

**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
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**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
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Joseph Sullivan	Vice Chair
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Valerie Means	Commissioner
John Tuma	Commissioner

In the Matter of Formal Complaint Regarding
the Services Provided by the Qwest
Corporation d/b/a CenturyLink in Minnesota,
on Behalf of the Communications Workers of
America

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

OAH File No. 21-2500-38965

**REPLY EXCEPTIONS OF THE MINNESOTA
DEPARTMENT OF COMMERCE**

April 12, 2024

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INTRODUCTION

The are three primary questions before the Commission.¹ First, whether the Administrative Law Judge (“ALJ”) correctly determined that each CenturyLink customer is individually entitled to receive adequate plain old telephone service (“POTS”) under Minn. R. 7810.3300 and Minn. R. 7810.5000. Second, whether the ALJ correctly determined that certain customers were not receiving adequate service and that certain facilities were failing to deliver adequate service. And third, whether the ALJ’s recommended remedies are reasonable solutions to fix CenturyLink’s failure to deliver adequate service. The ALJ correctly answered each of these questions. The ALJ’s interpretation of rules 7810.3300 and 7810.5000 is consistent with accepted canons of legal interpretation and informed by persuasive authority from other jurisdictions. Her findings that a preponderance of the evidence established approximately 5,000 customers do not receive adequate service and that certain facilities fail to provide adequate service are similarly well-founded; particularly, given the bases for these findings were largely CenturyLink’s own internal data. Finally, the ALJ’s recommended remedies to improve CenturyLink’s provision of POTS service are narrowly tailored and well within the Commission’s authority. As a result, the Commission should adopt the ALJ’s thoughtful and well-supported report in its entirety.

ARGUMENT

None of CenturyLink’s conclusory claims should cause the Commission to depart from the ALJ’s sound legal analysis and interpretation of rules 7810.3300 and 7810.5000, her findings that certain customers are not receiving adequate service and that certain facilities are failing to provide it, and her recommended remedies to improve CenturyLink’s service.

¹ In addition to finding that CenturyLink has failed to provide certain customers adequate service under rules 7810.3300 and 7810.5000, the ALJ also found that CenturyLink is violating rule 7810.5800. Because CenturyLink concedes that it is not meeting the standard, the Department does not repeat its arguments here. *See* CTL Exceptions at 30.

I. THE COMMISSION SHOULD ADOPT THE ALJ’S INTERPRETATIONS OF RULES 7810.3300 AND 7810.5000.

The Commission should adopt the ALJ’s legal interpretation of what “adequate service” requires under rules 7810.3300 and 7810.5000. Unlike the ALJ who relied on traditional legal tools to develop a reasonable interpretation, CenturyLink’s favored interpretation depends on conclusory legal analysis that is inconsistent with accepted canons of construction. CenturyLink also wrongly accuses the ALJ of manufacturing wholly new legal standards.

The ALJ correctly interpreted rules 7810.3300 and 7810.5000. Rule 7810.3300 requires that telephone companies, including CenturyLink:

adopt and pursue a maintenance program aimed at achieving efficient operation of its system so as to permit the rendering of safe and *adequate service*. Maintenance shall include keeping all plant and equipment in good state of repair consistent with safety and adequate service performance. Broken, damaged, or deteriorated parts which are no longer serviceable shall be repaired or replaced.²

Under rule 7810.5000, telephone companies also have an ongoing obligation to review their practices to assure the furnishing of “adequate service.”³ It is undisputed that the meaning of “adequate service” as used within the rules is undefined and has not been previously addressed by the Commission or appellate courts.⁴ As a result, the ALJ appropriately turned to traditional legal interpretative tools and decisions from other jurisdictions for guidance.⁵ Seeking to give the term its plain and ordinary meaning,⁶ the ALJ considered dictionary definitions that explained adequate means “sufficient to satisfy a requirement or meet a need,” while service refers to “the provision

² Minn. R. 7810.3300 (emphasis added).

³ Minn. R. 7810.5000.

⁴ CTL Exceptions at 11.

⁵ ALJ Report, Finding of Fact ¶¶ 51-57.

