

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

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
SUITE 350
121 SEVENTH PLACE EAST
ST. PAUL, MINNESOTA 55101-2147**

Katie Sieben	Chair
Joseph Sullivan	Vice Chair
Hwikwon Ham	Commissioner
Valerie Means	Commissioner
John Tuma	Commissioner

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

OAH File No. 21-2500-38965

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

**PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDATIONS**

TABLE OF CONTENTS

STATEMENT OF THE ISSUES	3
SUMMARY OF RECOMMENDATIONS.....	3
FINDINGS OF FACT	3
I. PROCEDURAL HISTORY	3
II. BACKGROUND.....	5
A. Transition to Market Competition.....	5
B. CenturyLink’s Minnesota Telephone Network.....	6
C. Landline Telephone Usage and Alternatives.	8
D. The Commission’s Role in Telecommunications.	10
E. Customer Complaints.	10
III. MINNESOTA RULES 7810.3300 AND 7810.5000.....	11

A.	Meaning of Adequate Service.....	11
B.	CenturyLink’s Performance.....	13
C.	Conclusions.....	17
IV.	MINNESOTA RULE 7810.5800	18
V.	THE DEPARTMENT’S RECOMMENDED REMEDIES.....	20
A.	Rehab of Plant and Equipment.....	20
B.	Implementation of a “Plant Pride” Program.....	23
C.	Shorter Service Repair Windows.....	27
	CONCLUSIONS OF LAW	28
	RECOMMENDATIONS.....	30

The Minnesota Public Utilities Commission (“Commission”) referred this matter to the Office of Administrative Hearings for a contested-case proceeding in January 2023. Administrative Law Judge Kimberly Middendorf (“ALJ”) was assigned to the matter. The Commission directed the ALJ to consider whether Qwest Corporation d/b/a CenturyLink QC is fulfilling the service quality requirements of Minnesota Statutes chapter 237 and Minnesota Rules chapter 7810—and, if not, the appropriate remedy.

An evidentiary hearing was held on December 13, 2023. Initial briefs were filed on January 17, 2024. Reply briefs were filed on February 7, 2024.

Jason Topp and Katie Wagner, Lumen Technologies, and Eric Swanson, Elizabeth Schmiesing, and Christopher J. Cerny, Winthrop & Weinstein P.A., appeared on behalf of Qwest Corporation d/b/a CenturyLink QC (“CenturyLink”).

Richard Dornfeld and Greg Merz, Assistant Attorneys General, appeared on behalf of the Minnesota Department of Commerce (“Department”).

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

Sally Ann McShane and Marc Fournier appear on behalf of the Minnesota Public Utilities Commission staff (“Commission”).

STATEMENT OF THE ISSUES

1. Whether CenturyLink has violated the telephone service quality requirements contained in Minnesota Statutes chapter 237 and Minnesota Rules chapter 7810; and
2. If so, the appropriate remedy to bring CenturyLink into compliance with the state's telephone service quality requirements.

SUMMARY OF RECOMMENDATIONS

1. The Commission should find that CenturyLink fails to provide adequate service, violating Minn. R. 7810.3300 and Minn. R. 7810.5000, when customers experience multiple service outages or disruptions caused by the same deficient outside plant or equipment over an approximately four-and-a-half year period. The Commission also should find that CenturyLink is violating Minn. R. 7810.5800, by its own admission, by failing to restore 95% of service outages within 24 hours.
2. Based on the evidence in the hearing record, the ALJ makes the following findings:

FINDINGS OF FACT

I. PROCEDURAL HISTORY

1. On April 23, 2020, the Communication Workers of America (“CWA”) filed allegations that CenturyLink had failed to meet service quality standards set forth in Commission rules.¹ On May 1, 2020, following negotiations with CenturyLink, CWA petitioned to withdraw its complaint.²
2. 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 had been resolved.³
3. On August 18, 2020, CWA petitioned the Commission to pursue an expedited investigation of CenturyLink's compliance with the state's telephone service quality requirements.⁴

¹ Formal Complaint of the CWA (Apr. 23, 2020) (eDocket No. 20204-162321-01).

² CWA Withdrawal Letter (May 1, 2020) (eDocket No. 20204-162752-01).

³ COMMISSION LETTER TO CWA (May 18, 2020) (eDocket No. 20205-163301-01); COMMISSION LETTER TO CENTURYLINK (May 18, 2020) (eDocket No. 20205-163301-02).

⁴ CWA Petition for Expedited Investigation (Aug. 18, 2020) (eDocket No. 20208-165981-01).

4. By October 23, 2020, the Commission had received comments from CenturyLink, the Department and the Office of the Attorney General. CenturyLink filed additional comments on November 5.⁵ By August 30, 2021, the Commission had received additional comments, revisions, and/or replies from all parties. Thereafter, the parties pursued settlement negotiations and filed periodic reports on the status of those negotiations.⁶

5. On August 16, 2022, CWA, the Department, and Office of the Attorney General recommended referring the matter to the Minnesota Office of Administrative Hearings to assign an administrative law judge to convene a series of public hearings regarding CenturyLink's service quality.⁷ On August 25, 2022, CenturyLink responded to the intervenor recommendations, demanding that any procedure comply with Commission rules and due process.⁸

6. On January 5, 2023, the Commission met to consider the matter. On January 30, 2023, the Commission referred the matter to the Office of Administrative Hearings for a contested-case proceeding. The Commission further requested that the assigned Administrative Law Judge hold one or more public hearings to take public comment on potential rule violations.⁹

7. The Administrative Law Judge held in-person public hearings in Thief River Falls on July 18, 2023; Hibbing on July 19, 2023; Marshall on July 26, 2023; and Owatonna on July 27, 2023. The Administrative Law Judge also held two remote public meetings via WebEx on July 21, 2023, and July 24, 2023.¹⁰

8. The Department, Office of the Attorney General, and CenturyLink filed pre-filed direct testimony on September 1, 2023. The parties filed rebuttal testimony on November 1, 2023, and surrebuttal testimony on December 1, 2023. An evidentiary hearing was held on December 13, 2023. On January 3, 2024, the Parties stipulated that only the following two issues remained in dispute:

- a. Has CenturyLink violated the following Minn. R. 7810.3300 (Maintenance of Plant and Equipment), Minn. R. 7810.5000 (Utility Obligations), or Minn. R. 7810.5800 (Interruptions of Service); and

⁵ Comments of the Office of the Attorney General (Oct. 23, 2020) (eDocket No. 202010-167605-02); Comments of the Office of the Department (Oct. 23, 2020) (eDocket No. 202010-167574-01); Comments of CenturyLink (Nov. 5, 2020) (eDocket No. 202011-168068-01).

⁶ See NOTICE AND ORDER FOR PUBLIC HEARING AND CONTESTED CASE HEARING at 2 (Jan. 30, 2023) (eDocket No. 20231-192697-01) (“NOTICE & ORDER FOR HEARING”).

⁷ Joint Intervenor Letter (Aug. 16, 2022) (eDocket No. 20228-188384-01).

⁸ CenturyLink Reply Letter (Aug. 25, 2022) (eDocket No. 20228-188592-01).

⁹ NOTICE & ORDER FOR HEARING at 6.

¹⁰ SECOND PREHEARING ORDER at 1-2 (May 16, 2023) (eDocket No. 20235-195879-01).

b. If so, what is the appropriate remedy.¹¹

9. The parties filed initial briefs on January 17, 2024, and reply briefs on February 7, 2024.¹²

II. BACKGROUND

A. Transition to Market Competition.

10. Before Congress passed the Telecommunications Act of 1996, telephone service was regulated similarly to electric and gas utilities. Telephone companies had exclusive service territories and were subject to rate of return price regulation. This form of regulation ensured that high-cost (primarily rural areas) received service through implicit subsidies generated from above-cost long-distance, business, and urban rates.¹³ While independent providers existed, the AT&T Corporation dominated the industry for decades. AT&T's origins date back to 1876. By 1939, AT&T controlled 83% of all U.S. telephones and 98% of all long-distance telephone lines and manufactured 90% of all U.S. phone equipment.¹⁴ In 1974, the federal government brought an anti-trust lawsuit against AT&T. In 1982, AT&T agreed to divest itself of 22 regional operating companies that would become separate entities and operate local telephone networks.¹⁵ The regional Bell operating companies were reorganized and converted into seven regional phone companies.¹⁶

11. Following the 1982 divestiture, Minnesota was served by U.S. West, Inc. which absorbed three smaller regional operating companies, including the Northwestern Bell Telephone Company. Northwestern Bell had been the Regional Bell Operating Company for Minnesota. In 2000, Qwest Communications purchased U.S. West. In 2011, it merged with CenturyLink. In 2020, the company changed its name to Lumen Technologies although it still operates in Minnesota as Qwest Communications d/b/a CenturyLink QC.¹⁷

12. In 1996, Congress enacted the Telecommunications Act that significantly changed how telephone companies were regulated. The legislation attempted to replace the system of monopoly telephone companies with market competition. The act was intended to facilitate a transition from regional monopolies to a competitive, deregulated industry.¹⁸ Congress anticipated that competition would ultimately reduce prices, increase

¹¹ Joint Stipulation (Jan. 4, 2024) (eDocket No. 20241-201849-01).

