

EXHIBIT A

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

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

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

OAH Docket No. 21-2500-38965

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

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

February 7, 2024

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APPEARANCES

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

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

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

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

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

STATEMENT OF ISSUES

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

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

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

SUMMARY OF FACTS AND RECOMMENDATION

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

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

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

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

FINDINGS OF FACT

I. INTRODUCTION

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

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

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

³ CWA Initial Letter at 2.

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

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

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

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

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

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

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

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

⁹ Notice and Order for Hearing at 3, 5.

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

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

II. PROCEDURAL HISTORY

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

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

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

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

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

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

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

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

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

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

¹¹ eDocket No. 20241-201849-01.

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

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

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

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

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

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

¹² Notice and Order for Hearing at 3, 5.

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

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

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

III. RELEVANT LAW

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

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

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

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

A. Minnesota Statutes Set Out Telecommunications and Broadband Goals.

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

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

¹⁶ Ex. CTL-1 at 15-16 (Mohr Direct).

¹⁷ Ex. CTL-1 at 15-16 (Mohr Direct).

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

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

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

²¹ Notice and Order for Hearing at 6.

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

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

The following are state goals that should be considered as the commission executes its regulatory duties with respect to telecommunication services:

- (1) supporting universal service;
- (2) maintaining just and reasonable rates;
- (3) encouraging economically efficient deployment of infrastructure for higher speed telecommunication services and greater capacity for voice, video, and data transmission;
- (4) encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner;
- (5) maintaining or improving quality of service;
- (6) promoting customer choice;
- (7) ensuring consumer protections are maintained in the transition to a competitive market for local telecommunications service; and
- (8) encouraging voluntary resolution of issues between and among competing providers and discouraging litigation.

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

²² Minn. Stat. § 237.025.

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

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

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

It is a state goal that:

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

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

....

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

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

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

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

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

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

B. Telephone Utilities Rules.

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

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

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

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

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

²⁵ Joint Stipulation at 2.

2. Minnesota Rule 7810.5000 (Utility Obligations).

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

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

3. Minnesota Rule 7810.5800 (Interruptions of Service).

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

Each telephone utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service with the shortest possible delay. The minimum objective should be to clear 95 percent of all out-of-service troubles within 24 hours of the time such troubles are reported.

C. Burden Of Proof.

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

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

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

IV. THE MINNESOTA TELECOMMUNICATIONS MARKETPLACE AND CENTURYLINK'S PERFORMANCE

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

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

A. The Competitive Landscape.

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

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

²⁷ Evid. Hrg. Tr. at 212 (Ardoyno).

²⁸ Ex. CTL-1 at 9, 14 (Mohr Direct).

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

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

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

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

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

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

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

Table 1 (Competitor Summary)

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

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

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

³⁴ Ex. CTL-1 at 9, 14 (Mohr Direct).

³⁵ Ex. CTL-1 at 9, 14 (Mohr Direct).

³⁶ Ex. CTL-1 at 16-17 (Mohr Direct).

³⁷ Ex. CTL-1 at 17 (Mohr Direct).

³⁸ Ex. CTL-1 at 18 (Mohr Direct).

³⁹ Ex. CTL-1 at 18 (Mohr Direct).

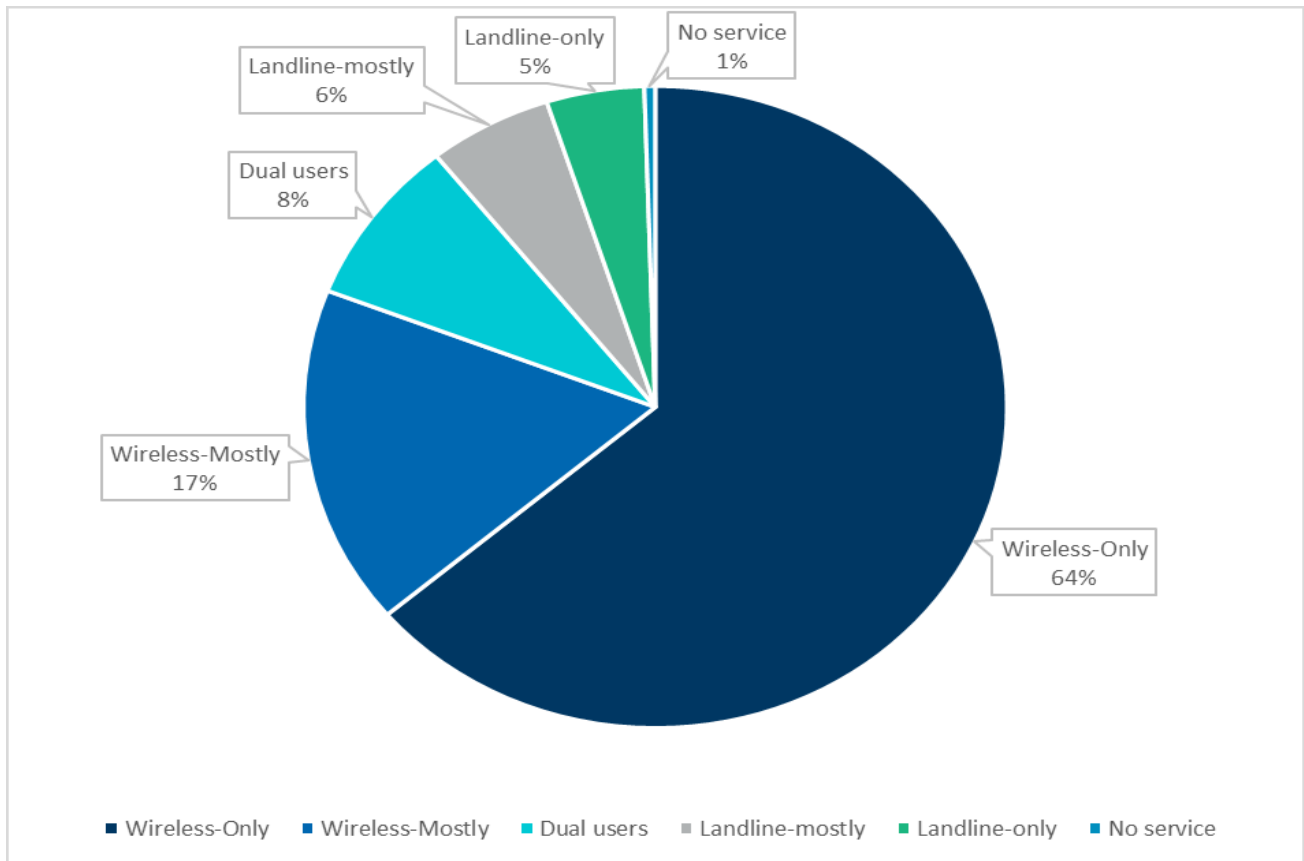
⁴⁰ Ex. CTL-1 at 18 (Mohr Direct).

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

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

Figure 1

Voice Technologies of Minnesota Households (2020)⁴³



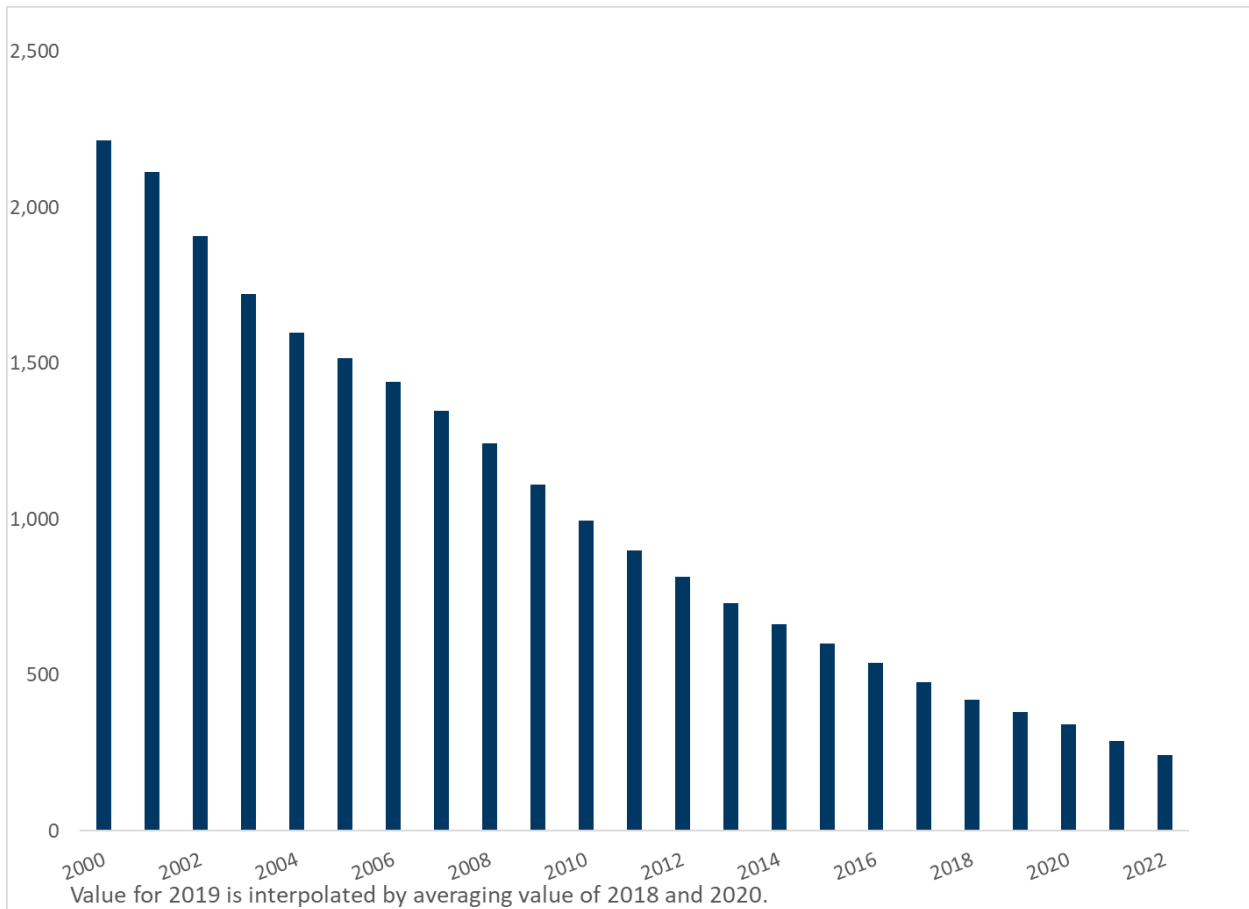
44. Second, this competition has caused a roughly 90 percent attrition of CenturyLink’s access lines in Minnesota over the past 20 years.⁴⁴

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

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

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

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



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

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

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

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

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

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

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

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

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

1. Trouble Reports.

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

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

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

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

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

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

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

52. “Trouble reports” encompass a wide range of potential issues and considers all duplicative reports or status inquiries. A company’s performance with respect to this metric thus indicates how frequently customers are reporting any trouble related to facilities. Minnesota Rule 7810.5900 establishes that “[i]t shall be the objective to so maintain service that the average rate of all customer trouble reports in an exchange is no greater than 6.5 per 100 telephones per month” and that a “trouble report rate of more than 8.0 per 100 telephones per month by repair bureau on a continuing basis indicates a need for investigative or corrective action.”⁵³

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

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

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

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

⁵³ Minn. R. 7810.5900.

⁵⁴ Ex. CTL-1 at 30 (Mohr Direct).

