

Staff Briefing Papers

Meeting Date July 26, 2018 Agenda Item 1 **

Company CenturyLink QC

Docket No. **P-421/CI-17-796**

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

- Issues
1. Whether CenturyLink is meeting the requirements of Minnesota Statutes Sections 237.69 - 237.711 and Minnesota Rules Chapter 7817 in administering the Telephone Assistance Plan (TAP) to its customers
 2. What action, if any, should the Commission take to clarify the definition of a customer “complaint”?

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Relevant Documents

Date

Notice of Commission Inquiry on TAP Complaints	December 13, 2017
Comments by the Minnesota Department of Commerce	March 13, 2018
Reply Comments by CenturyLink	March 29, 2018
Revised Response Comments by the Minnesota Department of Commerce	April 25, 2018
Notice of Supplemental Comment Period	June 12, 2018
Supplemental Comments by CenturyLink	June 19, 2018
Reply Supplemental Comments by the Minnesota Department of Commerce	June 26, 2018

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

I. Statement of the Issues

1. Whether CenturyLink is meeting the requirements of Minnesota Statutes Sections 237.69 - 237.711 and Minnesota Rules Chapter 7817 in administering the Telephone Assistance Plan (TAP) to its customers
2. What action, if any, should the Commission take to clarify the definition of a customer “complaint”?

II. Background

On November 8, 2017, the Commission opened Docket No. P421/CI-17-796 after the Commission’s Consumer Affairs Office (CAO) identified a pattern of complaints being filed regarding subscribers’ inability to enroll in the Telephone Assistance Plan (TAP) with CenturyLink. On December 13, 2017, the Minnesota Public Utilities Commission (Commission) issued a Notice of Commission Inquiry into CenturyLink’s Compliance with TAP Statutes and Rules in this Docket No. P421/CI-17-796. In its Notice, the Commission requested that the Minnesota Department of Commerce (Department), and if applicable, the Office of the Attorney General, conduct a review of customer complaints regarding TAP and file their recommendations with the Commission.

No public comments were received in this proceeding.

III. Parties’ Comments

A. Department Comments (March 13, 2018)

On March 13, 2018 the Department filed Comments providing legal context, a summary of consumer complaints, analysis, and recommendations.

i. Legal Context

The Department cited at pages 1-3 the following statutory authority and requirements for consideration:

- The Department is charged with investigating and enforcing Chapter 237 and Commission orders and rules promulgated pursuant to that Chapter. (M.S. 216A.07)
- The Department and the Commission may investigate whether a telephone or telecommunications carrier is offering the TAP program in compliance with the requirements of Minnesota Statutes sections 237.69 through 237.72 and related rules. (M.S. 237.74, subd. 4)
- The Commission has jurisdiction over this matter pursuant to Minnesota Statute sections 237.081 (Commission investigations), 237.461 (Enforcement) and 237.70,

subdivision 7(f) (Development of Telephone Assistance Plan; Application, notice, financial administration, complaint investigation).

- The Telephone Assistance Plan (TAP) is governed by M.S. 237.69 - 237.711.

The Department noted that TAP implementation guidelines are established by Minnesota Rule Chapter 7817 and highlighted the following in its assessment:

- “Complaints against local service providers regarding the telephone assistance plan must be investigated by the Department of Commerce.” (M.R. 7817.1000, subp.2)
- “The purpose of this chapter is to develop and implement a statewide telephone assistance plan to provide telephone assistance credits to reduce the local telephone rates of eligible residential households ...” This rule further states that “*this chapter is to be liberally construed to further these purposes.*” Emphasis added. (M.R. 7817.0200 Purpose and Construction.)
- “On request, the local service provider shall mail to a person an application form . . . and a brochure that describes the telephone assistance plan’s eligibility requirements and application process.” (M.R. 7817.0400, subp. 1, Information Provided)
- “To be eligible for a telephone assistance credit the applicant must: A. Be a subscriber who resides in Minnesota or has moved to Minnesota and intends to remain; and B. Be eligible for the federal Lifeline telephone service discount.” (M.R. part 7817.0400, subp. 4, Eligibility for Telephone Assistance Credits; Eligibility Criteria)
- A local service provider shall begin providing TAP credits to an applicant in the earliest possible billing cycle, but not later than the second billing cycle, following submission of a completed application demonstrating eligibility. If an applicant is denied eligibility, the local service provider must notify the applicant in writing of the reasons for the denial, of the right to appeal, and of the right to reapply. (M.R. 7817.0400, subp. 8, Eligibility for Telephone Assistance Credits: local service provider responsibilities)
- “When a local service provider determines that a recipient is no longer eligible to receive TAP credits, the provider must send written notification to the recipient stating the reasons for finding the recipient ineligible and advising the recipient of the right to appeal. A local service provider may terminate credits if: A. the recipient does not submit an appeal within 60 days of the date of the notice or B. the recipient submits an appeal and the commission determines that the recipient is not eligible.” (M.R. 7817.0600, subp. 2, Verification and Termination of Credits: termination of credits)

The Department noted that the Federal Communication Commission (FCC) updated Lifeline in its April 27, 2016 Lifeline and Link Up Reform and Modernization Order which included a “port freeze” subsequently eliminated on March 19, 2018.

The Department also highlighted the Commission's October 11, 2016 Order Clarifying Relationship between Lifeline and TAP, and other matters, in Docket No. P999/CI-16-302. In that Order, the Commission found that Minnesota law only permits TAP benefits to be used to subsidize telephone service and not broadband service. Thus, any restrictions placed on the Lifeline benefits relating to the provision of broadband service are inapplicable to the provision of TAP benefits.

Finally, the Department notes that a customer may receive TAP without receiving Lifeline benefits. While Minnesota law does not provide TAP for wireless service, customers may simultaneously get Lifeline benefits for wireless service from one qualified provider, and TAP benefits for landline service provided by another company.

ii. **Complaints**

Complaints considered in this investigation were filed with the Commission during the years 2011 through 2017, and with the Department during 2013 through 2018. (See DOC p.4) The Department observes:

- 39% of all the Lifeline/TAP complaints and inquiries made to the Commission and Department involved problems in communicating with CenturyLink,
- 32% of the complaints and inquiries involved problems in processing recertification forms and
- 32% involved loss of Lifeline/TAP credits during the recertification process.