¹² ORDER MODIFYING HEARING SCHEDULE at 2 (Dec. 4, 2023) (eDocket No. 202312-200951-01).

¹³ Ex. DOC-1 at 4 (Gonzalez Direct).

¹⁴ Ex. DOC-1 at 4 (Gonzalez Direct).

¹⁵ *United States v. Am. Tel. & Tel. Co. (Modified Final Judgment)*, 552 F. Supp. 131 (D. D.C. 1982).

¹⁶ Ex. DOC-1 at 4 (Gonzalez Direct).

¹⁷ Ex. DOC-1 at 5 (Gonzalez Direct).

¹⁸ Ex. DOC-1 at 5 (Gonzalez Direct).

consumer choice, and facilitate the development of new and better services.¹⁹ Despite the intentions of Congress, the Telecommunications Act has not generated significant or lasting competition between incumbent telephone companies and new fixed-wire carriers. To the extent that competition has increased, much of it has been caused by new technological developments, including mobile and broadband services.²⁰

B. CenturyLink’s Minnesota Telephone Network.

13. As a successor to the Northwestern Bell Telephone Company, CenturyLink retains service areas across Minnesota that span approximately 66,000 miles of copper cable and nearly 10,000 cross box locations.²¹ In these service areas, CenturyLink remains the statutorily mandated “carrier of last resort.”²² CenturyLink retains significant market share. CenturyLink has approximately 233,000 customer lines in Minnesota, or about 21% of all lines in the state.²³

14. In most of Minnesota, CenturyLink provides telephone service using analog voice transmissions carried over twisted-pair copper cables. These copper cables come in various sizes depending on the number of customers served. For traditional telephone service, each “pair” can serve one customer such that a 100-pair cable can serve up to 100 end users.²⁴ This type of service is commonly known as Plain Old Telephone Service (“POTS”). The expected lifespan of POTS equipment is approximately 25 to 50 years.²⁵ When POTS facilities are buried underground, great care must be taken to keep them dry. Moisture can cause copper cables to corrode or cause call quality to deteriorate.²⁶ Telephone companies will sometimes use underground air dryers to ensure that lines remain protected from excessive moisture.²⁷

15. CenturyLink primarily relies on “break/fix” maintenance to keep its POTS network operating. “Break/fix” maintenance refers to the practice of waiting until broken, damaged, or deteriorated facilities cause customer service outages or impairments before making repairs.²⁸ The alternative to “break/fix” maintenance is proactive rehabilitation (commonly referred to as “rehab”) where “processes are established to anticipate the ‘Break’ before it happens and take an appropriate action in advance.”²⁹ According to

¹⁹ Ex. DOC-1 at 5 (Gonzalez Direct).

²⁰ Ex. DOC-1, LG-D-10 (Gonzalez Direct) (Robert W. Crandall, *Competition and Chaos: U.S. Telecommunications Since the 1996 Telecom Act* 58 (2005)).

²¹ Ex. DOC-5, JDW-R-10 at 3-4 (Webber Rebuttal); Ex. DOC-5, JDW-R-8 at 4 (Webber Rebuttal).

²² Ex. DOC-4 at 16 (Webber Direct).

²³ Evid. Hrg. Tr. at 159-160 (Mohr); Ex. DOC-1 at 11 (Gonzalez Direct).

²⁴ Evid. Hrg. Tr. at 212 (Ardoyno).

²⁵ Ex. DOC-2 at 3-4 (Gonzalez Rebuttal).

²⁶ Evid. Hrg. Tr. at 219 (Ardoyno).

²⁷ Evid. Hrg. Tr. at 219 (Ardoyno).

²⁸ Ex. DOC-4 at 11 (Webber Direct).

²⁹ Ex. DOC-4 at 11 (Webber Direct) (citing the 2020 Schumaker & Company audit report).

consulting firm Schumaker & Company, it is an industry best practice is to place greater emphasis on proactive rehab.³⁰

16. CenturyLink is spending more than [NOT PUBLIC DATA BEGINS . . . ██████████ . . . NOT PUBLIC DATA ENDS] of its maintenance budget on reactive “break/fix” work.³¹ CenturyLink’s reliance on “break/fix” maintenance has increased in recent years as the company cut back on proactive rehab and staffing. Between 2019 and 2021, CenturyLink cut its rehab spending by [NOT PUBLIC DATA BEGINS . . . ██████████ . . . NOT PUBLIC DATA ENDS] from approximately [NOT PUBLIC DATA BEGINS . . . ██████████ ██████████ . . . NOT PUBLIC DATA ENDS].³² In December 2021, CenturyLink eliminated approximately [NOT PUBLIC DATA BEGINS . . . ██████████ . . . NOT PUBLIC DATA ENDS] field technician positions.³³ Technician workloads, in turn, have risen by [NOT PUBLIC DATA BEGINS . . . ██████████ . . . NOT PUBLIC DATA ENDS] since 2021.³⁴

³⁰ Ex. DOC-4 at 11 (Webber Direct) (citing the 2020 Schumaker & Company audit report).

³¹ Ex. DOC-6 at 4 (Webber Surrebuttal).

³² Ex. DOC-4 at 17-18 (Webber Direct).

³³ Ex. DOC-4 at 19 (Webber Direct).; Evid. Hrg. Tr. at 182 (Ardoyno); Ex. DOC-19 at 2.

³⁴ Ex. DOC-4 at 21, 51 (Webber Direct).

C. Landline Telephone Usage and Alternatives.

17. Older and lower-income Minnesotans are more reliant on landline telephone. According to the National Center for Health Statistics, approximately 53% of Americans older than 65 continue to have landline service while approximately 29% between the ages of 45 and 64 have landlines.³⁵ According to a 2022 Wilder Foundation study of likely Minnesota landline users, 82% of users expect to continue using them and 77% report that landline access is either “very” or “somewhat” important to them.³⁶ The survey also revealed that landline users tend to be older and lower-income, as shown below.³⁷

	Percent
Age of respondent	
25-44	1%
35-49	8%
50-64	25%
65-75	35%
75 and older	31%
Household income (2021) before taxes	
Less than \$25,000	12%
\$25,000 to under \$50,000	25%
\$50,000 to under \$75,000	22%
\$75,000 to under \$100,000	16%
\$100,000 to under \$150,000	16%
\$150,000 or higher	9%

18. Broadband internet and mobile service are commonly cited alternatives to traditional POTS telephone service. While they are adequate substitutions for many customers and offer additional functionalities, they are not uniformly available across Minnesota. Broadband, for example, can be used to provide voice over internet protocol (“VoIP”) service as an alternative to traditional telephone.³⁸ According to the Minnesota Department of Employment and Economic Development, many rural areas currently lack access to broadband. The areas shaded in pink and purple in the map below are considered by the Minnesota Department of Employment and Economic Development to

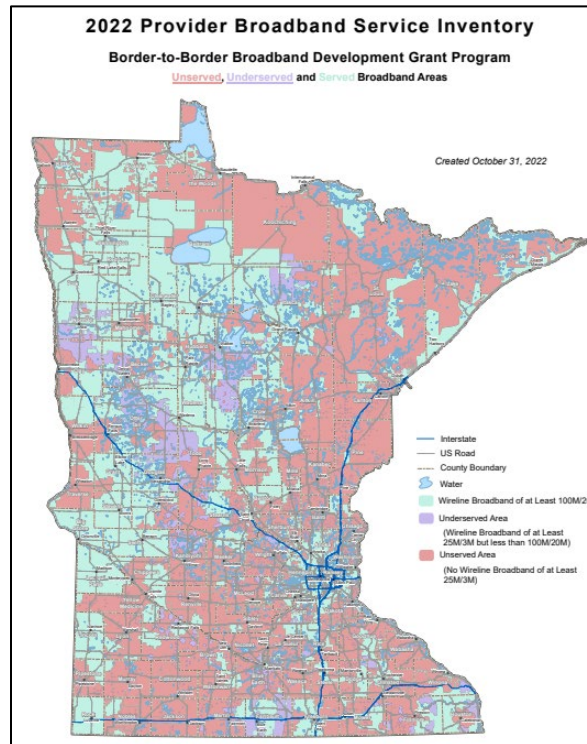
³⁵ Ex. DOC-1, LG-D-1 (Gonzalez Direct) (Stephen J. Blumberg and Julian V. Luke, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2022* at 1, National Center for Health Statistics (2023), www.cdc.gov/nchs/data/nhis/earlyrelease/wireless202305.pdf).

³⁶ Ex. DOC-1, LG-D-2 at 3, 6 (Gonzalez Direct) (Michelle Decker Gerrard and Anna Granias, *Assessment of Landline Telephone Access and Use in Minnesota*, Wilder Foundation Research (2022)).