⁵⁵ Ex. CTL-6 at 5 (Ardoyno Direct).

⁵⁶ Ex. CTL-6 at 5 (Ardoyno Direct).

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

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

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

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

2. Install Time.

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

⁵⁷ Ex. DOC-4 at 35 (Webber Direct).

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

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

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

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

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

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

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

⁶⁵ Minn. R. 7810.2800.

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

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

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

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

⁶⁹ **NOT PUBLIC DATA ENDS]**

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

3. Call Answer Time.

64. Minnesota Rule 7810.5200 sets forth the objective that:

[n]inety percent of repair service calls, calls to the business office, and other calls shall be answered within 20 seconds. An "answer shall mean that the operator or representative is ready to render assistance and/or ready to accept information necessary to process the call. An acknowledgment that the customer is waiting on the line shall not constitute an answer."⁷¹

⁶⁶

⁶⁷ Ex. CTL-6 at 8 (Ardoyno Direct).

⁶⁸ Ex. CTL-9 at 2 (Ardoyno Rebuttal).

⁶⁹

⁷⁰ Ex. DOC-6 at 8 (Ardoyno Direct).

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

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

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

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

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

V. ALLEGED VIOLATIONS

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

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

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

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

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

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

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

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

A. Telephone Utilities Rules at Issue.

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

1. Minnesota Rule 7810.3300 and 7810.5000.

Minn. R. 7810.3300 provides:

7810.3300 MAINTENANCE OF PLANT AND EQUIPMENT.

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

71. Minnesota Rule 7810.5000 provides in relevant part:

7810.5000 UTILITY OBLIGATIONS.

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

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

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

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

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

⁷⁸ DOC Initial Br. at 10.

⁷⁹ DOC Initial Br. at 12.

⁸⁰ DOC Initial Br. at 11-12.

⁸¹ OAG Initial Br. at 5-10.

⁸² CTL Initial Br. at 33.

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

⁸⁴ CTL Reply Br. at 8.

2. Minnesota Rule 7810.5800.

76. Minn. R. 7810.5800 provides:

7810.5800 INTERRUPTIONS OF SERVICE.

Each telephone utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service with the shortest possible delay. The minimum objective should be to clear 95 percent of all out-of-service troubles within 24 hours of the time such troubles are reported. In the event that service must be interrupted for purposes of working on the lines or equipment, the work shall be done at a time which will cause minimal inconvenience to customers. Each utility shall attempt to notify each affected customer in advance of the interruption. Emergency service shall be available, as required, for the duration of the interruption.

Every telephone utility shall inform the commission, as soon as possible, of any major catastrophe such as that caused by fire, flood, violent wind storms, or other acts of God which apparently will result in prolonged and serious interruption of service to a large number of customers.

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

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

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

⁸⁵ DOC Initial Br. at 23.

⁸⁶ CTL Initial Br. at 35.

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

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

1. Allegations that CenturyLink Fails to Provide Adequate Service.

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

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

83. Company witness Mr. Turner explained:

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

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

⁸⁷ Minn. R. 1400.7300, subp. 5.

⁸⁸ DOC Initial Brief at 12.

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

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

⁹¹ Ex. CTL-6 at 5 (Ardoyno Direct).

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

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

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

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

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

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

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

⁹² Ex. CTL-6 at 5 (Ardoyno Direct).

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

⁹⁴ Minn. R. 7810.5900.

⁹⁵ Ex. DOC-4 at 35 (Webber Direct).

⁹⁶ DOC Initial Br. at 12-13.

⁹⁷ Ex. DOC-4 at 28 (Webber Direct).

⁹⁸ Ex. DOC-4 at 36 (Webber Direct).

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

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

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

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

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

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

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

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

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

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

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

¹⁰⁴ DOC Initial Br. at 12-13.

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

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

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

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

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

2. Allegations that CenturyLink Does Not Perform Adequate Maintenance.

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

¹⁰⁷ Ex. DOC-4 at 35 (Webber Direct).

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

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

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

¹¹¹ Ex. DOC-15 at 11.

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

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

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

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

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

¹¹³ DOC Initial Br. at 17.

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

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

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

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

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

¹¹⁹ DOC Initial Br. at 18-21.

¹²⁰ DOC Initial Br. at 19-20.

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

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

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

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

3. Allegations that CenturyLink Does Not Adequately Fund Maintenance.

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

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

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

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

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

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

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

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

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

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

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

¹²⁶ OAG Initial Br. at 9.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

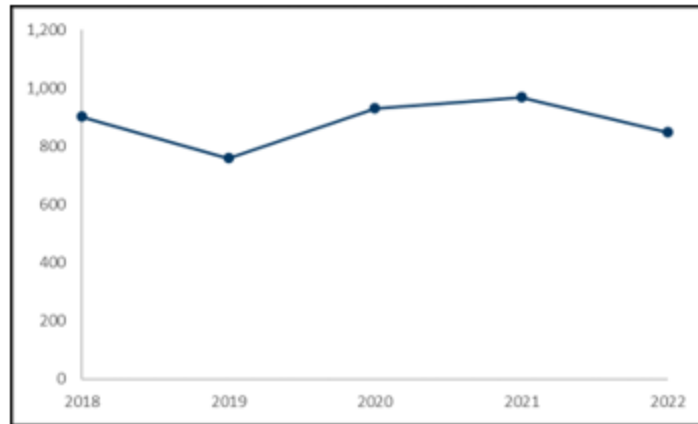
¹³⁵ DOC Initial Br. at 6; OAG Initial Br. at 5.

¹³⁶ Ex. DOC-4 at 19; Ex. DOC-19 at 2.

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

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

Retail Access Lines per CenturyLink Technician



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

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

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

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

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

¹⁴¹ Ex. CTL-6 at 12 (Ardoyno Direct).

¹⁴² Ex. DOC-4 at 56 (Webber Direct).

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

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

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

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

121. Minnesota Rule 7810.5800 establishes that “the minimum objective should be to clear 95 percent of all out-of-service troubles within 24 hours of the time such troubles are reported.”¹⁴⁵

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

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

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

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

¹⁴⁵ Minn. R. 7810.5800 (emphasis added).

¹⁴⁶ Ex. CTL-6 at 3 (Ardoyno Direct).

¹⁴⁷ Ex. CTL-1 at 30 (Mohr Direct).

¹⁴⁸ Ex. CTL-6 at 6 (Ardoyno Direct).

¹⁴⁹ Ex. CTL-6 at 6 (Ardoyno Direct).

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

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

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

¹⁵⁰ Ex. CTL-6 at 7 (Ardoyno Direct).

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

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

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

¹⁵⁴ Ex. CTL-6 at 7 (Ardoyno Direct).

¹⁵⁵ Ex. CTL-6 at 7 (Ardoyno Direct).

¹⁵⁶ Ex. CTL-6 at 7 (Ardoyno Direct).

¹⁵⁷ Ex. CTL-6 at 7 (Ardoyno Direct).

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

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

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

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

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

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

¹⁶⁰ Ex. CTL-1 at 30 (Mohr Direct).

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

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

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

¹⁶⁴ Ex. CTL-6 at 14 (Ardoyno Direct).

¹⁶⁵ Ex. CTL-6 at 13 (Ardoyno Direct).

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

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

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

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

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

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

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

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

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

¹⁷⁰ Ex. CTL-6 at 12 (Ardoyno Direct).

¹⁷¹ Ex. CTL-6 at 12 (Ardoyno Direct).

¹⁷² Ex. CTL-6 at 12 (Ardoyno Direct).

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

¹⁷⁴ DOC Initial Br. at 24.

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

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

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

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

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

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

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

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

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

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

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

139. The Department recommends that Commission should:

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

¹⁸⁰ DOC Initial Br. at 26.

¹⁸¹ DOC Initial Br. at 27.

¹⁸² DOC Initial Br. at 27.

¹⁸³ DOC Initial Br. at 28.

¹⁸⁴ DOC Initial Br. at 28.

¹⁸⁵ DOC Initial Br. at 28.

¹⁸⁶ DOC Initial Br. at 28.

¹⁸⁷ DOC Initial Br. at 28-29.

¹⁸⁸ DOC Initial Br. at 29.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

¹⁹⁴ OAG Initial Br. at 16.

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

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

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

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

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

RECOMMENDATION

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

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¹⁹⁵ Minn. R. 1400.7300, subp. 5.

EXHIBIT B

2004 WL 1810707 (Ohio P.U.C.)

In the Matter of the Complaint of John W. Wilson, Complainant

v.

AT&T Communications of Ohio, Inc., Respondent.

Case No. 03-2294-TP-CSS

Ohio Public Utilities Commission

June 2, 2004

OPINION AND ORDER

APPEARANCES:

John W. Wilson, 11511 Martin Luther King Drive, Cleveland, Ohio 44105, on his own behalf.

Douglas W. Trabaris, 222 West Adams Street, Suite 1500, Chicago, Illinois 60606, on behalf of AT&T Communications of Ohio, Inc. (AT&T).

BY THE COMMISSION

*1 The Commission, considering the complaint filed by John W. Wilson and the evidence admitted at the hearing, hereby issues it Opinion and Order.

OPINION:

I. History of the Proceedings:

On November 18, 2003, John W. Wilson (complainant) filed a complaint with the Commission against AT&T. Mr. Wilson contends that between June 9, 2003 and September 2003 his telephone service was intermittently interrupted for up to a week at a time. The complainant further asserts that AT&T has been unreasonable and unreliable in its attempts to correct the service problem(s). Mr. Wilson claims that he continues to experience difficulty with his telephone service. The complainant contends that AT&T has failed to provide him adequate telephone service.

AT&T filed its answer to the complaint on December 8, 2003. AT&T argues that the complaint fails to specify the service problem(s) or the manner in which AT&T has allegedly failed to provide reasonable service. AT&T admits that Mr. Wilson contacted AT&T to report service problems and technicians were dispatched to Mr. Wilson's home. The technicians did not detect any problems with the telephone equipment and facilities up to the network interface device (NID), as confirmed by SBC Ohio. Further, AT&T notes that Mr. Wilson has not reported any problems with his telephone service over the past three months.

By entry issued December 22, 2003, this matter was scheduled for a settlement conference on January 14, 2004, at the office of the Commission. The settlement conference was held as scheduled but the parties were unable to resolve the dispute informally. By entry issued March 3, 2004, this complaint was scheduled for a hearing to commence on April 6, 2004. On March 26, 2004, AT&T filed the direct testimony of Richard Giron, as supplemented on April 2, 2004 (AT&T Exhibits 1 and 2).

II. Hearing:

At the hearing, Mr. Wilson testified on his own behalf. Mr. Wilson stated that AT&T became his local telephone service provider on or about May 16, 2003. On June 9, 2003, Mr. Wilson states that he discovered he did not have a dial tone. Thereupon, the complainant contacted AT&T repair. Mr. Wilson testified that the AT&T representative he spoke with claimed that his

inside wire maintenance plan was not in effect yet. The complainant stated that after three additional calls to AT&T, as a result of intermittent dial tone problems, an inside wire technician was scheduled to visit the Wilson residence on June 16, 2003. According to Mr. Wilson, the technician did not show up for the repair appointment. Mr. Wilson testified that he contacted AT&T four more times and a second appointment was scheduled for June 21, 2003. As scheduled, the technician evaluated service at the Wilson premises. Mr. Wilson was not home on June 21, 2003, but his neighbor was available and had a key to admit the technician, if necessary. Mr. Wilson notes that the service order indicates that the technician repaired wiring and tested. Mr. Wilson testified that the June 21, 2003 work order implies that the technician entered his home. Mr. Wilson categorically denies that the technician entered his home on June 21, 2003. The witness testified that he experienced a multitude of telephone service problems from June 21, 2003, through July 18, 2003, that got progressively worse. On July 18, 2003, Mr. Wilson stated that an AT&T technician visited his home. As Mr. Wilson interprets the work order, the technician found 7 shorts in need of repair; repaired one short; indicated that something needed to be replaced and that calls could not be made with the bad cloth-wire; that one jack in the upstairs bedroom needs wire and a jack; and wire is old cloth-type in basement.¹ The work order also states that new wire and a jack need to be installed (Complainant Ex. 1, page 1-2, Tr. at 9-10, 12-13).

