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

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

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

OAH Docket No. 21-2500-38965

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

REPLY BRIEF OF QWEST CORPORATION D/B/A CENTURYLINK QC IN MINNESOTA

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INTRODUCTION

The Minnesota Public Utilities Commission ("Commission") opened this docket nearly four years ago, in response to a letter it received from the Communications Workers of America ("CWA"), raising general concerns about alleged service quality issues with respect to the voice telephone service provided by Qwest Corporation d/b/a CenturyLink QC in Minnesota ("CenturyLink" or Company") over its copper network (plain old telephone service, or "POTS") and asking the Commission to seek an injunction preventing the Company from reducing the size of its work force. While CWA has not actively participated in the docket since that time, the Minnesota Department of Commerce ("Department" or "DOC") and Office of the Attorney General – Residential Utilities Division ("OAG") (collectively, "Agencies") have, including asking hundreds of information requests of the Company. The significant time and resources spent during the nearly four-year investigation and litigation process has resulted in: (1) a voluminous record demonstrating the overall strong performance of the Company's Minnesota voice services network; and (2) a substantial narrowing of the issues, as many of the initial allegations included by the Commission in its order setting this matter for hearing have now fallen by the wayside. What the Administrative Law Judge ("ALJ") and the Commission have left to decide is whether or not the Agencies have met their burden to show CenturyLink is in violation of two general Telephone Utilities Rules (one regarding "maintenance of plant and equipment" and one regarding "utility obligations" and one Telephone Utilities Rule addressing "interruptions of service.") If so, then the ALJ and Commission must consider the Agencies' proposed remedies.

Analyzing these few remaining questions requires, first and foremost, an understanding of the applicable law. Second, it requires analyzing the substantial record of this proceeding in light of that applicable law. The Initial Briefs of the Agencies misstate the applicable law, create new "standards" found nowhere in Minnesota law and distort the facts, all while hurling insults at the Company. Neither fiery rhetoric nor impugning the Company's motives can change the facts that have been demonstrated in this proceeding – CenturyLink provides strong overall service in Minnesota and *prioritizes its POTS customers ahead of other customers*. Moreover, the "remedies" proposed by the Agencies lack any substantive support, including no analysis of their potential benefits or costs, or any demonstration that they will remedy the alleged deficiencies. For all of those reasons, and as discussed below and in the Company's Initial Brief, this matter should be closed without further action.

I. APPLICABLE LAW

Neither of the Agencies' Initial Briefs analyze the applicable law in this proceeding, nor do they so much as mention the burden of proof. Moreover, when the Agencies allude to the law, they misstate it, most notably by creating "standards" that do not exist. Therefore, before turning to the record evidence, it is important to get a firm grounding in Minnesota law.

A. The Agencies Bear the Burden of Proof.

While neither of the Agencies discusses the matter, there can be no question that they bear the burden of proof in this proceeding. As the Company discussed in its Initial Brief, the Office of Administrative Hearings (OAH) Rules provide: "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."[1] In this proceeding, it is the Agencies that urge the Commission to take action, find that CenturyLink has violated certain Telephone Utilities Rules, and impose certain obligations on the Company going forward. As such, OAH Rules place the burden of proof in this proceeding on the Agencies to support their allegations of rule violations, and the appropriateness of any remedy, by a preponderance of the evidence.

B. The Agencies Mischaracterize or Misstate the Relevant Provisions of Minnesota's Telephone Utilities Rules.

Pursuant to a stipulation of the parties, just three Minnesota Rules remain at issue in this proceeding: (1) Minn. R. 7810.3300, (2) Minn. R. 7810.5000 and (3) Minn. R. 7810.5800.[2]

1. The Agencies' Interpretation of "Adequate Service" Lacks Support In the Rules or Precedent.

The first two of the remaining rules at issue discuss the need for a telephone utility to provide "safe and adequate" or simply "adequate" POTS service. Minnesota Rule 7810.3300 provides:

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[1] Minn. R. 1400.7300, subp. 5.

[2] Joint Stipulation as to Issues in Dispute ("Joint Stipulation"), Jan. 4, 2024 (eDocket No. 20241-201849-01). Despite so stipulating, the Department recycles its long-standing dispute with CenturyLink's decades-long interpretation of the word "complaint," as used in two other Minnesota Rules (7810.1100 and 7810.1200) – an interpretation with which the Commission has never indicated concern. *See* DOC Initial Br. at 2. As the Department has stipulated that these rules are no longer at issue, the Company will not further address this issue.

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

As the Company discussed in its Initial Brief, the plain text of this rule calls for a telephone utility to be "aimed at achieving efficient operation" of its network, so that it provides "safe and adequate service." The rule also discusses repairing or replacing parts that "are no longer serviceable" and correcting certain issues "to the extent practicable."

Similarly, Minnesota Rule 7810.5000 provides:

> Each telephone utility shall provide telephone service to the public in its service area in accordance with its rules and tariffs on file with the commission. Such service shall meet or exceed the standards set forth in this chapter. Each telephone utility has the obligation of continually reviewing its operations to assure *the furnishing of adequate service*. (Emphasis added).