³⁷ Ex. DOC-1, LG-D-2 at 9-10 (Gonzalez Direct)

³⁸ Ex. DOC-1 at 7 (Gonzalez Direct).

be unserved or underserved based on the current definition of broadband, which is determined by download and upload capacity:³⁹



19. Like broadband, mobile telephone service is an alternative for some consumers. Mobile coverage, however, is not reliably available in all portions of Minnesota. Identifying the exact locations where coverage gaps exist can be a challenge.⁴⁰ During an investigation of mobile carriers, the Federal Communications Commission (“FCC”) found that Verizon, U.S. Cellular, and T-Mobile appeared to overstate the amount of coverage their services provide in maps. According to the FCC report, these providers appeared to overstate coverage in their maps about 40% of the time.⁴¹

³⁹ Ex. DOC-1 at 7-8 (Gonzalez Direct) (citing Minn. Dep’t Employment & Econ. Dev., *Provider Broadband Service Inventory* (2022), https://mn.gov/deed/assets/infrastructure-grant_tcm1045-134198.pdf).

⁴⁰ Ex. DOC-1 at 9 (Gonzalez Direct).

⁴¹ Ex. DOC-1 at 9 (Gonzalez Direct) (citing Rural Broadband Auctions Task Force, *Mobility Fund Phase II Coverage Maps Investigation Staff Report* (2019), <https://docs.fcc.gov/public/attachments/DOC-361165A1.pdf>).

D. The Commission’s Role in Telecommunications.

20. The Commission exercises regulatory authority over telephone companies. If the Commission finds that any service is inadequate, the Commission may make orders respecting the act, omission, practice, or service that is just and reasonable.⁴² The Commission has authority under Minn. Stat. § 237.081 “to make orders regarding the practices and services of telephone companies after affording the affected companies an opportunity to be heard.”⁴³ Separately, Minn. Stat. § 237.461, subd. 1, authorizes the Commission to “compel performance” or “other appropriate action.” Reviewing this authority, the Eighth Circuit Court of Appeals has explained, “these statutes give [the Commission] broad statutory authority to regulate the telecommunications market in Minnesota.”⁴⁴

21. Although the 1996 reforms changed its role, the Commission continues to exercise authority over the issuance of certificates of authority which are necessary to operate in the state. The Commission also ensures that providers comply with Minnesota’s 9-1-1 emergency service requirements and telephone service quality standards.⁴⁵ Beyond these functions, the Commission is responsible for ascertaining the fitness of providers to serve as eligible telecommunications carriers – a designation necessary to obtain federal subsidies for broadband deployment and low-income customer programs, which include voice service and broadband access.⁴⁶

E. Customer Complaints.

22. Cook County residents reported approximately 100 service outages attributable to CenturyLink between September 2018 and August 2023.⁴⁷ These outages left them without the ability to place telephone calls including to contact emergency service providers. The problem has become so persistent that local volunteer fire departments, at the Cook County Sheriff’s recommendation, leave their fire halls unlocked or staff them continuously during telephone service outages, so that affected members of the public can drive to the fire halls and directly contact emergency dispatchers using fire department radio systems.⁴⁸

23. Between January 2021 and June 2023, the Department received at least 530 complaints from CenturyLink customers ranging from lengthy outages to repeatedly missed repair appointments. As shown in the chart below, most complaints involved more than one issue. For example, 46% of the complaints involved a service outage and 38%

⁴² Minn. Stat. § 237.081, subd. 4(2)-(3).

⁴³ *In re Deregulation of the Installation & Maint. of Inside Wiring*, MPUC Docket No. C-86-743, FINDINGS OF FACT CONCLUSION OF LAW & ORDER, 1986 WL 1299676, at *2 (Dec. 31, 1986).

⁴⁴ *Qwest Corp. v. Minn. Pub. Utilities Comm’n*, 427 F.3d 1061, 1065 (8th Cir. 2005).

⁴⁵ Minn. R. 7812.0600 (2021).

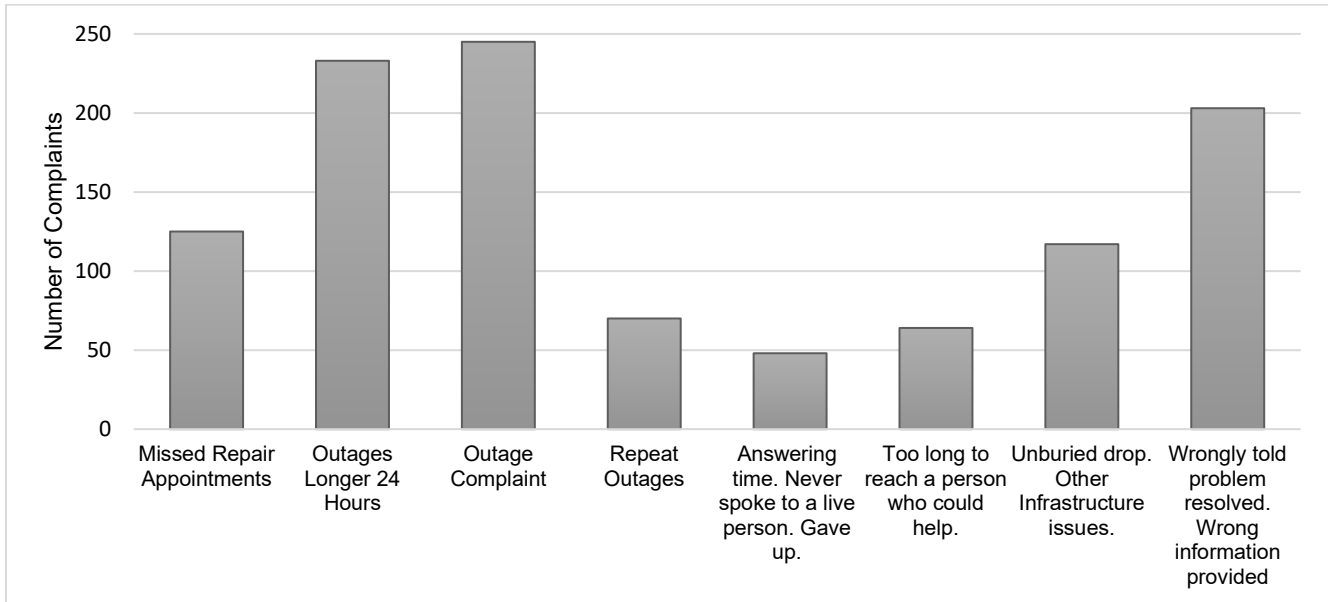
⁴⁶ Minn. R. 7812.1400.

⁴⁷ Ex. DOC-7 at 3.

⁴⁸ Evid. Hrg. Tr. at 37-38 (Mielke).

of the complaints reported that CenturyLink had wrongly claimed to resolve the customers' problem or otherwise gave the customer inaccurate information, while 15% of complaints involved both issues.⁴⁹

**Complaints Received by the Department
from January 2019 through June 2023.⁵⁰**



III. MINNESOTA RULES 7810.3300 AND 7810.5000.

A. Meaning of Adequate Service.

24. The Commission requires that every telephone company “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.”⁵¹ The rule further requires telephone companies to keep “all plant and equipment in good state of repair” and repair or replace any “broken, damaged, or deteriorated parts” necessary to assure adequate service.⁵² Telephone companies also have an ongoing obligation to review their practices to assure the furnishing of adequate service.⁵³

25. The Commission’s 7810.3300 and 7810.5000 rules do not define “adequate service.” The term should be given its plain and ordinary meaning, taking into

⁴⁹ Ex. DOC-1 at 13-14 (Gonzalez Direct).

⁵⁰ Ex. DOC-1 at 14 (Gonzalez Direct).

⁵¹ Minn. R. 7810.3300.

⁵² Minn. R. 7810.3300.

⁵³ Minn. R. 7810.5000.

consideration the context in which it is used.⁵⁴ Minnesota courts consider dictionary definitions to determine a word’s plain meaning.⁵⁵ Here, adequate means “sufficient to satisfy a requirement or meet a need,” while service refers to “the provision to the public of something, especially a utility.”⁵⁶ These definitions establish that adequate service requires that a telephone company satisfy each customer’s need for telephone service. Telephone is an essential service. As a result, most customers require near continuous telephone access with few disruptions to have their service needs satisfied.⁵⁷

26. Other jurisdictions have reached similar conclusions. The Ohio commission, while resolving a customer complaint filed against AT&T, concluded that adequate service turned on several factors “including, but not limited to, the number, severity and duration of the service problems, whether the service could have been corrected, and whether the service problems likely are caused by telephone company facilities.”⁵⁸ In another consumer complaint case, a Pennsylvania hearing officer similarly concluded that “[e]ven if only one customer is served on a particular line, a utility is mandated to maintain its facilities and render reasonable service.”⁵⁹ In that case, the administrative law judge concluded although occasional outages do not necessarily constitute a violation, losing service on three occasions over 16 months amounted to inadequate service.⁶⁰

27. The Administrative Law Judge concurs that adequacy of service must be determined on an individual basis based on the volume of service issues and whether the provider takes reasonable steps to address the underlying problem. In other words, what constitutes adequate service must consider a variety of factors relating to the service quality that customers are experiencing. Given that most consumers require telephone service to conduct essential communications in emergency situations, to conduct their jobs or businesses, and to communicate with friends and family, adequate service means that service must be nearly continuous. Customers who regularly and predictably lose

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

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

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

⁵⁷ See *In re Lifeline & Link Up Reform & Modernization Lifeline & Link Up Fed.-State Joint Bd. on Universal Serv. Advancing Broadband Availability Through Digital Literacy Training*, 27 F.C.C. Rcd. 6656, 6665 (2012) (“[V]oice service [is] a prerequisite for full participation in our economy and society.”).