*2 Mr. Wilson stated that on July 19, 2003, some of the jacks were again inoperable. The complainant contacted the AT&T service center and was given an appointment for July 22, 2003, but the technician did not show up as scheduled. Mr. Wilson stated that at 5:30 p.m. on July 22, 2003, he called AT&T about the missed appointment. Mr. Wilson states that several of the AT&T personnel he spoke with implied that the technician had visited the premises and the technician could not gain access to the inside of the Wilson home. Mr. Wilson states that by July 24, 2003, all six jacks in his home were inoperable (Tr. at 14).

Mr. Wilson testified that he contacted the Commission's public interest center and the Commission's complaint investigator introduced Mr. Wilson to Chad McFarland, a member of the Executive Appeals Office with AT&T. After a conversation with Mr. McFarland, Mr. Wilson states that Mr. McFarland stated he would contact SBC Ohio to check for facilities problems on the exterior of the home to the NID. According to Mr. Wilson, Mr. McFarland stated he would contact Mr. Wilson to verify whether or not his telephone service problems had been rectified (Tr. at 14-15).

Mr. Wilson testified that the SBC Ohio technician that visited his home on July 25, 2003, declared that the service problems were definitely inside the home. Subsequently, Mr. Wilson stated that he called AT&T and was given an appointment for July 28, 2003, between noon and 5:00 p.m. Mr. Wilson claimed that the technician did not show up. On July 29, 2003, Mr. Wilson contacted AT&T's complaint escalation division and spoke with an AT&T representative. The representative noted that the records described the complainant's home and the cars in the driveway. Mr. Wilson acknowledged that the description of his home and the cars in his driveway was correct but questioned how the technician could have come to either the front or side of his home and failed to see him in the garage waiting for the technician. An appointment was rescheduled for July 30, 2003 (Tr. at 15-17).

The complainant stated that, according to the work order dated July 30, 2003, an AT&T technician found and repaired a "bad splice" on the exterior of the home and repaired a jack cover. Mr. Wilson states that the technician repaired the same bad splice that had been repaired by another technician on June 21, 2003. Less than 24 hours later, Mr. Wilson said he began to experience intermittent telephone problems again (Complainant Exhibit 1, page 3; Tr. at 18).

Another appointment was scheduled by AT&T for Mr. Wilson for August 2, 2003. According to Mr. Wilson, the technician did not show up on August 2, 2003. After speaking with a representative in AT&T's escalation division, Mr. Wilson testified that AT&T scheduled another appointment for August 5, 2003. Mr. Wilson noted that according to the work order, the technician repaired a bad jack in the bedroom. The complainant testified that within three days of the August 5, 2003 repairs, he could not receive incoming telephone calls (Tr. at 19).

*3 Mr. Wilson became irritated and called AT&T escalation division yet again. Another appointment was scheduled for August 12, 2003, between 8:00 a.m. and 5:00 p.m. When the technician had not arrived by 3:15 p.m. on August 12, 2003, Mr. Wilson says he called AT&T's repair center and was assured that the technician would stop by later. According to Mr. Wilson the

August 12, 2003 appointment for repair was not kept by AT&T. The next day, Mr. Wilson called the AT&T repair center and an appointment was scheduled for August 16, 2003 (Tr. at 19).

Mr. Wilson notes that the work order for August 16, 2003, indicates that the technician repaired two jacks (one upstairs and one downstairs). As interpreted by Mr. Wilson, the work order dated August 16, 2003 also indicates that Mr. Wilson's home needs to be rewired and that such a job requires two technicians a half day to complete the work. On August 21, 2003, Mr. Wilson says one technician arrived at his home not the two recommended by the previous AT&T technician. Mr. Wilson noted that according to the work order for August 21, 2003, the technician tied down all jacks and other repairs were done as needed. The complainant testified that between August 21 and August 25, 2003, his local telephone service appeared to be adequate with minimal disruptions (Complainant Exhibit 1, page 4; Tr. at 20).

Shortly thereafter, Mr. Wilson claims that intense static on the line made it difficult for him to hear incoming calls and the complainant stated that the calling party could not clearly hear him. On August 28, 2003, an SBC Ohio technician visited the premises. The SBC technician, according to Mr. Wilson, tested the wires and confirmed that the problem was inside the premises. Subsequently, on August 30, 2003, an AT&T technician replaced the wire in the den and upstairs and tested all the jacks in the home. Mr. Wilson contends the repair worked well for about two days. The complainant again contacted AT&T's customer complaint escalation division on September 5, 2003. The complainant testified that AT&T requested that an SBC Ohio technician check his line. According to the complainant, the SBC Ohio technician concluded that the problem was the inside wires not the facilities and equipment outside the home. Five days later, an AT&T technician, who according to Mr. Wilson checked the box outside and then the wires in the basement, was unable to find the source of the problem. Subsequently, Mr. Wilson stated that AT&T agreed to rewire his house and scheduled an appointment for September 18, 2003 (Tr. at 20-23).

On September 18, 2003, an AT&T technician removed some original wire from the NID, and informed Mr. Wilson that there was a splice in the wire between the pole and his home, an area that is part of SBC Ohio's facilities. Mr. Wilson recalls that shortly after the AT&T technician left none of the jacks were working. Later, Mr. Wilson checked his telephones again and all four telephones had a dial tone. Mr. Wilson testified that at 12:29 p.m., the AT&T technician called and Mr. Wilson informed the technician about the erratic telephone problems. According to Mr. Wilson, the AT&T technician suggested that the telephone problems he was experiencing could be facilities or equipment inside or outside the home. Mr. Wilson reports that at approximately 4:25 p.m. that evening the telephones were operating intermittently with a high level of static and long, continuous rings. Mr. Wilson stated that if he was able to receive a telephone call or make a call, the call would eventually fade out. Mr. Wilson reported the problem to AT&T and the representative said she would test the line and call him back. Mr. Wilson stated that the representative did not return his call (Tr. at 24-26).

*4 On cross-examination, counsel for AT&T presented Mr. Wilson with two work orders for his address dated June 19, 2003 and August 2, 2003. Mr. Wilson noted upon viewing the documents that he had not signed either document and admitted that he had not seen the work orders dated June 19, and August 2, 2003. He admitted that there were times when he was not available and his neighbor, who has access to his home, was waiting for the technician. Mr. Wilson testified that he has lived in his home since 1968. Mr. Wilson stated that prior to having local service with AT&T, he had service with SBC Ohio and briefly thereafter was an MCI customer. Mr. Wilson never clearly stated whether MCI's inside wire maintenance plan was a factor in his decision to leave MCI; first he implied that it was and then he denied it was the reason for leaving MCI. Mr. Wilson says that although he has had problems with AT&T's service for over three months, he has not attempted to select another local service provider. He admits that he has not switched because he has had a multitude of problems and has an inside wire maintenance contract with AT&T. Mr. Wilson testified that most local service providers require a 30-day waiting period after enrollment before your inside wire service is effective and, therefore, he was not going to switch local telephone service providers. Mr. Wilson claims that he did not have any inside wire problems prior to switching his service to AT&T. Mr. Wilson further admits that, immediately after switching to AT&T, AT&T did not rewire his home. Mr. Wilson acknowledged that he had not had the wires in his home replaced since he moved into the residence in 1968 until the telephone wires were replaced by AT&T between June and September 2003 (AT&T Cross Exhibit 1 and Tr. at 27-29, 31, 37-38, 39).

Mr. Wilson also admitted that AT&T credited his telephone bill for outages and bills due over the period he experienced and reported telephone problems although he did not recall how often. The complainant also admits that AT&T offered him credits for the inconvenience associated with outages and other service problems. Currently, Mr. Wilson stated that he does not have an outstanding bill with AT&T. Nonetheless, Mr. Wilson states that he has paid for telephone service that was not provided by AT&T because of all the service problems. Mr. Wilson requests that the Commission order AT&T to compensate him for the three months of inadequate service he received, reimburse him for the \$600 he incurred on his cellular telephone for three months while he experienced service problems or outages, replace the four telephones that he threw out because an AT&T technician indicated that the telephones were the source of his service problems and reimburse him for income that he missed as a substitute professor. Mr. Wilson explained that as a substitute professor, he missed a number of opportunities to earn income because he was unable to receive telephone calls. Mr. Wilson also explained that on three occasions, AT&T requested a vendors meeting with SBC Ohio at his home, but to his knowledge, no such meeting ever took place. Mr. Wilson states that he continues to experience static and other problems with his telephone service (Tr. at 40-41, 43-44, 48, 50-51).

*5 AT&T presented the testimony of Richard Giron, Field Manager for residential service installation and maintenance in Ohio. Mr. Giron testified that, according to AT&T records, no problem has ever been identified on the telephone facilities up to the NID at Mr. Wilson's home as determined by SBC Ohio. Mr. Giron emphasizes that technicians have been dispatched to the Wilson home on numerous occasions and when problems were detected with the inside wires, such problems were fixed. The witness claimed that on December 4, 2003, an AT&T representative called Mr. Wilson and asserts Mr. Wilson indicated that he was not having any problems with his telephone other than occasional static. Further, Mr. Giron states that tests performed after each AT&T service call indicated there were no problems with Mr. Wilson's inside wiring. Mr. Giron interprets AT&T's inside wire plan to cover all troubles that interfere with the proper functioning of telephone service. Mr. Giron believes that based on AT&T's inspection of Mr. Wilson's home that the wiring is several decades old given that cloth-covered wire has not been used for over forty years. Further, Mr. Giron notes that AT&T's inside wire maintenance plan does not cover preexisting conditions, customer-supplied equipment or wiring that existed prior to AT&T providing local service to the customer. Mr. Giron claims that AT&T has repaired the preexisting inside wire conditions in Mr. Wilson's home over the course of several visits going above and beyond the requirements of the inside wire maintenance plan. Mr. Giron interprets the plan to merely require AT&T's technicians to repair, not replace facilities in the home of a customer.² If facilities, such as a wire or jack are replaced, Mr. Giron says the customer should be charged. AT&T witness Giron relies on the following passage from the inside wire maintenance plan as the basis for his interpretation:

Inside wiring that did not work when service was ordered, that does not meet our installation practices or technical standard, and wiring not connected to the telephone network is not covered by inside wire maintenance plan services.

(AT&T Cross Exhibit 2)

The witness notes that after each visit, the technician tested the wiring in the home and found it in working order. Mr. Giron notes that, according to AT&T records, Mr. Wilson has not reported any problems with his telephone service since approximately November 2003 (AT&T Exhibit 1, Tr. at 57-58, 60-61).

