

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

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
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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

**REPLY BRIEF OF THE MINNESOTA  
DEPARTMENT OF COMMERCE**

February 7, 2024

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## INTRODUCTION

CenturyLink must provide each customer with adequate telephone service. CenturyLink does not dispute this general obligation. CenturyLink instead claims that the sole standard for assessing whether it is providing adequate service should be its statewide, monthly trouble report rate. This rate, however, hides the significant and persistent problems experienced by several thousand customers. Additionally, CenturyLink argues that the adequate service requirement should not be stringently applied because the rules are, in its view, vague and anachronistic, and because it faces increased market competition and a declining customer base. Finally, CenturyLink baldly claims that, even if it is violating the Commission's service quality rules, the Commission lacks authority to do anything meaningful about it.

CenturyLink's arguments should be rejected. Adequate service requires near continuous telephone access without repeated disruptions, and the Department and other intervenors have established by a preponderance of the evidence that CenturyLink is not providing it to approximately 4,460 customers in Minnesota.<sup>1</sup> The Department's recommended remedies are narrowly targeted to ensuring these customers receive adequate service and are within the Commission's authority to regulate traditional telephone service.

## ARGUMENT

CenturyLink claims that the sole basis for assessing adequate service should be its statewide, monthly trouble report rate. The company further appears to suggest that it is entitled to special treatment because the rules require interpretation and are outdated, and it is subject to

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<sup>1</sup> In its initial brief, the Department also established CenturyLink's failure to meet the Minn. R. 7810.5800 requirement to restore service within 24 hours at least 95% of the time. DOC Initial Br. at 22–25. Because CenturyLink concedes that it is not meeting the standard and the Department already addressed the company's legal arguments, the Department will not repeat those arguments here.

market competition and a declining customer base. And if it cannot avoid its obligations under the rules, CenturyLink insists without support that the Commission cannot order it to rehabilitate plain old telephone service (“POTS”) plant and equipment that is failing to provide adequate service.

**I. ADEQUATE SERVICE MUST BE ASSESSED ON A CUSTOMER-BY-CUSTOMER BASIS.**

Although CenturyLink agrees that Minn. R. 7810.3300 and Minn. R. 7810.5000 require the provision of safe and adequate service, the company claims that the appropriate—indeed, only—measure for assessing compliance is its Minn. R. 7810.5900 trouble report rate.<sup>2</sup> CenturyLink’s argument is legally flawed and could lead to absurd results. Additionally, CenturyLink wrongly claims that the Department has engaged in “mathematical gymnastics” to manufacture violations of invented standards.

**A. CenturyLink’s Trouble Report Rate Does Not Measure Whether Individual Customers Are Receiving Adequate Service.**

CenturyLink claims that because rules 7810.3300 and 7810.5000 do not expressly define adequate service, the appropriate measure is its trouble report rate. However, adequate service, as the Department established, must be assessed on a customer-by-customer basis.

CenturyLink states that because rules 7810.3300 and 7810.5000 do not provide specific metrics for assessing whether it is providing adequate service, the sole basis for answering that question is its compliance with the 7810.5900 trouble report rate rule.<sup>3</sup> This argument, however, violates applicable canons of construction. Like statutes, canons of construction govern administrative rules.<sup>4</sup> Canons of construction dictate that Minnesota Rules chapter 7810 must be

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<sup>2</sup> CTL Initial Br. at 33–34.

<sup>3</sup> *Id.* at 34.

<sup>4</sup> *In re Reissuance of an NPDES/SDS Permit to United States Steel Corp.*, 954 N.W.2d 572, 576 (Minn. 2021).

construed as a whole, giving effect wherever possible to all of its provisions.<sup>5</sup> CenturyLink’s argument violates this basic principle because it renders rules 7810.3300 and 7810.5000 duplicative of rule 7810.5900 by failing to give these rules distinct meanings. If the Commission had not intended for rules 7810.3300 and 7810.5000 to impose distinct obligations on telephone companies, including CenturyLink, it would not have promulgated them. The Administrative Law Judge should decline CenturyLink’s invitation to water down chapter 7810, particularly when the Commission rejected each of CenturyLink’s recent rulemaking petitions intended to accomplish just that.

