

**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55101**

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
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Katie Sieben	Chair
Joseph Sullivan	Vice Chair
Hwikwon Ham	Commissioner
Valerie Means	Commissioner
John Tuma	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

OAH File No. 21-2500-38965

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

**INITIAL BRIEF OF THE MINNESOTA
DEPARTMENT OF COMMERCE**

January 17, 2024

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INTRODUCTION

Each CenturyLink telephone customer is entitled to adequate service. The Commission’s 7810 rules require it.¹ And many customers depend upon adequate service to contact friends and family, run small businesses, or reach 9-1-1 for medical or other emergencies. As an incumbent local exchange carrier, CenturyLink is the “carrier of last resort” in the territory that it serves and customers have a right to rely on its service.² Despite CenturyLink’s obligations to deliver adequate service, the company’s unwillingness to sufficiently maintain its aging network means that an increasing number of customers are forced to endure lengthy and repeated outages, or buzzing, ringing, or static that renders their landline service useless.

These customers cannot be treated as mere datapoints to be averaged or annualized away. They are individuals; each of whom is entitled to adequate service. Customers like Nancy Peterson who reported having “to call for repair countless times [over the last ten years] because there was so much noise on [her] line it was essentially useless.”³ Customers like M.P. Olson who is dismayed over losing service with every snowstorm or rainfall.⁴ Or others who complained that CenturyLink expressly refuses to make permanent fixes.⁵ While still others are frustrated by CenturyLink’s reliance on half-measures like duct taping telephone lines to trees to keep them off the road – in some cases for years at a time – or allowing downed trees to precariously rest on lines.⁶

¹ Minn. R. 7810.3300, .5000 (2022).

² Minn. R. 7812.1400 (“On and after July 28, 1997, each local exchange carrier (LEC) operating in Minnesota shall be designated an eligible telecommunication carrier (ETC).”) (2022); 47 U.S.C. § 214(e) (eligible telecommunications carrier must offer the services that are supported by Federal universal service support mechanisms throughout its designated territory).

³ Pub. Cmt. of Nancy Peterson (Aug. 22, 2023) (eDocket No. 20238-198599-01).

⁴ Pub. Cmt. of M.P. Olson (Aug. 21, 2023) (eDocket No. 20238-198601-01).

⁵ Ex. DOC-1, LG-D-11 (Gonzalez Direct) (A.H. Voicemail); Evid. Hrg. Tr. at 40 (Mielke).

⁶ Ex. DOC-1 at 13 (Gonzalez Direct).

The true volume of complaints is almost certainly much higher than the reported totals. As CenturyLink conceded, most customers are unlikely to file complaints with regulatory agencies or the company.⁷ But even CenturyLink’s internal complaint statistics are deflated by its creative, but textually unmoored, “complaint” definition.⁸ Instead of applying a plain language meaning to an undefined term,⁹ CenturyLink only classifies customer inquiries that are referred by government agencies or escalated by company executives to its consumer advocacy group as complaints.¹⁰ In CenturyLink’s view of the world, a customer who calls to inform CenturyLink that a technician missed a repair appointment and the customer’s service has been out for a week is not making a “complaint.” Indeed, CenturyLink witness Ms. Mohr resisted acknowledging that she was previously responsible for addressing customer complaints, preferring to call them “customer inquiries” or “inbound calls,” despite using the term “complaint” in her own resume.¹¹ In short, unless a customer is highly persistent, it is unlikely that CenturyLink will ever classify his or her “complaint” as one. CenturyLink’s crabbed definition of “complaint” no doubt makes its numbers look better but does not reflect reality.

The facts show CenturyLink is failing to provide at least 4,460 customers with adequate service as Minn. R. 7810.3300 and Minn. R. 7810.5000 require.¹² Instead of proactively rehabilitating its network, the company relies heavily on “break/fix” maintenance practices.¹³

⁷ Evid. Hrg. Tr. at 141-42.

⁸ See Minn. R. 7810.1100–.1200.

⁹ See, e.g., Minn. Stat. § 645.08(1) (“[W]ords and phrases are construed according to rules of grammar and according to their common and approved usage”); *Troyer v. Vertlu Mgmt. Co.*, 806 N.W.2d 17, 24 (Minn. 2011) (“If the rule is unambiguous, we construe the rule according to the common and approved usage of its words and phrases and do not disregard the rule’s plain meaning to pursue its spirit.”).

¹⁰ Scott Belka Affidavit ¶ 9 (Aug. 25, 2021) (eDocket No. 20218-177576-01).

¹¹ Evid. Hrg. Tr. at 136-137 (Mohr).

¹² Ex. DOC-5 at 19 (Webber Rebuttal).

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

While some “break/fix” maintenance is inevitable, CenturyLink’s near exclusive reliance upon it burdens customers who must report outages and other troubles before anything is done. This burden is compounded by CenturyLink’s poor repair time performance that violates Minn. R. 7810.5800’s standard for restoring service following an outage.¹⁴ Frequent troubles followed by lengthy repair delays is not consistent with adequate service.

Given these established failures, the Commission should order CenturyLink to implement the Department’s recommended remedies to rehabilitate deficient plant and equipment serving the most harmed customers and prevent future backlogs through better preventative maintenance of its aging legacy copper network.

FACTS

CenturyLink is the “Carrier of Last Resort” in Many Communities

As a successor to the Northwestern Bell Telephone Company, CenturyLink has operated in Minnesota for more than a century. The company operated as a government-sanctioned monopoly for decades until Congress enacted the Telecommunications Act of 1996.¹⁵ The Telecommunications Act sought to replace the system of monopoly telephone companies with market competition.¹⁶ Due to its monopoly legacy, CenturyLink retains service areas across Minnesota that span approximately 66,000 miles of copper cable and nearly 10,000 cross box locations.¹⁷ In these service areas, CenturyLink remains the statutorily mandated “carrier of last resort.”¹⁸ Although CenturyLink has faced competition since the 1996 reforms, it still retains

¹⁴ Ex. DOC-4 at 50-54 (Webber Direct)).

¹⁵ Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56 (1996).

¹⁶ Ex. DOC-1 at 4-5 (Gonzalez Direct).