Further, Mr. Giron testified that, based on the work orders, AT&T rewired Mr. Wilson's home and he not could find in AT&T's billing records where Mr. Wilson was billed for such services. Mr. Giron notes that the work order dated August 21, 2003, indicates that the AT&T technician replaced 45 feet of wire in Mr. Wilson's home; and the work order dated August 30, 2003, indicates that 200 feet of wire was replaced (Complainant Exhibit 1, AT&T Cross Exhibit 1, Tr. at 59-60, 66-68).

III. Discussion and Conclusion

*6 In a complaint case, such as this one, the burden of proof is on the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189 (1966). Accordingly, in this case, it is the responsibility of Mr. Wilson to present evidence in support of the allegations made in the complaint. To meet his burden of proof in this case, the complainant needs to establish, by a preponderance of the evidence,

that AT&T provided legally inadequate service. While “inadequate service” in a complaint proceeding is not specifically defined in Title 49, Revised Code, the Commission determines whether a telephone company provided legally inadequate service based 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. See Case No. 85-1076-TP-CSS, *Carpet Color Systems v. The Ohio Bell Telephone Company*, Order issued October 9, 1987; *The Ohio Bell Telephone Co. v. Pub. Util. Comm.* (Ohio 1990) 49 Ohio St.3d 123, 551 N.E.2d 145; and Case No. 95-1182-TP-CSS, *State Alarm, Inc. v. Ameritech Ohio*, Orders issued March 25, 1999 and November 30, 2000.

The Commission relies primarily on the facts presented in this case rather than an interpretation of AT&T's inside wire maintenance plan to reach a decision in this matter. The record in this proceeding reveals that Mr. Wilson contracted with AT&T to provide his local telephone service, including an inside wire maintenance agreement, on or about May 9, 2003. On June 9, 2003, Mr. Wilson reported a service outage to AT&T and was informed that his inside wire maintenance plan was not yet effective. The Commission notes that according to Mr. Wilson, and AT&T does not refute that, AT&T evaluated service at the Wilson home at least 8 times between June 21, 2003 and September 18, 2003, inclusive. Further, the Commission notes that, according to documents submitted by Mr. Wilson, the vendor of the telecommunications facilities, SBC Ohio, has also evaluated the exterior telephone equipment and facilities to the demarcation point (NID) at the Wilson home. SBC Ohio determined that the telephone trouble experienced by Mr. Wilson was within the customer premise on July 25, August 28, September 3, and September 19, 2003 (Complainant Exhibit 1, pages 8-13).

Based on the testimony of Mr. Wilson, he experienced a variety of service problems from June through September 2003 including: no dial tone, the telephone operating intermittently, no operable jacks in the home, the inability to receive incoming calls, parties unable to hear one another clearly, static on the line, long continuous rings, and fading calls. Each of the service issues reported lasted at least a few days up to a maximum of one week, until an AT&T repair technician could visit the Wilson home. Mr. Wilson reported the lack of a dial tone on June 9, 2003, but his inside wire plan was not yet effective. The first repair visit, according to the complainant, was scheduled for June 16, 2003, a week after the service outage. The AT&T work orders reveal that AT&T initially repaired wiring at the home and tested the inside facilities. The record also demonstrates that according to the work orders, over the course of the repair visits to the Wilson home, the AT&T technicians repaired shorts, replaced the cloth-covered wire in complainant's home and the wires leading from the punch block in the basement, installed new jacks, replaced jack covers, repaired splices and tied down all the jacks in the home. Also, on August 18, 2003, the AT&T technician notes that approximately 45 feet of wire was replaced in the Wilson home. We note that, at the next visit, the technician replaced approximately 200 feet of wire in Mr. Wilson's den and upstairs bedroom and tested all the jacks. The September 18, 2003 work order reveals that the AT&T technician replaced the line from the NID to the basement junction and informed Mr. Wilson of a splice in the line on SBC Ohio's facilities and directed Mr. Wilson to contact SBC Ohio to have it repaired.

*7 In determining whether AT&T has provided legally inadequate service to Mr. Wilson, we note that AT&T requested the assistance of the underlying carrier to test the facilities and equipment leading to the Wilson home to determine the source of the service problems. Further, AT&T tested and replaced facilities that could potentially be the source of the complainant's service issues and eventually replaced approximately 250 feet of inside wire throughout Mr. Wilson's home. We note that cloth-covered wire, like that found in Mr. Wilson's home, has not be used for more than 40 years. Finally, we note that it does not appear that Mr. Wilson's telephone service problems are likely caused by AT&T equipment or facilities. Therefore, the Commission finds AT&T's evaluation of and response to Mr. Wilson's repair requests to be appropriate under the circumstances. We note that AT&T's response to the service problems reported by Mr. Wilson progressed in light of the frequency of such service problems reported.

In addition, the complainant argues that an AT&T technician failed to keep the repair appointment on five occasions (June 16, July 22, July 28, August 2, and August 12, 2003). On the other hand, AT&T asserts that on two occasions the AT&T technician was unable to gain access to the premises (June 19 and August 2, 2003). The AT&T technician, on one occasion, correctly described the house and the cars in the driveway on one of the two times the company claims no access to the premises. As to the alleged June 16 missed appointment, the record is not clear whether the repair appointment was for June 16 or June 19.

Nonetheless, the Minimum Telephone Service Standards (MTSS) at Chapter 4901:1-5, Ohio Administrative Code (O.A.C.), includes provisions for missed repair appointments and service outages at Rule 4901:1-5-16, O.A.C., Rule 4901:1-5-16, O.A.C., specifically provides that the local service provider shall make an adjustment to a subscriber's bill, with some exceptions, whenever a subscriber's service is interrupted and remains out of service for more than 24 consecutive hours after being reported to the local service provider. Further, paragraph (E)(2) of Rule 4901:1-5-16, O.A.C., provides that when the local service provider fails to meet a scheduled repair appointment, the company must credit the subscriber's bill in an amount equal to at least half of one month's charges for regulated local services rendered inoperative. However, the Commission notes that payment of credits is not a complete defense to an allegation of inadequate service. Nonetheless, Mr. Wilson admits that he has received credits on his bill for out-of-service conditions and missed repair appointments.

Thus, based on the evidence of record in this case, the Commission finds that the complainant has failed to meet his burden of proof to establish that AT&T has provided legally inadequate service from June through September 2003. Accordingly, we find it unnecessary to address the issue of complainant's requests for damages.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

*8 (1) The complaint was filed on November 18, 2003.

(2) AT&T is a telephone company as defined in Section 4905.03(A)(2), Revised Code, and a public utility pursuant to Section 4905.02, Revised Code. Thus, AT&T is subject to the jurisdiction of this Commission under the authority of Sections 4905.04 through 4905.06, Revised Code.

(3) Mr. Wilson is a customer of AT&T at 11511 Martin Luther King Drive in Cleveland, Ohio.

(4) A settlement conference was held in this matter on January 14, 2004.

(5) This case is properly before this Commission, pursuant to Section 4905.26, Revised Code.

(6) In a complaint case, such as this one, the burden of proof is on the complainant to present evidence to support the complaint. *Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E. 2d 666 (1966).

(7) Based on the record in this proceeding, the complainant has failed to sustain his burden of proof to establish that AT&T provided him legally inadequate telephone service from June through September 2003.

ORDER:

It is, therefore,

ORDERED, That the complaint is dismissed and, therefore, the case is closed of record. It is, further,

ORDERED, That a copy of this Order be served upon Mr. Wilson, AT&T and its counsel, and all other interested persons of record.

Footnotes

- 1 The Commission notes that we do not necessarily agree with the complainant's interpretation of the July 8, 2003 work order.
- 2 The Commission notes that, although it does not affect our decision in this case, we do not agree with some of the AT&T witness's interpretation of the limitations and requirements of the inside wire maintenance plan.

End of Document

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EXHIBIT C

2020 WL 1673955 (Pa.P.U.C.)

Cynthia Mosco

v.

Verizon Pennsylvania LLC

Docket No. C-2018-3006579

Pennsylvania Public Utility Commission

March 9, 2020

INITIAL DECISION

BY THE COMMISSION: Long, Administrative Law Judge.

INTRODUCTION

*1 The formal complaint of a customer against a telephone utility is sustained. The telephone utility failed to maintain reasonable telephone service to the complainant. A civil penalty is assessed. However, the customer's request for relief cannot be granted, because the Commission cannot prevent the telephone utility from retiring its copper network and migrating customers to fiber-based telephone service.

HISTORY OF THE PROCEEDINGS

On December 17, 2018, Cynthia Mosco (Complainant) filed a formal complaint against Verizon Pennsylvania, LLC (Verizon), alleging that Verizon refused to repair her copper lines and insisted that she permit the installation of fiber optics for her telephone service at her residence (service location). Verizon filed an answer on January 7, 2019. Verizon admitted that the Complainant has had service problems. Verizon averred that her service was restored; however, if her service problems persist, migration to fiber-optic facilities will be necessary for permanent repair.

By hearing notice dated March 5, 2019, this matter was assigned to Administrative Law Judge Emily DeVoe and scheduled for a hearing on April 8, 2019. Judge DeVoe issued a prehearing order on March 7, 2019.

The hearing convened as scheduled. The Complainant appeared and was self-represented. Verizon appeared, represented by Suzan D. Paiva, Esquire.

Prior to the presentation of any evidence, the parties engaged in off-the-record settlement discussions. Once back on the record, the parties agreed to continue the hearing and file a written status report in six months. Verizon also agreed to notify the Complainant if it made any filings with the Federal Communications Commission (FCC) that relate to the service location and Verizon's deployment of fiber-optic lines. Verizon was directed to notify the Complainant in writing within twenty days of the filing, and either attach a copy of the filing or provide the Complainant with instructions on how she may access it or obtain a copy. Judge DeVoe memorialized these agreements in an interim order dated April 8, 2019, which directed the parties to file a status report on or before October 11, 2019.

On April 19, 2019, Judge DeVoe received a letter from Verizon dated April 15, 2019. In its letter, Verizon advised it made a filing with the FCC on April 10, 2019, which starts the FCC's copper retirement process for an area encompassing the service location. Verizon also advised it will continue to monitor the Complainant's service over copper, and that there is nothing the Complainant needs to do at this time.