Attachment 1 to the Department's March 13, 2018 Comments provides a summary of Lifeline and TAP complaints filed with both the Department and the Commission between 2011 and 2017. While an individual complaint may include several of the following, complaints appear to fall into these categories:

- A. TAP/Lifeline application mistakenly sent to PUC.
- B. General questions about TAP/Lifeline program, application, recertification process.
- C. Request for TAP/Lifeline application or information.
- D. Questions or problems about switching carriers.
- E. Problems in communicating with CenturyLink regarding TAP/Lifeline.
- F. Problems or delays encountered with CenturyLink processing application.
- G. Problems or delays encountered with CenturyLink processing recertification.
- H. TAP/Lifeline credits eliminated from monthly bill.
- I. Customer never received recertification form or received form late.
- J. Problems with TAP/Lifeline credit (other than with application or recertification) or problem not specified in complaint.
- K. Problems with recertification not related to CenturyLink.

The Department also highlighted two complaints as examples. The first (see DOC at p.4) involved a customer who was wrongly denied TAP benefits when the customer received Lifeline benefits from another provider. The Department and CenturyLink reached an agreement in principle regarding this situation but it was not memorialized before this investigation was opened. In the second example (see DOC at p. 5) the customer's claims to have been told that TAP and Lifeline were no longer offered. The company claimed that the recertification form was received well past its due date but also found that "the representative provided inaccurate information regarding the Lifeline/TAP programs."

iii. Compliance Analysis

Providing accurate and complete information

(M.S.237.71 and M.R. 7817.0200 and 7817.0400, subp. 1)

CenturyLink is required, under Minnesota law to provide accurate and complete information to consumers. However, Thirty-nine percent (39%) of Lifeline/TAP complaints and inquiries investigated involved problems in communicating with CenturyLink. The first highlighted customer complaint, discussed above, involved communication errors, which were verified through CenturyLink's own investigation into that particular complaint.

Timely Benefit Receipt

(M.S. 237.70, subdivision 7(c) and 237.71 and M.R. part 7817.0400, subpart 8A)

CenturyLink is required, under Minnesota statute and the Commission rules, to begin providing telephone assistance credits to an applicant in the earliest possible billing cycle but not later than the second billing cycle following the submission of a completed application demonstrating eligibility.

The review of Lifeline/TAP complaints filed by CenturyLink customers who have filed (sometimes multiple) applications and waited for months with no response from CenturyLink, raises the issue of compliance with the statutory and regulatory mandate for CenturyLink to provide TAP credits promptly.

Notification and Appeal of Ineligibility Finding or Termination

(M.R. 7817.0400, subp. 8B, 7817.0600, subp. 2, and 7817.1000, subp. 1)

CenturyLink is required to "*send written notification to the recipient* [of credits] stating the reasons for finding the recipient ineligible and advising the recipient of the right to appeal. A local service provider may terminate credits if: A) the recipient does not submit an appeal within 60 days of the date of the notice; or B) the recipient submits an appeal and the commission determines that the recipient is not eligible." Emphasis added.

The Department reviewed the written notice sent by CenturyLink to Minnesota TAP recipients. A copy of the template for this notice is included as Attachment 2 to the Department Comments. While the notice provides “the reasons for finding the recipient ineligible,” the notice is not satisfactorily fulfilling its statutory and regulatory duty to “advise the recipient of the right to appeal.” A review of Lifeline/TAP complaints includes numerous complaints from CenturyLink customers who indicate that the first notice of loss of TAP benefits occurred when customers reviewed their monthly bills and realized that the TAP credit suddenly disappeared from the bills. In such situations, customers no longer have the option to appeal the loss of TAP benefits before the loss occurs, and are forced to reapply for TAP benefits anew.

A review of the individual complaints provides no indication that any of the Lifeline/TAP complainants were aware of their right to appeal a finding of ineligibility for TAP benefits by CenturyLink or an awareness of the 60 day notice period before the prospective termination of TAP benefits. Without a reference to the right of appeal and the 60 day notice in the written letter sent by CenturyLink to TAP applicants, the Department can find no means by which Minnesota customers would be made aware of these two regulatory requirements.

Need for “Complaint” Definition Clarification (Minnesota Administrative Rule 7810.1200)

The Department observes at page 5 that M.R. 7810.1200 requires:

Each utility shall keep a record of all complaints received by it from its customers which shall be classified as directed by the Public Utilities Commission. The record shall show the name and address of the customer, the date and nature of the complaint, and its disposition and date thereof. The utility shall keep records of the customer complaints in such a manner as will enable it to review and analyze its procedures and actions.

CenturyLink stated that it defines a complaint as any customer issue or concern that cannot be (or is not) addressed or resolved through normal business practices and channels. Issues that require escalation or intervention by CenturyLink executives, outside agencies (such as regulatory bodies, elected officials, the Better Business Bureau or the media) are considered complaints and are handled accordingly.

The Department asserts that CenturyLink’s definition of what constitutes a complaint is very narrow and precludes the collection of data that would enable the Company to review and analyze its procedures and actions. The summary of the individual complaints contained little detail on which to base a conclusion, and CenturyLink’s definition of “complaint” excludes numerous cases that would constitute complaints under a broader definition. The Commission should consider clarifying how the term “complaint” should be defined to reduce the gamesmanship that otherwise can occur.

iv. Department's Initial Recommendations

1. To address the regulatory compliance issues identified, the Department asked the Commission to direct Qwest Corporation dba CenturyLink to take the following actions within 30 days of the Commission's Order:
 - A. File a plan for how it will train its employees on the TAP program, at some regular interval, to enable the Commission to achieve its statutory goal of making the TAP program available to eligible Minnesotans.
 - B. File a plan with the Commission to show how it will improve its internal practices to provide TAP credits to customers in the "earliest possible billing cycle."
 - C. Provide TAP benefits to eligible customers even though they receive the Lifeline benefit from another provider,
 - D. File a report identifying each eligible Minnesota customer denied TAP benefits over the last two years, due to the customer receiving the Lifeline benefit from another provider. The report should include documentation showing the length of time in which each affected customer was denied TAP benefits, whether the customer is currently enrolled in TAP, enroll the customer if appropriate and provide credit to the customer in the amount of TAP credit that should have been received.
 - E. File a revised version of its written notice to CenturyLink customers who are recipients of TAP benefits, notifying them of their right to appeal decisions of CenturyLink to the Commission. In cases where CenturyLink determines that recipients are no longer eligible to receive TAP credits, the notice must state that CenturyLink will terminate credits if (1) the recipient does not submit an appeal within 60 days of the notice or (2) the recipient submits an appeal and the commission determines that the recipient is not eligible.

