either Ms. Gonzalez’s testimony, nor in any other witness’s testimony, attempts to determine if there are any actual benefits, or the extent of such benefits, of imposing her recommended obligations on the Company. Lacking any expert testimony regarding either the cost or benefits of these “remedies,” the record cannot support imposing these obligations on the Company.⁵⁶

In contrast, record does include expert testimony from Mr. Ardoyno, CenturyLink’s Director of Network Service Operations with over 20 years of experience dealing with

⁵¹ See ALJ Report at Finding ¶ 96; Evid. Hrg. Tr. (Dec. 13, 2023) at 107-108 (Webber) (noting that Ms. Gonzalez sponsors all of the Department’s recommendations).

⁵² Evid. Hrg. Tr. (Dec. 13, 2023) at 80-81 (Gonzalez).

⁵³ Evid. Hrg. Tr. (Dec. 13, 2023) at 80 (Gonzalez).

⁵⁴ Evid. Hrg. Tr. (Dec. 13, 2023) at 87-88 (Gonzalez).

⁵⁵ Evid. Hrg. Tr. (Dec. 13, 2023) at 82-83 (Gonzalez).

⁵⁶ The recommended “remedies” in this case consist of unsupported speculations of a witness with no relevant experience. Thus, they fail to be supported by substantial evidence. See [*In re NorthMet Project Permit to Mine Application*, 959 N.W.2d 731, 749 \(Minn. 2021\)](#) (quotations omitted), *reh’g denied* (Minn. June 15, 2021).

network maintenance and repair issues.⁵⁷ In testimony not addressed in the ALJ Report, Mr. Ardoyno explained that the line-by-line or cable-by-cable information provided by and relied on by the Department in fashioning its “remedies” does not meaningfully identify issues requiring maintenance work, given the Company’s drastically reduced customer base and corresponding reduction in total trouble reports. As Mr. Ardoyno testified:

In the past, when the Company had more POTS customers, rehabilitation opportunities could also be identified by a large number of trouble tickets in the same area, because a concentration of trouble tickets on a single cable could indicate a need for a cable repair. As the number of POTS customers has declined, however, it is simply not possible to identify problem cables in this way, as the number of trouble reports are declining along with the number of customers. Put another way, with respect to the Company’s copper network, there are simply not enough trouble reports to discern patterns of troubles that might indicate a need for a larger repair.⁵⁸

While the record does not support the Department’s remedies, the record does call into question their wisdom. For example, Company witness Mr. Turner analyzed six potential “rehabilitation” projects highlighted by the Department.⁵⁹ As he noted, if the portion of the network identified for these projects were causing substantial problems, one would expect the relevant wire centers where these projects were proposed to have seen higher trouble report rates.⁶⁰ However, *none* of the wire centers where these projects were proposed had average trouble report rates anywhere near the trouble report rule objective of 6.5 troubles or fewer per 100 lines.⁶¹ For example, the technician’s notes related to one

⁵⁷ Ex. CTL-8 at 1 (Ardoyno Direct).

⁵⁸ Ex. CTL-10 at (Ardoyno Rebuttal).

⁵⁹ Ex. CTL-21, Sched. 1 at ¶ 19 (Turner Surrebuttal).

⁶⁰ *Id.*

⁶¹ *Id.*

of the highlighted projects stated that thousands of customers *could* be impacted. A review of trouble report data, however, showed a trouble report rate in 2022 of less than 0.8 per 100 lines for the wire center at issue, reflecting a network that is performing well on behalf of its customers.⁶²

Requiring the Company to perform work of unknown cost in an area demonstrating exceptional overall network performance is neither reasonable nor justified. As Company witness Mr. Turner explained, the “remedies” included in the ALJ Report and Order 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” and limiting its ability to deploy newer technologies that customers largely prefer, and that support the State’s universal broadband access goals.⁶³

B. The ALJ Report and Order Errs in Justifying These “Remedies” by Stating that the Impacted Customers Are Rural and Do Not Have Other Options.