Even if it did not violate basic canons of construction, CenturyLink’s argument that its proposed substitution is justified by the lack of a clear definition for adequate service in either rule is unwarranted. Adequate service requires that CenturyLink provide each customer with near continuous telephone access without repeated disruptions.<sup>6</sup> The Administrative Law Judge and the Commission are likewise well-equipped to interpret an undefined term of art appearing in law. Administrative law judges are “learned in the law and frequently have substantial experience with statutory interpretation” and are therefore well-equipped to interpret matters of law.<sup>7</sup> The Commission also may interpret undefined terms in its own rules. Commissioners are energy and telecommunications specialists who are appointed with consideration of past experience “in the profession of engineering, public accounting, property and utility valuation, finance, physical [and] natural sciences . . . .”<sup>8</sup> Nor have administrative law judges and the Commission hesitated to define

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<sup>5</sup> Minn. Stat. § 615.16 (2022); *Eclipse Architectural Grp., Inc. v. Lam*, 814 N.W.2d 692, 701 (Minn. 2012).

<sup>6</sup> DOC Initial Br. at 11.

<sup>7</sup> William J. Keppel, 21 Minn. Prac., Admin. Prac. & Proc. § 9.15 (2d ed. 2023).

<sup>8</sup> Minn. Stat. § 216A.03, subd. 1 (2022).

relevant terms of art arising in recent disputes.<sup>9</sup> In short, both administrative law judges and the Commission have the duty to apply their respective expertise and traditional interpretative tools to determine the meaning of adequate service. Applying these tools, the Administrative Law Judge and the Commission should reach the same conclusion as the Department: adequate service entitles each customer to near continuous telephone access without repeated disruptions. Blindly substituting one rule for another, as CenturyLink suggests, would abdicate this responsibility.

CenturyLink's proposal to use compliance with the 7810.5900 trouble report rate rule as a proxy for adequate service under rules 7810.3300 and 7810.5000 would further lead to absurd results, violating yet another canon of construction.<sup>10</sup> The trouble report rule 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.<sup>11</sup>

Under CenturyLink's interpretation, as long as no more than 7.9 customers out of every 100 customers report troubles, then the company is providing all customers with adequate service. This means, for example, if the same 7 customers out of 100 reported once a month, every month that

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<sup>9</sup> See, e.g., *In re Review of the July 2018–December 2019 Annual Automatic Adjustments Reports*, Docket No. E-999/AA-20-171, ORDER ADOPTING ADMINISTRATIVE LAW JUDGE REPORT AS MODIFIED & REQUIRING REFUND (Feb. 25, 2022) (eDocket No. [20222-183172-01](#)) (concluding that the electric company had not employed “good utility practice” in maintaining certain components of a coal-fired power plant); *In re Review of the 2017-2018 Annual Automatic Adjustment Reports for All Elec. Utils.*, Docket No. E-999/AA-18-373, NOTICE OF & ORDER FOR HEARING at 10 (July 13, 2022) (eDocket No. [20227-187362-04](#)) (assessing whether any or all of the energy replacement costs incurred by the utility were reasonably and prudently incurred, applying “good utility practice.”).

<sup>10</sup> See Minn. Stat. § 645.17 (disfavoring interpretations that lead to “absurd, impossible of execution, or unreasonable” results).

<sup>11</sup> Minn. R. 7810.5900 (2023). The Department understands that CenturyLink tracks its trouble report rate by telephone exchange and not by “repair bureau” as the rule provides. The Department believes these are functionally equivalent for the purposes of assessing compliance.

they lack service, CenturyLink would be in compliance with rule 7810.5900 and therefore would be providing adequate service under rules 7810.3300 and 7810.5000, even as those customers continuously lack the ability to place or receive calls. That CenturyLink’s interpretation would deem a circumstance in which nearly 10% of its customers continuously lack service as “adequate” is plainly absurd. The rule 7810.5900 trouble report rate is a measure of overall network health. In contrast, rules 7810.3300 and 7810.5000 assess whether specific customers are receiving adequate service. There is no legal or even practical basis to conflate them.