2. The Department requested following clarification on what constitutes a complaint as provided in Minnesota Rule 7817:

A complaint is any expression of dissatisfaction, whether oral or written, and whether justified, and resolved in the customer's favor or not, from or on behalf of an eligible complainant about the firm's provision, repair and, billing of, or failure to provide such functions, of a regulated service. Telephone and telecommunications carriers' records of complaints must include detailed descriptions of each individual customer complaint and the accompanying resolution, to allow the carrier to review and analyze its procedures and actions, as required in Minnesota Administrative Rule 7810.1200.

3. The Department requested the Commission to order CenturyLink to provide TAP benefits to eligible customers even though they may receive the Lifeline benefit from another provider.

B. CenturyLink's Reply Comments (March 29, 2018)

In Reply Comments CenturyLink expressed surprise that the Department proposed measures beyond those addressed by the company in a letter of October 19, 2017 (See Exhibit 1 of CenturyLink's March 29, 2018 Comments). In that earlier letter, CenturyLink disagreed with the Department's concerns, but agreed to:

- Provide a TAP credit retroactively to the date nearest their application for complaints discussed at that time and in the future for those similarly situated;
- Revise its TAP eligibility criteria as requested by the Department ;
- Provide a one-time staff training on TAP eligibility and verification; and
- Modify its application as per the Department's earlier requests.

CenturyLink responded further in three specific areas in the Department's Comments.

i. Customer Complaints Peaked in 2013-2014 due to FCC Recertification Requirements

CenturyLink shows a time graph of the number of complaints per year, peaking with FCC rule revisions of 2012-2014. The Company says that its on-going staff training has resulted in a continuing decline of complaints with only 0.24 % of its Lifeline customers filing a complaint at the Commission/Department during 2017.

ii. CenturyLink Willing to Implement Many of the Department's Suggested Practices

CenturyLink addresses each of the Departments recommendations A-E (See Department Comments p. 9, and CenturyLink Reply at p.3) concerning CenturyLink's TAP administrative practices.

- A. The Department asked CenturyLink to file a plan for how it will train its employees on the TAP program, at some regular interval, ...

Reply: CenturyLink responded that it "shares the goal of making the TAP program available to eligible Minnesotans. CenturyLink trains its employees regularly on these procedures."

- B. The Department asked CenturyLink to file a plan showing how it will improve its internal practices to provide TAP credits to customers in the "earliest possible billing cycle."

Reply: CenturyLink indicated its current processes meet this requirement and that no further changes are needed. The Company elaborates on the adequacy of its procedures in this regard on pages 3-5. *[Staff notes the Department yields this point in the Department's Supplemental Reply Comments (June 26, 2018) and withdraws this recommendation.]*

- C. The Department asked CenturyLink to provide TAP benefits to eligible customers even though they receive the Lifeline benefit from another provider.

Reply: CenturyLink agreed to do this on a going forward basis last fall. The company expects this issue to greatly diminish with the elimination of the Lifeline port freeze that was frequently why customers were rejected.

- D. The Department asked CenturyLink to file a report identifying each eligible Minnesota customer denied TAP benefits over the last two years, due to the customer receiving the Lifeline benefit from another provider. The report should include documentation showing the length of time in which each affected customer was denied TAP benefits, whether the customer is currently enrolled in TAP, enroll the customer if appropriate and provide credit to the customer in the amount of TAP credit that should have been received.

Reply: CenturyLink is willing to file a report identifying customers that were denied TAP benefits due to being listed as having received Lifeline benefits from another provider and as having a port freeze in place. The report will not show whether or not the customer received TAP benefits from another provider or whether the customer retained eligibility in the intervening time period. CenturyLink would not have that information if the customer obtained services elsewhere.

- E. File a revised version of its written notice to CenturyLink customers who are recipients of TAP benefits, notifying them of their right to appeal decisions of CenturyLink to the Commission. In cases where CenturyLink determines that recipients are no longer eligible to receive TAP credits, the notice must state that CenturyLink will terminate credits if (1) the recipient does not submit an appeal within 60 days of the notice or (2) the recipient submits an appeal and the commission determines that the recipient is not eligible.

Reply: CenturyLink is willing to work with the Commission and the Department to modify its written notice to address this concern.

iii The Commission should reject the Department's proposed definition of the term "complaint" under Minnesota Rules.

CenturyLink asserts that the Department's suggested definition of complaint is vague where highlighted below:

A complaint is any **expression of dissatisfaction, whether oral or written, and whether justified, and resolved in the customer's favor or not**, from or on behalf of an eligible complainant about the firm's provision, repair and, billing of, or failure to provide such functions, of a regulated service. Telephone and telecommunications carriers' records of complaints must include detailed

descriptions of each individual customer complaint and the accompanying resolution, to allow the carrier to review and analyze its procedures and actions, as required in Minnesota Administrative Rule 7810.1200. (Emphasis added.)

Furthermore, CenturyLink asserts the proposed definition is broad and burdensome. In contrast, CenturyLink's present definition does not rely on an interpretation of the content of a customer's communication but rather depends on whether or not the customer considers the matter significant enough to pursue beyond normal business channels.