The ALJ Report and Order make findings contrary to the record when basing the need for the ordered “remedies” in part on the necessity of POTS for making critical calls and on the speculation that the POTS customers at issue are rural. For example, the ALJ Report states that *most* consumers require POTS to conduct essential communications:

Given that *most consumers* require [POTS] to conduct essential communications in emergency situations, to conduct their jobs or businesses, and to communicate with friends and family, adequate service means that service must be nearly continuous. Customers who regularly, repeatedly, or

⁶² *Id.*

⁶³ Ex. CTL-21, Sched. 1 at ¶ 28 (Turner Surrebuttal).

predictably lose service each year due to older or failing utility-maintained equipment cannot be receiving adequate service...⁶⁴

The ALJ Report further claims that the 4,460 customers identified as allegedly receiving inadequate service are rural:

In this instance, the record shows that while CenturyLink's overall statewide network performs satisfactorily, certain customers—*most commonly located in the rural periphery*—are not receiving adequate service. CenturyLink serves approximately 233,000 customer lines in Minnesota. About 4,460 of them are receiving inadequate service, which is two percent of CenturyLink's landline customers. These Minnesotans are among the population for whom the Commission rejected, out of concern for the public interest, CenturyLink's prior attempts to escape its regulatory obligations.⁶⁵

The record flatly contradicts both findings. First, Mr. Turner explained that the dynamic telecommunications marketplace in Minnesota has left *less than two percent* of the households in CenturyLink's copper-network service areas without access to competitive voice services.⁶⁶ This intense and ubiquitous competition means that over 98 percent of customers no longer "require [POTS] to conduct essential communications in emergency situations, to conduct their jobs or businesses, and to communicate with friends and family." Moreover, this intense competition incentivizes companies like CenturyLink to provide strong voice service at competitive prices.⁶⁷

Second, in its Exceptions, CenturyLink included a sworn statement of CenturyLink witness Susan Mohr that included a map showing the location of the 4,460 customers

⁶⁴ ALJ Report at Finding ¶ 57.

⁶⁵ ALJ Report at Finding ¶ 86 (emphasis added).

⁶⁶ Ex. CTL-19, Sched. 1 at ¶ 49 (Turner Rebuttal); Ex. CTL-21, Sched. 1 at ¶ 25 (Turner Surrebuttal).

⁶⁷ Ex. CTL-21, Sched. 1 at ¶ 27 (Turner Surrebuttal).

identified by the Department and called out in the ALJ Report and Order as receiving inadequate service. Ms. Mohr also provided a listing of competitors that report serving a customer within a small area surrounding each customer. That data shows that roughly half of customers are located in *urban* areas.⁶⁸ In addition, a significant percentage of such CenturyLink POTS customers also have *fiber* service available from CenturyLink affiliates or other fiber providers. A higher percentage are likely to have cable service available and nearly every customer has wireless service available. CenturyLink acknowledges that connectivity that enables voice transmissions continues to be an essential service. However, that connectivity is now provided by far more than just the POTS service provided by the Company – facts ignored in the ALJ Report and Order.

C. The ALJ Report and Order Err By Citing Other Jurisdictions As Precedent For The Remedies Ordered Here.

The ALJ Report and Order inaccurately claim other regulatory bodies in other jurisdictions have taken “similar regulatory actions” to those ordered here.⁶⁹ In prior briefing and its Exceptions, the Company discussed the dramatic differences between the Pennsylvania case noted in the ALJ Report - and the Pennsylvania statutes and rules underlying that case - and the current case. The ALJ Report also cited *In re Qwest Corp.*⁷⁰ for its assertion that the Oregon Commission ordered Qwest to restore basic telephone service to all customers in its service territory after a wildfire by December 1, 2020.⁷¹ In

⁶⁸ See eDocket File No. 20244-204948-03 at Exhibit E.

⁶⁹ ALJ Report at Finding ¶108.

⁷⁰ Docket No. UM 2129, Order No. 20-431, 2020 WL 6886274, at *1 (Ore. PUC Nov. 18, 2020).

⁷¹ ALJ Report at Finding ¶110.

fact, the Oregon Commission *originally* ordered that “[f]or those customers Qwest finds it impracticable to serve using its own facilities, it will provide comparable voice service via other technology at no additional cost by December 1, 2020, and provide service to these customers using its own facilities by January 1, 2021.”⁷² However, *that original order was replaced* by a settlement agreement that modified the order requirements. Moreover, the situation faced by the Oregon Commission is clearly distinguishable in that it concerned restoration of service after an emergency and the commission relied, in part, on Oregon statutes related to public health and safety.⁷³ The Oregon Commission also relied on the Oregon legislature’s general broad grant of authority to it,⁷⁴ which provides that “[t]he commission is vested with power and jurisdiction to supervise and regulate every public utility and telecommunications utility in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction.”⁷⁵ Thus, the Oregon matter was grounded on an interpretation of statutes and emergency authority not present in the current matter.