The parties were unsuccessful in resolving their dispute, and by letter dated October 8, 2019, the Complainant requested a hearing. By notice dated October 18, 2019, a further hearing was scheduled to take place on November 25, 2019.¹

*2 The hearing convened as scheduled. The Complainant was self-represented and testified on her own behalf. Verizon was represented by Suzan D. Paiva, Esquire and presented the testimony of two witnesses, Larry Hixson and Janet Gazlay Martin. Verizon also offered two exhibits which were admitted into the record. Official notice was also taken of three FCC documents marked as Verizon Exs. 3, 4, and 6. The hearing resulted in a transcript of 140 pages. The record was closed by order dated January 7, 2020, following the receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Cynthia Mosco who resides at 951 Brintell Street, Pittsburgh, Pennsylvania (service location). (N.T. 24)
2. Verizon Pennsylvania LLC is a jurisdictional public utility.
3. The Complainant currently receives “plain old telephone service” (POTS) from Verizon's copper-based network. (N.T. 54)
4. The Complainant has suffered intermittent outages of her telephone service as well as other service problems since June 2016. (N.T. 25)
5. The Complainant has made 39 service calls to Verizon in the last two and a half years. (N.T. 26-27)
6. Many times, the Complainant was able to call out, but no calls were coming in. (N.T. 27)
7. On September 16, 2016, the Complainant had no telephone service and was not able to call her home to contact her family when she was calling from the hospital. (N.T. 25)
8. The Complainant had no telephone service on June 1, 2018; August 29, 2018; February 21, 2019; and October 8, 2019. (Verizon Ex. 1)
9. It took seven days for the August 29, 2018 outage to be resolved because the line began working without a Verizon repair. (Verizon Ex. 1)
10. The outages on June 1, 2018, February 21, 2019 and October 8, 2019 were repaired the following day. (Verizon Ex. 1)
11. The Complainant reported that she could not receive in-coming calls or that there was noise or static on the line on May 31, 2018; July 3, 2018; November 18, 2018; November 24, 2018; December 15, 2018 and February 12, 2019. (Verizon Ex. 1)
12. The May 31, 2018 service problem was repaired six and a half hours after the problem was reported. (Verizon Ex. 1)
13. It took more than three days to repair the July 3, 2018 service problem. (Verizon Ex. 1)
14. On November 18, 2018, the Complainant could not receive incoming calls. (Verizon Ex. 1; see N.T. 27, 84)
15. The November 18, 2018 service problem was not repaired until November 23, 2018, five days later. (Verizon Ex. 1)
16. It took two days to repair the November 24, 2018 service problem. (Verizon Ex. 1)
17. It took 18 days to repair the December 15, 2018 service problem. (Verizon Ex. 1)

18. It took three days to repair the February 12, 2019 service problem. (Verizon Ex. 1)
19. Often, it would take more than 24 hours for Verizon to restore Complainant's service after she reported a service problem. (N.T. 27; See Verizon Ex. 1)
20. On June 1, 2018, at 3:09 p.m., Verizon's record notes that the Complainant reported that she could not make or receive calls. (Verizon Ex. 1)
- *3 21. The June 1, 2018 record notes a "medical emergency." (Verizon Ex. 1)
22. A technician was not dispatched until June 2, 2018 at 8:55 a.m. (Verizon Ex. 1)
23. Although the service record on July 3, 2018, notes "testing inconclusive" suggesting that Verizon attempted to resolve the outage remotely, the Complainant's service was not restored until July 7, 2019, when a technician was finally dispatched. (Verizon Ex. 1)
24. Verizon provides most of its POTS using fiber optic lines instead of copper line. (N.T. 54)
25. Fiber optic POTS is available in the Complainant's neighborhood. (N.T. 54)
26. Customers in an area are served from a distribution box which serves as a "hub" or "junction" for providing a location to connect wires and provide flexibility to the network. (N.T. 55)
27. The distribution box is capable of serving 600 customers. (N.T. 72)
28. The customers served by area distribution boxes are ultimately served from Verizon's wire center in Sharpsburg. (N.T. 97)
29. Verizon began deploying fiber optic cable to customers served from the Sharpsburg wire center in approximately 2007. (N.T. 86)
30. Only five of the customers served by the distribution box to the Complainant are served by copper wire; the remaining customers are served by fiber optic lines. (N.T. 55, 66)
31. The copper line that serves the Complainant is past its useful life and needs to be replaced. (N.T. 58; 63)
32. The copper line that serves the Complainant comes up a hill and through the woods, so it is in rough shape. (N.T. 63; 67-68)
33. Verizon's plan is to retire its copper network and to replace it with fiber optic lines. (N.T. 59)
34. Verizon chose fiber optic for several reasons: the material is less expensive than copper; fiber optic is less susceptible to weather, especially water, and easier to maintain; and copper is difficult to obtain. (N.T. 59)
35. It can take more than a week to obtain a piece of copper to repair a copper line. (N.T. 59)
36. Fiber transmits light rather than electricity and can operate under water. (N.T. 60)
37. Generally, fiber optic line is more reliable than copper line. (N.T. 60; *see also* N.T. 113)

38. Fiber optic service requires an Optical Network Terminal (ONT). (N.T. 63)
39. Although the ONT is installed in the customer's home, it is owned by Verizon and Verizon would replace it if it was damaged. (N.T. 63; 126)
40. The ONT is the point of demarcation between Verizon's facilities and the customer's inside wiring. (N.T. 63-64)
41. Although the ONT is typically installed near the current location where the Verizon cable connects to the inside wiring of a customer's home,² the ONT can be located anywhere inside a person's home so long as it is near an existing jack and a power outlet. (N.T. 106)
- *4 42. In a typical fiber optic installation, a Verizon technician would walk through the home with the customer and they would agree on a location for the installation of the ONT. (N.T. 106)
43. If there is no suitable electrical outlet for the ONT in a person's home, Verizon would pay for a licensed electrician to install an outlet. (N.T. 107)
44. The maximum power that the ONT draws is 10.5 watts. (N.T. 107)
45. Once the fiber optic network has been deployed, the copper network cables are removed. (N.T. 69)
46. Verizon does not remove the copper wiring inside a customer's home. (N.T. 76)
47. A customer owns the wiring inside her home and is responsible for maintaining the home's inside wiring. (N.T. 76, 90)
48. The purpose of the ONT is to translate the incoming light signal from the fiber optic cables to an electrical signal that the copper needs so that it can ring the telephone and transmit sound. (N.T. 104)
49. The copper wiring inside a person's home is less susceptible to the elements than copper cable used outside. (N.T. 104)
50. The electricity for copper line telephone service is provided by Verizon. (N.T. 82, 91)
51. The fiber optic lines are powered through a 110 wall outlet in the customer's home. (N.T. 91)
52. Verizon provides a battery back-up for the ONT to provide electricity for a customer's telephone service in the event the electricity service is interrupted. (N.T. 91)
53. The battery back-up unit for the ONT includes a tray for 12 D-cell batteries for reserve power in the event there is a power outage. (N.T. 108)
54. The battery back-up unit is rated for 24 hours of reserve power. (N.T. 109)
55. When Verizon begins the process of retiring its copper network and deploying fiber optic network in a particular area, it first makes a filing with the Federal Communications Commission (FCC), an agency of the federal government, and then gives notice to customers that their telephone service will be migrating from the copper network to the fiber optic network. (N.T. 98)
56. Verizon filed a notice of copper retirement for the Complainant's service address with the FCC in April 2019. (N.T. 99-101; Verizon Ex. 2)

57. According to Verizon's copper retirement plan filed with the FCC, all customers receiving service from copper lines must be removed from the copper network by April 2020. (N.T. 102)

58. A customer is notified by letter that their telephone service will be migrated from copper to fiber optic and is invited to make an appointment for the installation. (N.T. 110)

59. If a customer does not call to make an appointment the customer receives telephone reminder calls from a combination of robocalls and live agents and is mailed a reminder post card. (N.T. 110)

60. If a customer fails to respond, eventually the customer's telephone service is suspended except for calls to Verizon and 9-1-1. (N.T. 110)

61. If the customer does not contact Verizon within two weeks of the suspension of telephone service, the customer's service is terminated. (N.T. 111)

*5 62. Verizon sent the Complainant the initial migration letter in October 2019, requesting that she contact Verizon to make an appointment to transition her service from copper to fiber optic. (N.T. 29, 111, 118)

63. Verizon has suspended its normal process for contacting migration customers for the Complainant while her complaint is pending before the Commission. (N.T. 112, 120)

64. Verizon managers visited the Complainant in her home who attempted to explain the ONT device to the Complainant, but the Complainant's questions were not answered to her satisfaction. (N.T. 32)

65. There is no difference in either the price or the function of POTS offered via copper cable or fiber optic cable. (N.T. 103)

DISCUSSION

Section 701 of the Public Utility Code (Code), provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.³

A person seeking affirmative relief from the Commission has the burden of proof.⁴ In this matter, the Complainant is the party asking for relief from the Commission; therefore, she has the burden of proof. This means, that the Complainant must establish facts which support her claims by a preponderance of the evidence.⁵ The term "preponderance of the evidence" means one party must present evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party.⁶ Relief can only be granted if the Complainant proves facts by a preponderance of the evidence, which show that Verizon violated the Public Utility Code or Commission regulations.

Reliability: Complainant's Copper Cable Service

The Complainant contends that Verizon is not repairing or maintaining the copper cable from which she receives her telephone service. She contends that she got "nasty phone calls" and was told that Verizon would not repair her line.⁷ She also contends that Verizon does not promptly make repairs, and often no technician is dispatched within 24 hours. She has contacted Verizon 39 times in the last two and a half years regarding the quality of her telephone service and has found the situation very stressful and frustrating.⁸

*6 Section 1501 of the Code,⁹ mandates that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. Upon finding that the service or facilities of a public utility are unreasonable, unsafe or inadequate, the Commission may prescribe, by regulation or order, the reasonable, safe and adequate service or facilities that a public utility must furnish or employ.¹⁰

A telephone utility's obligation to render reasonable and continuous service is further defined by the Commission's regulations in Chapter 63. Specifically, Section 63.24(a)¹¹ requires:

Each public utility shall endeavor to maintain its entire system in such condition as to make it possible to furnish continuous service, and shall take reasonable measures to prevent interruptions of service and to restore service with a minimum delay if interruptions occur.

When a customer reports an outage to a telephone utility, the Commission's regulations¹² also require the utility to respond within a certain period of time and to honor repair commitments:

(a) A public utility shall respond to and take substantial action to clear out-of-service trouble of an emergency nature whenever the outage occurs, within 3 hours of the reported outage consistent with the needs of customers and personal safety of utility personnel.

(b) A public utility shall respond to and take substantial action to clear other out-of-service trouble, not requiring unusual repair, within 24 hours of the report, except for isolated weekend outages affecting fewer than 15 customers in an exchange or where the customer agrees to another arrangement.

(c) A public utility shall keep commitments made to its customers and applicants, unless timely notice of unavoidable changes is given to the customer or applicant or a reasonable attempt is made to convey the notice.

The Commission's regulations do not define what it means to “take substantial action” to meet the requirement of Section 63.57. The determination of whether a utility complies with Section 63.57 is made on a case-by-case basis.¹³ The Commission has held that the regulation does not require the utility to have telephone service repairs completed within 3 hours of an emergency outage report or 24 hours of a non-emergency outage report, but the utility is generally required to at least dispatch a technician or take some other reasonable action and begin to make repairs within that period of time.¹⁴ Remote troubleshooting, in the right circumstances, may be considered “substantial action,” but if the testing does not resolve the problem, the action does not meet the standard of substantial action.¹⁵

*7 In addition to the duty to provide reasonable service and facilities as set forth in Section 1501 of the Public Utility Code, the Commission also sets transmission standards for telephone service:

A public utility shall furnish, operate and maintain facilities adequate to provide acceptable transmission of communications. Transmission shall be at adequate volume levels and free of excessive distortion, noise and cross talk.¹⁶

Verizon does not dispute that the Complainant has had problems with her telephone service. Verizon's trouble report record that was admitted into the record indicates that the Complainant reported various problems with her telephone service nearly eleven

times from May 31, 2018 to October 8, 2019.¹⁷ The Complainant credibly testified that she could not reach her family at her home by telephone on September 16, 2018, and has had other intermittent service problems since June 2016. The Complainant testified that Verizon did not always enter a ticket for a service repair call on her line. Verizon's trouble report record also supports the Complainant's testimony that action by Verizon was not taken within 24 hours, and often took multiple days to repair. In the most extreme example, when the Complainant's service call occurred on December 15, 2018, a technician was not dispatched until January 1, 2019. The repair was not made until January 2, 2020, 18 days after the initial service call, when a technician repaired the "F2" cable.¹⁸

Larry Hixon, Verizon's witness, testified that it is very difficult to repair copper cable. It can take a week or more to get new cable to make splices in the service. The F1 line that serves the Complainant runs through the woods and is susceptible to weather. It is old and has reached the end of its useful life. It is for this reason that Verizon is retiring the copper cable that serves the Complainant. He offered no specific testimony about the service calls reported on Verizon Exhibit 1. He did not identify a specific instance where the delay in making repairs was due to Verizon's inability to obtain materials.