Finally, CenturyLink argues that the total amount of information it gathers does support effective customer service stating:

CenturyLink maintains customer care records about all customers. As Attachment 2 to the Department's Comments demonstrates, CenturyLink tracks the reasons that every TAP and Lifeline application is rejected. CenturyLink maintains customer records designed to track every phone call and every communication with a customer, regardless of whether or not CenturyLink classifies the communication as a complaint. CenturyLink keeps all of the necessary records that "allow it to review and analyze its procedures and actions" as is required by Minn. R. 7810.1200. The Department's concerns about "gamesmanship" associated with complaint tracking do not apply in this context. (See CenturyLink Reply at p. 8)

C. Department's Revised Responsive Comments (April 25, 2018)

In its April 25, 2018 Responsive Comments the Department addresses:

- the lack of prior agreement between the Department and CenturyLink;
- the need for CenturyLink to provide a training plan;
- the need to address CenturyLink's classification of what qualifies as a complaint.

In addition, the Department amends its recommendations, part of which modifies its recommendation to adopt the Department's proposed complaint definition to "the Department should determine how it may best provide clarity to CenturyLink and the rest of the industry what the Commission considers to be a complaint." (See Appendix 1 to this briefing paper).

CenturyLink Letter of October 19, 2017 was not an agreement

The Department notes at pages 1-2 that during the summer and fall of 2017 the Department and CenturyLink were in negotiations to resolve certain TAP-related practices. The Department regarded the letter of October 19, 2017 from CenturyLink as an unsatisfactory first attempt to memorialize an agreement in principal from verbal discussions. Disagreeing with terms of the written agreement, the Department responded with a counter proposal on October 24, 2017 (a

copy is attached to the Department's Responsive Comments). Before CenturyLink further responded to the Department's counter proposal the Commission opened this proceeding.

CenturyLink must present its training plans

While CenturyLink states in reply comments that it trained its personnel in TAP and Lifeline procedures between August 14 and August 31 of 2017, the Department's highlighted example on page 6 of its initial comments occurred after that training period. This Commission investigation was initiated due to an on-going pattern of complaints filed regarding subscribers' inability to enroll in the Telephone Assistance Plan (TAP). The Department concludes at page 5:

Because CenturyLink's March 29 comments continue to provide no plan for training, as the Department recommended in its initial comments, the Department stands by its recommendation that CenturyLink provide its plan for training to demonstrate the adequacy of that training.

CenturyLink's Misclassification of "Complaints" needs correction

The Department notes CenturyLink's affirmation that the company only considers a customer concern to be a "complaint" if it comes to the attention of CenturyLink executives, outside agencies such as regulatory bodies, elected officials, the Better Business Bureau or the media.

Consequently, the Department asserts:

1. CenturyLink's "complaint" definition violates the Commission's long-standing complaint procedures in Minn. Rule 7810.1100 subp. 1, which requires CenturyLink to establish procedures whereby qualified personnel shall be available during regular business hours to receive and, if possible, resolve all customer inquiries, requests, and complaints.
2. CenturyLink may also routinely violate Minn. Rule 7810.1100 subp. 2, which specifies that, if a "complaint cannot be promptly resolved, the utility shall contact the customer within five business days and at least once every 14 calendar days thereafter, and advise the customer regarding the status of its investigation until: the complaint is mutually resolved; or the utility advises the customer of the results of its investigation and final disposition of the matter; or the customer files a written complaint with the Public Utilities Commission or the courts".
3. CenturyLink may be routinely violating Minn. Rule 7810.1200, which requires CenturyLink to "keep a record of all complaints received by it from its customers . . . [including] the name and address of the customer, the date and nature of the complaint, and its disposition and date thereof" and to "keep records of the customer complaints in such a manner as will enable it to review and analyze its procedures and actions."

4. CenturyLink's records may be unreliable for purposes of 7810.0500 subp. 3, which states: "Each utility shall furnish to the commission, at such times and in such form as the commission may require, the results of any tests, summaries, or records. The utility shall also furnish the commission with any information concerning the utility's facilities or operations which may be requested."
5. CenturyLink's complaint definition has no support in Minnesota telecommunications laws. Nowhere in the statutes, or rules, is awareness by a company executive or third party required before a customer contact expressing dissatisfaction is to be treated as a complaint. Nothing in the Commission's rules suggest that the term "complaint" should have anything other than its ordinary meaning. Absent definition in M.S. 237, M.S. 648.08 provides that words and phrases are construed according to rules of grammar and according to their common and approved usage. The Department cites dictionary definitions as including expressions of dissatisfaction, allegation or protest.
6. If CenturyLink believed that the Commission's rules presented an unreasonable burden the company could have filed an Application for Relief under M.R. 7810.0200 but did not choose to do so.

To emphasize the consequences of CenturyLink's definition of complaints, the Department reiterated its March 13 initial comments, at page 6, citing CenturyLink's refusal to provide all such complaints in response to Department Information Request No. 3, which asked: "Please provide documentation describing all the TAP complaints filed by Minnesota customers of CenturyLink over the past two years." CenturyLink objected to Information Request 3, and provided a spreadsheet that identified, for each complaint on the list, a "collection point" such as: FCC, Media Relations, PUC, Better Business Bureau, Attorney General, and Executive Offices. None were identified as having been "collected" from the customer.

The Department concludes that the vast majority of customers who expressed that they were treated inappropriately would not have been deemed to have made "complaints". As stated initially:

"CenturyLink's definition of what constitutes a complaint is very narrow and precludes the collection of data that would enable it to review and analyze its procedures and actions. The summary of the individual complaints [provided by CenturyLink in response to the Department's IR] contained little detail on which to base a conclusion, and CenturyLink's definition of 'complaint' excludes numerous cases that would constitute complaints under a broader definition."

D. CenturyLink Supplemental Comments (June 19, 2018)

TAP Administration

In response to the Commission's June 12, 2018 request for supplemental comment, CenturyLink reasserted that its procedures provide credits in the earliest possible bill cycle and are in accord with M.S. § 237.70, Subd. 7(c) which states in relevant part:

On receiving a completed application from an applicant, the subscriber's local service provider shall provide telephone assistance plan credits against monthly charges in the earliest possible month following receipt of the application. The applicant must receive telephone assistance plan credits until the earliest possible month following the service provider's receipt of information that the applicant is ineligible.