⁶ ALJ Report, Finding of Fact ¶ 55 (citing *Troyer v. Vertlu Mgmt. Co.*, 806 N.W.2d 17, 24 (Minn. 2011); *Buzzell v. Walz*, 974 N.W.2d 256, 261 (Minn. 2022); *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016)).

to the public of something, especially a utility.”⁷ Given these definitions, the ALJ concluded that “adequate service means that service must be nearly continuous” and that “adequacy must be determined on an individual basis based on the volume of service issues and whether the provider takes reasonable steps to address the underlying problem.”⁸ In reaching this conclusion, the ALJ reasoned that telephone is an essential service and “a prerequisite for full participation in our economy and society.”⁹ The ALJ also considered persuasive authority from other jurisdictions resolving service quality disputes that she found instructive to develop her recommended interpretation.¹⁰ In short, the ALJ considered dictionary definitions, persuasive authority from other states, and the typical telephone service needs of consumers to arrive at a reasonable interpretation of the term “adequate service.”

In contrast, CenturyLink’s interpretation is flawed and unsupported by the law. Although the company points to a dictionary definition that defines adequate to mean to “sufficient for a specific need or requirement,” “of a quality that is good or acceptable,” “of a quality that is acceptable but not better than acceptable” or “lawfully and reasonably sufficient,” it draws inexplicable conclusions.¹¹ Based on these plain language definitions, CenturyLink asserts that adequate service means “not posing a danger and capable of carrying voice service.”¹² This interpretation, however, appears entirely divorced from the supplied definitions. CenturyLink’s interpretation does not consider the “specific needs or requirements” of the customer. It does not

⁷ *Id.* (citing *Adequate*, American Heritage Dictionary (5th ed. 2022); *Service*, American Heritage Dictionary (5th ed. 2022)).

⁸ *Id.* ¶ 57.

⁹ *Id.* (citing *In re Lifeline & Link Up Reform & Modernization Lifeline & Link Up Fed.-State Joint Bd. on Universal Serv. Advancing Broadband Availability Through Digital Literacy Training*, 27 F.C.C. Rcd. 6656, 6665 (2012)).

¹⁰ *Id.* ¶ 56.

¹¹ CTL Exceptions at 11.

¹² *Id.*

consider what a reasonable customer would consider to be sufficient telephone service. Instead, CenturyLink essentially proposes swap out “adequate service” for an assessment of whether its equipment will hurt people or be physically unable to carry voice service. Equipment that does not pose a danger, however, does not necessarily deliver “adequate service.” A dead phone line might not “pose a danger,” but it would not deliver adequate service. Likewise, it is unreasonable to claim that a line “capable” of carrying voice service but is regularly out of operation is providing “adequate service.”

In its initial brief, CenturyLink asserted that because “Minn. R. 7810.3300 [and] Minn. R. 7810.5000 do[] not provide specific metrics or objectives to be measured and tracked, . . . [t]he best indication of whether the Company is providing safe and adequate service, and is therefore in compliance with these general service quality rules, is the Company’s trouble report rate.”¹³ It is unclear whether CenturyLink has conceded that argument.¹⁴ What is clear, however, is this argument violates basic principles of legal interpretation. Canons of construction dictate that Minnesota Rules chapter 7810 must be construed as a whole, giving effect wherever possible to all of its provisions.¹⁵ CenturyLink’s argument violates this basic principle because it renders rules 7810.3300 and 7810.5000 duplicative of rule 7810.5900 by failing to give these rules distinct meanings.¹⁶

¹³ CTL Initial Br. at 34.

¹⁴ Compare CTL Exceptions at 22 (“The Recommendation inaccurately portrays CenturyLink’s position as arguing that compliance with Rules 7810.3300 and 7810.5000 should be measured by compliance with trouble report rate measurements set forth in Minn. R. 7810.5900[.]”), with CTL Exceptions at 11 (“The Company submits . . . more targeted Telephone Utilities Rules (e.g. concerning trouble reports or call answer times) provide the necessary context for determining whether the Company is meeting its general obligation of providing such “safe and adequate service.”).

¹⁵ Minn. Stat. § 615.16 (2022); *Eclipse Architectural Grp., Inc. v. Lam*, 814 N.W.2d 692, 701 (Minn. 2012).

¹⁶ ALJ Report, Finding of Fact ¶ 83.