¹⁷ Ex. DOC-5, JDW-R-10 at 3-4 (Webber Rebuttal); Ex. DOC-5, JDW-R-8 at 4 (Webber Rebuttal).

¹⁸ Ex. DOC-1 at 10-11(Gonzalez Direct); Ex. DOC-4 at 16 (Webber Direct).

significant market share. CenturyLink serves approximately 233,000 customer lines in Minnesota, or about 21% of all lines in the state, while the average company has only 5,905 lines.¹⁹

CenturyLink Does Little Proactive Maintenance on Its Aging Network

In most of Minnesota, CenturyLink still provides telephone service using the same technologies as it did before the 1996 reforms: analog voice transmissions carried over twisted-pair copper cables. These copper cables come in various sizes depending on the number of customers served in any given area. For traditional telephone service, each “pair” can serve one customer such that a 100-pair cable can serve up to 100 end users.²⁰ This type of service is commonly known as Plain Old Telephone Service (“POTS”). The expected lifespan of POTS equipment is approximately 25 to 50 years.²¹ When POTS facilities are buried underground, great care must be taken to keep them dry. Moisture can cause copper cables to corrode or cause call quality to deteriorate.²² Telephone companies will sometimes use underground air dryers to ensure that lines remain protected from excessive moisture.²³

Although many traditional copper facilities—built prior to the 1996 reforms—are reaching the end of their effective operating lives, telephone companies have little incentive to make major investments in rural areas because it is less profitable. Nationally, providers such as AT&T, Verizon, and Frontier Communications have faced regulatory actions for allowing their legacy networks to fall into disrepair, resulting in deteriorating service quality for customers who continue to be served by those networks.²⁴ Like these companies, CenturyLink relies heavily on its legacy

¹⁹ Evid. Hrg. Tr. at 159-160 (Mohr); Ex. DOC-1 at 11 (Gonzalez Direct).

²⁰ Evid. Hrg. Tr. at 212 (Ardoyno).

²¹ Ex. DOC-2 at 3-4 (Gonzalez Reubttal).

²² Evid. Hrg. Tr. at 219 (Ardoyno).

²³ *Id.*

²⁴ Ex. DOC-4 at 8-9 (Webber Direct).

copper network to serve customers, generally choosing to deploy modern, fiber optic cable in only the most densely populated areas.²⁵

Faced with an aging network and similar financial incentives, CenturyLink primarily relies on “break/fix” maintenance to keep its POTS network operating. “Break/fix” maintenance refers to the practice of waiting until broken, damaged, or deteriorated facilities cause customer service outages or impairments before making repairs.²⁶ The alternative to “break/fix” maintenance is proactive rehabilitation (commonly referred to as “rehab”) where “processes are established to anticipate the ‘Break’ before it happens and take an appropriate action in advance.”²⁷ According to consulting firm Schumaker & Company, it is an industry best practice to place greater emphasis on proactive rehab.²⁸ CenturyLink, however, is spending more than [NOT PUBLIC DATA BEGINS . . . █████ . . . NOT PUBLIC DATA ENDS] of its maintenance budget on reactive “break/fix” work.²⁹

CenturyLink’s reliance on “break/fix” maintenance has increased in recent years as the company cut back on proactive rehab and staffing. 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 PUBLIC DATA ENDS].³⁰ In December 2021, CenturyLink also cut its workforce nearly [NOT PUBLIC DATA BEGINS . . . █████ . . . NOT PUBLIC DATA ENDS] field technician positions—despite asserting in this proceeding that it struggles to find

²⁵ Ex. DOC-15 at 2; Evid. Hrg. Tr. at 146 (Mohr); Ex. CTL-1 at 10 (Mohr Direct).

²⁶ *Id.* at 11.

²⁷ *Id.* (citing the 2020 Schumaker & Company audit report).

²⁸ *Id.*

²⁹ Ex. DOC-6 at 4 (Webber Surrebuttal).

³⁰ Ex. DOC-4 at 17-18 (Webber Direct).

sufficient field technicians to maintain its network.³¹ The cutbacks predictably have caused technician workloads to jump by [NOT PUBLIC DATA BEGINS . . . █████ . . . NOT PUBLIC DATA ENDS] since 2021 while customers must endure increasingly long waits to have their service restored.³²

Although its internal records show little proactive rehab work is performed, CenturyLink claims to have procedures governing the process. The first step of these procedures is for a field technician to “characterize” the proposed project.³³ If the “characterized” proposal is acceptable to the technician’s supervisor, the second step is for the supervisor to upload the proposal into the “Proactive Rehab Tool” where a regional manager considers the proposal. If the manager approves, the third step is for CenturyLink’s financial department to conduct a capital evaluation. CenturyLink generally will not approve a project for funding unless it generates a positive payback within five years.³⁴ Although CenturyLink asserts that projects that do not meet the five-year payback requirement may nonetheless be funded out of local expense funds, it acknowledged it sets no budgets for local expense work.³⁵

Customers With Few Alternatives are Frustrated by Service Disruptions

Minnesotans in rural areas are more dependent on traditional POTS service. Cellular service is often less reliable because there are fewer cellular towers or rugged geography blocks transmission of cellular signals.³⁶ Despite being more dependent on POTS service, some rural customers have been forced to endure more outages and repair delays. Cook County residents, for

³¹ *Id.* at 19; Evid. Hrg. Tr. at 182 (Ardoyno); Ex. DOC-19 at 2.

³² Ex. DOC-4 at 21, 51 (Webber Direct).

³³ Ex. DOC-5, JDW-R-7 at 11, 18 (Webber Rebuttal); Evid. Hrg. Tr. at 214 (Ardoyno).

³⁴ Ex. DOC-4 at 15 (Webber Direct).

³⁵ Ex. CTL-10 at 8 (Ardoyno Rebuttal); Ex. DOC-20 at 1; Evid. Hrg. Tr. at 229 (Ardoyno).