CenturyLink states that it complies with these requirements by using the following procedure:

1. The customer submits a TAP/Lifeline Application
2. CenturyLink reviews the application within 5 days.
3. Within the five-day time period, CenturyLink either approves the application or sends a letter to the customer explaining why the application was not approved.
4. If the application is approved, discounts are applied effective the day CenturyLink received the application.
5. Any discounts appear in the next bill issued after the review.

Complaint Definition

CenturyLink asserts that TAP complaint record-keeping is sufficient if it facilitates CenturyLink's review of its own procedures and actions as provided by M.R. 7810.1200. The company asserts that its current definition does so. Furthermore, CenturyLink reiterates that the Department's broader definition of the term "complaint" would be burdensome without any demonstrated benefit.

As an example, CenturyLink offers the 2008 Embarq Alternative Form of Regulation (AFOR) Plan settlement in which

"Embarq agreed to implement an electronic complaint tracking tool that recorded all Minnesota complaints received in call centers and were escalated to a first level supervisor. Embarq created the tool and dealt with compliance over the course of its AFOR. As far as the company is aware, this additional tracking provided no help to the company in analyzing its processes and procedures. The data did not appear to be used for any purpose by regulators."

(See Docket Nos. P-430/DI-07-1586; P-430/AR-07-948, Order Acknowledging Settlement and Closing Case (Dec. 15, 2008).)

E. Department's Supplemental Reply Comments (June 26, 2018)

TAP Administration

The Department reiterates its earlier recommendations for TAP administration except that based on CenturyLink's June 19, 2018 clarifications **the Department withdraws its previous recommendation Part 1.B to asking CenturyLink to show how it will improve its internal practices to provide TAP credits to customers in the earliest possible billing cycle.** (See Department Supplemental Reply p.4)

Complaint Definition

The Department rebuts at length the reasonability of CenturyLink's present definition of "complaint" which excludes all complaints that are not escalated to CenturyLink executives, outside agencies such as regulatory bodies, elected officials, the Better Business Bureau or the media. The Department notes CenturyLink points to no definition of "complaint" in Commission rules or other relevant documents to support its present definition. Further, CenturyLink fails to acknowledge that the regulatory purpose for maintaining records on TAP complaints is to ensure that the needs of TAP recipients are fulfilled in accordance with the requirements of Minnesota law and so the Department can investigate related complaints as required under the law. (See Department Supplemental Reply p. 2-3 and M.S. 237.70)

The Department reiterates at page 3:

CenturyLink's practice of misclassifying "complaints" also means that CenturyLink may also routinely violate Minn. Rule 7810.1100 subpart 2, which specifies that, if a "complaint cannot be promptly resolved, the utility shall contact the customer within five business days and at least once every 14 calendar days thereafter, and advise the customer regarding the status of its investigation until: the complaint is mutually resolved; or the utility advises the customer of the results of its investigation and final disposition of the matter; or the customer files a written complaint with the Public Utilities Commission or the courts."

If CenturyLink's definition of complaint is adopted, it would be unnecessary for it to contact the customer within 5 days, if the complaint cannot be promptly resolved, because the problem experienced by the customer would not be deemed a complaint, unless it was escalated. Further, with CenturyLink's interpretation, if a complaint is escalated, it would seem that it was not resolved promptly. The rules simply lack meaning if CenturyLink's proposal is adopted.

Finally, the Department rebuts the applicability of CenturyLink's June 19, 2018 citation of the 2008 stipulation agreement between the Department and Embark setting a definition of the term "complaint". The Department notes that was related to Embarq's Alternative Form of

Regulation (AFOR) Plan in Docket Nos. P430/DI-07-1586 and P430/AR-07-94 (*i.e.*, the Embarq AFOR dockets). The issue was not about TAP but rather Embarq's compliance with Section V(B) of its existing AFOR plan. Elaborating in footnote 4, the Department explains:

Embarq's AFOR Plan, section V(B), filed in the Embarq AFOR dockets, states as follows: As required by Minnesota Rule 7810.1200, Embarq will keep a record of all complaints received by it from its customers in such a manner that will enable it to review and analyze its processes. Complaints will be reported to the Commission on an annual basis for the following categories: installations, repairs, billing, rates, customer service, Service Center Response times, slamming, and information services (such as 900 services). Complaints will be reported if they have been referred to Embarq by outside agencies (such as the Commission, the Department, the OAG) as well as direct customer complaints received.

The Department summarizes at page 4:

... the settlement in the Embarq AFOR dockets holds Embarq to a higher standard in "complaint" record keeping than does CenturyLink's proposal in the current docket.

Although emphasizing the need for clarification, the Department modifies its recommendation regarding defining a complaint at page 6 stating in relevant part:

The Department is modifying its recommendation to recognize that the Commission may have an inadequate record to clarify the definition of "complaint." ***Thus, along with finding that CenturyLink's definition is unacceptable, the Commission should determine how it may best provide clarity to CenturyLink and the rest of the industry what the Commission considers to be a complaint. ... The Commission may wish to initiate a new docket and solicit comments or take some other action to resolve this matter.*** (Emphasis added.)

IV. Staff Analysis

Analysis-- Issue 1: Does CenturyLink meet the requirements of M.S.237.69 - 237.711 and Minnesota Rules Chapter 7817 in administering the Telephone Assistance Plan (TAP) to its customers.

A short narrative summary of the parties exchange on these matters will clarify related options and recommendations.

Department Comments (March 13, 2018)

In its initial Comments the Department presents a good comparison of consumer communications and CenturyLink's response compliance with M.S.237.69 - 237.711 and Minnesota Rules Chapter 7817.

As a prelude to the Department's analysis, it notes at page 4 that providers required to provide TAP must do so even in instances where eligible applicants have obtained a federal Lifeline benefit from another provider. The Department originally recommended a finding to this effect for CenturyLink as Alternative 3, but not in its later revised recommendations. Staff revisits this as Recommendation A.1.0.

Staff agrees with the Department's assessment that the record presented shows the Company has inadequately provided consumers accurate and complete information on the TAP program and application process (including rights to appeal of eligibility denial or termination); and their being provided TAP benefits at the earliest possible billing cycle after establishing eligibility.