As explained more thoroughly in the discussion below, the Commission cannot prevent Verizon from retiring its copper line.¹⁹ However, the Commission has been clear that Verizon must continue to render reasonable and adequate service to its customers, regardless of the technology used to provide landline telephone service.²⁰ The ability to migrate customers on troubled networks to the fiber network does not relieve Verizon of its duty to provide adequate and reliable service to those customers still served on its copper network.²¹ Even if only one customer is served on a particular line, a utility is mandated to maintain its facilities and render reasonable service.²²

***8** Here, the Complainant's telephone service has been neither reliable nor adequate. It is clear from the technician's comments that Verizon is eager to migrate the Complainant to the fiber optic network.²³ At least one technician note states that "fiber is the only fix." Mr. Hixson explained that the copper line serving the Complainant has reached the end of its useful life. However, these factors do not excuse Verizon's failure to comply with Section 63.57, or its failure to render reasonably continuous service, as required by Section 63.24 and Section 1501 of the Code. Commission regulations require Verizon to maintain its facilities to render reasonable service,²⁴ take substantial action when an outage is reported,²⁵ offer reasonably continuous service,²⁶ and furnish acceptable transmission of communication free of excessive distortion.²⁷ Verizon Exhibit 1 demonstrates violations of all of these provisions at various times and supports the Complainant's allegation that Verizon has failed to provide her with adequate telephone service.

Section 3301 of the Public Utility Code²⁸ permits the Commission to assess a civil penalty for violations of the Public Utility Code or its regulations. To implement this section, the Commission has adopted certain standards that must be applied when imposing a civil penalty for violations of Commission directives and regulations.²⁹ Section 69.1201(a) of the Commission's regulations states:

***9** The Commission will consider specific factors and standards in evaluating litigated ... cases involving violations of 66 Pa.C.S. (relating to the Public Utility Code) and this title. These factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate.³⁰

These factors and standards to be considered are enumerated in subsection (c):

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing, or technical errors, it may warrant a lower penalty.

- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.
- (5) The number of customers affected and the duration of the violation.
- (6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.
- (7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations or attempts to interfere with Commission investigations may result in a higher penalty.
- (8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.
- (9) Past Commission decision in similar situations.
- (10) Other relevant factors.³¹

With these principles in mind, each violation is considered below.

Failure to Take Substantial Action

***10** On June 1, 2018, at 3:09 p.m., Verizon's record notes that the Complainant reported that she could not make or receive calls. The record notes a "medical emergency." A technician was not dispatched until the next day at 8:55 a.m. When an emergency is noted Section 63.57(a) requires a utility to take substantial action to clear the problem within a three hour timeframe.³²

Verizon failed to comply with this regulation because the technician was not dispatched until the following day. Nor did Verizon take any other reasonable action to clear the problem. Failing to respond to a service outage when a medical emergency is noted is a serious violation.³³ There is no explanation for the delay in taking action or why it took Verizon almost 18 hours to dispatch a technician, which might mitigate the gravity of the violation. The service notes state only that "fiber is the only fix."

Verizon is certainly aware that the failure to comply with this regulation can result in a substantial civil penalty. In *Eernisse v. Verizon Pennsylvania LLC*, the Commission assessed civil penalties totaling \$5,500 in connection with several violations of Section 63.57(a) and (b). In particular, where Verizon failed to take substantial action within three hours when the complainant reported that he had no telephone service to call for emergency help for his son, the Commission assessed a \$1,000 penalty.³⁴ The same civil penalty will also be assessed here.

The Complainant also argues that Verizon failed to repair her telephone service within 24 hours. Verizon's records indicate that it failed to dispatch a technician within 24 hours relating to service calls made on July 3, 2018, November 18, 2018, November

24, 2018, December 12, 2018 and February 12, 2019. Verizon's records indicate that on these dates the Complainant could not receive incoming calls or had static on the line. While these incidents implicate violations of other Commission statutes and regulations, the Commission has held that there is no requirement to dispatch a technician or complete a repair unless the service call relates to a complete outage.³⁵ No civil penalty will be assessed for violating Section 63.57, as it relates to these service calls which do not report an outage.

Quality of Telephone Service

***11** Verizon has also failed to render reasonable telephone service to the Complainant, which violates Section 1501 of the Public Utility Code. The Commission's regulations also establish more specific standards which apply to telephone service, Sections 63.24(a), and 63.63. As explained below, Verizon has violated these regulations as well. It is true that Verizon is not required to render perfect service.³⁶ Periodic outages may happen from time to time and do not necessarily rise to a violation of the Public Utility Code. However, the Complainant has suffered from numerous problems with her telephone service within a relatively short period of time, which renders her service inadequate and far less than perfect.

Section 63.24 of the regulations requires that Verizon maintain its system in such condition as to furnish continuous service and to take reasonable measures to prevent interruptions of service, as well as to restore any interruptions of service with a minimum delay.³⁷ Like Section 63.57, the Commission has interpreted this section to only apply to outages for the purposes of assessing a civil penalty.³⁸

The record establishes that the Complainant had no telephone service on three occasions: June 1, 2018; February 21, 2019; October 8, 2019. Given the scope of the service quality complaints reported by the Complainant, these outages constitute a violation of Section 63.24. The Complainant testified that she had made complaints to Verizon 39 times in the last two and a half years, beginning in 2016. This testimony is supported by Verizon's record which notes a significant number of service calls in the last 18 months. Several of Verizon's service reports note that the Complainant is disabled or noted the medical necessity for repairs. Therefore, these violations are serious in nature. Verizon's records note that repairs were made, but there is no testimony regarding what those repairs were or what efforts were made to stabilize the Complainant's telephone service. Although fiber network service was available to the Complainant which may have remediated some of her service problems, there is nothing in the statute or regulations which mandates that she accept migration before Verizon files to retire its copper network with the FCC. Verizon did not make that filing until April 2019. Until the copper network is retired, Verizon is obligated to maintain and repair its copper network.

***12** The service report notes that the outage reported on June 1, 2018 was a medical emergency, which makes it particularly serious. Therefore, a \$1,000 civil penalty is assessed for this Section 63.24 violation. There is no medical issue identified on the outage report for February 21, 2018; therefore, \$500 is assessed for this violation. A civil penalty of \$750 is appropriate for the outage on October 8, 2018. This penalty is escalated because it is the second outage report in a short period of time.

Some of the Complainant's service calls were made because she had incomplete service. That is, she could call out, but could not receive incoming calls or there was static on her line. In the context of all of the Complainant's problems with her telephone service and her testimony that these types of issues had been ongoing for several years, these complaints constitute a violation of Section 1501. It is clear from Verizon's service notes that it believed that the Complainant should simply migrate to fiber optic service. The Complainant testified that on more than one occasion, she was told by a Verizon employee that Verizon would no longer repair its copper lines. But there is no specific evidence in the record that Verizon deliberately delayed repairs to the Complainant's service in order to incentivize her to migrate her service from the copper network. As with the outage reports, it is noted that Verizon made repairs, but there is no detail regarding these repairs. Verizon has been penalized in the past by the Commission for failing to render reasonable service when a customer suffers from a number of service complaints in a

relatively short period of time.³⁹ The Commission has held that it is appropriate to assess a civil penalty for each day that the Complainant's service is inadequate.⁴⁰

Verizon will be assessed a civil penalty of \$250 per day for the service complaints on May 31, 2018, and November 18, 2018, for a total of \$1,500. On these occasions the Complainant reported that she could not receive incoming calls. The November 18, 2018 service call was not resolved until five days later, November 23, 2018. The Complainant again reported that she could not receive incoming calls on November 24, 2018 and December 15, 2018. The November 24, 2018, service call was not resolved until November 26, 2018. As the problem was not adequately resolved after the November 18, 2018 call, it is appropriate to escalate the daily penalty for November 24 service all to \$500 per day, for a total of \$1,000. The December 15, 2018 service call, less than a month later, was not resolved for eighteen days. A daily penalty of \$750 per day will be assessed for 18 days, totaling \$13,500.⁴¹ The chart below summarizes these daily penalties and totals.

***13** On July 3, 2018, the Complainant reported that she intermittently had no dial tone. The record does not note that there was a complete loss of service. However, even though there was not a complete outage, intermittent loss of dial tone is still a serious violation of Section 1501. The service complaint was not resolved for four days. A total penalty of \$3,000 is appropriate for the violation related to the July 3 service call.⁴²

Finally, service reports show that the Complainant reported static or noise on her line on August 29, 2018 and February 12, 2019. These service complaints prove a violation of Section 1501 of the Code and Section 63.63 of the regulations.

Verizon did not dispatch a technician at all for the August 29, 2018 static report. The service report notes that the issue resolved on its own on September 5, 2018, seven days later. This failure to address the service complaint for a week is unreasonable customer service in violation of Section 1501 of the Public Utility Code. The report of static is also a violation of Section 63.63, which requires Verizon to render service free of unreasonable noise or interference. Because many of the service complaints made by the Complainant took days to resolve, a civil penalty of \$1,000 is assessed for violating Section 1501 of the Public Utility Code. An additional civil penalty of \$250 per day for seven days is assessed for violating Section 63.63. The total penalty for the August 29, 2018 service complaint is \$2,750.⁴³

Regarding the service complaint initiated on February 12, 2019, Verizon dispatched a technician and the issue was resolved on February 15, 2019. There is no note regarding what repair was made. As this is the second complaint regarding noise on the line, Verizon failed to render service free from unreasonable interference in violation of Section 63.63 of the regulations, and a civil penalty of \$300 per day, for a total of \$900 will be assessed.

Inadequate Customer Service

The Complainant also maintains that Verizon has failed to answer her questions about the equipment which is used to provide telephone service by fiber optic cable, regarding safety, insurance and responsibility. She is concerned that the Optical Network Terminal (ONT) cannot be installed in her basement; that her questions regarding the electricity usage of the ONT have not been answered; and that she will be held responsible for the ONT which is an expensive piece of equipment.

The Complainant testified that she has many questions about Verizon's fiber optic service and that none of the numerous Verizon representatives to whom she spoke could answer her questions. She did not identify a specific conversation or employee. She did state that at various times representatives of Verizon visited her home to discuss migration to Verizon's fiber optic network. Verizon did not offer customer contact records which would establish a record of the contacts employees had with the Complainant.

***14** There are no Commission regulations establishing a standard of conduct for public utility customer service representatives. In the absence of specific regulations, Section 1501 of the Public Utility Code governs a public utility's obligation to provide

reasonable service to its customers. In *Gallagher v. Bell Telephone Co. of Pa.*,⁴⁴ the Commission held that a public utility had violated Section 1501 by allowing its customer service representatives to refuse to identify themselves to a complainant, by calling the complainant a rude name and by hanging up on the complainant.⁴⁵ In *Brickner v. PPL Electric Utilities Corporation*,⁴⁶ the Commission assessed a civil penalty where utility employees failed to provide accurate information regarding a rate.⁴⁷

The Complainant's testimony regarding her frustration in her dealings with Verizon is credible. She testified that she had conversations with Verizon technicians and employees who visited her home, but none of these representatives could satisfactorily answer her questions regarding the fiber optic network or the equipment necessary to operate it. Mr. Hixon⁴⁸ and Ms. Gazlay Martin⁴⁹ both offered testimony at the hearing which answered the questions articulated by the Complainant in her testimony. The Complainant noted at the hearing that their testimony was the first time that some of her questions had been answered.