Again, the plain text of the rule discusses the general obligation of providing adequate service.

The Agencies find within these rules a requirement that a telephone utility provide near continuous telephone access at all times to every customer on its network, lest it be found to have violated the rules.[3] The Department makes repeated conclusory

[3] *See, e.g.*, DOC Initial Br. at 10 ("Under the Commission's rules, CenturyLink customers are entitled to adequate service that provides them with near continuous telephone service without repeated disruptions. CenturyLink is not meeting this standard for all customers.")

pronouncements that this requirement is "clear" or that the rules "must" be interpreted in the manner proposed by the Department.[4] However, nothing in Minnesota Rules or Commission precedent contemplates such a granular, customer-by-customer analysis to determine compliance with these general statements of a telephone utility's service obligations. Moreover, nothing in Minnesota Rules or Commission precedent suggests that "adequate" POTS telephone service means "near continuous" service to each and every customer at all times. Had that been the intent of these rules, they certainly could have been written to make that intent clear. And the Department's interpretation ignores the language of Minn. R. 7810.5900, which provides an objective for maintenance of service such that "the average rate of all customer trouble reports in an exchange is no greater than 6.5 per 100 telephones per month." As the record establishes, the Company more than meets this objective.[5]

The Department also attempts to bolster its proposed customer-by-customer application of these rules by claiming other state commissions have endorsed such an approach.[6] However, the Department ignores the substantial differences in the statutory and regulatory authority granted to these commissions and disregards the significant factual

[4] *See, e.g.*, DOC Initial Br. at 10 ("the plain language meaning of 'adequate service' is clear"), 12 ("adequacy of service must be determined on an individual basis").
[5] Minn. R. 7810.5900 was among the rules originally referred to the OAH by the Commission in this matter. In light of the record evidence that the Company is in compliance with this rule, the Agencies agreed with the Company that it was no longer at issue. *See* Joint Stipulation, Jan. 4, 2024 (eDocket No. 20241-201849-01).
[6] DOC Initial Br. at 11-12.

differences in those cases, resulting in gross misinterpretations of these extra-jurisdictional cases.

For example, the Department cites *Cynthia Mosco v. Verizon Penn. LLC*,[7] an individual customer complaint proceeding in Pennsylvania, for the proposition that "the [ALJ] concluded although occasional outages do not necessarily constitute a violation, losing service on three occasions over 16 months was inadequate service," and to support its argument that customers require near continuous service.[8] However, the complainant in that case "testified that she had made complaints to Verizon 39 times in the last two and a half years, beginning in 2016. This testimony is supported by Verizon's record which notes a significant number of service calls in the last 18 months. Several of Verizon's service reports note that the Complainant is disabled or noted the medical necessity for repairs. Therefore, these violations are serious in nature."[9] Thus, the finding of violation was not predicated simply on three outages, but was considered in light of nearly 40 complaints from an individual customer, and the fact that Verizon was aware that the complainant had a medical necessity for repairs and service.

Further, the Pennsylvania Rule in question is no longer in force, having been *repealed* via Pennsylvania PUC rulemaking on August 13, 2022 due to the Commission's February 2015 decision to reclassify stand-alone basic telephone service as competitive in

[7] Docket No. C-2018-3006579, 2020 WL 1673955 at *11 (Pa. PUC Mar. 9, 2020).
[8] DOC Initial Br. at 11-12.
[9] *Cynthia Mosco v. Verizon Penn. LLC*, Docket No. C-2018-3006579, 2020 WL 1673955 at *18 (Pa. PUC Mar. 9, 2020).

parts of the Verizon Pennsylvania and Verizon North service territories.[10] In that February 2015 decision, the Commission determined that due to the competition that Verizon faced in certain geographic areas from cable fixed wireline carriers, cellular telephone carriers, and the availability of fiber based services, it was appropriate to classify Verizon's POTS service as competitive.[11]

Notably, the Commission has made an analogous determination with respect to areas in which the Company provides telephone service.[12] While this Commission determination has not led to any modification of the applicable rules here, the fact that 104 exchange areas in which the Company provides service have been determined to be competitive is relevant to how these nearly 50 year-old rules are applied to participants in the modern telecommunications industry.

Finally, even if it had not been repealed, the Pennsylvania Rule at issue in the cited section of the ALJ's recommendations is not an appropriate parallel to Minn. R. 7810.3300. The Pennsylvania Rule *actually requires continuous service*, which the Department argues should be *read into* the Minnesota Rule. The Pennsylvania Rule, 52 Pa. Code § 63.24, provided, in part:

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[10] *See* 2022 PA Reg Text 499945, 52 Pa. B. 5049.

[11] *Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of All Retail Services in Certain Geographic Areas and for a Waiver of Regulations for Competitive Services*, Docket Nos. P-2014-2446303, P-2014-2446304 (Pa. PUC Mar. 4, 2015).