Moreover, the ALJ concluded that using compliance with rule 7810.5900 as a proxy for “adequate service” under rules 7810.3300 and 7810.5000 would lead to absurd results.¹⁷ For example, if the same 7 customers out of 100 reported once a month, every month, that they lack service, CenturyLink would be in compliance with rule 7810.5900, and therefore would be providing adequate service under rules 7810.3300 and 7810.5000, even as those customers would continuously lack the ability to place or receive calls.¹⁸ That CenturyLink’s interpretation would deem a circumstance in which customers continuously lack service as “adequate” is plainly absurd. CenturyLink’s claim that its service is adequate on average is of little comfort to a customer whose telephone is repeatedly out of service for days at a time. The rule 7810.5900 trouble report rate is a measure of overall network health. In contrast, rules 7810.3300 and 7810.5000 assess whether specific customers are receiving “adequate service.” There is no legal or even practical basis to conflate them.

II. THE ALJ CORRECTLY DETERMINED THAT APPROXIMATELY 4,460 CUSTOMERS ARE RECEIVING INADEQUATE SERVICE IN VIOLATION OF RULES 7810.3300 AND 7810.5000.

After interpreting the meaning of “adequate service” in rules 7810.3300 and 7810.5000 as a matter of law, the ALJ considered whether the Department and other intervenors had established that CenturyLink had failed to provide all customers with “adequate service” by a preponderance of the evidence. In its exceptions, CenturyLink claims the ALJ’s conclusion that the utility had not provided certain customers with “adequate service” amounted to the creation of entirely new standards. CenturyLink is confused about the basics of legal analysis. The ALJ did not invent a new standard by finding that repeated service outages over a short period of time amounted to inadequate service. CenturyLink is entitled to argue that the intervenors failed to meet their burden

¹⁷ ALJ Report, Finding of Fact ¶ 82.

¹⁸ *Id.*

of production, or that the ALJ’s interpretations of rules 7810.3300 and 7810.5000 are wrong. But its claim that the ALJ created entirely new standards turns a blind eye to the great weight of evidence in the record regarding the low quality of service that many CenturyLink customers are receiving.

As discussed above, the ALJ concluded that “adequate service means that service must be nearly continuous. Customers who regularly, repeatedly, or predictably lose service each year due to older or failing utility-maintained equipment cannot be receiving adequate service.”¹⁹ The ALJ further found that the Department had established by a preponderance of the evidence that at least 4,460 customers had experienced at least four troubles over 4.5 years.²⁰ In fact, CenturyLink appears to concede this fact.²¹ Applying her legal interpretation of what “adequate service” requires, the ALJ concluded that these 4,460 customers were not receiving adequate service because their telephone access was not “nearly continuous.”²² Similarly, the ALJ found, based on CenturyLink’s own records, that 210 of CenturyLink’s 100-pair cables were responsible for ten or more trouble tickets – 75% of which company technicians diagnosed as being caused by deteriorated cable.²³ Again applying her interpretation of what “adequate services” requires, the ALJ concluded that these cables were not delivering adequate service.²⁴ Indeed, CenturyLink’s own director of network operations agreed that cable groups contained in the list with 29 or 31 troubles over a 12-month span had not performed adequately.²⁵ These are legal conclusions,

¹⁹ ALJ Report, Finding of Fact ¶ 57.

²⁰ ALJ Report, Finding of Fact ¶ 86, Conclusions of Law ¶ 7.

²¹ CTL Exceptions at 35.

²² ALJ Report, Finding of Fact ¶¶ 57, 86, Conclusions of Law ¶¶ 6-7.

²³ ALJ Report, Finding of Fact ¶ 71.

²⁴ *Id.* ¶¶ 71, 112.

²⁵ *Id.*

supported by robust and frequently unrefuted evidence, about whether certain conduct violated the Commission’s existing rules; they are not new standards.