To address regulatory issues identified, the Department submitted a 5-part remedy (Department Initial Recommendation 1.A-E, Briefing Paper p.6).

CenturyLink Reply (March 29, 2018)

CenturyLink replied to each part of the Departments Recommendation 1.A-E in its Reply Comments. After first noting negotiations with the Department on these matters prior to the opening of this proceeding, CenturyLink expressed general agreement-in-principal with the Department and a willingness to work with the Commission and Department on these matters. However, CenturyLink asserted that it was presently in compliance Department Recommendation 1.B which addressed procedures to ensure timely start of TAP benefits for eligible applicants.

Department Response Comments (April 25, 2018)

In its Responsive Comments the Department clarified that negotiations with CenturyLink on these matters had not concluded before the start of this proceeding. The Department also emphasized the need for CenturyLink to provide plans for training on an on-going basis that will result in improved outcomes, citing problems noted in its original filing that persisted after earlier training occurred. The Department also modified its recommendations for item 1.A-E in order to provide better clarity and details (See Briefing Paper Appendix 1).

CenturyLink Supplemental Comments (June 19, 2018)

In its Supplemental Comments, CenturyLink elaborates that it is compliant with requirements for providing benefits in the earliest possible bill cycle (M.S. 237.70, Subd. 7(c) using the following current procedure:

1. The customer submits a TAP/Lifeline Application.
2. CenturyLink reviews the application within 5 days.

3. Within the five-day time period, CenturyLink either approves the application or sends a letter to the customer explaining why the application was not approved.
4. If the application is approved, discounts are applied effective the day CenturyLink received the application.
5. Any discounts appear in the next bill issued after the review.

Department's Supplemental Comments (June 26, 2018)

In its Supplemental Comments the Department conceded the adequacy of CenturyLink's procedures for providing TAP benefits at the earliest possible billing cycle and withdrew its related recommendation (1.B).

Staff Commentary on Issue 1

Staff agrees with the Department's Recommendation 1.A-E with modifications. Significant modifications include additions to Issue 1 Alternatives A.1.4 and A.1.5. In those instances modifications include the offering of credit to customers who were wrongly denied and to report on that process. Fortunately, CenturyLink has indicated that its recordkeeping should readily facilitate this, stating:

... CenturyLink tracks the reasons that every TAP and Lifeline application is rejected. CenturyLink maintains customer records designed to track every phone call and every communication with a customer, regardless of whether or not CenturyLink classifies the communication as a complaint. CenturyLink keeps all of the necessary records that "allow it to review and analyze its procedures and actions".... (See CenturyLink Reply Comments, March 29, 2018, p. 8)

Staff also recommends that the procedure assuring benefits at the earliest possible billing cycle that CenturyLink presented in its Supplemental Comments of June 19, 2018 at page 3, with which the Department agreed, be memorialized with a compliance letter affirming this procedure is, and will continue to be, CenturyLink's practice. (See Decision Option A.1.2)

Staff notes that the Department's initial recommendations separately found that TAP credits were to be provided to eligible customers even if the customer received Lifeline benefits from another provider. Decision Option A.2, as modified, reinstates a general finding to this effect.

Observing that negotiations were under way prior to this proceeding, that agreement in principal appears to exist between the parties, and that CenturyLink has stated its willingness to resolve these issues cooperatively with the Department and Commission, Staff believes it appropriate to extend the time allowed from 30 to 60 days to bring these matters to conclusion and to direct CenturyLink to consult with the Department on these compliance filings. ⁱ

Analysis -- Issue 2: What action, if any, should the Commission take to clarify the definition of a customer “complaint”?

A large portion of the total record in this proceeding addresses Issue 2 with the parties remaining in disagreement. Staff presents an analysis of parties’ positions here, but notes that parties do not assert that they lacked sufficient input from consumer communications to enable them to assess TAP program performance and construct remedies for improvement.

In its initial March 13, 2018 Comments the Department cites M.R. 7810.1200 as requiring

Each utility shall keep a record of ***all complaints*** received by it ***from its customers*** which shall be classified as directed by the Public Utilities Commission. The record shall show the name and address of the customer, the date and nature of the complaint, and its disposition and date thereof. The utility shall keep records of the ***customer complaints*** in such a manner as will enable it to review and analyze its procedures and actions. (Emphasis added by Staff.)

Responding to the Department’s information request for all TAP-related customer complaints, CenturyLink explained that only customer communications that require escalation or intervention by CenturyLink executives, outside agencies (such as regulatory bodies, elected officials, the Better Business Bureau or the media) are considered to be “complaints”. Accordingly, the company responded with a record of customer communications only referred by third parties as “complaints” meeting CenturyLink’s definition.

The Department asserts that CenturyLink’s definition is too narrow, and may well exclude the majority of customer communications that customers would have considered to have been “complaints” given the common understandings of the word’s meaning. The Department argues that the likely exclusion of large numbers of such customer communications from being considered “complaints”:

1. Does not allow CenturyLink to truly assess its own TAP administration processes as required by M.R.7810.1200.
2. Is not consistent with M.R.7810.1100, Subp.1 requirements to establish ...”such procedures whereby qualified personnel shall be available during regular business hours to receive and, if possible, resolve all customer inquiries, requests, and complaints“
3. Is not consistent with M.R.7810.1100, Subp.2 requirements that for complaints not promptly resolved, the customer will be contacted within 5 business days and at least once every 14 days thereafter to advise the customer of the status of the investigation until resolved or until the customer files a written complaint with the Commission or courts.
4. May significantly reduce the number of TAP “complaints” that might be appealed to the Commission as provided in M.R.7817.1000.

CenturyLink repeatedly argues that it is only required to keep customer communication records sufficient for the company to assess itself, that its existing “complaint” definition enables it to do so, and that it should have definition flexibility under M.R. 7810.1200 regarding self-assessment information. CenturyLink asserts that the Department’s definition places an undue burden on the company, in part, by requiring customer service staff to make a judgement about the nature of the customer’s communication. CenturyLink notes that the current definition requires no such discernment, asserting that makes it more reliable and easy to administer. Furthermore, in the context of this proceeding, CenturyLink notes that it does keep non-complaint records of the reasons that every TAP and Lifeline application is rejected and other customer service records. (See CenturyLink Reply Comments, March 29, 2018, p.7)

The Department notes that if the CenturyLink had determined a rule to be burdensome, it could petition for relief, but has not done so in this instance.