[12] *See* Docket No. P-421/AM-16-496. In that matter, the Commission determined that customers in 104 of CenturyLink's Minnesota exchange service areas have access to, and use, competitive, alternative services.

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

Unlike the repealed Pennsylvania rule, the Minnesota Rules do not include any discussion of "continuous service." Moreover, as the Department acknowledges, Minnesota's Telephone Utilities Rules do not define "safe and adequate" or "adequate" service and the Commission has not previously addressed this issue.[13] Thus, the interpretation of these terms is a matter of first impression.

Merriam-Webster defines "adequate" as "sufficient for a specific need or requirement," "of a quality that is good or acceptable," "of a quality that is acceptable but not better than acceptable" or "lawfully and reasonably sufficient."[14] Consistent with these definitions, the Company has interpreted "safe and adequate service," as used in the rules, "to mean not posing a danger and capable of carrying voice service."[15] The Company submits this is a reasonable definition and that other, more targeted Telephone Utilities Rules (*e.g.* concerning trouble reports or call answer times) provide the necessary context for determining whether the Company is meeting its general obligation of providing such "safe and adequate service." As the Company discussed in detail in its Initial Brief and discusses further, below, the record demonstrates the Company's strong overall

[13] DOC Initial Br. at 10.
[14] https://www.merriam-webster.com/dictionary/adequate.
[15] CenturyLink Response to OAG Information Request 60(b), included in the record at OAG Ex. 1, Sched. 9 at 2-3 (Lebens Direct).

performance with respect to its Minnesota voice customers when viewed in this context, as evidenced by the significant narrowing of issues in this case.[16]

The Company does not in any way intend to minimize the importance of providing safe and adequate service to its voice telephone customers. However, the record of this proceeding demonstrates both the efforts that the Company has taken and continues to take to provide safe and adequate service (for example, by making voice service repair its highest priority work) and its overall success in achieving such service, as reflected in its low trouble report rates. The Company's efforts and prioritization of its voice service customers, and the successful performance of its network, demonstrate that the Company is fully in compliance with Minnesota rules.

2. The Agencies Misstate the Language of the Service Restoration Rule.

The Agencies also misstate the third rule still at issue in this proceeding, Minnesota Rule 7810.5800, concerning interruptions of service. The Department accuses the Company of "violating Minn. R. 7810.5800 that *requires* the company to restore 95% of service outages within 24 hours."[17] The OAG similarly characterizes this rule as setting a "standard" that the Company is allegedly violating.[18] By its plain language, however, this rule contains no "requirement" or "standard." Instead, Minn. R. 7810.5800 provides:

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[16] Minnesota Telephone Utilities Rules previously at issue prior to the Joint Stipulation include 7810.1100 and 7810.1200 (complaint handling), 7810.2800 (installation or upgrade times), 7810.4900 (adequacy of service), 7810.5200 (call answer time), and 7810.5900 (trouble reports).

[17] DOC Initial Br. at 9. (Emphasis added).

[18] OAG Initial Br. at 15.

> 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. (Emphasis added).

An "objective" is "something toward which effort is directed: an aim, goal, or end of an action."[19] While the Company has acknowledged it is not clearing 95 percent of its out-of-service troubles within 24 hours, so is not currently meeting this objective, the rule simply does not establish a "requirement" as argued by the Department. Moreover, as discussed further, below, the Company has demonstrated its commitment to restoration of voice services "with the shortest possible delay," as stated in the rule, by prioritizing such repairs over all other technician work.[20]

In summary, despite the Agencies' efforts to portray them otherwise, not one of the three remaining rules at issue in this proceeding establishes a measurable and enforceable "standard" or "requirement." That does not make them unimportant, and the Company has prioritized its voice service restoration work so that it is best positioned to continue providing safe and adequate service. However, the general nature of these nearly 50 year-old rules, written for a completely different era, does mean the ALJ and Commission must consider how to apply these rules in light of today's telecommunications marketplace and in light of the State's overarching telecommunications and broadband goals, as discussed in the Company's Initial Brief.[21]

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[19] https://www.merriam-webster.com/dictionary/objective
[20] Ex. CTL-6 at 6, 8 (Ardoyno Direct).
[21] *See* CTL Initial Br. at 13-19.

II. THE RECORD DEMONSTRATES CENTURYLINK'S STRONG NETWORK PERFORMANCE AND COMMITMENT TO ITS VOICE SERVICE CUSTOMERS.

As the Company discussed in its Initial Brief, the record demonstrates that CenturyLink is meeting or exceeding the objectives set forth in the Telephone Utilities Rules, with the single exception the restoration of service objective set forth in Minnesota Rule 7810.5800.[22] As noted above, the Company's performance is particularly strong with respect to the trouble report rate objective in Minnesota Rule 7810.5900 – a key metric for assessing the overall health of the Company's voice service network. Company expert witness Mr. Steven Turner has over 35 years of experience in the telecommunications industry, including work in a variety of engineering and operating positions and being responsible for designing and engineering AT&T's local networks across a five-state region.[23] As Mr. Turner explained:

> Trouble report rates are a useful metric for evaluating the "efficient operation" and "adequacy" of CenturyLink's copper-based telephone service, and the Company's trouble report rates are unambiguously outstanding.[24]

Indeed, while Minnesota rules provide an *objective* of maintaining service so that the average rate of all customer trouble reports in an exchange is no greater than 6.5 per 100 telephones per month,[25] CenturyLink's statewide annual average trouble report rates

[22] *See* CTL Initial Br. at 21-32.
[23] Ex. CTL-19, Sched. 1 at ¶ 2 (Turner Rebuttal).
[24] Ex. CTL-21, Sched. 1 at ¶ 8 (Turner Surrebuttal).
[25] Minn. R. 7810.5900.

were 0.85% for 2019; 0.77% for 2020; 0.78% for 2021; and 0.69% for 2022.[26] Moreover, when measured *monthly* at the *wire-center* level, CenturyLink is meeting the trouble report rate objective well over 99 percent of the time.[27] Thus, in addition to demonstrating CenturyLink's compliance with the trouble report rule, Mr. Turner noted the these "exceptionally low trouble report rates" demonstrate that "CenturyLink's maintenance practices appear to support precisely the 'efficient operation of its system,'" discussed in Minnesota Rule 7810.3300.[28]

CenturyLink shows similar strong performance across other measures, including meeting its installation commitments well over the 90 percent metric in Minnesota Rule 7810.2800.[29] The Company's continued exceedance of this metric, despite the challenges imposed by its prioritization of voice telephone out-of-service repairs, further demonstrates CenturyLink's strong commitment to voice customer service and to maintaining its copper-based network.

The record also contains substantial evidence of the Company's overall commitment to its voice service customers, as demonstrated by its prioritization of voice service customers' needs. For example, CenturyLink demonstrated the efforts it has taken to meet the call answer time rule objective of answering 90 percent of calls within 20 seconds[30] – a significantly more onerous requirement than the 60 second requirement

[26] Ex. CTL-19, Sched. 1 at ¶ 81 (Turner Rebuttal); Ex. CTL-21, Sched. 1 at ¶ 8 (Turner Surrebuttal).
[27] Ex. CTL-19, Sched. 1 at ¶ 80 (Turner Rebuttal).
[28] Ex. CTL-21, Sched. 1 at ¶ 34 (Turner Surrebuttal).
[29] Ex. CTL-9 at 2 (Ardoyno Rebuttal).
[30] Minn. R. 7810.5200.

established in the Company's 2009 Alternative Form of Regulation ("AFOR") plan. As Company witnesses explained, the Company invested to upgrade its call center systems by acquiring the Genesys call routing platform—considered the best call routing platform in the industry—to improve response time; and utilized alternative technologies such as click-to-chat.[31] CenturyLink also prioritizes calls from Minnesota regulated voice telephone service customers, despite the risk of dissatisfaction from customers with competitive unregulated service who may not receive the same level of timely response as voice customers.[32]

Similarly, the Company prioritizes POTS out-of-of service restorations, which are assigned to technicians before installation requests or repairs of broadband services.[33] The Company utilizes 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 to most efficiently dispatch its technicians skilled in voice service repair to those repair sites.[34] The requirement that POTS out-of-service restoration jobs are prioritized means that the route optimizer does not always assign tasks in the most efficient way from an overall system perspective.[35] For example, the route optimizer may end up assigning a new voice out-of-service restoration to a technician that is located far away because the technicians who are closer may not have the proper skillset

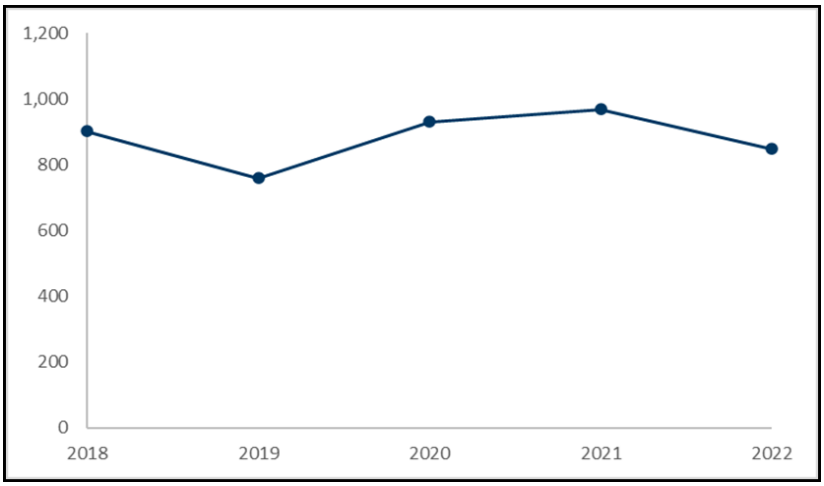
[31] Ex. CTL-13 at 8 (Rejanovinsky Direct).
[32] Ex. CTL-13 at 8 (Rejanovinsky Direct); Ex. CTL-4 at 5-6 (Mohr Rebuttal).
[33] Ex. CTL-6 at 6 (Ardoyno Direct).
[34] Ex. CTL-6 at 6-7 (Ardoyno Direct).
[35] Ex. CTL-6 at 7 (Ardoyno Direct).