³⁶ Evid. Hrg. Tr. at 42-43 (Mielke).

example, reported approximately 100 service outages attributable to CenturyLink between September 2018 and August 2023.³⁷ These outages left them without the ability to place telephone calls including to contact emergency service providers. The problem has become so persistent that local volunteer fire departments, at the Cook County Sheriff's recommendation, leave their fire halls unlocked or staff them continuously during telephone service outages, so that affected members of the public can drive to the fire halls and directly contact emergency dispatchers using fire department radio systems.³⁸ In response to Cook County's concerns, however, CenturyLink told local officials that it is unwilling to make fundamental fixes to its network because the cost outweighs the financial benefits.³⁹

Cook County residents are not the only Minnesotans to complain about CenturyLink's service problems. Between January 2021 and June 2023, the Department received at least 530 complaints from CenturyLink customers ranging from lengthy outages to repeatedly missed repair appointments. As shown in the chart below, most complaints involve more than one issue. For example, 46% of the complaints involved a service outage and 38% of the complaints reported that CenturyLink had wrongly claimed to resolve the customers' problem or otherwise gave the customer inaccurate information, while 15% of complaints involved both issues.⁴⁰ In addition to complaints received by the Department, at least another 100 customers filed written complaints with the Commission during the pendency of this contested-case proceeding.⁴¹

³⁷ Ex. DOC-7 at 3.

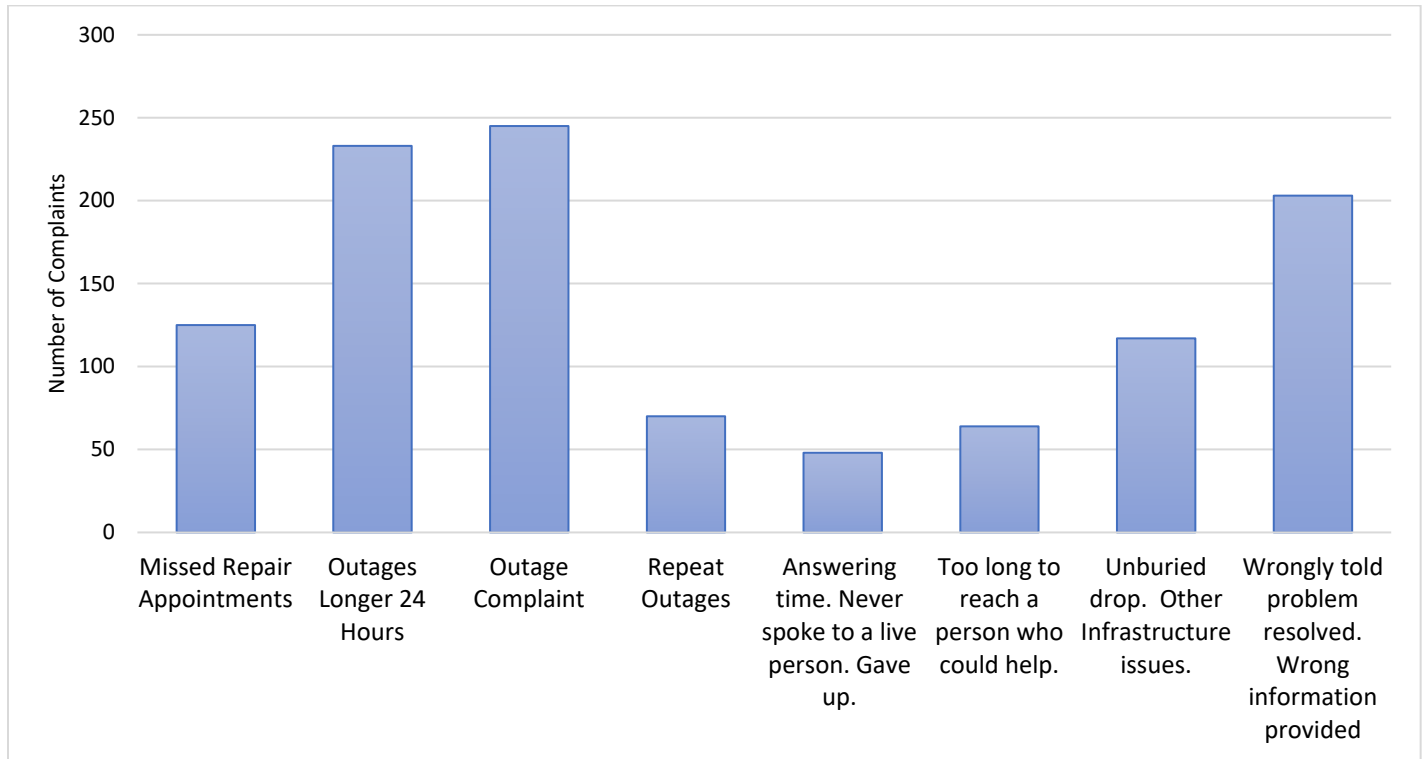
³⁸ Evid. Hrg. Tr. at 37-38 (Mielke).

³⁹ *Id.* at 41-42.

⁴⁰ *Id.*

⁴¹ Evid. Hrg. Tr. at 140 (Mohr).

**Complaints Received by the Department
from January 2019 through June 2023.⁴²**



As this complaint data highlights, many customers are not receiving adequate service. Customers located in rural areas, however, often lack other plausible service alternatives and, therefore, the option to switch providers in response to CenturyLink’s poor service.⁴³ Rural customers like Terri Knutson in Bovey explained how their CenturyLink service is essential because they are unable to get cellphone coverage at home, making the “frequent outages and intermittent static and clicking” over the past few years even more serious of a problem.⁴⁴ These customers are frequently among the most vulnerable in the state. Approximately two-thirds of Minnesotans who depend on landlines are older than 65, while about three-fifths live in households

⁴² Ex. DOC-1 at 14 (Gonzalez Direct).

⁴³ See, e.g., Ex. DOC-3 at 2-11 (Gonzalez Surrebuttal).

⁴⁴ Pub. Cmt. of Terri Knutson (July 6, 2022) (eDocket No. 20238-198601-01).

that have incomes of less than \$75,000.⁴⁵ They are entitled to the protections afforded by the Commission’s service-quality rules.