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

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

⁶⁰ *Cynthia Mosco v. Verizon Pennsylvania LLC*, Docket No. C-2018-3006579, 2020 WL 1673955, at *11 (PA P.U.C. Mar. 9, 2020).

service each year due to the same older or failing equipment are not receiving adequate service.

B. CenturyLink’s Performance.

1. The Department’s Allegations.

28. The Department alleged that CenturyLink is failing to provide all customers with adequate service due to its excessive reliance on “break/fix” maintenance that leaves customers without service for extended periods of time. CenturyLink’s trouble report data from January 2019 through June 2023 (approximately **[NOT PUBLIC DATA BEGINS . . .** . . . **NOT PUBLIC DATA ENDS]** discrete trouble reports) reflects that 77% of all problems related to deteriorating or failing plant or equipment.⁶¹ According to the Department, 4,460 CenturyLink customers experienced at least four troubles related to deteriorating or failing plant or equipment. For customers in the four-to-five trouble category, that is at least one trouble every ten to thirteen months. For customers in the five-or-more category, that is approximately one trouble every seven months, or about twice a year for four-and-a half years.⁶²

29. To identify these customers, the Department took approximately 4.5 years of CenturyLink’s own trouble report data and counted the number of outages or other problems that each customer had experienced. As shown in the table below, the 4,460 CenturyLink customers are individuals falling into the “4-5 troubles” and “5+ troubles” rows.

**Basic Telephone Service – Outside Plant Troubles
(January 2019 to June 2023)⁶³**

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

30. The Department also pointed to individual customer experiences. The Department, for example, highlighted an Austin resident who experienced 14 troubles

⁶¹ DOC Initial Br. at 12; Ex. DOC-5 at 19 (Webber Rebuttal).

⁶² DOC Initial Br. at 12; Ex. DOC-5 at 19 (Webber Rebuttal).

⁶³ Ex. DOC-5 at 19 (Webber Rebuttal).

caused by deteriorated CenturyLink equipment between April 2019 and May 2023.⁶⁴ CenturyLink's director of network operations acknowledged that he would not consider a customer in Austin who experienced multiple disruptions a year to be receiving adequate service.⁶⁵

31. According to the Department, CenturyLink's failure to provide all customers with adequate service stems from deficient maintenance practices. The Department cited two reasons for why the company's maintenance is deficient. First, it alleged that CenturyLink does not engage in sufficient proactive rehab work despite the size and age of its network. Second, it asserted that the company does not timely complete the small number of proactive rehab projects that it does identify.

32. *Procedures.* The Department argued that CenturyLink's proactive rehab procedures are inadequate. Rehab refers to proactive maintenance that a company performs on an aging or failing network component to reduce or avoid future service problems.⁶⁶ In the Department's view, CenturyLink performs this work on a mostly ad-hoc basis. The Department pointed to an admission by CenturyLink's director of network operations that the company "doesn't automatically or systematically run any proactive testing." Instead, network testing only occurs incidentally to service installations or repairs.⁶⁷ The Department also asserted that CenturyLink also does not use any predictive data analysis to identify operational anomalies and potential equipment defects before failures occur. Instead, the company relies on a monthly "manual process" to identify potentially high trouble areas.⁶⁸ Additionally, the Department pointed to the fact that CenturyLink's regional managers receive no regular reporting on service quality or performance problems; company management is only informed on an "as needed" basis as a deficiency.⁶⁹ Finally, the Department highlighted that CenturyLink's only current program for maintaining its outside plant is creating trouble tickets."⁷⁰ In sum, the Department concluded that CenturyLink essentially waits until a field technician identifies a problem while doing something else or a customer reports a problem. The Department disagreed that this was proactive or sufficient to meet the requirements of Minn. R. 7810.3300. In the agency's view, CenturyLink's "proactive" process still involves waiting until enough problems with a particular piece of plant or equipment accrue before doing anything about it, if at all.⁷¹

33. *Proactive Rehab Results.* Beyond the company's procedures, the Department also argued that CenturyLink is performing little proactive rehab work:

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

⁶⁵ Evid. Hrg. Tr. at 224-225 (Ardoyno); DOC Initial Br. at 13.

⁶⁶ Ex. CTL-8 at 8 (Ardoyno Direct); Ex. DOC-2 at 2 (Gonzalez Rebuttal).

⁶⁷ Ex. DOC-22 at 4; Evid. Hrg. Tr. at 194 (Ardoyno).

⁶⁸ Ex. DOC-25 at 2; Evid. Hrg. Tr. at 200 (Ardoyno).

⁶⁹ Ex. DOC-23 at 2; Evid. Hrg. Tr. at 196 (Ardoyno).

⁷⁰ Ex. DOC-2, LG-R-1 (Gonzalez Rebuttal).

⁷¹ DOC Initial Br. at 17-18.

a. In its “Proactive Rehab Tracking Tool” records, CenturyLink technicians identified only **[NOT PUBLIC DATA BEGINS . . . █████ . . . NOT PUBLIC DATA ENDS]** potential rehab projects between January 2019 and June 2023 for the entire state. The Department argued that is far too little work given that CenturyLink’s statewide network spans approximately 66,000 miles of copper cable and nearly 10,000 cross box locations.⁷² Even though CenturyLink only identified a small number of projects, the company still has only pursued half of them to date. Of the remaining projects, the Department’s expert found that at least **[NOT PUBLIC DATA BEGINS . . . █████ . . . NOT PUBLIC DATA ENDS]** of them relate to correcting deficiencies with CenturyLink’s traditional copper network.⁷³ In some instances, CenturyLink allowed rehab projects identified by technicians to languish for years.⁷⁴

b. The Department asserted that CenturyLink’s “100 Pair Cable Live Tracking Report” records showed a similar pattern. In the report, CenturyLink tracked **[NOT PUBLIC DATA BEGINS . . . █████ . . . NOT PUBLIC DATA ENDS]** different cables across Minnesota.⁷⁵ Yet CenturyLink identified just **[NOT PUBLIC DATA BEGINS . . . █████ . . . NOT PUBLIC DATA ENDS]** potential rehab jobs and completed only **[NOT PUBLIC DATA BEGINS . . . █████ . . . NOT PUBLIC DATA ENDS]** of them.⁷⁶ The report, however, shows that 210 100-pair cables were responsible for ten or more trouble tickets – 75% of which CenturyLink technicians diagnosed as being caused by deteriorated cable. The Department’s expert reasoned that these cables marked a “conservative” starting place for investigation and possible rehab.⁷⁷ Moreover, CenturyLink’s 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.⁷⁸

34. In sum, the Department argued that regardless of how CenturyLink becomes aware of the need to rehab its outside plant and equipment, it is performing little rehab work. Since 2019, the Department pointed out that CenturyLink has only replaced about **[NOT PUBLIC DATA BEGINS . . . █████ . . . NOT PUBLIC DATA ENDS]** of cable out of approximately 66,000 miles in the state.⁷⁹ It likewise cut its annual rehab spending by 51% from approximately **[NOT PUBLIC DATA BEGINS . . . █████ . . . NOT PUBLIC DATA ENDS]**.⁸⁰ Over the past three years, CenturyLink

⁷² Ex. DOC-5, JDW-R-10 at 3-4 (Webber Rebuttal); Ex. DOC-5, JDW-R-8 at 4 (Webber Rebuttal).

⁷³ Ex. DOC-5 at 10-11 (Webber Rebuttal).

⁷⁴ DOC Initial Br. at 18-20.

⁷⁵ Ex. DOC-5 at 15 (Webber Rebuttal).

⁷⁶ Ex. DOC-5 at 16 (Webber Rebuttal).

⁷⁷ Ex. DOC-5 at 16 (Webber Rebuttal).

⁷⁸ Evid. Hrg. Tr. at 212-213 (Ardoyno).

⁷⁹ Ex. DOC-2 at 3 (Gonzalez Rebuttal).

⁸⁰ Ex. DOC-4 at 17-18 (Webber Direct).

only spent **[NOT PUBLIC DATA BEGINS . . . █████ . . . NOT PUBLIC DATA ENDS]** of its total outside plant budget on rehab work.⁸¹

2. CenturyLink's Response.

35. CenturyLink argued that Minn. R. 7810.3300 and Minn. R. 7810.5000 contain extraordinarily general and broad language that does not define adequate service. As a result, CenturyLink stated that the best indication of whether the Company is providing safe and adequate service, and is therefore in compliance with these general service quality rules, is whether the company's trouble report rate complies with Minn. R. 7810.5900.⁸²

36. Minnesota rule 7810.5900 provides: "It 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. A customer 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."