or were fully-allocated to other jobs by the time the out-of-service call came in.[36] These efforts to service its voice service customers first certainly demonstrates the Company's commitment to these customers and to working toward the objective set forth in the rule. Moreover, it demonstrates the utter baselessness of accusations that the Company as "unofficially abandoned wireline customers," as alleged by the OAG.[37]

In their attempt to paint the Company as uncaring about its voice service customers, the Agencies distort the record, particularly regarding the Company's actions with respect to its workforce and its spending on its Minnesota network. For example, the Department chides the Company for an alleged drastic cut in field technician positions in December 2021.[38] That simply never happened, and it is unclear why the Department believes that it did. What *has* happened is that the Company's technician headcount has declined over the five year period of 2018 – 2022 at a rate slightly less than the decline in the number of access lines.[39] Moreover, this time period includes the Company's discontinuance of its Prism video service product, contributing to the technician workforce reduction. Overall, the Company's management of its workforce has kept the number of technicians per retail access line quite stable over this time period, as shown in Figure 10 of Mr. Turner's Rebuttal Testimony:[40]

[36] Ex. CTL-6 at 7 (Ardoyno Direct).
[37] OAG Initial Br. at 1.
[38] DOC Initial Br. at 5.
[39] Ex. CTL-19, Sched. 1 at ¶ 53 (Turner Rebuttal).
[40] Ex. CTL-19, Sched. 1 at ¶ 101 (Turner Rebuttal).

Retail Access Lines per CenturyLink Technician



The Department also criticizes the Company for allegedly not spending sufficiently on "proactive rehabilitation," or "rehab" work. Again, the Department distorts the record, by focusing solely on the Company's "transformation" budget, as though that is the only manner in which rehabilitation projects are funded.[41] However, the Company has explained that it does not separately track all "rehab" funding and that, in addition to the transformation budget, proactive rehabilitation projects are funded in a number of other different ways, including by the Company's capital budget and by local expense funds.[42] And while the OAG accuses the Company of "financially starving repair efforts," the record demonstrates that the Company continues to invest millions of dollars in its Minnesota network each year, and those investments have allowed the Company to

[41] *See* DOC Initial Br. at 5 (citing Ex. DOC-6 at 4 (Webber Surrebuttal)).
[42] Ex. DOC-9 at 5 (Ardoyno Rebuttal); Evid. Hrg. Tr. Vol. 1 (Dec. 12, 2023) at 229 (Ardoyno); Ex. DOC-11 at 5 (Ardoyno Surrebuttal).

continue its strong network performance, with trouble rates below one percent each year and declining significantly from 2019 to 2022.[43]

Finally, the Department further mischaracterizes the record when it cites Ms. Gonzalez's testimony for the proposition that CenturyLink is a carrier of last resort.[44] The Department's Initial Brief appears to confuse Ms. Gonzales' testimony, which argues that in some cases, CenturyLink may be the only available landline option available, with a legal standard that is not relevant to this case. "Carrier of last resort" is an industry legal term with specific rights and obligations that exist in some states.[45] Minnesota statutes do not explicitly apply such an obligation, and Ms. Gonzales' testimony makes no such claim. Because this proceeding relates to service quality rules and not the scope of carrier of last resort obligations, such issues are not relevant to this proceeding.

III. THE AGENCIES CREATE NEW STANDARDS NEVER SET FORTH IN COMMISSION RULES.

Because the Agencies are unable to demonstrate noncompliance with the rules as written, given the Company's strong overall network performance in Minnesota, the Agencies continue to encourage the ALJ and Commission to apply new standards to the Company, despite that these so-called "standards" are found nowhere in Minnesota law.

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[43] Ex. CTL-19, Sched. 1 at ¶ 81 (Turner Rebuttal); Ex. CTL-21, Sched. 1 at ¶ 8 (Turner Surrebuttal).
[44] DOC Initial Br. at 3 (citing Ex. DOC-1 at 10 (Gonzalez Direct)).
[45] *See, e.g.*, § 4901:1-6-27 Ohio Administrative Code and § 4927.11 Ohio Revised Code, available at http://codes.ohio.gov/orc/4927.11 (providing that an incumbent local exchange carrier shall provide basic local exchange service to all persons or entities in its service area).

The Company cannot be held to standards it never knew existed and the Agencies' recommendations must be rejected.