***15** To the extent the Complainant's questions were not answered, the testimony of Verizon's witnesses remedied any omissions that may have been made by other employees. Therefore, a civil penalty for a violation of Section 1501's reasonable customer service requirement is not warranted.

Migration from Copper to Fiber

The Complainant does not want to transition to Verizon's fiber optic network, but wants the Commission to order Verizon to continue to provide her with telephone service over a copper cable network.

The retirement of copper telephone lines is regulated by the Federal Communications Commission (FCC). In 2015 the FCC issued a final rule, commonly referred to as the *Technology Transitions Order*, addressing a communications utility's retirement of its copper facilities.⁵⁰ Under the FCC's regulation, a telephone service provider is not required to obtain the FCC's approval of its intent or plan to retire its copper lines and to transition to fiber optic lines, but the telephone service provider is required to give timely notice of its plan to customers that it will be replacing its copper wire lines with fiber optic lines. The Commission, as a Commonwealth agency, lacks the power to override a federal regulation. Accordingly, the Commission has held that a telephone service provider is not required by Commission statute or regulation to continue to provide service over copper, provided the telephone service provider has complied with the FCC's copper retirement rules.⁵¹

As explained by Verizon's witnesses, the copper cable serving the Complainant has reached the end of its useful life and is scheduled to be replaced with fiber optic lines. Verizon filed a notice of copper retirement for the Complainant's service address with the FCC in April 2019, and began notifying customers, like the Complainant, in October 2019. As of the date of the hearing, the Complainant was still receiving telephone service via copper cable.

As explained above, the Commission cannot order Verizon to provide the Complainant with telephone service by copper cable. Verizon's witnesses explained at length the reasons for Verizon's decision to migrate its customers from copper service to fiber optic service. Specifically, Verizon is able to offer more reliable telephone service with its fiber optic network because the cable itself is more durable in the outdoor environment. In contrast copper cable is damaged by wet outdoor conditions and has become increasingly difficult and expensive to repair. To replace the current copper cable with new copper cable would be significantly more expensive than replacing the copper cable with fiber optic cable. Fiber optic service is offered to customers at the same price as their previous copper line service.

***16** Fiber optic service does require the customer to utilize an Optical Network Terminal (ONT). Although the device is installed in the customer's home, it is owned by Verizon. The purpose of the ONT is to translate the incoming light signal from the fiber optic cables to an electrical signal which can be transmitted to the customer's copper wiring in the home and can ring

the telephone and transmit sound. The ONT does require an electrical outlet to operate. It is the customer's responsibility to pay for the electricity used to operate the ONT. In contrast, the electricity which is necessary to power telephone service by copper cable is generated by Verizon. Verizon offers migration customers a battery back-up for the ONT which will power the unit with batteries in the event of a power outage.

Although the transition to fiber optic service requires the customer to accept a device that requires the customer's electricity, the FCC has permitted telephone service providers to retire their copper networks. As explained above, a fiber optic network offers installation and maintenance advantages that permit a telephone service provider to offer enhanced service to customers. The Commission does not have the authority to prevent Verizon from retiring its copper network. Therefore, the Commission cannot order Verizon to maintain the Complainant's copper wire telephone service. She must either migrate to Verizon's fiber optic network or choose another telephone service provider.

Conclusion

Verizon has failed to render reasonable telephone service to the Complainant as set forth above. These counts of the complaint will be sustained, and Verizon shall pay a total civil penalty in the amount of \$25,900, as summarized in the table below:

Begin Date	End Date	Days	Complaint	Violation	Penalty	Total Assessment
6/1/2018	6/2/2018	1	outage	§ 63.24	\$1,000	\$1,000
2/21/2019	2/22/2019	1	outage	§ 63.24	\$500	\$500
10/8/2019	10/9/2019	1	outage	§ 63.24	\$750	\$750
5/31/2018	5/31/2018	1	no incoming calls	§ 1501	\$250	\$250
7/3/2018	7/7/2018	4	intermittent no dial tone	§ 1501	\$750/day	\$3,000
11/18/2018	11/23/2018	5	no incoming calls	§ 1501	\$250/day	\$1,250
11/24/2018	11/26/2018	2	no incoming calls	§ 1501	\$500/day	\$1,000
12/15/2018	1/2/2019	18	no incoming calls	§ 1501	\$750/day	\$13,500
2/12/2019	2/15/2019	3	static	§ 1501	\$300/day	\$900
6/1/2018	6/2/2018	1	outage - emergency noted	§ 63.57(a)	\$1,000	\$1,000
8/29/2018	9/5/2018	7	noise on the line	§ 63.63; § 1501	\$250/day plus \$1,000	\$2,750
Total Penalty						\$25,900

*17 The claim that Verizon failed to adequately explain the equipment and operation of the fiber optic network is also sustained, but no penalty will be assessed.

Finally, the Commission lacks the authority to direct Verizon to continue provide service to the Complainant on its copper network. Verizon has made its filing with the FCC and notified customers that the copper network in the Complainant's area

will be retired. The Complainant has the option of retaining her telephone service with Verizon, but on its fiber optic network, or becoming a customer of another telephone service provider.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this complaint. 66 Pa.C.S. § 701.
2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
3. Verizon failed to respond to and take substantial action to clear out-of-service trouble of an emergency nature whenever the outage occurs, within three hours of the reported outage. 52 Pa.Code § 63.57(a).
4. Verizon failed to maintain its entire system in such condition as to make it possible to furnish continuous service, failed to take reasonable measures to prevent interruptions of service and failed to restore service within a minimum delay if interruptions occur. 66 Pa.C.S. § 1501; 52 Pa.Code § 63.24(a).
5. Verizon failed to furnish, operate and maintain facilities adequate to provide acceptable transmission of communications, by maintaining transmission at adequate volume levels and free of excessive distortion, noise and cross talk. 52 Pa.Code § 63.63.
6. Section 3301(a) and (b) of the Public Utility Code authorizes the Commission to impose a maximum civil penalty of \$1,000.00 per day for violations of the statute, regulations and orders. 66 Pa.C.S. § 3301(a) and (b).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of Cynthia Mosco at Docket C-2018-3006579 is sustained.
2. That within thirty (30) days of entry of the final order of the Commission, Verizon Pennsylvania, LLC shall pay a civil penalty in the amount of \$25,900 in accordance with Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, by sending a certified check or money order payable to the Commonwealth of Pennsylvania to:

Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building, 2nd Floor

400 North Street

Harrisburg, PA 17120

3. That upon payment of the penalty, this docket shall be marked closed.

Footnotes

- 1 This matter was transferred to me on October 22, 2019.
- 2 This location is called the network interface device, or NID. N.T. 105.
- 3 66 Pa.C.S. § 701.
- 4 66 Pa.C.S. § 332(a).
- 5 *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040, 1055-56 (Pa. 2007); *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).
- 6 *Popowsky*.
- 7 N.T. 26, 93.
- 8 E.g., N.T. 31.
- 9 66 Pa.C.S. § 1501.
- 10 66 Pa.C.S. § 1505.
- 11 52 Pa.Code § 63.24(a).
- 12 52 Pa.Code § 63.57.
- 13 *Eernisse v. Verizon Pennsylvania LLC*, Docket No. C-2012-2287023 (Opinion and Order entered January 15, 2014); *see also Miller v. Verizon Pennsylvania, Inc.*, Docket No. C-20066923 (Order entered November 12, 2008); *Wolfe v. Verizon North, LLC*, Docket No C-2011-2266224 (Opinion and Order entered December 20, 2012).
- 14 Eernisse.
- 15 *Eernisse*, p. 26
- 16 52 Pa.Code § 63.63(a).
- 17 Verizon only offered repair records for the eighteen months before the hearing. N.T. 56. There are two repair records for October 8, 2019.
- 18 Verizon Ex. 1. *See* N.T. 65-66, explaining the location F1 and F2 cables.
- 19 *See Altman v. Verizon Pennsylvania, LLC*, Docket No. C-2015-2515583 (Initial Decision dated July 25, 2016), reviewed by the Commission to make administrative corrections to the civil penalty and adopting the substantive analysis of the administrative law judge (Opinion and Order entered October 27, 2016).
- 20 *Fox v. Verizon Pennsylvania LLC*, Docket No. C-2016-2576-04 (Opinion and Order entered July 12, 2018), at p. 9.
- 21 *Altman*, Initial Decision at p. 18.

- 22 *Linn v. Verizon Pennsylvania, LLC*, Docket No. C-2014-2400411 (Final Order entered April 30, 2015), Initial Decision at p. 12.
- 23 Counsel for Verizon observed that every time the Complainant made a service call, Verizon offered to migrate the Complainant to the fiber network as a repair option. N.T. 43.
- 24 66 Pa.C.S. § 1501.
- 25 52 Pa.Code § 63.57.
- 26 52 Pa.Code § 63.24.
- 27 52 Pa.Code § 63.63.
- 28 66 Pa.C.S. § 3301.
- 29 *See* 52 Pa.Code § 69.1201; *see also, Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company*, Docket No. C-00992409 (Order entered February 10, 2000) (*Rosi*).
- 30 52 Pa.Code § 69.1201(a).
- 31 52 Pa.Code § 69.1201(c).
- 32 52 Pa.Code § 63.57(a).
- 33 *Eernisse*.
- 34 *Id.* at 32.
- 35 *Eernisse*, at p. 16.
- 36 E.g., *Williams v. Verizon Pennsylvania, LLC*, Docket No. C-2018-3005368 (Final Order entered August 23, 2019).
- 37 *Wolfe*, at p. 9.
- 38 *Eernisse*, at p. 16.
- 39 *Altman; Linn; Eckroth v. Verizon Pennsylvania, Inc.*, Docket No. C-2011-2279168 (Opinion and Order entered May 17, 2013).
- 40 *Id.*
- 41 *Wolfe*.

Begin date	End date	days	Penalty per day	Total
5/31/2018	5/31/2018	1	250	250
11/18/2018	11/23/2018	5	250	1250
11/24/2018	11/26/2018	2	500	1000
12/15/2018	1/2/2019	18	750	13500

- 42 *Wolfe; Eernisse*.

- 43 *Linn; Eckroth.*
- 44 Docket No. F-8958314 (Opinion and Order entered September 23, 1992).
- 45 *Id.*; see also, *Moffa v. Verizon Pennsylvania Inc.*, Docket No. C-2010-2212745 (Final Order entered March 22, 2012); *Haimes v. PPL Electric Utilities Corporation*, Docket No. F-002201447 (Final Order entered April 3, 2008).
- 46 Docket No. C-2009-2105583 (Opinion and Order entered May 21, 2010).
- 47 See also *Maisch v. PECO Energy Company*, Docket No. C-2009-2118649 (Opinion and Order entered May 26, 2011).
- 48 Larry Hixon is the local supervisor for the portion of the Verizon network which serves the Complainant. N.T. 53.
- 49 Janet Gazlay Martin is the Director of Network Transformation of Verizon, responsible for the customer outreach programs to aid customers who are transitioning from copper service to fiber optic service. N.T. 95-86.
- 50 See, *Technologies Transitions, Policies Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers and Special Access for Price Cap Local Exchange Carrier*, 80 Fed. Reg. 63322 (October 15, 2015) as codified in 47 CFR 51.332.
- 51 *Fox v. Verizon Pennsylvania LLC*, Docket No. C-2016-2576094 (Opinion and Order entered July 12, 2018).