37. CenturyLink noted that it has significantly bettered this objective, consistently achieving trouble reports of below 1.0 per 100 lines.⁵¹ 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.⁸³ 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.⁸⁴ CenturyLink asserted, considering the fact that certain exchanges have few remaining customers and that a single trouble report or two in a month could result in the company missing the trouble report rate objective,⁸⁵ the company's performance is a strong indicator of a healthy network.⁸⁶

38. In response, the Department disagreed that CenturyLink's compliance with Minn. R. 7810.5900 could be used as a proxy for assessing adequate service under Minn. R. 7810.3300 and Minn. R. 7810.5000. The Department argued that canons of construction did not permit such a substitution because it would fail to give each of the

⁸¹ Ex. DOC-5 at 10 (Webber Rebuttal).

⁸² Ex. CTL-6 at 5 (Ardoyno Direct); *see also* Ex. CTL-19 at ¶ 88 (Turner Rebuttal) ("CenturyLink's compliance with Minnesota PUC Rule 7810.2900 regarding trouble report rates has been unambiguously strong between 2019 and 2023[.]").

⁸³ Ex. CTL-6 at 5 (Ardoyno Direct).

⁸⁴ Ex. CTL-6 at 5 (Ardoyno Direct).

⁸⁵ Ex. CTL-1 at 28 (Mohr Direct).

⁸⁶ Ex. CTL-7, Sched. 2 (Ardoyno Direct).

rules a distinct meaning.⁸⁷ The Department also argued that it could lead to absurd results, explaining that if, for example, the same 7 customers out of 100 reported once a month, every month that they lack service, CenturyLink would be in compliance with 7810.5900 and therefore would be providing adequate service under Minn. R. 7810.3300 and Minn. R. 7810.5000, even as those customers would continuously lack the ability to place or receive calls.⁸⁸

C. Conclusions.

39. The Administrative Law Judge concurs with the Department that basic principles of legal interpretation preclude CenturyLink's argument that its performance under Minn. R. 7810.5900 can be used as a proxy for adequate service under Minn. R. 7810.3300 and Minn. R. 7810.5000. First, adequacy of service must be assessed on a customer-by-customer basis because customers receive service on an individual basis, not in the aggregate. It would be unreasonable to define adequate service in a manner that even CenturyLink employees agree would leave a small minority of customers without adequate service. Use of the trouble report rate as a proxy, however, would aggregate adequate service into a singular statewide figure instead of treating customers individually. Second, it would violate applicable principles of legal interpretation require the OAH and Commission to give each of the rules distinct meanings. Again, simply using the trouble report rate as a proxy, would give each of the rules the same meaning. A more reasonable interpretation is that Minn. R. 7810.3300 requires telephone companies to provide each customer with adequate service, Minn. R. 7810.5000 requires telephone companies to regularly assess whether their procedures are delivering such service to each customer, while Minn. R. 7810.5900 measures overall network health.

40. In this instance, the record shows that although CenturyLink's overall statewide network performs satisfactorily, certain customers—most commonly located in the rural periphery—are not receiving adequate service. CenturyLink serves approximately 233,000 customer lines in Minnesota.⁸⁹ About 4,460 of them are receiving inadequate service, or 2% of them.⁹⁰

41. The Administrative Law Judge further finds that CenturyLink's proactive maintenance practices are insufficient to consistently provide all customers with adequate service. Citing its own expert's experience and report from an independent consulting firm, the Department persuasively established that industry best practices require telephone companies to proactively identify plant and equipment that is likely to fail and make the necessary repairs or replacements necessary to prevent disruption or otherwise poor telephone transmission (crackling, static, muffled calls) performance.⁹¹ In this case, the Department established that CenturyLink devotes few resources to proactive

⁸⁷ DOC Reply Br. at 2-3; Minn. Stat. § 615.16 (2022); *Eclipse Architectural Grp., Inc. v. Lam*, 814 N.W.2d 692, 701 (Minn. 2012).

⁸⁸ DOC Reply Br. at 4-5.

⁸⁹ Evid. Hrg. Tr. at 159-160 (Mohr); Ex. DOC-1 at 11 (Gonzalez Direct).

⁹⁰ Ex. DOC-5 at 19 (Webber Rebuttal); Ex. DOC-2 at 8-9 (Gonzalez Rebuttal).

⁹¹ Ex. DOC-4 at 8-9 (Webber Direct) (citing the 2020 Schumaker & Company audit report).

rehabilitation work and lacks procedures for systematically or comprehensively evaluating the performance of its POTS network.⁹² Even CenturyLink’s proactive maintenance programs still rely on customers or technicians reporting enough problems associated with a specific piece of equipment before any action is taken.⁹³ The Department further highlighted how even once a piece of plant or equipment is identified, CenturyLink does not take timely action – sometimes allowing proposed projects to linger unresolved for years at a time.⁹⁴

IV. MINNESOTA RULE 7810.5800

42. The third rule at issue in this proceeding is Minn. R. 7810.5800. The rule states “that 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.”

43. In interpreting the rule, the words and phrases contained within it should be construed according to rules of grammar and according to their common and approved usage. General words must be restricted in their meaning by preceding particular words.⁹⁵ The Department argued that, in the rule’s third sentence, “objective” is qualified or limited by “minimum.” An objective is “something worked toward or striven for; a goal.”⁹⁶ A minimum, on the other hand, refers to the “lowest possible amount or degree permissible or attainable.”⁹⁷ In turn, the Department argued that an otherwise permissive “goal” is modified to set a floor or set a baseline requirement that the company should aim to exceed. The Department also asserted that this reading is consistent with the rule as a whole. The second sentence makes clear that companies should restore service “with the shortest possible delay” and, therefore, companies should aim to not merely meet but exceed the 95% requirement.

44. The parties do not dispute that CenturyLink’s performance fell below the 95% minimum objective level in **[NOT PUBLIC DATA BEGINS . . . ██████████ . . . NOT PUBLIC DATA ENDS]**, and has remained below that level for all but **[NOT PUBLIC DATA BEGINS . . . ██████████ . . . NOT PUBLIC DATA ENDS]** months through June 2023, as shown below.

⁹² Ex. DOC-4 at 17-18 (Webber Direct); Ex. DOC-22 at 4; Ex. DOC-23 at 2; Ex. DOC-25 at 2; Evid. Hrg. Tr. at 194, 196, 200 (Ardoyno).

⁹³ Ex. DOC-1, LG-R-1 (Gonzalez Direct).

⁹⁴ Ex. DOC-5 at 10-13 (Webber Rebuttal).

⁹⁵ Minn. Stat. § 645.08(1), (3) (2022).

⁹⁶ *Objective*, American Heritage Dictionary (5th ed. 2022).

⁹⁷ *Minimum*, American Heritage Dictionary (5th ed. 2022).

Out-of-Service Restorations within 24 Hours⁹⁸

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

45. The Department suggested that CenturyLink’s declining performance was likely caused by its decision to lay off about **[NOT PUBLIC DATA BEGINS . . . █████ . . . NOT PUBLIC DATA ENDS]** of its Minnesota field technician workforce, causing per technician workloads to spike **[NOT PUBLIC DATA BEGINS . . . █████ . . . NOT PUBLIC DATA ENDS]** since 2021.⁹⁹ In the Department’s view, no evidence suggests CenturyLink’s performance will improve without Commission intervention.

46. In response to the Department’s allegation, CenturyLink claimed that the rule only sets an “objective” and is therefore “not a mandatory standard.”¹⁰⁰ CenturyLink also stated that it recognizes that it is struggling to meet the objective of clearing 95% of all out-of-service troubles within 24 hours.¹⁰¹ However, CenturyLink’s 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.¹⁰² 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 2000.¹⁰³ By 2022, the average is only **[NOT PUBLIC DATA BEGINS . . . █████ . . . NOT PUBLIC DATA ENDS]** lines per mile. According to the company,

⁹⁸ Ex. DOC-4 at 51 (Webber Direct)

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

¹⁰⁰ Ex. CTL-8 at 5 (Ardoyno Direct).

¹⁰¹ Ex. CTL-1 at 30 (Mohr Direct).

¹⁰² Ex. CTL-6 at 7 (Ardoyno Direct).

¹⁰³ Ex. CTL-19, Sched. 1 at 26, Fig. 5 (Turner Rebuttal).