Both parties briefly discussed an alternative definition of “complaint” from Embarq’s AFOR noting that it was broader than CenturyLink’s present definition and narrower than the Department’s proposed definition.

With the parties having initiated comparisons with other definitions of “complaint” in other circumstances, Staff offers another comparison. Xcel Energy, the largest electric utility and arguably the most highly regulated in the state, has the following definition in its Commission-approved Quality of Service plan tariff:

“Customer Complaint” is defined as any complaint submitted, in writing, by US Mail, e-mail, or by fax, *registered by the Minnesota Public Utilities Commission’s Consumer Affairs Office to the Company*, regarding a complaint submitted by an Xcel Energy customer in which the customer states a grievance related to the Company’s provision of service to that customer.¹ (Emphasis added.)

Xcel’s tariffed definition is an even more narrow definition of complaint than CenturyLink’s since it *only includes complaints forwarded by CAO*. While TAP complaints may arguably deserve a different definition of complaint than other customer complaints, it is useful to note that there is no single uniform definition of complaint when it comes to consumer matters regulated by the Commission.

In this proceeding, Staff observes that CenturyLink’s principle argument is that its present complaint definition and process, in conjunction with other customer service tracking and record-keeping, is sufficient to monitor the TAP program, identify shortcomings, and support the construction of improvements. The very fact that the Department and CenturyLink appear

¹ Section No. 6, 3rd Revised Sheet No. 7.2. Approved by the Commission in Docket Nos. E,G002/CI-02-2034 and 12-383.

to have used existing consumer communications to begin addressing Issue 1 appears supportive of CenturyLink's argument of minimum sufficiency in this regard.

Nonetheless, Staff recognizes the Department's concerns that CenturyLink's official "complaints" may represent only a small, and perhaps not representative, sampling of consumer communications which the consumers may have deemed to have been complaints.

With these considerations in mind, Staff offers another alternative. The Commission may decline to adopt any specific definition of complaint to apply to the TAP program, instead focusing on the requirements of Minn. Rule 7810.1100, subpart 1:

"The utility shall establish such procedures whereby qualified personnel shall be available during regular business hours to receive, and if possible, resolve all customer *inquiries, requests, and complaints.*"

Whether or not CenturyLink classifies a TAP call as a complaint, inquiry, or request, it should be receiving that communication and resolving it.

Observing that this proceeding was initiated by the Commission's Consumer Affairs Office, the Commission might instead serve TAP customers, and measure the effectiveness of newly implemented measures addressing Issue 1, by requiring CenturyLink to temporarily make quarterly reports to the Commission's Consumer Affairs Office on all TAP inquiries, requests, and complaints during the 6 quarters following the issuance of the Order in this proceeding. The specifics of the reports could be negotiated between CenturyLink and the Commission COA, in consultation with the Department, in the 30 days following the Order in this proceeding with approval delegated to the Executive Secretary.

In support of this Staff alternative, Staff also notes that the record does not indicate that there is a widespread problem with the definition of "complaint" in the industry requiring a more expansive proceeding such as referral to the OAH or in a new docket.

V. Decision Options and Recommendations

A. Issue 1: Does CenturyLink meet the requirements of M.S237.69 - 237.711 and Minnesota Rules Chapter 7817 in administering the Telephone Assistance Plan (TAP) to its customers.

1.0 Qwest Corporation dba CenturyLink is required to take the actions A-E below within 60 days of the Commission's Order. The Company shall do so in consultation with the Department. **(Staff recommended, modified after Department)**

1.1. File an explanation of how its employees are trained to ensure that customers are provided accurate information on the TAP program. The explanation should include

training materials, which customer service representative groups receive training on the TAP programs, the frequency with which CenturyLink personnel receive ongoing training to ensure the TAP program is understood, and any additional information to demonstrate for the Commission that CenturyLink is taking appropriate step to achieve the statutory goal of making the TAP program available to eligible Minnesotans.

(Department and Staff recommended)

- 1.2. Affirm in writing to the Commission that it will provide TAP credits to customers in the “earliest possible billing cycle” using the five step procedure described in CenturyLink’s Comments of June 19, 2018 at page 3.
(Staff recommended, modified after Department)
- 1.3 Affirm in writing that CenturyLink provides TAP benefits to eligible consumers even if they receive Lifeline benefit from another provider.
(Staff recommended, modified after Department)
- 1.4. For each eligible customer denied TAP during the past 2 years due to having Lifeline benefits from another provider, provide credit in the amount that should have been provided had the customer been properly enrolled in TAP.

File a report identifying each eligible Minnesota customer denied TAP benefits over the last two years, due to the customer receiving the Lifeline benefit from another provider. The report shall include documentation showing:

- the length of time in which each affected customer was denied TAP benefits,
- whether the customer is currently enrolled in TAP,
- whether the company has now enrolled the customer or a statement explaining why enrollment is not appropriate; and
- the Company having provided credit to the customer in the amount of TAP credit that should have been provided had the customer been properly enrolled.

(Staff recommended, modified after Department)

- 1.5.1 File a revised version of the written notice that CenturyLink uses to notify TAP recipients of their right to appeal decisions of CenturyLink to the Commission. In cases where CenturyLink determines that a recipient is no longer eligible to receive TAP credits, the notice must state that CenturyLink will terminate credits if (1) the recipient does not submit an appeal within 60 days of the notice or (2) the recipient submits an appeal and the Commission determines that the recipient is not eligible.
(Department and Staff recommended)
- 1.5.2 Notify each customer that was denied TAP participation or removed from the program during the past 2 years that they have the right to appeal that decision within 60 days and to receive credit in the amount that would have been provided if found upon appeal of having been wrongly denied. **(Staff recommended)**

- 1.5.3 Affirm that for each customer denied TAP during the past 2 years, who now chooses to appeal after notification, and who is found to have been eligible at the time previously denied TAP benefits, CenturyLink will provide credit in the amount that should have been provided had the customer been properly enrolled in TAP and file a report 150 days following this Order identifying each eligible Minnesota customer found to be eligible for such credits, the length of time the customer was denied benefits, if the customer is currently enrolled in TAP.
(Staff recommended)
- 2.0 The Commission finds that service providers required to provide TAP benefits to eligible customers must do so even if those customers receive a federal Lifeline benefit from another provider. **(Staff recommended, modified after Department)**
- 3.0 Direct filing of compliance filings by CenturyLink on Issue 1 with subsequent noticing of filings for subsequent Comments.
- 4.0 Other actions that the Commission may deem prudent.