III. THE ALJ’S RECOMMENDED REMEDIES TO ADDRESS RULE 7810.3300 AND 7810.5000 VIOLATIONS ARE SUPPORTED BY THE RECORD.

After concluding that CenturyLink had failed to provide all customers with “adequate service,” the ALJ recommended that the Commission require the company to take certain remedial steps.²⁶ Among others, the ALJ recommended that the Commission require CenturyLink to promptly review and remedy equipment and plant serving 4,460 customers who are not receiving “adequate service,” rehab the 210 100-pair cables identified as responsible for the most chronic service disruptions, and implement a “Plant Pride” program to proactively address service quality inadequacies. CenturyLink asserts that the remedies are unjustified because, in its view, the Department witness that recommended them lacks suitable credentials and the Department’s witness failed to perform any cost-benefit analysis for her recommendations. CenturyLink also objected to the recommended remedies – relying on extra-record and unsubstantiated evidence – on the basis that some customers who currently receive inadequate service live in urban areas or have alternative service providers.

CenturyLink claims that the remedies recommended by the ALJ should be rejected because the Department witness Ms. Gonzalez had never been “responsible for designing, operating, or maintaining a network.”²⁷ This criticism is meritless. Ms. Gonzalez merely recommended that CenturyLink fix plant and equipment that was failing to deliver adequate service in the opinion of the Department’s other witness, Mr. Webber.²⁸ Given that he has decades of industry experience, including as an AT&T district manager and co-founder of his own telephone company, Mr.

²⁶ ALJ Report, Finding of Fact ¶ 57.

²⁷ CTL Exceptions at 32.

²⁸ Ex. DOC-3 at 8-9 (Gonzalez Rebuttal).

Webber was well equipped to render a sound opinion on the performance of this plant and equipment.²⁹ CenturyLink’s claim that a recommendation that it fix equipment failing to deliver “adequate service” must be made by someone previously “responsible for designing, operating, or maintaining a network” is unjustified. This self-serving position would place the company beyond regulatory oversight and belies the experience of anyone who has ever called a mechanic or plumber to repair their car or kitchen sink. Recommending that any company, regardless of industry, fix broken equipment hardly requires specialized expertise.

CenturyLink also criticizes Ms. Gonzalez’s recommendations on the basis that she failed to determine whether customers could simply switch providers or perform any cost-benefit analysis.³⁰ These arguments, however, depend on exceptions in rules 7810.3300 and 7810.5000 that do not exist. The Commission’s service quality rules do not exempt telephone companies from compliance based on cost. Nor was the Department obligated by law to produce cost information. To the extent that CenturyLink believes cost data is important, it should have produced it – given that it owns the relevant equipment, has access to the relevant information, and had ample time to produce it.³¹ Although the Department made the recommendations adopted by the ALJ in rebuttal testimony filed in November 2023, CenturyLink made no attempt to quantify the cost of rehabbing the equipment serving 4,460 customers who are not receiving adequate service or the 210 100-pair cables identified as responsible for the most chronic service disruptions. Instead, the company has continued to rely on unspecified cost concerns.

²⁹ Ex. DOC-1, JDW-D-2 at 1-2 (Webber Direct).

³⁰ CTL Exceptions at 32-33.

³¹ *Savig v. First Nat. Bank of Omaha*, 781 N.W.2d 335, 347 (Minn. 2010) (“[A]ll else being equal, the burden is better placed on the party with easier access to relevant information.”); *In re UnitedHealth Grp. Inc. S’holder Derivative Litig.*, 754 N.W.2d 544, 561 (Minn. 2008) (“[I]t is the ‘general rule’ that ‘the party that asserts the affirmative of an issue has the burden of proving the facts essential to its claim.’”).

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NOT PUBLIC DATA HAS BEEN EXCISED

The Commission’s service quality rules also do not exempt telephone companies on the basis that alternative providers exist. In fact, state’s competitive market regulation statute expressly requires CenturyLink and other telephone companies to continue complying with the 7810 rules.³² Moreover, even if such an exception existed, there is no substantiated evidence in the record that demonstrates these 4,460 customers are served by alternative providers. The Mohr affidavit submitted with CenturyLink’s exceptions is untimely and no party has had an opportunity to explore her new claims through discovery and cross-examination. Even if the Commission does not strike CenturyLink’s extra-record submission,³³ there are significant reasons to question the veracity of the Mohr affidavit. For example, Ms. Mohr baldly claims that [NOT PUBLIC DATA BEGINS . . . ██████████ . . . NOT PUBLIC DATA ENDS] located at [NOT PUBLIC DATA BEGINS . . . ██████████ . . . NOT PUBLIC DATA ENDS] in Albert Lea could obtain home telephone service from the following providers: Midco; LTD Broadband; GigFire; Metronet Holdings; New Cingular Wireless Services, Inc; T-Mobile; and Verizon.³⁴ The Department, however, established through unrefuted testimony that the only providers serving this

³² Minn. Stat. § 237.025, subd. 6.

