

Staff Briefing Papers

Meeting Date November 1, 2018 Agenda Item **1

Company Qwest Corporation dba CenturyLink QC

Docket No. **P421/CI-17-796**

In the Matter of a Commission Inquiry into CenturyLink's Compliance with TAP Statutes and Rules

Issues

1. Should the Commission grant CenturyLink's petition for reconsideration?
2. Should the Commission take any other action?

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 **Relevant Documents**

Date

CenturyLink Motion for Clarification and Reconsideration

September 24, 2018

Department of Commerce Response

October 1, 2018

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

I. Statement of the Issues

1. Should the Commission grant CenturyLink's petition for reconsideration?
2. Should the Commission take any other action?

II. Background

On December 13, 2017, the Commission opened the current docket in response to customer complaints. Following a notice and comment process, the Commission issued an Order on September 12, 2018. Among other things, the Order required CenturyLink to file an explanation of how its employees are trained to ensure that customers receive accurate TAP information, and a report identifying customers that were denied TAP benefits.

Commission Meeting Procedures

Petitions for reconsideration are governed by Minn. Rules 7829.3000. Minn. Rules 7829.3000, subpart 6 states that the Commission shall decide a petition for rehearing, amendment, vacation, reconsideration, or reargument with or without oral argument.

In accordance with the Commission's meeting procedures, only a Commissioner voting on the prevailing side may move to reconsider. If the motion to reconsider passes, then the matter is again before the Commission. In this docket, the Commissioners voted 5-0, so any Commissioner may move to reconsider or clarify.

III. Parties' Comments

A. Reconsideration as to Process: Ordering Paragraphs 1.a and 1.e

The portions of the Commission's Order that are at issue here are as follows:

1. Within 60 days of the date of this order, CenturyLink must file the following:
 - a. An explanation of how employees are trained to ensure that customers are given accurate TAP program information. The explanation must include training material, which customer service representative groups receive TAP training, the frequency with which CenturyLink personnel receive ongoing training to ensure that the TAP program is understood, and any additional information to demonstrate that CenturyLink is taking appropriate steps to achieve the statutory goal of making the TAP program available to eligible Minnesotans.
 - e. A report identifying each Minnesota customer denied TAP benefits over the last two years due to receiving Lifeline benefits from another provider. The report must include the following documentation:

- i. The length of time each affected customer was denied TAP benefits;
- ii. Whether the customer is currently enrolled in TAP;
- iii. Whether the Company has now enrolled the customer or a statement explaining why the customer is not enrolled;
- iv. The amount of TAP credits that should have been provided had the customer been properly enrolled.

CenturyLink's Petition

CenturyLink filed a motion to reconsider these two Ordering Paragraphs (1.a. and 1.e). CenturyLink noted that the Order does not specify a procedure after each of these reports is filed. CenturyLink noted that, in the absence of a delegation to the Executive Secretary, these filings would be subject to a formal review and comment process. CenturyLink stated that such a process seems unnecessary, and, to the extent that there are comments about the documents, such review and commentary could be handled informally. In the event the informal process does not resolve any disputes, the issue could be handled more formally. For transparency's sake, CenturyLink will still plan to make these filings in the docket so that all parties can review; nonetheless, delegating review to staff allows more flexibility and efficient problem solving.

Department Response to Reconsideration of Process

The Department opposed CenturyLink's request to delegate authority to the Executive Secretary for these two Ordering Paragraphs:

The Department believes that CenturyLink should file its reports as a formal part of this Docket, and parties should have an opportunity to comment. The Department would like the opportunity to review CenturyLink's submission, and if there are concerns, to bring it before the Commission for a determination. If there is no controversy, the matter can be placed on the Commission's consent calendar.

The Department sees no efficiencies in CenturyLink's proposal. Uncertainty regarding time frames and notice are unnecessary. To the contrary, the 'formal' system is more efficient than an informal and unknown process. If other parties have different concerns from the Commission staff, those parties can place their concerns on the record for the Commission's consideration before the matter is closed. Even if other parties raise concerns, but agreement is then reached by all interested parties, the matter can be placed on the Commission's consent calendar.¹

¹ Department comments at 2.

B. Clarification: Ordering Paragraph 1.d

Secondly, CenturyLink requested clarification on Section 1.d. of the Order, which requires the following:

d. For each eligible customer who was denied TAP credits in the past two years as a result of receiving Lifeline benefits from another provider, issue credits to each of those customers in the amount that should have been provided had the customer been properly enrolled in TAP.

As CenturyLink states:

Customers that potentially fit within this paragraph fall in three categories: (1) customers still receiving service from CenturyLink; (2) customer who at the time of the application received service but no longer receive service; and (3) customers who never received service from CenturyLink.

The first category of customers presents no problem. CenturyLink has already provided credits to customers that still receive service from the company.

The second category of customers is more problematic. Such customers do not have an account on which to provide credits. CenturyLink theoretically could attempt to send refunds to such customers, but it will likely not have current contact information to send a refund.

The third category of customers is even more problematic. Not only is CenturyLink without contact information but also the customer never received service and may have received a TAP credit from another provider.