**B. The Department’s Conclusion That 4,460 Customers Are Not Receiving Adequate Service Is Grounded in Sound Analysis of Record Evidence.**

Confronted with clear evidence that some customers are not receiving adequate service, CenturyLink’s strawman argument accuses the Department of developing “its own standards for determining compliance, untethered to the actual language of the applicable rules” and engaging in “mathematical gymnastics” to find violations.<sup>12</sup> The record supports the Department.

The Department has not developed its own standards. The only standards at issue in this proceeding are those found in chapter 7810 of the Minnesota Rules. To that end, the Department’s expert evaluated whether all CenturyLink customers are receiving adequate service under rules 7810.3300 and 7810.5000. Because this term of art is not defined in the Commission’s rules, he relied on decades of industry experience to evaluate whether CenturyLink is providing adequate service.<sup>13</sup> The Department’s expert also surveyed commonly accepted practices or industry standards derived from past Commission proceedings and similar matters across the United States.<sup>14</sup> This is a well-accepted legal practice both at the Commission and generally in specialized

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<sup>12</sup> CTL Initial Br. at 34–35, 38.

<sup>13</sup> Ex. DOC-4 at 11 (Webber Direct); Ex. DOC-4, JDW-D-2 at 1–2 (Webber Direct).

<sup>14</sup> Ex. DOC-4 at 27–31 (Webber Direct) (surveying prior alternative form of regulation plans, the Frontier settlement approved by the Commission, and service quality rules in other jurisdictions).

legal disputes.<sup>15</sup> As a result, he concluded that the POTS facilities, which support 4,460 customers and that CenturyLink technicians have concluded are “worn,” “corroded,” or are otherwise deteriorated, are not being sufficiently maintained to deliver adequate service.<sup>16</sup>

CenturyLink accuses the Department of “mathematical gymnastics,” but the accusation is again long on rhetoric and short on substance. To be clear, the Department’s expert reviewed 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. He displayed these results in a table.<sup>17</sup> The Department then argued that the 4,460 customers who experienced at least four troubles over this time frame were not receiving adequate service because their telephone access was not “nearly continuous without repeated disruptions.”<sup>18</sup> Notably, CenturyLink has not disputed the finding that these 4,460 customers have experienced at least four troubles, and in some cases many more, over the 4.5-year timeframe. Nor could it; this analysis relies on basic math—addition to count how many problems each customer experienced and then division to calculate averages—to evaluate CenturyLink’s *own* trouble report data. This is hardly the work of a mad, or even outcome-determinative, data scientist.

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<sup>15</sup> See, e.g., Minn. Stat. §§ 336.2-202, .1-303 (2022) (permitting parties to introduce evidence of common industry practices or methods necessary explain or supplement the terms of any writing stating the agreement of the parties); *In re Review of the July 2018–December 2019 Annual Automatic Adjustments Reports*, Docket No. E-999/AA-20-171, ORDER ADOPTING ADMINISTRATIVE LAW JUDGE REPORT AS MODIFIED & REQUIRING REFUND (Feb. 25, 2022) (eDocket No. [20222-183172-01](#)) (construing the undefined industry term “good utility practice”); *In re Review of the 2017-2018 Annual Automatic Adjustment Reports for All Elec. Utils.*, Docket No. E-999/AA-18-373, NOTICE OF & ORDER FOR HEARING at 10 (July 13, 2022) (eDocket No. [20227-187362-04](#)) (same).

<sup>16</sup> Ex. DOC-4 at 49–50 (Webber Direct); Ex. DOC-5 at 20 (Webber Rebuttal).

<sup>17</sup> Ex. DOC-5 at 18–20 (Webber Rebuttal).

<sup>18</sup> DOC Initial Br. at 10–14.