First, the Agencies ask the Commission to create a new standard of "chronic trouble," defining that term as a customer experiencing four or more trouble tickets over the past five years, and then apply that standard by ordering the Company to take action on a customer-by-customer basis with respect to every customer meeting this definition.[46] The notion that four or more trouble tickets on a customer account over a five year period constitutes "chronic trouble" or violates service quality standards appears nowhere in Minnesota rules or in any Commission precedent.[47] It is purely a creation of Department witness Mr. Webber. And as Company witness Mr. Turner noted, Mr. Webber's proposed standard goes far beyond any requirement contemplated under the Telephone Utilities Rules.[48] Moreover, this proposed new "standard" could lead to a finding that "chronic troubles" exist on a line even if there are fundamentally different kinds of problems, or problems reported multiple years apart, on that line.[49] Because of the variation in the nature or kinds of trouble that can be experienced on a voice service line, a crude tool that aggregates troubles across a period spanning multiple years simply does not provide any meaningful insights as to the quality of the service being provided. As Company witness

[46] The Company discusses the Agencies' proposed remedies in the following section of this Reply Brief.
[47] As Mr. Turner noted, what *does* have precedent is the "repeat trouble" standard used in CenturyLink's 2009 AFOR and, although that standard no longer applies to the Company, it has been in compliance with it nonetheless. Ex. CTL-19, Sched. 1 at ¶¶ 89-91 (Turner Rebuttal).
[48] Ex. CTL-19, Sched. 1 at ¶¶ 92-94 (Turner Rebuttal).
[49] Ex. CTL-19, Sched. 1 at ¶¶ 92-94 (Turner Rebuttal).

Mr. Ardoyno noted, over a period of years a customer could have had facilities switched, there may have been a construction project creating impacts, or any number of other factors could have come into play that would *not* indicate "chronic trouble" or a failure to provide "adequate service."[50] For all of these reasons, the Department's new "chronic trouble" standard must be rejected.

Second, the Agencies ask the Commission to establish a new standard relating to 100-pair cables. Under this new standard, if a 100-pair cable had 10 closed trouble tickets in 12 months, and 75% or more of the troubles on that cable were coded with CenturyLink's general category of Cause Code 310, the Company would be required to take some specific action with respect to that 100-pair cable.[51] As noted by Mr. Ardoyno, the 310 cause code is extremely broad, and is often used by technicians even when a more precise code should be used.[52] Again, nothing in the Telephone Utilities Rules suggests anything approximating this standard, which was also created by Mr. Webber. Moreover, looking at a raw number of trouble reports, combined with the use of a general code, raises several concerns, including completely ignoring the regulatory emphasis on trouble report *rates*.[53] This newly proposed standard, having no basis in Minnesota law, must also be rejected.

[50] Evid. Hrg. Tr. at 225 (Dec. 13, 2023) (Ardoyno).
[51] DOC Initial Br. at 27, citing Ex. DOC-5 at 15-16 (Webber Rebuttal).
[52] Ex. CTL-11 at 8 (Ardoyno Surrebuttal).
[53] Ex. CTL-21, Sched. 1 at ¶ 17 (Turner Surrebuttal).

IV. THE AGENCIES' "REMEDIES" LACK RECORD SUPPORT AND RUN COUNTER TO THE PUBLIC INTEREST.

To address the alleged violations of these newly-created standards, the Agencies recommend imposing a laundry list of requirements on the Company, including: (1) reviewing and rehabbing "all outside plant and equipment" that serves the over 4000 customers who meet Mr. Webber's definition of experiencing "chronic trouble and doing so within 24 months;" and (2) reviewing and rehabbing the over 200 100-pair cables that meet Mr. Webber's definition of "100 pair cable trouble."

Department witness Ms. Gonzalez sponsored the Agencies' recommended "remedies" in this proceeding.[54] Ms. Gonzalez has never been responsible for designing, operating or maintaining a network and does not claim expertise on such matters.[55] Similarly, Ms. Gonzalez has never been responsible for managing a technician workforce.[56] In developing her recommendations, Ms. Gonzalez did not attempt to determine the cost of the actions she recommends be required of the Company.[57] Moreover, to the extent her recommendations apply on a customer-by-customer basis, Ms. Gonzalez did not attempt to determine whether that customer has the option of taking voice service from another provider.[58] Finally, nothing in either Ms. Gonzalez's testimony, nor in any other witness's testimony, attempts to quantify the benefits of imposing the Agencies'

[54] *See* Evid. Hrg. Tr. (Dec. 13, 2023) at 107-108 (Webber) (noting that Ms. Gonzalez sponsors all of the Department's recommendations); OAG Initial Br. at 16 (generally supporting the Department recommendations).
[55] Evid. Hrg. Tr. (Dec. 13, 2023) at 80-81 (Gonzalez).
[56] Evid. Hrg. Tr. (Dec. 13, 2023) at 80 (Gonzalez).
[57] Evid. Hrg. Tr. (Dec. 13, 2023) at 87-88 (Gonzalez).
[58] Evid. Hrg. Tr. (Dec. 13, 2023) at 82-83 (Gonzalez).

recommended obligations on the Company. Lacking *any* expert testimony regarding either the cost or benefits of the Department's recommendations, the record cannot support imposing these obligations on the Company.