If the Commission does not intend for customers in the second and third categories to receive credits, no clarification of the Order is necessary. The Order requires credits be given and credits are not possible if the customer does not have an account. If, however, the Commission does intend credits for such customers, clarification of the Order to direct how such credits should be given and how to calculate the appropriate amount of credit would allow CenturyLink to comply. CenturyLink respectfully asks for guidance on this issue.²

Department Response to Petition

The Department supported CenturyLink's clarification request. The Department stated that while it is appropriate for CenturyLink to make its customers whole, the company was not

² CenturyLink petition at 2-3.

found to have violated either Minnesota Statutes or Commission Rules here. Thus, it is acceptable for the credit to be applied only to existing CenturyLink customers.³

IV. Staff Analysis

For procedural reasons, staff supports the entirety of CenturyLink's petition.

This docket was opened by the Commission in response to customer complaints. The Commission requested that the Department investigate the matter, and the Department filed comments with the Commission following the completion of its investigation. One presumes, then, that the follow up filings required by the order are more in the nature of compliance filings, to carry out the policy and legal clarifications made in the Order. These can often be best accomplished by informal dialogue between staff and the parties.

Training plan reporting (Ordering Paragraph 1.a)

The docket is now in the follow up phases, and Ordering Paragraphs 1.a, d, and e bear that out; the filing of a training plan/explanation is to ensure that communications within CenturyLink's personnel, and from CenturyLink's personnel to customers, are clear and in compliance with state law. The nature of the training plan review may include issues such as what language to use to communicate the requirements of the TAP and Lifeline programs, and how frequently training may need to occur. The policy and legal decisions have already been made by the Commission in its Order, and the training plan review would benefit from a more informal discussion where staff from CenturyLink, the Department, and the Commission's Consumer Affairs Office can go over the details of the training plan, ask questions, and exchange ideas.

One imagines, in contrast, how the formal notice and comment process would work if used on the training plan and materials; parties would, presumably, file comments which might potentially include edits to training materials. Staff would need to summarize these in briefing papers, and Commissioners would be charged with reviewing each of these suggested edits in the agenda meeting. Further, the formal commenting process largely excludes CAO participation. Since the docket was opened in response to complaints filed at CAO, excluding CAO would remove an important contributor to the process.

Staff suggests one additional clarification beyond that requested by CenturyLink: the language does not state whether the training plan must be submitted once for approval or if later changes to its training plan must also be submitted. Staff suggests that the training plan be submitted once, with approval delegated to the Executive Secretary, but that the Commission request CenturyLink to informally contact CAO and the Department if significant changes are made in the future.

³ Department response to CenturyLink petition at 2.

TAP Credit Report (Ordering Paragraph 1.e.)

Staff also supports delegation to the Executive Secretary of the report indicating follow up on customers being denied TAP credits. This ordering paragraph is in the nature of a compliance filing as a follow up to the Commission's policy and legal decision in this matter; there does not appear to be anything formal for the Commission to decide. Rather, the filing contains customer specific, non-public information that will assist the Department and Consumer Affairs Office in having information exchanges with CenturyLink. If a legal or policy decision arises in the context of reviewing this report, the informal discussions can exclude this issue and interested parties can file comments.

Clarification Requested of Ordering Paragraph 1.d

Staff agrees with the Department and CenturyLink that the order should be interpreted to only require credits to existing CenturyLink customers, for the reasons listed by both parties. Staff suggests the Commission include language in a new Order making this clear.

V. Decision Options

I. Reconsider and/or Clarify the following Ordering Paragraphs from the Commission's September 12, 2018 Order in the current docket.

A. Modify Ordering Paragraphs 1.a and 1.e as follows:

1. Within 60 days of the date of this order, CenturyLink must file the following:

a. An explanation of how employees are trained to ensure that customers are given accurate TAP program information. The explanation must include training material, which customer service representative groups receive TAP training, the frequency with which CenturyLink personnel receive ongoing training to ensure that the TAP program is understood, and any additional information to demonstrate that CenturyLink is taking appropriate steps to achieve the statutory goal of making the TAP program available to eligible Minnesotans. The Commission hereby delegates authority to the Executive Secretary to approve, or approved as modified, CenturyLink's training plan. CenturyLink is not required to formally submit subsequent versions of its training plan, but is requested to informally share significant revisions with the Commission's Consumer Affairs Office and the Department.

e. A report identifying each Minnesota customer denied TAP benefits over the last two years due to receiving Lifeline benefits from another provider. The report must include the following documentation:

- i. The length of time each affected customer was denied TAP benefits;
- ii. Whether the customer is currently enrolled in TAP;

- iii. Whether the Company has now enrolled the customer or a statement explaining why the customer is not enrolled;
- iv. The amount of TAP credits that should have been provided had the customer been properly enrolled.

The Commission hereby delegates authority to the Executive Secretary to approve CenturyLink's report.

B. Make the following clarification of Ordering Paragraph 1.d:

- d. For each eligible customer still receiving service from CenturyLink who was denied TAP credits in the past two years as a result of receiving Lifeline benefits from another provider, issue credits to each of those customers in the amount that should have been provided had the customer been properly enrolled in TAP.

OR

II. Reject the Requests to Reconsider and Clarify the Commission's September 12, 2018 Order in the current docket.

Staff Recommendation

Staff recommends reconsidering and clarifying as outlined in Decision Option 1, parts A and B.