³³ For matters referred to OAH for a contested case proceeding, new factual information or evidence can only become part of the evidentiary “record” when it is offered prior to the completion of the OAH hearing. *See* Minn. Stat. § 14.60, subd. 2 (2022); Minn. R. 1400.7800, subp. J (2023); *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 274 (Minn. 2001) (holding agency decisionmakers are limited to the evidence contained in the ALJ’s report and the record certified by OAH back to the agency); *In re Appl. of N. States Power Co. for Auth. to Increase Its Rates of Elec. Serv. in Minn.*, 440 N.W.2d 138, 140 (Minn. Ct. App. 1989) (explaining that the Commission may not rely on information not made a part of the record in the contested case proceedings); *see also In re Midwest Oil of Minn.*, No. A06-1731, 2007 WL 2245818, at *3 (Minn. Ct. App. Aug. 1, 2007) (“In a contested case, the evidentiary record closes with the submission of any written memoranda and any late-filed exhibits that the parties and the ALJ have agreed may be accepted, and the filing of a transcript of the contested case hearing.”); *In re Residential Bldg. Contractor License of LeMaster Restoration, Inc.*, No. A10-1700, 2011 WL 2437463, at *5 (Minn. Ct. App. June 20, 2011) (“[Relators] are not entitled to present evidence to the commissioner that was never before the ALJ.”).

³⁴ Mohr Affidavit, Ex. 1

location were Metronet, GigFire/LTD Broadband, HughesNet, StarLink, and ViaSat.³⁵ The Department further established that the cheapest VoIP telephone service – procured from a satellite internet provider – at this location would cost about \$58 a month excluding taxes, fees, and any one-time equipment costs. That is nearly double CenturyLink’s flat-rate residential telephone service rate of \$30.04 a month, excluding taxes and fees.³⁶ Additionally, CenturyLink advises its own VoIP customers that VoIP is not an adequate substitute for a landline telephone in the event of an emergency.³⁷

Last, CenturyLink states that ALJ’s recommended remedies are unwarranted because “over nearly half of customers are located in urban areas.”³⁸ The data, assuming that the Mohr affidavit is even accurate, shows that about 40% of the customers are in urban areas while about 60% are in rural areas.³⁹ This is hardly inconsistent with the Department’s conclusion that customers receiving inadequate service are “most commonly located in the rural periphery.”⁴⁰ CenturyLink’s urban/rural classification system also ignores that communities, for example, in northern Washington county or southern Dakota county are considered part of the Twin Cities metropolitan area, but still are more rural in terms of population density or character. Most importantly, a landline telephone service customer’s location is ultimately irrelevant. The Commission’s 7810 service quality rules do not allow CenturyLink to discriminate against certain customers or otherwise exempt the company from providing adequate landline telephone service based on location or the availability of other providers.

³⁵ Ex. DOC-3 at 3-7 (Gonzalez Surrebuttal).

³⁶ *Id.* at 8.

³⁷ Ex. DOC-17; Hrg. Tr. at 165 (Mohr).

³⁸ CTL Exceptions at 35.

³⁹ CenturyLink identifies 4,880 total customers in Exhibit 1. The company claims that 2,115 of the customers reside in urban areas, or 43% of the total customers.

⁴⁰ *See, e.g.*, DOC Reply Br. at 7.

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In sum, the Commission should order CenturyLink to adopt the remedies recommended by the ALJ. Requiring the company to rehab or replace the landline telephone facilities serving a small number of customers receiving inadequate POTS telephone service and implement some basic preventive programs to avoid future service declines is necessary to ensure Minnesota customers receive the service to which they are entitled.

CONCLUSION

None of CenturyLink’s conclusory legal analysis, ill-conceived claims about new standards, or extra-record evidentiary submissions should cause the Commission to depart from the ALJ’s well-reasoned and fully supported report. The Commission has a meaningful opportunity to help Minnesotans who currently receive inadequate POTS service. The Commission should take it.

Dated: April 12, 2024

Respectfully submitted,

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