While the record does not support these remedies, the record does call into question their wisdom. For example, Company witness Mr. Turner analyzed six potential rehab projects highlighted by the Department.[59] As he noted, if these potential rehab projects were causing substantial problems, one would expect the wire centers where these projects were proposed to have seen higher trouble report rates.[60] However, *none* of the wire centers where these projects were proposed had average trouble report rates anywhere near the trouble report rule objective of 6.5 troubles or fewer per 100 lines.[61] For example, the technician's notes related to one of the highlighted projects stated that thousands of customers could be impacted. A review of trouble report data, however, showed a trouble report rate in 2022 of less than 0.8 per 100 lines for the wire center at issue, reflecting a network that is performing well on behalf of its customers.[62] In another instance, **[NOT PUBLIC DATA BEGINS**

NOT PUBLIC DATA ENDS]. DOC's discussion of this issue in its brief, however, omits testimony that explains why that project has not moved forward. Mr. Ardoyno explained that in fact, that entry referred to a **[NOT PUBLIC DATA BEGINS**

[59] Ex. CTL-21, Sched. 1 at ¶ 19 (Turner Surrebuttal).
[60] Ex. CTL-21, Sched. 1 at ¶ 19 (Turner Surrebuttal).
[61] Ex. CTL-21, Sched. 1 at ¶ 19 (Turner Surrebuttal).
[62] Ex. CTL-21, Sched. 1 at ¶ 19 (Turner Surrebuttal).

NOT PUBLIC DATA ENDS] and that in fact, no customers were affected by this issue.[63] Mr. Ardoyno additionally testified that the Company does not have **[NOT PUBLIC DATA BEGINS NOT PUBLIC DATA ENDS]** but in fact has far fewer, calling into question the accuracy of the technician's notations.[64]

Requiring the Company to perform work of unknown cost in an area demonstrating exceptional overall network performance is neither reasonable nor justified.

Mr. Turner also noted the dynamic telecommunications marketplace and the significant strides already made in Minnesota that has left just over 1.5 percent of the households in CenturyLink's copper-network service areas without access to competitive voice services.[65] This vibrant competition not only means that customers are not left "stranded," with no alternative, it incentivizes companies like CenturyLink to provide strong voice service at competitive prices.[66]

Finally, Mr. Turner explained that the Agencies' recommendations that the Commission micro-manage the Company's maintenance of its network would "ultimately create economic waste, requiring the Company to expend significant financial resources to continue augmenting a copper network that is no longer the voice service preference of the vast majority of Minnesotans" and limiting its ability to deploy newer technologies that customers largely prefer, and that support the State's universal broadband access goals.[67]

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[63] Evid. Hrg. Tr. at 218 (Ardoyno).
[64] Evid. Hrg. Tr. at 231 (Ardoyno).
[65] Ex. CTL-19, Sched. 1 at ¶ 49 (Turner Rebuttal); Ex. CTL-21, Sched. 1 at ¶ 25 (Turner Surrebuttal).
[66] Ex. CTL-21, Sched. 1 at ¶ 27 (Turner Surrebuttal).
[67] Ex. CTL-21, Sched. 1 at ¶ 28 (Turner Surrebuttal).

Lacking analytical support for its recommendations, the Department looks to other jurisdictions and claims that its recommendations are "broadly consistent" with remedies ordered by other state regulatory commissions.[68] They are not. The Company has already noted the dramatic differences between the Pennsylvania case relied upon by the Department, and the Pennsylvania statutes and rules underlying that case, and the current case. The Department also cites *In re Qwest Corp.*[69] for its assertion that the Oregon Commission ordered Qwest to restore basic telephone service to all customers in its service territory after a wildfire by December 1, 2020.[70] As an initial matter, to be clear, the Oregon commission *originally* ordered that "[f]or those customers Qwest finds it impracticable to serve using its own facilities, it will provide comparable voice service via other technology at no additional cost by December 1, 2020, and provide service to these customers using its own facilities by January 1, 2021."[71] However, as the Department buries in a footnote, that original order was replaced by a settlement agreement that modified the order requirements.[72] Moreover, the situation faced by the Oregon commission is clearly distinguishable in that it concerned restoration of service after an emergency and the commission relied, in part, on Oregon statutes related to public health and safety.[73] The commission also relied on the Oregon legislature's general broad grant of authority to the

[68] DOC Initial Br. at 29-30.
[69] Docket No. UM 2129, Order No. 20-431, 2020 WL 6886274, at *1 (Ore. PUC Nov. 18, 2020).
[70] DOC Initial Br. at 30.
[71] *In re Qwest Corp.*, 2020 WL 6886274, at *1.
[72] DOC Initial Br. at 30, n.117.
[73] *See In re Qwest Corp.*, Docket. No. UM 2129, Staff Report at 5 (Ore. PUC Nov. 10, 2020).

PUC,[74] which provides that "[t]he commission is vested with power and jurisdiction to supervise and regulate every public utility and telecommunications utility in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction."[75] Thus, the Oregon matter was grounded on an interpretation of statutes and emergency authority not present in the current matter before the Minnesota Commission.