The record shows that although CenturyLink’s overall statewide network performs reasonably, certain customers—most commonly located in the rural periphery—are not receiving adequate service. CenturyLink serves approximately 233,000 customer lines in Minnesota.<sup>19</sup> About 4,460 (about 2%) of them are receiving inadequate service.<sup>20</sup> These customers, like most Americans, depend on reliable telephone service. Customers deprived of adequate service are “disadvantage[d] in accessing social and economic resources and opportunities.”<sup>21</sup> The need for adequate service is perhaps even more acute in rural areas where customers may be geographically isolated. It is, thus, no consolation to these 4,460 customers—who endure regular outages or other service problems year after year—that they are not particularly significant relative to CenturyLink’s entire Minnesota operation or generating sufficient complaints to tip the company’s statewide, monthly trouble report rate average into noncompliance. It is precisely this sort of situation that the Commission’s 7810.3300 and 7810.5000 rules guard against. The rules do not allow a company to carve part of its customer base out of its obligation to provide adequate service. The Commission should not permit CenturyLink to add an exception to the 7810.3300 and 7810.5000 adequate service requirement.

The question before the Administrative Law Judge and the Commission is clear: how many service outages or disruptions must a customer endure before his or her service is inadequate under rules 7810.3300 and 7810.5000. The Department established that customers who experience disruptions caused by the same deficient equipment year-after-year are not receiving adequate

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<sup>19</sup> Evid. Hrg. Tr. at 159–160 (Mohr); Ex. DOC-1 at 11 (Gonzalez Direct).

<sup>20</sup> Ex. DOC-5 at 19 (Webber Rebuttal); Ex. DOC-2 at 8–9 (Gonzalez Rebuttal).

<sup>21</sup> See, e.g., *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).

service.<sup>22</sup> Other than accusing the Department of “mathematical gymnastics” or employing an “exceptionally capacious method[ology],”<sup>23</sup> the company has not disputed the substance of the Department’s actual findings. In fact, CenturyLink’s own director of network operations admitted that he would not consider a customer experiencing multiple disruptions a year to be receiving adequate service.<sup>24</sup> Interpreting its own rules, the Commission should reach the same conclusion.

## **II. THERE ARE NO EXCEPTIONS TO CENTURYLINK’S OBLIGATION TO PROVIDE EACH CUSTOMER WITH ADEQUATE SERVICE.**

CenturyLink devotes significant portions of its brief to discussing the changing competitive landscape and its subjective commitment to its Minnesota customers.<sup>25</sup> Remarkably, CenturyLink even appears to suggest that these claimed circumstances entitle it to special or lenient treatment under the Commission’s 7810 rules, urging the Commission to consider state broadband deployment goals and the existence of market competition in evaluating CenturyLink’s compliance with the telephone service quality rules.<sup>26</sup>

Neither market competition nor statewide broadband deployment goals exempt CenturyLink from the Commission’s 7810 rules. Beyond the text of the rules not supporting this argument, CenturyLink’s public policy and international government affairs director concurred, testifying that the Commission has authority over telecommunication services, and that CenturyLink has an ongoing responsibility to comply with the 7810 service quality rules.<sup>27</sup> Nor does the recently enacted Competitive Market Regulation statute discussed by CenturyLink excuse it from providing POTS customers with adequate service.<sup>28</sup> Despite its discussion of how the

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<sup>22</sup> DOC Initial Br. at 12–14.

<sup>23</sup> CTL Initial Br. at 34–35, 41.

<sup>24</sup> Evid. Hrg. Tr. at 224–225 (Ardoyno); DOC Initial Br. at 13.

<sup>25</sup> *See, e.g.*, CTL Initial Br. at 14–20.

<sup>26</sup> *Id.* at 7–9.

<sup>27</sup> Evid. Hrg. Tr. at 150–151 (Mohr).