ARGUMENT

The Department and other intervenors have established by a preponderance of the evidence that CenturyLink is violating the Commission’s chapter 7810 service-quality rules.⁴⁶ The preponderance of the evidence standard only requires that to establish a fact, it must be more likely than not that it exists.⁴⁷ This standard is less rigorous than the clear and convincing evidence standard which requires that “the truth of the facts asserted [be] ‘highly probable.’”⁴⁸

Application of the “more likely than not” standard in this matter demands a finding that CenturyLink is violating Minn. R. 7810.3300 and Minn. R. 7810.5000, which require telephone companies to provide all customers with adequate service. In this instance, CenturyLink is failing to provide at least 4,460 customers with adequate service.⁴⁹ Using the company’s own data, the Department established that these customers chronically experience troubles with their lines because CenturyLink fails to proactively rehabilitate its aging outside plant and equipment.⁵⁰ By any reasonable definition, these customers are not receiving adequate service. Additionally, CenturyLink is, by its own admission, violating Minn. R. 7810.5800 that requires the company to restore 95% of service outages within 24 hours.⁵¹

To remedy CenturyLink’s violations of the chapter 7810 rules, the Commission should order the company to make targeted improvements to its outside plant and equipment that is not

⁴⁵ Ex. DOC-1 at 6–7 (Gonzalez Direct).

⁴⁶ Minn. R. 1400.7300, subp. 5 (2022)

⁴⁷ *City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1, 4 (Minn. 2004).

⁴⁸ *Vermillion State Bank v. Tennis Sanitation, LLC*, 969 N.W.2d 610, 626 (Minn. 2022).

⁴⁹ Ex. DOC-5 at 19 (Webber Rebuttal).

⁵⁰ Ex. DOC-4 at 48-49 (Webber Direct); Ex. DOC-5 at 18-23 (Webber Rebuttal); Ex. DOC-5, JDW-R-4 (Webber Rebuttal); Ex. DOC-5, JDW-R-5 (Webber Rebuttal).

⁵¹ Ex. CTL-8 at 5 (Ardoyno Direct).

providing customers with adequate service. Requiring CenturyLink to rehabilitate deficient POTS facilities is clearly within the Commission’s authority. It also is broadly consistent with steps taken by other state commissions to remedy service quality failures.

I. CENTURYLINK FAILS TO PROVIDE ALL CUSTOMERS WITH ADEQUATE SERVICE.

The Commission’s rules require CenturyLink to sufficiently maintain its network to provide all its customers with adequate service. The chapter 7810 rules do not define adequacy and the Commission has not previously addressed it. But the plain language meaning of “adequate service” is clear, and other state public utilities commissions have interpreted the term in similar rules and contexts. Adequate service means near continuous telephone access without repeated disruptions, and CenturyLink is not providing it.

A. To Provide Adequate Service, CenturyLink Must Ensure Every Customer Receives Near Continuous Telephone Access Without Repeated Disruptions.

Under the Commission’s rules, CenturyLink customers are entitled to adequate service that provides them with near continuous telephone service without repeated disruptions. CenturyLink is not meeting this standard for all customers. The Department—relying on CenturyLink’s own data—identified thousands of customers who experience chronic troubles all linked to deteriorating plant or equipment.

CenturyLink must provide all customers with adequate service. The Commission requires that telephone companies, including CenturyLink:

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.⁵²

⁵² Minn. R. 7810.3300 (emphasis added).

Telephone companies further have an ongoing obligation to review their practices to assure the furnishing of adequate service.⁵³

The Commission’s 7810.3300 rule does not define “adequate service.” The Commission should give the term its plain and ordinary meaning, taking into consideration the context in which it is used.⁵⁴ Courts consider dictionary definitions to determine a word’s plain meaning.⁵⁵ Here, adequate means “sufficient to satisfy a requirement or meet a need,” while service refers to “the provision to the public of something, especially a utility.”⁵⁶ These definitions establish that adequate service requires that CenturyLink satisfy each customer’s need for telephone service. Telephone is an essential service. It is “a prerequisite for full participation in our economy and society.”⁵⁷ As a result, most customers require near continuous telephone access with few disruptions to have their service needs satisfied.

Other jurisdictions have reached similar conclusions. For example, while resolving a customer complaint filed against AT&T, the Ohio commission concluded that adequate service turned on several factors “including, but not limited to, the number, severity and duration of the service problems, whether the service could have been corrected, and whether the service problems likely are caused by telephone company facilities.”⁵⁸ In another consumer complaint case, an administrative law judge’s initial decision that was largely adopted by the Pennsylvania

⁵³ Minn. R. 7810.5000.

⁵⁴ *Troyer v. Vertlu Mgmt. Co.*, 806 N.W.2d 17, 24 (Minn. 2011); *Buzzell v. Walz*, 974 N.W.2d 256, 261 (Minn. 2022).

⁵⁵ *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016).

⁵⁶ *Adequate*, American Heritage Dictionary (5th ed. 2022); *Service*, American Heritage Dictionary (5th ed. 2022).

⁵⁷ *See In re Lifeline & Link Up Reform & Modernization Lifeline & Link Up Fed.-State Joint Bd. on Universal Serv. Advancing Broadband Availability Through Digital Literacy Training*, 27 F.C.C. Rcd. 6656, 6665 (2012).

⁵⁸ *Wilson v. AT&T Communications of Ohio*, No. 03-2294-TP-CSS, 2004 WL 1810707, at *6 (Ohio P.U.C. June 2, 2004).

commission concluded that “[e]ven if only one customer is served on a particular line, a utility is mandated to maintain its facilities and render reasonable service.”⁵⁹ In that case, the administrative law judge concluded although occasional outages do not necessarily constitute a violation, losing service on three occasions over 16 months was inadequate service.⁶⁰

Adequacy of service must be determined on an individual basis based on the volume of service issues and whether the provider takes reasonable steps to address the underlying problem. In other words, what constitutes adequate service must consider a variety of factors relating to the service quality that customers are experiencing. Nothing about this definition permits CenturyLink to discount or ignore the needs of individual customers. The adequate service requirement should be assessed on a case-by-case basis.