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.¹⁰⁴ However, since CenturyLink prioritizes 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.¹⁰⁵

47. The Administrative Law Judge finds that CenturyLink is in violation of Minn. R. 7810.5800 because the company has not come reasonably close to meeting the minimum objective set forth in the rule. Although an objective would not normally be mandatory given the plain meaning of the word, in this case the rule indicates that restoring service to 95% of customers within 24 hours is a “minimum” requirement, or a floor on CenturyLink's performance. Much of CenturyLink's argument addressing Minn. R. 7810.5800 relates to why the company has not met or come reasonably close to meeting the standard. The rule, however, does not provide any exemptions for the geographic and workforce shortage barriers that the company has identified. CenturyLink's argument that it cannot find enough qualified technicians is particularly inexplicable, given that it laid off about half of its technician workforce at almost the same time its performance dropped. As such, CenturyLink's noncompliance with Minn. R. 7810.5800 appears to be at least partially a self-inflicted injury.

V. THE DEPARTMENT'S RECOMMENDED REMEDIES.

48. After concluding that CenturyLink was not providing adequate service to 4,460 customers, the Department recommended that the Commission require the company to take certain remedial steps. Specifically, the Department recommended that CenturyLink should be required to timely investigate and promptly rehab deficient plant and equipment identified by the Department's expert, implement a preventative “Plant Pride” program to prevent future network deterioration, and use shorter repair appointment windows.¹⁰⁶

A. Rehab of Plant and Equipment.

49. To resolve the existing violations of Minn. R. 7810.3300 and Minn. R. 7180.5000, the Department recommended that the Commission require CenturyLink to review and rehab all outside plant and equipment that serves customers who have had four or more deteriorated plant trouble tickets since 2019, as identified by the Department's expert, within 24 months of the final order in this matter.¹⁰⁷ The Commission also should require CenturyLink to file quarterly reports on its progress, on a customer-by-customer basis. The Department stressed that this recommendation is narrowly

¹⁰⁴ Ex. CTL-19, Sched. 1 at 26, Fig. 5 (Turner Rebuttal).

¹⁰⁵ Ex. CTL-6 at 6-7 (Ardoyno Direct).

¹⁰⁶ Ex. DOC-2 at 27-28 (Gonzalez Rebuttal).

¹⁰⁷ Ex. DOC-5 at 19-20 (Webber Rebuttal).

targeted to improve service for the approximately 4,460 customers who are not currently receiving adequate service. In support of this contention, the Department established that these customers represent only 6% of all customers with a deteriorated plant related problem, but they are responsible for 21% of all deteriorated plant related problems.¹⁰⁸

50. In addition, the Department recommended that the Commission require CenturyLink to review and rehab the 210 100-pair cables that the Department's expert identified as driving troubles within 24 months.¹⁰⁹ The Department again stressed that this recommendation is narrowly targeted for several reasons. First, the Department concluded that it is likely that there is significant overlap between the plant and equipment directly serving the 4,460 customers who are not receiving adequate service and these 210 cables, lessening the incremental volume of additional work. Second, the Department noted that these 210 cables amount to fewer than **[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS]** of all cables contained in CenturyLink's tracking report.¹¹⁰ In the Department's view, requiring CenturyLink to promptly rehab its worst performing plant and equipment would be a reasonable step to ensure adequate service on ongoing basis.

51. In response, CenturyLink asserted that the Department's recommendations have no basis in Minnesota statutes or rules and no precedent in case law, leading company witness Mr. Turner to describe it as "an extraordinary new regulatory regime."¹¹¹ The Department vigorously rejected that assertion. The Department stated that the Commission has broad authority to regulate traditional POTS service under Minn. Stat. § 237.02, noting that the Commission and its predecessors have regulated telephone service since 1915.¹¹² The Department also pointed out that state law authorizes the Commission to make orders regarding the "practices and services of telephone

¹⁰⁸ Ex. DOC-5 at 19 (Webber Rebuttal).

¹⁰⁹ Ex. DOC-5 at 15-16 (Webber Rebuttal); Ex. DOC-2 at 8-9 (Gonzalez Rebuttal).

¹¹⁰ CenturyLink's report identifies approximately 9,500 total cables. Ex. DOC-5 at 15 (Webber Rebuttal).

¹¹¹ Ex. CTL-21 at ¶ 28 (Turner Surrebuttal).

¹¹² Minn. Stat. § 237.02 (2022) (vesting the public utilities commission "with the same jurisdiction and supervisory power over telephone and telecommunications companies doing business in this state as the commission's predecessor, the railroad and warehouse commission, had over railroad and express companies" prior to the 1967 replacement of the railroad and warehouse commission, Minn. Laws 1967, ch. 864, with the department of public service); see, e.g., [Minn. Stat. § 237.04-.05 \(1965\)](#) (authorizing the railroad and warehouse commission to issue orders compelling telephone companies to remove or reconstruct any telephone wires inconsistent with its regulations governing maintenance and operation of paralleling lines); Minn. Stat. § 237.16 (1965) (vesting the railroad and warehouse commission with exclusive authority to prescribe the terms and conditions for the construction telephone lines and exchanges). The railroad and warehouse commission was originally created in 1871, Minn. Laws. 1871, ch. 22, and has regulated telephone service since 1915. Minn. Laws. 1915, ch. 152.

companies” and authority to “compel performance” or “other appropriate action.”¹¹³ Additionally, the Department stated that the Commission could condition CenturyLink’s ongoing possession of a certificate of authority upon compliance with any remedy ordered in this matter.¹¹⁴

52. The Department also cited examples of other state commissions taking similar regulatory actions, including several examples involving CenturyLink’s parent company or affiliates:¹¹⁵

a. In 2020, the Pennsylvania commission fined Verizon for failure to consistently provide a single customer with adequate service. In that case, the customer reported instances of losing service, the inability to receive incoming calls, a lack of dial tone, or static or noise that interfered with service.¹¹⁶ The administrative law judge report largely adopted by the Pennsylvania commission explained that Verizon was obligated to maintain its copper network to provide adequate and reliable service.¹¹⁷

b. In 2020, following several wildfires that knocked out telephone service, the Oregon commission ordered several Lumen subsidiaries to “restore basic telephone service to all customers who requested service in the company’s service territory” by December 1, 2020, either by repairing or replacing its own facilities or by providing comparable voice service to affected customers at no additional cost.¹¹⁸

c. In 2018 and proceedings, the Wyoming commission ordered Lumen affiliates to rehab its outside plant where customers are not receiving adequate

¹¹³ Minn. Stat. §§ 237.081, subd. 4(2)-(3), .461, subd. 1; *In re Deregulation of the Installation & Maint. of Inside Wiring*, MPUC Docket No. C-86-743, FINDINGS OF FACT CONCLUSION OF LAW & ORDER, 1986 WL 1299676, at *2 (Dec. 31, 1986).

¹¹⁴ Minn. Stat. § 237.16, subd. 1(b) (“No person shall provide telephone service in Minnesota without . . . a certificate of authority from the commission under terms and conditions the commission finds to be consistent with . . . the provision of affordable telephone service at a quality consistent with commission rules, and the commission’s rules.”).

¹¹⁵ DOC Initial Br. at 29-31.

¹¹⁶ *Cynthia Mosco v. Verizon Pennsylvania LLC*, Docket No. C-2018-3006579, 2020 WL 1673955, at *16 (PA P.U.C. Mar. 9, 2020); *Cynthia Mosco v. Verizon Pennsylvania LLC*, No. C-2018-3006579, 2022 WL 1423613, at *12 (PA P.U.C. Apr. 25, 2022).

¹¹⁷ *Cynthia Mosco v. Verizon Pennsylvania LLC*, Docket No. C-2018-3006579, 2020 WL 1673955, at *11 (PA P.U.C. Mar. 9, 2020).

¹¹⁸ See, e.g., *In re Qwest Corp.*, No. 20-431, 2020 WL 6886274, at *1 (Nov. 18, 2020). The original commission order was eventually replaced with a settlement that granted Lumen two additional months to restore service. *In re United Tel. Co. of the Nw. (Um 2127)*, *Centurytel of Oregon (Um 2128)*, *Qwest Corp. (Um 2129)*, No. 20-486, 2020 WL 7767794, at *1 (Dec. 23, 2020).

service. The commission found that customers were experiencing ongoing service problems and ordered Qwest Corporation to timely address all maintenance and repair requests in particular communities and file quarterly reports on the proactive upgrading being done, all maintenance and service-related activities, and all other resolutions of problems being undertaken.¹¹⁹

53. The Administrative Law Judge recommends that the Commission adopt the Department's recommendation that CenturyLink be required to promptly review and remedy plant serving 4,460 customers who are not receiving adequate service along with the 210 100-pair cables responsible for the most chronic service disruptions. The Administrative Law Judge concludes that it is within the Commission's authority and a reasonable solution to remedy the continual service problems experienced by a small segment of customers who are nonetheless entitled to adequate service. Minnesota Statutes sections 237.02, 237.081, subdivision 4(2)-(3), .461, subdivision 1, grant the Commission ample authority to order a telephone company to fix problems with POTS facilities that are responsible for inadequate service following a contested case hearing. The Department, moreover, highlighted similar examples from other jurisdictions and conceded that this authority only extended to POTS telephone service.