In addition, the Department cites *In re Complaint Filing of Karen King Against Qwest Corp. Requesting a Formal Hearing on the Alleged Problems with Her Telecommunications Service (King)*[76] to support its argument that the Minnesota PUC has the legal authority to require certain remedial actions.[77] However, in *King*, the Wyoming commission applied a Wyoming statute that provides:

> Any customer, and the commission on its own motion, may complain concerning the quality of service provided by a telecommunications company. A complaint shall be noticed and heard as provided for in the Wyoming Administrative Procedure Act. The commission, after notice and hearing, may direct the telecommunications company to take whatever remedial action is ***technically feasible and economically reasonable to provide reasonably adequate service. The commission shall authorize a telecommunications provider to recover the cost of compliance*** as reasonably determined by any commission order under this section.[78]

As is evident, not only does this statute require the Wyoming commission to determine both the technical feasibility and the economic reasonability of any proposed remedial action, it expressly *requires* the Commission to allow recovery of the cost of

[74] *In re Qwest Corp.*, Docket. No. UM 2129, Staff Report at 5 (Ore. PUC Nov. 10, 2020).
[75] 57 Ore. Rev. Stat. § 756.040(2).
[76] Wy. PSC Docket No. 70000-1269-TC-06, 2008 WL 9895044 (Wy. PSC May 9, 2008).
[77] DOC Initial Br. at 30.
[78] Wyo. Stat. Ann. § 37-15-406(b).

compliance.[79] In short, the cases from other jurisdictions provide no support for the extreme interpretation of Minnesota's Telephone Utilities Rules, and the Commission's remedial powers under those Rules, argued by the Agencies here.

In addition to the cable-specific or customer-specific work the Agencies ask the Commission to order, they ask the Commission to insert itself into the relationship between the Company and its collective bargaining partner, CWA in a variety of ways, as discussed in the Company's Initial Brief.[80] The Agencies cite no authority the Commission possesses that would allow the State to require the Company to take specific actions with respect to its collective bargaining partner, and have not recognized the substantial and routine interactions the Company and CWA already have.[81]

Finally, the Department continues to recommend the Commission order CenturyLink to reduce its repair appointment windows from eight to four hours.[82] No rule language imposes such an obligation. Aside from questions of the Commission's authority to dictate business practices of a company to this degree, Company witness Mr. Ardoyno explained that such an order would have unintended and adverse consequences for customers. As Mr. Ardoyno explained, restricting the Company to a four-hour repair

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[79] This same statute was applied in the other Wyoming case cited by the Department, *In re Formal Complaint of Ron and Alyce Carter Against Qwest Corp. d/b/a/ CenturyLink QC Alleging Unreliable and Intermittent Telephone Service in Zone 3 of the Lusk, Wyoming Exchange*, Wy. PSC Docket No. 70000-1633-TC-16, 2017 WL 4552156 (Wy. PSC Oct. 6, 2017), a case where the complainants demonstrated that their phone did not work properly 50-60% of the time over the course of the previous year. *Id*. at ¶ 30.
[80] CTL Initial Br. at 54-55.
[81] Ex. CTL-11 at 11 (Ardoyno Surrebuttal).
[82] DOC Initial Br. at 29.

window will lead to more missed repair appointments, and will also lead to less efficiency in assigning technicians to repair tickets, which will, if anything, negatively impact the Company's ability to restore service in 24 hours.[83] As discussed above, 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.[84] 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. Mr. Ardoyno also indicated that with a narrower repair window, more appointments, not fewer appointments, will likely be missed.[85] Finally, restricting the repair window would not address the main challenge in completing repairs in a more timely manner – the Company's dwindling POTS customer base and the geographic spread of those customers.[86]

CONCLUSION

CenturyLink is committed to the provision of safe, reasonable and adequate performance, in compliance with Minnesota rules. After four years of investigation and litigation, the Agencies fail to meet their burden to demonstrate the Company is violating these rules. In fact, the record demonstrates the contrary – it demonstrates both the Company's strong overall network performance and its prioritization of Minnesota voice service customers over other aspects of its business. Creating new service quality measures

[83] Ex. CTL-11 at 12 (Ardoyno Surrebuttal).
[84] Ex. CTL-11 at 12 (Ardoyno Surrebuttal).
[85] Ex. CTL-11 at 12 (Ardoyno Surrebuttal).
[86] Ex. CTL-11 at 12 (Ardoyno Surrebuttal).

and then forcing the Company to make economically wasteful investments to address those new service quality measures does not serve CenturyLink's customers or the public interest. Moreover, such mandates would only tilt the competitive playing field against CenturyLink and further delay its ability to help Minnesota meet the aggressive universal broadband service goals established by the legislature. For these reasons, and as discussed in its Initial Brief, CenturyLink respectfully requests that the ALJ find the Company to be in substantial compliance with Minnesota rules and to recommend the Commission close this docket.

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