Applying these standards, CenturyLink is failing to provide all customers with adequate service due to its excessive reliance on “break/fix” maintenance that leaves customers without service for extended periods of time. CenturyLink’s trouble report data from January 2019 through June 2023 (approximately [NOT PUBLIC DATA BEGINS . . . ██████████ . . . NOT PUBLIC DATA ENDS] discrete trouble reports) reflects that 77% of all problems related to deteriorating or failing plant or equipment.⁶¹ As reflected in the table below, 4,460 CenturyLink customers experienced at least four troubles related to deteriorating or failing plant or equipment. For customers in the four-to-five trouble category, that is at least one trouble every ten to thirteen

⁵⁹ *Cynthia Mosco v. Verizon Pennsylvania LLC*, Docket No. C-2018-3006579, 2020 WL 1673955, at *16 (PA P.U.C. Mar. 9, 2020) (“PA ALJ Initial Decision”); *Cynthia Mosco v. Verizon Pennsylvania LLC*, No. C-2018-3006579, 2022 WL 1423613, at *12 (PA P.U.C. Apr. 25, 2022) (“PA PUC Decision”).

⁶⁰ PA ALJ Initial Decision at *11.

⁶¹ Ex. DOC-4 at 48-49 (Webber Direct).

months. For customers in the five-or-more category (who had 7.5 troubles on average), that is approximately one trouble every seven months, or about twice a year for four-and-a half years:

**Basic Telephone Service – Outside Plant Troubles
(January 2019 to June 2023)⁶²**

Customers with:	# of Customers in each Category	Total # of Tickets for each Category	Average # of Tickets Per Customer
[NOT PUBLIC DATA BEGINS ...			
1 Trouble			
2-3 Troubles			
4-5 troubles			
5+ Troubles			
Total			
... NOT PUBLIC DATA ENDS]			

In some cases, customers experienced considerably more, and more frequent, troubles. **[NOT PUBLIC DATA BEGINS ...** [REDACTED] **... NOT PUBLIC DATA ENDS]** of Northfield, for example, experienced 12 troubles between August 2019 and September 2021, or one trouble every two months.⁶³ While **[NOT PUBLIC DATA BEGINS ...** [REDACTED] **... NOT PUBLIC DATA ENDS]** of Austin experienced 14 troubles caused by deteriorated CenturyLink equipment between April 2019 and May 2023.⁶⁴ That is approximately one trouble every three to four months. Regardless of the exact definition adopted by the Commission, multiple outages each year for several years in a row cannot be consistent with adequate service. Indeed, CenturyLink’s director of network operations admitted that he would not consider the Austin customer’s service to be adequate.⁶⁵

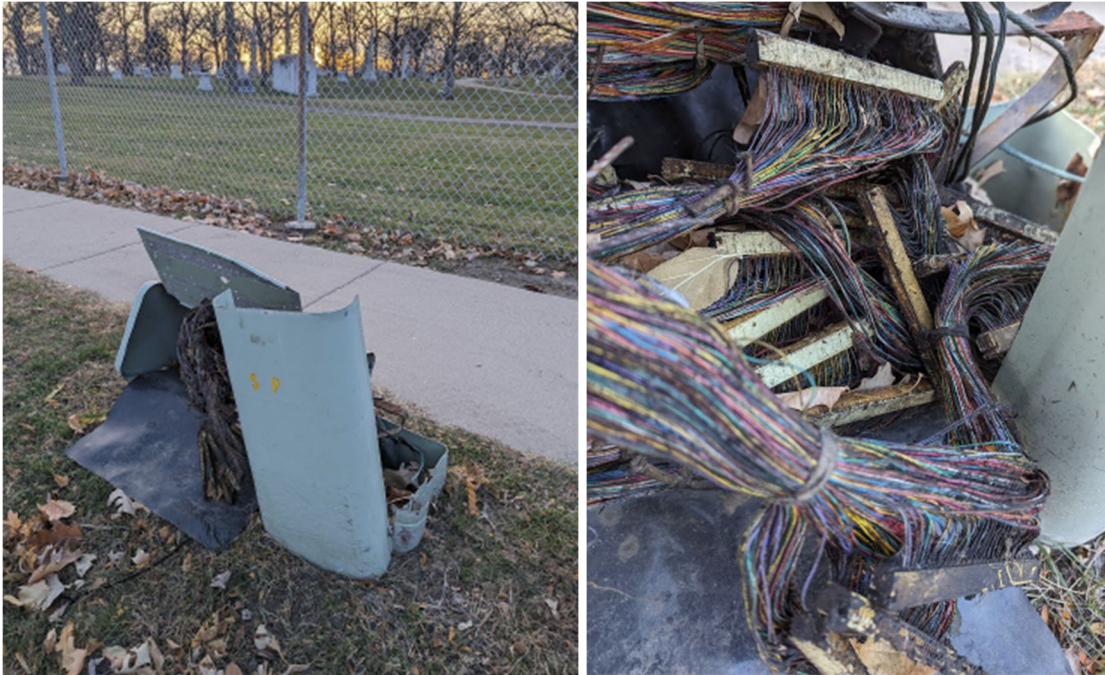
⁶² Ex. DOC-5 at 19 (Webber Rebuttal).

⁶³ Ex. DOC-4 at 42 (Webber Direct); Ex. DOC-4, JDW-D-13 (Webber Direct).

⁶⁴ Evid. Hrg. Tr. at 224 (Ardoyno); Ex. DOC-29 at 5.

⁶⁵ Evid. Hrg. Tr. at 224-225 (Ardoyno).

Ex. OAG-6, BPL-S-6 at 26 (Lebens Surrebuttal)



Ex. OAG-6, BPL-S-6 at 36 (Lebens Surrebuttal)



Ex. OAG-8, BPL-S-6 at 74 (Lebens Surrebuttal)



Another witness recounted how there are places in Cook County where trees have fallen on top of telephone lines strung from poles and laid there for years.⁶⁹ And in some cases, CenturyLink facilities have caught fire in heavily wooded areas, requiring the county to dispatch volunteer firefighters to monitor and contain the fire.⁷⁰ These outcomes are inconsistent with CenturyLink’s obligation to keep its facilities in a “good state of repair consistent with safety and adequate service performance.”⁷¹

The Department’s expert Mr. Webber has decades of industry experience, including as a district manager for law and government affairs with AT&T and co-founder of his own telephone company. He testified that, to ensure adequate service, the requirements in Minn. R. 7810.3300

⁶⁹ Evid. Hrg. Tr. at 40, 58 (Mielke).

⁷⁰ *Id.* at 64-65.

⁷¹ Minn. R. 7810.3300.