B. Implementation of a "Plant Pride" Program

54. Beyond promptly restoring adequate service where it is presently lacking, the Department recommended that the Commission also should take steps to ensure that CenturyLink engages in sufficient proactive rehab work to avoid future backlogs.¹²⁰ Specifically, the Department recommended that the Commission should:

- a. Require CenturyLink to modify its existing Proactive Rehab Tracking procedures or create new procedures to "resolve" all plant rehab reports received from field technicians within 90 days.
- b. Define the term "resolve" to mean "the repair; replacement; or a reasonable alternative resolution, including the possibility of no action, as determined by the company in consultation with the Communications Workers of America ("CWA").
- c. Require that the field technician who initially submitted the report receive notification of how the report was ultimately resolved.

¹¹⁹ *In re Compl. Filing of Karen King Against Qwest Corp. Requesting A Formal Hearing on the Alleged Probs. with Her Telecomm'cns Serv.*, Docket No. 70000-1269-TC-06, 2008 WL 9895044 (WY P.S.C. May 9, 2008); *In re Formal Compl. of Ron & Alyce Carter Against Qwest Corp. d/b/a Centurylink QC Alleging Unreliable & Intermittent Tel. Serv. in Zone 3 of the Lusk, Wyoming Exch.*, No. 70000-1633-TC-16, 2017 WL 4552156, at *9 (WY P.S.C. Oct. 6, 2017).

¹²⁰ Ex. DOC-2 at 9-15 (Gonzalez Rebuttal).

d. Require CenturyLink’s director of network service operations for Minnesota and applicable regional leaders to meet with the CWA’s area/district leadership on a quarterly basis to review all reports from the quarter.

e. Require CenturyLink to educate field technicians about these new procedures and keep them informed of the results through communications at the garage level, including through dedicated space to post local results (e.g., before and after photos).

f. Encourage CWA’s area/district leadership to educate their members on a regular basis about these new procedures and champion robust participation.¹²¹

55. The Department stated that it modeled this recommendation on the “Plant Pride” programs adopted in New York and Pennsylvania.¹²² Those programs similarly allow technicians to submit plant conditions needing additional maintenance and require the applicable telephone company to promptly review the submissions. In New York, for example, Verizon must resolve 75% of all technician submissions within 90 days. These programs also place great emphasis on collaboration between the company and its workers. In New York, meetings occur on a quarterly basis, while they happen semi-annually in Pennsylvania.¹²³

56. The Department concluded that quarterly meetings with CWA’s area/district leadership are appropriate for several reasons. First, the Department argued it was necessary to temper the significant discretion by the Department’s proposed definition of “resolve.” In the Department’s view, if company and union representatives agree that a delay or other alternative resolution is appropriate, that should typically be a satisfactory outcome from a regulatory perspective as well. Second, the Department explained that an important part of the proposal is empowering workers to identify rehab projects and stated that involving union representatives in the process would facilitate greater buy-in and participation.¹²⁴

57. Regarding the quarterly filings, the Department recommended that the Commission require CenturyLink to make quarterly filings with the Commission that list: (a) each reported issue; (b) the approximate location of the plant; (c) the date it was reported; (d) the date it was resolved, if applicable; and (e) the status of whether or how it was resolved. To the extent that CenturyLink and the CWA disagreed about how to resolve a particular report, the quarterly filing should expressly note it. This would allow the Department or any other interested party to seek additional Commission action as necessary.¹²⁵

¹²¹ Ex. DOC-2 at 12-13 (Gonzalez Rebuttal).

¹²² Ex. DOC-2 at 9 (Gonzalez Rebuttal).

¹²³ Ex. DOC-2 at 9-10 (Gonzalez Rebuttal).

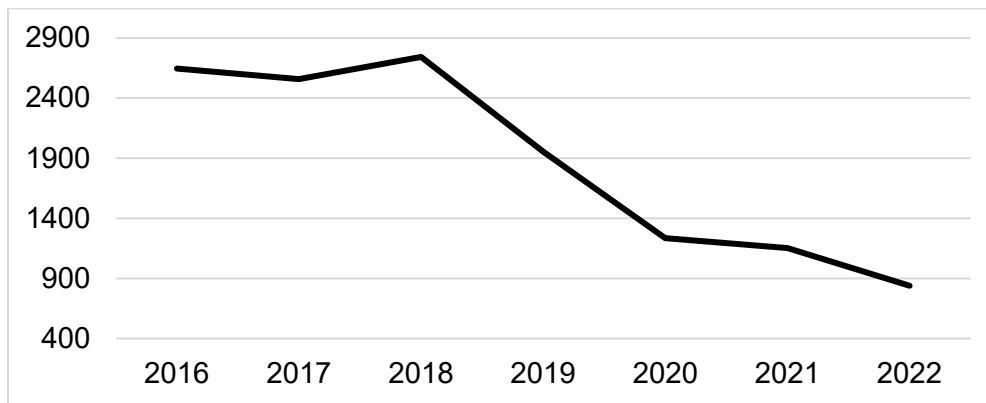
¹²⁴ Ex. DOC-2 at 14 (Gonzalez Rebuttal).

¹²⁵ Ex. DOC-2 at 14 (Gonzalez Rebuttal).

58. The Department clarified that the purpose of this quarterly reporting would be to allow regulators to monitor service quality, and not to resolve disputes between CenturyLink and CWA over how any particular proposed rehab project was resolved. Instead, if any troubling trends developed, the Department would be able to take action to involve the Commission as appropriate.¹²⁶

59. The Department indicated it was optimistic that a Plant Pride program would improve CenturyLink’s performance long-term. The Department pointed to improved outcomes for Verizon customers in New York and Pennsylvania where similar program exist as shown in the graphs below. According to the Department, since the New York and Pennsylvania settlements were respectively implemented in 2016 and 2017, the states have seen significant drops in filed complaints. In New York, the number of annually filed complaints has dropped by approximately 68%. In Pennsylvania, the number of annually filed complaints has dropped 45%.¹²⁷

Verizon New York Complaints¹²⁸

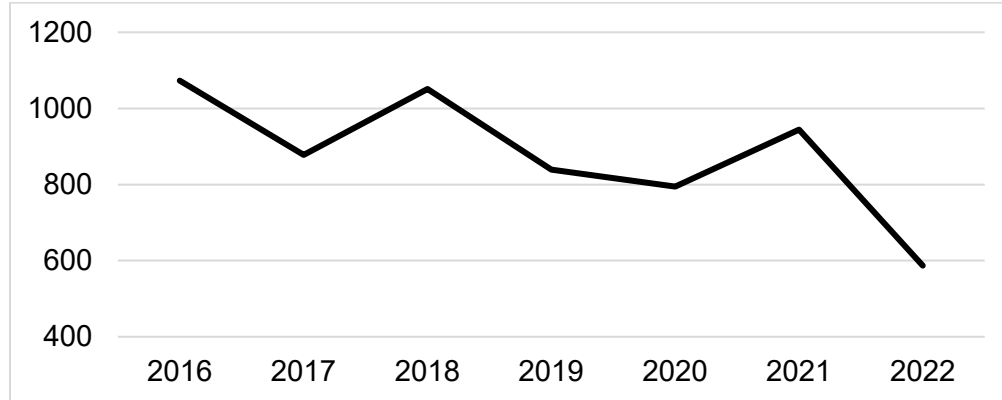


¹²⁶ Ex. DOC-2 at 15 (Gonzalez Rebuttal).

¹²⁷ Ex. DOC-2 at 10-11 (Gonzalez Rebuttal).

¹²⁸ Ex. DOC-2 LG-R-3 at 1 (Gonzalez Rebuttal) (Tab 1)

Verizon Pennsylvania Residential Complaints¹²⁹



60. CenturyLink opposed the Department’s Plant Pride program recommendation. CenturyLink also asserts that the Department and Commission lack authority to insert themselves “into the Company’s relationship with its collective bargaining partner.”¹³⁰

61. The Department disputed CenturyLink’s assertion that a Plant Pride program would inappropriately intrude upon the company’s collective bargaining relationship with the CWA. The Department noted that it had neither made any hiring recommendations, nor has it attempted to force changes to other collective bargaining issues, including wages and compensation, disciplinary rules and procedures, job protection provisions, or grievance and arbitration procedures.¹³¹ The Department also asserted the quarterly meetings between CenturyLink and CWA to discuss proactive rehab projects identified by field technicians would not be particularly onerous given CenturyLink’s representations that it already meets with CWA officials on a regular basis.¹³²

62. The Department also stressed that CenturyLink would remain ultimately responsible for determining how to resolve proposed rehab projects identified by field technicians under the Department’s Plant Pride program recommendation. The Department expressed hope that regular meetings with the CWA would result in a consensus outcome, but if not, the Department’s recommendation would only require CenturyLink to note the disagreement with CWA in the quarterly reporting to the Commission.¹³³ According to the Department, the purpose of the reporting is not for the Commission or the Department to then mediate disputes between CenturyLink and the

¹²⁹ Ex. DOC-2 LG-R-3 at 2 (Gonzalez Rebuttal) (Tab 2)

¹³⁰ CTL Initial Br. at 53.