D. The Four-Hour Repair Required By the ALJ Report and Order Finds No Precedent In Minnesota Rules Or Past Commission Orders And Will Hinder Company Performance.

The ALJ Report and Order require CenturyLink to reduce its repair appointment windows from eight to four hours – apparently to remedy the alleged harm associated with

⁷² *In re Qwest Corp.*, 2020 WL 6886274, at *1.

⁷³ *See In re Qwest Corp.*, Docket. No. UM 2129, Staff Report at 5 (Ore. PUC Nov. 10, 2020).

⁷⁴ *In re Qwest Corp.*, Docket. No. UM 2129, Staff Report at 5 (Ore. PUC Nov. 10, 2020).

⁷⁵ 57 Ore. Rev. Stat. § 756.040(2).

CenturyLink's alleged violation of Minn. R. 7810.5800.⁷⁶ No rule language imposes such any such obligation. Aside from questions of the Commission's authority to dictate business practices of a company to this degree, Company witness Mr. Ardoyno explained that such an order would have unintended and adverse consequences for customers. As Mr. Ardoyno explained, restricting the Company to a four-hour repair window will lead to *more* missed repair appointments, and will also lead to less efficiency in assigning technicians to repair tickets, which will, if anything, *negatively impact* the Company's ability to restore service in 24 hours.⁷⁷ As discussed above, the Company assigns repair tickets to technicians through a route optimizer that assigns tickets based on priority (with POTS out-of-service tickets at the highest priority), geography, workload, and skill sets.⁷⁸ Adding an additional restriction based on a four-hour repair window would be a Minnesota-specific or manual adjustment that will add more complexity to the routing system and negatively impact the efficient assignment of tickets. Mr. Ardoyno also indicated that with a narrower repair window, more appointments, not fewer appointments, will likely be missed.⁷⁹ Finally, restricting the repair window would not address the main challenge in completing repairs in a more timely manner - the Company's dwindling POTS customer base and the geographic spread of those customers.⁸⁰

⁷⁶ ALJ Report at Findings ¶¶ 129-131.

⁷⁷ Ex. CTL-11 at 12 (Ardoyno Surrebuttal).

⁷⁸ Ex. CTL-11 at 12 (Ardoyno Surrebuttal).

⁷⁹ Ex. CTL-11 at 12 (Ardoyno Surrebuttal).

⁸⁰ Ex. CTL-11 at 12 (Ardoyno Surrebuttal).

VII. CENTURYLINK OFFERS THE ATTACHED “MINNESOTA SERVICE QUALITY PLAN” AS A REASONABLE MEANS OF RESOLVING THE ISSUES IN THIS PROCEEDING.

This case has now consumed over four years of the parties’ and Commission’s time. And while CenturyLink has deep concerns with the legal and evidentiary underpinnings of the ALJ Report and Order, the Company appreciates the concerns expressed by the parties and by the Commission regarding the Company’s remaining plain old telephone service (“POTS”) customers. In addition, the Company strongly believes the public interest will be best served, not by continuing litigation, but by all parties working together in addressing the issues of central concern. Therefore, as an alternative to reconsideration and reversal, CenturyLink offers the Minnesota Service Quality Plan (“MSQP”). Adopting the MSQP, rather than leaving in place the ALJ Report and Order, would allow all parties and the Commission to move forward to ensure the provision of safe and adequate telephone service in Minnesota, while also furthering the State’s ambitious broadband service goals.

Dated: September 27, 2024

WINTHROP & WEINSTINE, P.A.

By: /s/ Eric F. Swanson

Eric F. Swanson, #0188128

Elizabeth H. Schmiesing, #0229258

Christopher J. Cerny, #0403524

225 South Sixth Street, Suite 3500

Minneapolis, Minnesota 55402

(612) 604-6400

Jason Topp, #0232166

QWEST CORPORATION D/B/A

CENTURYLINK IN MINNESOTA

200 South Fifth Street, Suite 2200

Minneapolis, Minnesota 55402

ATTORNEYS FOR QWEST CORPORATION D/B/A

CENTURYLINK OF MINNESOTA

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