“point towards a rigorous program of preventative maintenance, that is primarily focused on identifying and resolving potential [outside plant] network failures before they have negative impacts on a telephone companies’ basic telephone service subscribers.”⁷² Mr. Webber is not alone in his assessment. The Schumaker & Company consulting firm concurred, explaining that preventative maintenance is necessary and that companies commonly evaluate “the amount of preventive versus corrective maintenance work activities as a measure of success.”⁷³

CenturyLink is not meeting its preventative maintenance obligation. CenturyLink fails to engage in sufficient proactive rehab work. Unlike *repair* work, which CenturyLink does in response to a specific issue or outage, *rehab* is proactive maintenance or outright replacement of aging or failing network components to reduce or avoid future service problems.⁷⁴ The company, however, performs this work on a mostly ad-hoc basis. CenturyLink’s director of network operations admitted that the company “doesn’t automatically or systematically run any proactive testing.” Instead, network testing only occurs incidentally to service installations or repairs.⁷⁵ To that end, CenturyLink also does not use any predictive data analysis to identify operational anomalies and potential equipment defects before failures occur. Instead, the company relies on a monthly “manual process” to identify potentially high trouble areas.⁷⁶ CenturyLink’s regional managers, moreover, receive no regular reporting on service quality or performance problems; company management is only informed on an “as needed” basis.⁷⁷ And while the company claims to have robust proactive rehab processes, its only current program for maintaining its outside plant

⁷² Ex. DOC-1 at 11 (Webber Direct); Ex. DOC-1, JDW-D-2 at 1-2 (Webber Direct).

⁷³ Ex. DOC-1 at 11 (Webber Direct).

⁷⁴ Ex. CTL-8 at 8 (Ardoyno Direct); Ex. DOC-2 at 2 (Gonzalez Rebuttal).

⁷⁵ Ex. DOC-22 at 4; Evid. Hrg. Tr. at 194 (Ardoyno).

⁷⁶ Ex. DOC-25 at 2; Evid. Hrg. Tr. at 200 (Ardoyno).

⁷⁷ Ex. DOC-23 at 2; Evid. Hrg. Tr. at 196 (Ardoyno).

is creating trouble tickets.”⁷⁸ In other words, CenturyLink waits until a field technician stumbles upon a problem while doing something else or enough customers report problems. This is hardly a proactive approach. CenturyLink’s “proactive” process still involves waiting until enough problems pile up with a particular piece of plant or equipment before doing anything about it, if at all.

Although CenturyLink failed to provide documentation describing its purported procedures, internal manuals used for training, or inspection criteria,⁷⁹ CenturyLink claims to identify rehab work in two ways. First, the company claims to consider opportunities submitted by field technicians through a “Proactive Rehab Tracking Tool.” Second, CenturyLink asserts that it uses its “100 Pair Cable Live Tracking Report” to identify cables that have experienced the most troubles on a 12-month rolling basis for possible rehab.

The company is not performing the proactive rehab work that its technicians and reports have identified. In its “Proactive Rehab Tracking Tool” records, CenturyLink technicians identified only [NOT PUBLIC DATA BEGINS . . . ■ . . . NOT PUBLIC DATA ENDS] potential rehab projects between January 2019 and June 2023 for the entire state. This is a staggeringly small amount given that CenturyLink’s statewide network spans approximately 66,000 miles of copper cable and nearly 10,000 cross box locations.⁸⁰ Even though CenturyLink only identified a small number of projects, the company still has only pursued half of them to date. Of the remaining projects, the Department’s expert found that at least [NOT PUBLIC DATA BEGINS . . . ■ . . . NOT PUBLIC DATA ENDS] of them relate to correcting deficiencies with

⁷⁸ Ex. DOC-2, LG-R-1 (Gonzalez Rebuttal).

⁷⁹ *Id.*; Evid. Hrg. Tr. at 191-192 (Ardoyno).

⁸⁰ Ex. DOC-5, JDW-R-10 at 3-4 (Webber Rebuttal); Ex. DOC-5, JDW-R-8 at 4 (Webber Rebuttal).

The [NOT PUBLIC DATA BEGINS . . . ██████████ . . . NOT PUBLIC DATA ENDS] is far from the only example of CenturyLink failing to complete work it identifies or slowing the review and potential approval process to a glacial pace. The Department’s expert also pointed to examples in [NOT PUBLIC DATA BEGINS . . . ██████████ ██████████ ██████████ ██████████ ██████████ . . . NOT PUBLIC DATA ENDS].⁸⁶

The company’s “100 Pair Cable Live Tracking Report” records shows a similar pattern. Once again, CenturyLink identified few rehab opportunities, slow walked the opportunities it did identify, and ultimately performed few if any rehab projects despite the size and age of its network. In that report, CenturyLink tracked [NOT PUBLIC DATA BEGINS . . . ██████████ . . . NOT PUBLIC DATA ENDS] different cables across Minnesota.⁸⁷ Yet CenturyLink identified just [NOT PUBLIC DATA BEGINS . . . ██████████ . . . NOT PUBLIC DATA ENDS].⁸⁸ The report, however, shows that 210 100-pair cables were responsible for ten or more trouble tickets, with 75% or more of those troubles having been diagnosed as being caused by deteriorated cable by CenturyLink technicians.⁸⁹ The Department’s expert reasoned that these 210 cables marked a “conservative” starting place for investigation and possible rehab.⁹⁰ Moreover, CenturyLink’s director of network operations agreed that cable groups contained in the

⁸⁶ Ex. DOC-5 at 13 (Webber Rebuttal).
⁸⁷ *Id.* at 15.
⁸⁸ *Id.* at 16.
⁸⁹ *Id.*; Ex. DOC-5, JDW-R-3 (Webber Rebuttal).
⁹⁰ *Id.*

Out-of-Service Restorations within 24 Hours⁹⁸

Year	2019	2020	2021	2022	2023
[NOT PUBLIC DATA BEGINS . . .					
January	█	█	█	█	█
February	█	█	█	█	█
March	█	█	█	█	█
April	█	█	█	█	█
May	█	█	█	█	█
June	█	█	█	█	█
July	█	█	█	█	█
August	█	█	█	█	█
September	█	█	█	█	█
October	█	█	█	█	█
November	█	█	█	█	█
December	█	█	█	█	█
Annual Average	█	█	█	█	█
. . . NOT PUBLIC DATA ENDS]					

CenturyLink’s performance has precipitously declined and has shown no signs of recovery even following the end of the COVID-19 pandemic. CenturyLink’s declining performance was likely caused by its decision to lay off about [NOT PUBLIC DATA BEGINS . . . █ . . . NOT PUBLIC DATA ENDS] of its Minnesota field technician workforce, causing per technician workloads to spike [NOT PUBLIC DATA BEGINS . . . █ . . . NOT PUBLIC DATA ENDS] since 2021.⁹⁹ Without Commission intervention, no evidence suggests CenturyLink’s performance will improve.