B. Issue 2: What action, if any, should the Commission take to clarify the definition of a customer “complaint”?

1. Decline to adopt a specific definition of consumer “complaint” in this proceeding. **(Staff recommended)**
2. Require CenturyLink to: make 6 quarterly reports to the Commission’s CAO addressing all TAP inquiries, requests and complaints in a written or verbal manner format to be determined by the CAO, in consultation with the Department, under authority delegated to the Executive Secretary. Such reports shall begin 90 days following the date of the Order in this proceeding. **(Staff recommended)**
3. Approve CenturyLink’s definition of “complaint” as “any customer issue or concern that cannot be (or is not) addressed or resolved through normal business practices and channels. Issues that require escalation or intervention by CenturyLink executives, outside agencies (such as regulatory bodies, elected officials, the Better Business Bureau or the media) are considered complaints and are handled accordingly.”
4. Approve the Department’s definition of a “complaint” as being “A complaint is any expression of dissatisfaction, whether oral or written, and whether justified, and resolved in the customer’s favor or not, from or on behalf of an eligible complainant about the firm’s provision, repair and, billing of, or failure to provide such functions of a

regulated service. Telephone and telecommunications carriers' records of complaints must include detailed descriptions of each individual customer complaint and the accompanying resolution, to allow the carrier to review and analyze its procedures and actions, as required in Minnesota Administrative Rule 7810.1200." **(Department Recommendation)**

5. Find that CenturyLink has violated M.R. 7810.1100 and M.R. 7810.1200 for failing to keep a record of all complaints received by it from its customers and for failing to keep complaint records in such a manner to enable review and analysis of its procedures and actions. **(Department recommendation)**
6. Refer the issue of CenturyLink failing to keep a record of all complaints received by it from its customers, and for failing to keep complaint records in such a manner as to enable it to review and analyze its procedures and actions to the Office of Administrative Hearings to develop a more robust record on the possible violations. **(Department recommendation)**
7. Open a new docket in which to examine the need to define what is considered a customer "complaint" by the Commission, and if needed, to define "complaint". **(Department recommendation)**

Staff recommends Decision Options A.1 (all parts), A.2, B.1 and B.2.

APPENDIX 1

Department's Revised Recommendations

Revised Responsive Comments

April 26, 2018

1. The Department recommends that Qwest Corporation dba CenturyLink be required to take the following actions within 30 days of the Commission's Order:
 - 1.A. File an explanation of how its employees are trained to ensure that customers are provided accurate information on the TAP program. The explanation should include training materials, which customer service representative groups receive training on the TAP programs, the frequency with which CenturyLink personnel receive ongoing training to ensure the TAP program is understood, and any additional information to demonstrate for the Commission that CenturyLink is taking appropriate step to achieve the statutory goal of making the TAP program available to eligible Minnesotans.
 - ~~1.B. File a plan with the Commission to show how it will improve its internal practices to provide TAP credits to customers in the "earliest possible billing cycle." [withdrawn in filing of June 26, 2018.]~~
 - 1.C. Provide TAP benefits to eligible customers even though they receive the Lifeline benefit from another provider.
 - 1.D. File a report identifying each eligible Minnesota customer denied TAP benefits over the last two years, due to the customer receiving the Lifeline benefit from another provider. The report should include documentation showing: the length of time in which each affected customer was denied TAP benefits, whether the customer is currently enrolled in TAP, whether the company has now enrolled the customer or a statement explaining why enrollment is not appropriate and that the Company has provided credit to the customer in the amount of TAP credit that should have been provided had the customer been properly enrolled.
 - 1.E. File a revised version of the written notice that CenturyLink uses to notify TAP recipients of their right to appeal decisions of CenturyLink to the Commission. In cases where CenturyLink determines that a recipient is no longer eligible to receive TAP credits, the notice must state that CenturyLink will terminate credits if (1) the recipient does not submit an appeal within 60 days of the notice or (2) the recipient submits an appeal and the Commission determines that the recipient is not eligible.
2. The Department believes CenturyLink has violated Minnesota rules by failing to keep a record of all complaints received by it from its customers, and for failing to keep

complaint records in such a manner as to enable it to review and analyze its procedures and actions. If the Commission agrees there may have been a violation of Minnesota rules, it should determine whether it has sufficient information to make a finding that there has been a violation, refer the matter to the Office of Administrative Hearings if it believes there needs to be a more robust record on the possible violations, or find that it will take no action on the violations. If the Commission does not believe there has been a violation of its rules, then no action is needed.

3. The Department recommends that the Commission find that CenturyLink's definition of a complaint is unacceptable. CenturyLink limits its definition of complaint to those that come to the attention of third parties such as the FCC, Media Relations, PUC, Better Business Bureau, Attorney General, and Executive Offices. In its March 13, 2018 comments, the Department recommended that the Commission clarify what constitutes a complaint and proposed language that the Commission may adopt. ***The Department is modifying its recommendation*** to recognize that the Commission may have an inadequate record to clarify the definition of "complaint." ***Thus, along with finding that CenturyLink's definition is unacceptable, the Commission should determine how it may best provide clarity to CenturyLink and the rest of the industry what the Commission considers to be a complaint.*** In the absence of the Commission taking some action, the Department believes company practices will not change and expressed customer dissatisfaction will not be treated as a complaint unless the customer brings the matter to a third party. ***The Commission may wish to initiate a new docket and solicit comments or take some other action to resolve this matter.*** (Emphasis added.)
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