End of Document

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EXHIBIT D

RETAIL QUALITY OF SERVICE

A Standards and Customer Remedies

During the term of the Revised Plan, Qwest will comply with specific quality of service standards and customer remedies as shown in this Appendix

B. Service Quality Standards and Customer Remedies Apply to Normal Operating Conditions

The service quality standards and customer remedies in this Appendix apply only to normal operating conditions and do not establish a level of performance to be achieved where circumstances are beyond Qwest's control. Qwest is exempted from the otherwise applicable individual customer remedies if it is prevented from meeting a quality of service standard because of conditions caused by persons, things, or events outside the reasonable control of Qwest, that Qwest could not have reasonably anticipated and prevented, or circumstances that endanger the safety of Qwest employees or members of the public, including: (1) delays of a local government unit in granting approval for obtaining easements, permits or access to rights-of-way; where Qwest has made a timely application for any permits; (2) the customer, including but not limited to, no access to customer's premises, delays caused by the customer's construction project or lack of facilities or the customer choosing a later appointment than offered; (3) delays caused by a vendor in the delivery of equipment where Qwest has made a timely order or request; (4) other delays outside the control of Qwest, including, but not limited to, acts of God, explosions or fires, floods, frozen ground, tornadoes, severe weather, epidemics, injunction, war, acts of terrorism, strikes or work stoppages, or negligent or willful misconduct by customers or third

parties including outages originating from the introduction of a computer virus onto the provider's network. Events caused by Qwest employees or contractors are not outside Qwest's control for the purpose of the Plan.

C. Substantial Compliance

Substantial compliance with retail service quality standards is satisfied if Qwest 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 Qwest 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, Qwest 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. Qwest 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**.

D. Annual Service Quality Reports

Qwest shall report annually to the Commission, the Department, and the OAG its performance in meeting the quality of service standards for the previous year.

E. Service Quality Standards

1. Installation Terms

a. Application for Service:

In cases where a construction agreement is not required, an application shall be considered as made when the customer either verbally or in writing requests service. In cases where a construction agreement is requested or payment is required, an application shall be considered as made when the Company receives the applicable construction agreement signed by the Company and by the customer, and the customer has made any advance payment to the Company required by the tariff.

b. Primary Line Service:

Primary line service is the first access line to the customer providing local dial tone and local usage necessary to receive a call.

2. Installation Interval - Ninety-five percent of residential/business basic primary line service orders will be completed within three business days or on the requested installation date, if later. This will be measured statewide on an annual basis.

a. If Qwest is unable to provide primary local exchange service to a customer within three business days, or on the requested installation date, if later, for Company reasons, Qwest shall waive the one-time installation charge for primary line connections.

b. Qwest shall also offer the customer free of charge a telephone number, a directory assistance listing, and the customer's choice of either:

- 1) Free remote call forwarding of that number until service is provisioned; or
- 2) A free voice mailbox to which the customer's calls may be directed until service is provisioned.

c. The company shall give priority installation commitments to customers who identify critical medical situations. Critical medical situations are identified as infants on monitoring systems, individuals on life support systems, or other life threatening emergencies.

d. If the delay is due to customer actions or other force majeure conditions, then no remedy will be required.

3. Restoration of Out-of-Service - It shall be the Company's objective to clear 95% of out-of-service trouble report conditions within 24 hours of the time such troubles are reported. Compliance with the objective shall be determined by a 12-month annual statewide average performance for the measure. A service is deemed to be out-of-service if the customer is unable to receive or place calls. This definition includes service affecting troubles such as static severe enough to prevent communications.

a. If Qwest fails to reinstate basic primary residential service within 48 hours and basic primary business service within 24 hours of the outage or a later date requested by the customer for the repair to be made, for Company reasons, Qwest will provide the customer a pro rata adjustment (i.e., 1/30th) of the monthly recurring charge for the first two days (Residential) and one day (Business) that there is a service outage. Qwest shall provide the customer \$5 for each day thereafter that the Residential customer is out-of-service and \$10 for each day the Business customer is out-of-service.

b. The company shall give priority repair commitments to customers who identify critical medical situations. Critical medical situations are identified as infants on monitoring systems, individuals on life support systems, or other life threatening emergencies.

c. If the missed restoration of service is due to events beyond Qwest's reasonable control (e.g., force majeure), then no remedy will be required.

4. **Trouble Report Rates** - The Company shall not exceed 2.5 customer trouble reports per 100 access lines, measured monthly on an exchange basis for each of Qwest's five LATAs. Compliance with the required objective shall be determined by the annual average of the 12 monthly out-of-service trouble report performance metrics by LATA, excluding reports caused by conditions outside Qwest's control (e.g., force majeure events or customer action).

In the event of a customer trouble report rate of more than 6.5 per 100 telephones per month per exchange for more than three consecutive months, the Department/OAG shall meet and confer with Qwest representatives to negotiate a voluntary resolution to the matter. If successful resolution of the matter cannot be negotiated, Qwest will present the Department and OAG with a plan to bring service quality into compliance. If the plan is not acceptable to the Department or OAG, the Department or OAG may file a complaint with the PUC for the purpose of determining whether reasonable additional customer remedies are warranted. Qwest 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.

5. **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.

6. **Held Orders** - No more than .005% of primary access line orders where facilities are not available will be held for more than 30 days for Company reasons. Compliance shall be determined by a 12-month annual statewide average of the performance for the measure.

7. **Service Center Access** - Calls to the Service Center will be on hold no more than 60 seconds on the average after the last menu option is selected before being answered by a live service representative. The service representative will accept the information needed to begin processing the call and direct the caller to the appropriate specialized personnel, as appropriate. Compliance shall be determined by a 12-month annual statewide average of the performance for the measure for combined customer, business and repair calls.

8. **POTS Missed Repair Commitments** - Qwest will complete 90% of repair tickets by the commitment date provided to the customer. Compliance shall be determined by a 12-month annual average of the statewide performance for the measure. If the Company misses a commitment to repair service, due to Company reasons, where the customer is required to be at the premises, the Company will make reasonable efforts to adjust-to-satisfy.

a. The company shall give priority repair commitments to customers who identify critical medical situations. Critical medical situations are identified as infants on monitoring systems, individuals on life support systems, or other life threatening emergencies.

b. If the company misses a repair ticket commitment date, and the customer is required to be at the premise, Qwest will provide a remedy to the customer which may include a credit on the bill of the affected customer in the amount of \$10 for a residential customer or \$20 for a business customer for each trouble report. However, if the missed commitment is due to events beyond Qwest's reasonable control (e.g., the customer's failure to provide Qwest with adequate or correct information or failure to arrange for access to the premises, or force majeure events, etc.), then no remedy will be required.

EXHIBIT E

STATE OF MINNESOTA

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie Sieben	Chair
Hwikwon Ham	Commissioner
Valerie Means	Commissioner
Joseph K. Sullivan	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
(CWA)**

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

AFFIDAVIT OF SUSAN MOHR

I, Susan Mohr, being first duly sworn upon oath, depose and state:

1. My name is Susan Mohr, and I am Director, Public Policy and International Government Affairs for Lumen Technologies, the parent company of Qwest Corporation d/b/a CenturyLink QC in Minnesota (CenturyLink or Company). In this role, I am responsible for working with business units and government affairs partners to develop and communicate timely and strategic advocacy on regulatory and legislative initiatives at the State and Federal levels, including issues related to retail and wholesale service quality, voice technology transition, broadband expansion, privacy, and cybersecurity.

2. I previously filed Direct, Rebuttal and Surrebuttal Testimony in the above-captioned proceeding.

3. I have reviewed the Findings of Fact, Conclusions of Law and Recommendation (Recommendation) submitted by the Administrative Law Judge (ALJ) in this matter on March 13, 2024.

4. The Recommendation states: (1) plain old telephone service (POTS) landlines remain necessary to ensure a reliable means of communication in part because alternatives are not available;¹ and (2) that the customers experiencing repeat trouble (as defined by the

¹ See Recommendation at Findings ¶¶ 26, 60.

Department of Commerce witness Mr. Webber) on their POTS landlines are “most commonly located in the rural periphery.”²

5. This affidavit provides an analysis of the geographic locations of those customers. This analysis demonstrates a very high percentage of customers have alternative services available to them. These percentages will only increase as federal, state and private broadband initiatives continue to replace copper networks with fiber and/or other more modern alternatives. This analysis further demonstrates that nearly half of the identified customers reside in urban areas.

Significant Alternatives are available to the customers identified in the Recommendation as having experienced four or more troubles.

6. Finding 26 of the Recommendation states:

As the Commission has consistently concluded, landlines continue to be necessary and useful to many Minnesotans. Even as CenturyLink argues that competition obviates the need for continued regulation because landlines are being phased out, nothing in the record establishes plans for upgrading the offerings in unserved or underserved rural areas to include broadband or other alternatives.

7. Finding 60 of the Recommendation states, in relevant part:

The broad public interest is to ensure that all Minnesotans have reliable means of telecommunication, and the record establishes that landline service continues to be a necessary service for many Minnesotans.”

8. CenturyLink analyzed these findings with respect to the customers the Recommendation identifies as having four or more trouble reports between 2019 and 2023. According to our records, there are 4,881 such customer lines.³

9. Exhibit 1, shows the location and potential competitive alternatives available to each customer.

10. To calculate the list of potential competitive alternatives, CenturyLink identified those competitive alternatives and classified them into the groups listed below. For each group a very significant percentage of customers appear to have alternate providers offering service in the area:

² See Recommendation at Findings ¶ 86.

³ This number of lines is larger than the approximately 4460 identified in the Recommendation.

- Lumen Fiber (620 lines) (12.7%)
- Wireless Internet Service Provider (WISP) (4,694 lines) (96.2%)
- Other Fiber Provider (1,306 lines) (26.7%)
- Cable (2,701 customers) (55.3%)
- Mobile Provider (4,877 lines) (99.9%).

11. If a fixed provider is listed, then that provider has indicated they serve at least one location within the same 0.7 square kilometer area (H3 hexagon 8) as the working telephone number. For mobile voice providers, the area is about 0.1 square kilometers (H3 hexagon 9). This analysis suggests a provider is in the area but does not definitively determine whether that service is available at that location. Lumen reported fiber availability is address specific.

Nearly Half of the Customers are in Urban Areas

12. Finding 86 states, without citation to any record evidence: “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.” (Emphasis added.)

13. Attached as Exhibit 2 is a map of the location of those customers. In order to create this map, CenturyLink used the working telephone number to look up the address and latitude and longitude associated with the number. Those locations were then used to create the map.

14. Exhibit 2 analyzes whether the locations are considered urban pursuant to the US Census Bureau’s urban areas and definition: <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html>. Remaining locations are classified as rural.

15. The analysis in Exhibit 2 concludes that 2,115 locations are urban and 2,765 locations are rural. Thus, approximately 43.3% of the customers are urban and 56.7% of the customers are rural.

Approximately 15% of the customers have disconnected service

16. A significant percentage of customers identified as having four or more trouble reports between 2019 and June 2023 are no longer CenturyLink customers.

17. The Company's records show 4,151 of the 4,880 customers remain with CenturyLink, meaning that 729 have chosen alternate providers, meaning that nearly 15% have dropped CenturyLink as their voice telephony service provider either during or after the 2019 through June 2023 time frame.

This concludes my affidavit.



Susan Mohr

Subscribed and sworn to before me
This 1st day of April, 2021.



Notary Public