CenturyLink does not dispute that its performance falls below the Commission’s standard. Instead, CenturyLink improperly attempts to render a word in Minn. R. 7810.5800 “superfluous, void, or insignificant.”¹⁰⁰ CenturyLink suggests that the rule only sets an “objective” and is

⁹⁸ *Id.* at 51.

⁹⁹ Ex. DOC-4 at 20-21 (Webber Direct); Ex. DOC-2 at 17 (Gonzalez Rebuttal).

¹⁰⁰ *Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 170 (Minn. 2021); Minn. Stat. § 645.16 (“Every law shall be construed, if possible, to give effect to all its provisions.”)

therefore “not a mandatory standard.”¹⁰¹ This interpretation, however, violates the canon against surplusage by reading the “minimum” requirement out of the rule entirely. The Commission should reject CenturyLink’s attempt to avoid Minn. R. 7810.5800’s clear requirements.

Customers are doubly burdened by CenturyLink’s failure to promptly restore service because of the company’s heavy reliance on “break/fix” maintenance. If CenturyLink engaged in robust proactive rehab work that prevented outages, then fewer customers would experience lengthy service restoration delays. The company, however, does not engage in significant proactive rehab, and customers with few or no other options for basic telephone service are forced to bear the brunt of lengthy and repeated outages. The Commission should find that CenturyLink is violating Minn. R. 7810.5800 by failing to restore service for 95% of customers within 24 hours.

II. THE COMMISSION SHOULD ORDER CENTURYLINK TO IMPLEMENT THE DEPARTMENT'S PROPOSED REMEDIES.

The Commission should direct CenturyLink to investigate and promptly rehab deficient plant and equipment identified by the Department’s expert, require the company to implement a preventative “Plant Pride” program to prevent future network deterioration, and use shorter repair appointment windows. These narrowly targeted remedies will help ensure that all CenturyLink customers receive adequate service under the Commission’s 7810 rules. These remedies, moreover, are within the Commission’s authority and consistent with actions taken in other jurisdictions.

A. The Department’s Recommendations Are Targeted to Ensure That All CenturyLink Customers Receive Adequate Service.

The Commission should exercise its authority to require CenturyLink to investigate and promptly rehab deficient plant and equipment identified by the Department’s expert. The

¹⁰¹ Ex. CTL-8 at 5 (Ardoyno Direct).

Commission also should require the company to implement a preventative “Plant Pride” program like those adopted in other states. Last, the Commission should require CenturyLink to use smaller repair appointment windows that do not waste customer time.

The Commission has broad authority to remedy CenturyLink’s provision of inadequate service.¹⁰² Section 237.081 grants the Commission “authority to make orders regarding the practices and services of telephone companies after affording the affected companies an opportunity to be heard.”¹⁰³ Separately, section 237.461, subdivision 1, authorizes the Commission to “compel performance” or “other appropriate action.” In short, “these statutes give [the Commission] broad statutory authority to regulate the telecommunications market in Minnesota.”¹⁰⁴

Here, the 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 months of the final order in this matter.¹⁰⁵ The Commission also should require CenturyLink to file quarterly reports on its progress, on a customer-by-customer basis. This recommendation is narrowly targeted to improve service for the approximately 4,460 customers who are not currently receiving adequate service. These customers represent only [NOT PUBLIC DATA BEGINS . . . ■ . . . NOT PUBLIC DATA ENDS] of all customers with a deteriorated plant related problem, but they are burdened

¹⁰² Minn. Stat. § 237.081, subd. 4(2)-(3) (“Whenever the commission finds . . . that any service is inadequate, the commission shall make an order respecting the . . . act, omission, practice, or service that is just and reasonable[.]”)

¹⁰³ *In re Deregulation of the Installation & Maint. of Inside Wiring*, MPUC Docket No. C-86-743, FINDINGS OF FACT CONCLUSION OF LAW & ORDER, 1986 WL 1299676, at *2 (Dec. 31, 1986).

¹⁰⁴ *Qwest Corp. v. Minn. Pub. Utilities Comm’n*, 427 F.3d 1061, 1065 (8th Cir. 2005) (stating that the Commission’s broad authority does not extend to ordering restitution).

¹⁰⁵ Ex. DOC-5 at 19-20 (Webber Rebuttal).

with [NOT PUBLIC DATA BEGINS . . . █████ . . . NOT PUBLIC DATA ENDS] of all deteriorated plant related problems.¹⁰⁶

In addition, to helping ensure that all customers receive adequate service, the Commission should require CenturyLink to review and rehab the 210 100-pair cables that the Department's expert identified as driving troubles within 24 months.¹⁰⁷ This recommendation, again, is narrowly targeted. First, it is likely that there is significant overlap between the plant and equipment directly serving the 4,460 customers who are not receiving adequate service and these cables, lessening the incremental volume of additional work. Second, these 210 cables amount to fewer than [NOT PUBLIC DATA BEGINS . . . █████ . . . NOT PUBLIC DATA ENDS] of all cables contained in CenturyLink's tracking report.¹⁰⁸ Requiring CenturyLink to promptly rehab its worst performing plant and equipment is a reasonable step to ensure adequate service on an ongoing basis.

Beyond promptly restoring adequate service where it is presently lacking, the Commission also should take steps to ensure that CenturyLink engages in sufficient proactive rehab work to avoid future backlogs. Specifically, the Commission should:

- (a) 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.
- (b) 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”).

¹⁰⁶ *Id.* at 19.

¹⁰⁷ Ex. DOC-5 at 15-16 (Webber Rebuttal); Ex. DOC-5, JDW-R-3 (Webber Rebuttal); Ex. DOC-2 at 8-9 (Gonzalez Rebuttal).