¹³¹ DOC Reply Br. at 12; National Labor Relations Act, 29 U.S.C. § 158(a)(5), (d) (2022) (identifying wages, hours, and other terms and conditions of employment as subject to mandatory bargaining).

¹³² Ex. CTL-11 at 11 (Ardoyno Surrebuttal); CTL Initial Br. at 54.

¹³³ Ex. DOC-2 at 15 (Gonzalez Rebuttal).

CWA as to specific proposed rehab projects. Instead, the Department would use this information to monitor CenturyLink's performance and raise any concerning trends to the Commission's attention.¹³⁴

63. The Administrative Law Judge recommends that the Commission adopt the Department's Plant Pride program proposal. The experiences of other states with similar programs establish that a Plant Pride program would likely improve CenturyLink's proactive maintenance practices and thereby reduce customer complaints long-term. In several respects the Department's proposal is merely a modest extension of CenturyLink's existing practices. First, CenturyLink asserted during this proceeding that it had procedures that permit field technicians to propose proactive rehab projects. The Department's proposal would ensure that the company takes some sort of definitive action within 90 days, including affirmatively deciding to take no action, for each proposal. It also would ensure that the submitting field technician is made aware of the outcome. Second, CenturyLink asserted that it already meets with CWA leadership on a regular basis. The Department's proposal would formalize these meetings and direct CenturyLink to discuss how it intended to resolve each proposed rehab project from the prior quarter with CWA leadership. Third, CenturyLink maintains some records about what proposed rehab projects are under evaluation or completed by the company. The Department's proposal would require similar records to be filed with the Commission so that regulatory agencies could better track trends with CenturyLink's performance. The Administrative Law Judge finds that these proposals are appropriate given the inadequate service received by some customers and the record evidence establishing that CenturyLink allows proposed rehab projects to sit in an uncertain or undecided state for long periods of time. The Administrative Law Judge also finds that requiring a Plant Pride program for POTS service falls firmly within the Commission's jurisdiction.

C. Shorter Service Repair Windows.

64. Lastly, the Department recommended that the Commission require CenturyLink reduce repair appointment windows from eight hours to four hours. CenturyLink's Minn. R. 7810.5800 performance demonstrates that it struggles to timely restore service.¹³⁵ In the Department's view, shorter repair windows are necessary to ensure customer time is respected and force CenturyLink to focus its attention on meeting repair obligations.

65. In response, CenturyLink stated that the company assigns repair tickets to technicians through a route optimizer that assigns tickets based on priority (with POTS out-of-service tickets at the highest priority), geography, workload, and skill sets. CenturyLink argued that adding an additional restriction based on a four-hour repair window would be a Minnesota-specific or manual adjustment that will add more complexity to the routing system and negatively impact the efficient assignment of tickets. CenturyLink also argued that with a narrower repair window, more appointments, not fewer appointments, will be missed. In the company's view, restricting the repair

¹³⁴ Ex. DOC-2 at 15 (Gonzalez Rebuttal).

¹³⁵ Ex. DOC-2 at 18-19 (Gonzalez Rebuttal).

window will not address the main challenge in addressing repairs in a more timely manner – the geographic spread of its POTS customers.¹³⁶

66. The Administrative Law Judge concurs with the Department that shorter repair windows of four hours are appropriate given CenturyLink’s admitted poor performance in restoring service within the 24-hour window required by Minn. R. 7810.5800.

67. Based on the foregoing Findings of Fact and the record in this proceeding, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. Based on the findings above and the record in this proceeding,
2. The Commission and the Administrative Law Judge have jurisdiction over the subject of the proceeding pursuant to Minn. Stat. § 237.081, subd. 1 (2022), Minn. R. 7810.0200 (2023), and Minn. Stat. §§ 14.57–.62 (2022).
3. Proper notice was timely given and all relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter was properly before the Administrative Law Judge.
4. The Department and Office of the Attorney General bore the burden to demonstrate by a preponderance of the evidence that CenturyLink violated the telephone service quality requirements contained in Minnesota Statutes chapter 237 and Minnesota Rules chapter 7810.¹³⁷ The preponderance of the evidence standard requires that to establish a fact, it must be more likely than not that it exists.¹³⁸ This standard is less rigorous than the clear and convincing evidence standard which requires that “the truth of the facts asserted [be] ‘highly probable.’”¹³⁹
5. The Commission has broad authority to regulate POTS telecommunications service, including ordering the remedies recommended by the Department. Whenever the Commission finds that any service is inadequate, the Commission shall make an order respecting the act, omission, practice, or service that is just and reasonable.¹⁴⁰ The Commission has authority under Minn. Stat. § 237.081 “to make orders regarding the practices and services of telephone companies after affording the affected companies an

¹³⁶ Ex. CTL-11 at 12 (Ardoyno Surrebuttal).

¹³⁷ Minn. R. 1400.7300, subp. 5 (“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.”).

¹³⁸ *City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1, 4 (Minn. 2004).

¹³⁹ *Vermillion State Bank v. Tennis Sanitation, LLC*, 969 N.W.2d 610, 626 (Minn. 2022).

¹⁴⁰ Minn. Stat. § 237.081, subd. 4(2)-(3).

opportunity to be heard.”¹⁴¹ Separately, Minn. Stat. § 237.461, subd. 1, authorizes the Commission to “compel performance” or “other appropriate action.”

6. Minnesota Statutes section 237.02 (2022) similarly vests the Commission “with the same jurisdiction and supervisory power over telephone and telecommunications companies doing business in this state as the commission’s predecessor, the Railroad and Warehouse Commission, had over railroad and express companies” prior to the 1967 replacement of the Railroad and Warehouse Commission with the Department of Public Service.¹⁴² Minnesota Statutes chapter 237 immediately prior to the creation of the Department of Public Service granted the Railroad and Warehouse Commission broad authority to issue orders, for example, compelling telephone companies to remove or reconstruct any telephone wires inconsistent with its regulations governing maintenance and operation of paralleling lines, and to prescribe the terms and conditions for the construction of telephone lines and exchanges.¹⁴³ Collectively, the Eighth Circuit Court of Appeals has explained, “these statutes give [the Commission] broad statutory authority to regulate the telecommunications market in Minnesota.”¹⁴⁴

7. The Administrative Law Judge concludes that Minn. R. 7810.3000 and Minn. R. 7810.5000 require telephone companies to provide customers with adequate service and to continually review their operations to assure the furnishing of adequate service on an ongoing basis. Adequate service requires that telephone companies provide each customer receiving POTS telephone service near continuous telephone access without repeated disruptions.

8. The Department and Office of the Attorney General demonstrated by a preponderance of the evidence that CenturyLink violated Minn. R. 7810.3000 and Minn. R. 7810.5000 by failing to provide approximately 4,460 customers with adequate service.

9. The Department and Office of the Attorney General demonstrated by a preponderance of the evidence that CenturyLink violated Minn. R. 7810.5800 by failing to restore 95% of service outages within 24 hours.

10. Any of the forgoing Findings of Fact more properly designated as Conclusions of Law are hereby adopted as such.

¹⁴¹ *In re Deregulation of the Installation & Maint. of Inside Wiring*, MPUC Docket No. C-86-743, FINDINGS OF FACT CONCLUSION OF LAW & ORDER, 1986 WL 1299676, at *2 (Dec. 31, 1986).

¹⁴² Minn. Laws 1967, ch. 864.

¹⁴³ Minn. Stat. § 237.04-.05, .16 (1965)

¹⁴⁴ *Qwest Corp. v. Minn. Pub. Utilities Comm’n*, 427 F.3d 1061, 1065 (8th Cir. 2005).

RECOMMENDATIONS

Based upon these Findings of Fact and Conclusions of Law, the Administrative Law Judge recommends:

1. The Commission find that CenturyLink is failing to provide adequate service, violating Minn. R. 7810.3000 and Minn. R. 7810.5000, when customers experience multiple service disruption caused by the same deficient outside plant or equipment over an approximately four-and-a-half year period.

2. The Commission require CenturyLink to review and rehab all outside plant and equipment that serves customers who have had four or more deteriorated plant trouble tickets between January 2019 and June 2023, as identified by the Department's expert, within 24 months of the final order in this matter.¹⁴⁵ The Commission also should require CenturyLink to file quarterly reports on its progress, on a customer-by-customer basis.

3. The Commission require CenturyLink to review and rehab the 210 100-pair cables that the Department's expert identified as driving troubles within 24 months.¹⁴⁶

4. The Commission find that CenturyLink is violating Minn. R. 7810.5800 by failing to restore 95% of service outages within 24 hours. To reduce the harm caused by CenturyLink's non-compliance, the Commission should also require CenturyLink to reduce repair appointment windows from eight hours to four hours.

5. The Commission should adopt the Findings of Fact, Conclusions of Law, and Recommendations set forth above.

¹⁴⁵ Ex. DOC-5 at 19-20 (Webber Rebuttal).

¹⁴⁶ Ex. DOC-5 at 15-16 (Webber Rebuttal); Ex. DOC-2 at 8-9 (Gonzalez Rebuttal).