¹⁰⁸ CenturyLink's report identifies approximately 9,500 total cable groups. Ex. DOC-5 at 15 (Webber Rebuttal).

(c) Require that the field technician who initially submitted the report receive notification of how the report was ultimately resolved.

(d) 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.

(e) 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).

(f) Encourage CWA’s area/district leadership to educate their members on a regular basis about these new procedures and champion robust participation.¹⁰⁹

This recommendation is closely modeled on the “Plant Pride” programs adopted in New York and Pennsylvania.¹¹⁰ Those programs similarly allow technicians to submit plant conditions needing additional maintenance and require the applicable telephone company to promptly review the submissions. In New York, for example, Verizon must resolve 75% of all technician submissions within 90 days. These programs also place great emphasis on collaboration between the company and its union workers. In New York, meetings occur on a quarterly basis, while they happen semi-annually in Pennsylvania.¹¹¹

The programs have been successful in improving service quality in those states. Since the New York and Pennsylvania programs were respectively implemented in 2016 and 2017, the state commissions have seen significant drops in filed complaints. In New York, the number of annually filed complaints dropped by approximately 68%. In Pennsylvania, the number of annually filed

¹⁰⁹ Ex. DOC-2 at 12-13 (Gonzalez Rebuttal).

¹¹⁰ *Id.* at 9.

¹¹¹ *Id.* at 9-10.

complaints dropped 45%.¹¹² Additionally, those states have not seen a subsequent regression in performance year-over-year.¹¹³ CenturyLink should be required to adopt similar procedures in Minnesota.

Lastly, the Commission should require CenturyLink to reduce repair appointment windows from eight hours to four hours. CenturyLink's Minn. R. 7810.5800 performance demonstrates that it struggles to timely restore service. The Department has further received numerous reports from customers that CenturyLink requires them to be available for the entire day and then repeatedly misses the appointments.¹¹⁴ Shorter repair windows are necessary to ensure customer time is respected and force CenturyLink to focus its attention on meeting repair obligations.

B. The Department's Recommendations Are Broadly Consistent with Remedies Ordered by State Commissions in a Diverse Range of Jurisdictions.

State law empowers the Commission to adopt the Department's recommendations to correct CenturyLink's failure to provide all customers with adequate service. The Department's recommendations also are consistent with the types of relief ordered by other state commissions to resolve inadequate telephone service, including Oregon, Pennsylvania, and Wyoming.

In 2020, the Pennsylvania commission fined Verizon for failure to consistently provide a single customer with adequate service. In that case, the customer reported instances of losing service, the inability to receive incoming calls, a lack of dial tone, or static or noise that interfered with service.¹¹⁵ The administrative law judge report largely adopted by the Pennsylvania

¹¹² *Id.* at 10.

¹¹³ *Id.* at 11-12.

¹¹⁴ Ex. DOC-2 at 18-19 (Gonzalez Rebuttal).

¹¹⁵ PA ALJ Initial Decision at *16; PA PUC Decision at *12. Applying comparative fault-like reasoning, the Pennsylvania commission ultimately reduced the fine recommended by the Administrative Law Judge because the customer had refused to take fiber service offered by Verizon to remedy the problems. PA PUC Decision at *11 (reasoning that the reduced "civil penalty amount properly reflects both the nature and duration of the violations and the

commission explained that Verizon was obligated to maintain its copper network to provide adequate and reliable service.¹¹⁶ In other 2020 proceedings, following several wildfires that knocked out telephone service, the Oregon commission ordered several Lumen subsidiaries to “restore basic telephone service to all customers who requested service in the company’s service territory” by December 1, 2020, either by repairing or replacing its own facilities or by providing comparable voice service to affected customers at no additional cost.¹¹⁷

The Wyoming commission similarly has ordered Lumen affiliates to rehab its outside plant where customers are not receiving adequate service. In 2008 and 2018 proceedings, the commission found that customers were experiencing ongoing service problems and ordered Qwest Corporation to timely address all maintenance and repair requests in particular communities and file quarterly reports on the proactive upgrading being done, all maintenance and service-related activities, and all other resolutions of problems being undertaken.¹¹⁸

As these examples illustrate, state commissions can and do exercise legal authority to ensure that telephone companies provide their customers with adequate traditional telephone service. The Minnesota commission likewise should exercise its authority to ensure all CenturyLink customers, including those presently experiencing chronic troubles, receive adequate

Complainant's refusal to migrate her service to fiber, which would have allowed her to avoid the chronic service problems that she experienced.”).

¹¹⁶ PA ALJ Initial Decision at *11.

¹¹⁷ See, e.g., *In re Qwest Corp.*, No. 20-431, 2020 WL 6886274, at *1 (Nov. 18, 2020). The original commission order was eventually replaced with a settlement that granted Lumen two additional months to restore service. *In re United Tel. Co. of the Nw. (Um 2127)*, *Centurytel of Oregon (Um 2128)*, *Qwest Corp. (Um 2129)*, No. 20-486, 2020 WL 7767794, at *1 (Dec. 23, 2020).

¹¹⁸ *In re Compl. Filing of Karen King Against Qwest Corp. Requesting A Formal Hearing on the Alleged Probs. with Her Telecomm’cns Serv.*, Docket No. 70000-1269-TC-06, 2008 WL 9895044 (WY P.S.C. May 9, 2008); *In re Formal Compl. of Ron & Alyce Carter Against Qwest Corp. d/b/a Centurylink QC Alleging Unreliable & Intermittent Tel. Serv. in Zone 3 of the Lusk, Wyoming Exch.*, No. 70000-1633-TC-16, 2017 WL 4552156, at *9 (WY P.S.C. Oct. 6, 2017).

service. The most effective mechanism for ensuring those CenturyLink customers receive adequate service would be to order the Department's recommended remedies.

CONCLUSION

For the reasons stated above, the Department requests that the Administrative Law Judge find that CenturyLink has violated Minn. R. 7810.3300 and Minn. R. 7810.5000 by failing to provide all customers with adequate service and Minn. R. 7810.5800 by failing to timely restore service outages. To address CenturyLink's failings, the Administrative Law Judge should further recommend that the Commission adopt the Department's proposed remedies. CenturyLink's performance will not improve absent Commission intervention.

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