<sup>28</sup> CTL Initial Br. at 8; Minn. Stat. §§ 237.011, .025.

statute has reduced some of its regulatory obligations, CenturyLink ignores that the plain language of the statute expressly obligates it to comply with Minnesota Rules chapter 7810.<sup>29</sup>

The existence of state telecommunications policy goals and goals for broadband deployment also do not exempt CenturyLink from providing all customers with adequate POTS service.<sup>30</sup> These goals are irrelevant to this proceeding. Unlike the Commission's 7810 service-quality rules, these generalized policy statements do not create any enforceable rights or obligations for CenturyLink.<sup>31</sup> Even if they were applicable to this proceeding, the depth of CenturyLink's commitment to these policy goals appears shallow at best. Elsewhere in its brief, CenturyLink pivots away from its professed interest in meeting Minnesota's broadband goals, claiming that either everyone in Minnesota already has high-speed internet or that the Commission has no jurisdiction over broadband facilities.<sup>32</sup> CenturyLink cannot use purported market conditions or generalized statements of public policy to escape regulatory obligations specific to its performance.

Finally, the Commission has heard CenturyLink's arguments before and repeatedly rejected them. In 2014, the Commission denied CenturyLink's petition for a variance from Minn. R. 7810.5800's service restoration requirements, concluding in part that the legislature had "recognized the continuing importance of service quality" by directing the Commission "to consider, in its oversight of telecommunications services, maintaining or improving service

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<sup>29</sup> Minn. Stat. § 237.025, subd. 6.

<sup>30</sup> CTL Initial Br. at 8–9.

<sup>31</sup> See, e.g., *In re PERA Police & Fire Plan Line of Duty Disability Benefits of Brittain*, 724 N.W.2d 512, 518 n.6 (Minn. 2006) ("[W]here there is conflict between general introductory or explanatory provisions and the plain meaning of the specific words of the operative provision, the specific control the general.")

<sup>32</sup> CTL Initial Br. at 5, 15.

quality.”<sup>33</sup> In 2016, the Commission denied another CenturyLink petition to eliminate or significantly curtail the chapter 7810 service quality rules, concluding that “the record does not demonstrate that effective competition exists throughout Minnesota or that service quality would be maintained if the rule standards were repealed.”<sup>34</sup> In 2021, CenturyLink filed yet another rulemaking petition that sought to “modernize” Minn. R. 7810.5200 and Minn. R. 7810.5800.<sup>35</sup>

The Commission again rejected CenturyLink’s petition. The Commission concluded:

Although landlines are no longer the most advanced telecommunications technology on the market, many customers still rely primarily on landline phone service, often because they cannot access broadband or other options. These customers still depend on quality service in a timely manner to preserve access to basic communications services and to protect their health and safety. The Commission is skeptical that a reduction in service quality standards would better serve the public interest.<sup>36</sup>

In short, the Commission has had numerous opportunities to revise, eliminate, or vary its telephone service quality rules and has repeatedly declined. Importantly, the Commission rejected each of CenturyLink’s petitions in the last ten years, underscoring the ongoing importance of the protections afforded by the rules. There is simply no support for CenturyLink’s veiled suggestion that the 7810 rules are somehow no longer applicable or that it is otherwise entitled to special treatment.<sup>37</sup>

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<sup>33</sup> *In re CenturyLink, Inc. Pet. for a Variance to Minn. R. 7810.5800*, Docket No. P-421/AM-14-255, ORDER DENYING VARIANCE REQUEST at 9 (Aug. 11, 2014) (eDocket No. [20148-102174-01](#)).

<sup>34</sup> *In re Rulemaking to Consider Possible Amendments to Minn. Rules 7810.4100 through 7810.6100*, Docket No. P-999/R-14-413, ORDER CLOSING RULEMAKING PROCEEDING & INITIATING STAKEHOLDER WORKGROUP PROCESS at 14 (May 2, 2016) (eDocket No. [20165-120922-02](#)).

<sup>35</sup> *In re Petition for a Rulemaking Regarding Minn. Rules Chapter 7810*, Docket No. P-421/M-21-381, CenturyLink Petition at 14–20 (JUNE 7, 2021) (eDocket No. [20216-174848-01](#)).

<sup>36</sup> *In re Petition for a Rulemaking Regarding Minn. Rules Chapter 7810*, Docket No. P-421/M-21-381, ORDER DENYING PETITION at 5 (Aug. 5, 2021) (eDocket No. [20218-176852-01](#)).

<sup>37</sup> CTL Initial Br. at 5, 9.

### **III. THE DEPARTMENT’S RECOMMENDED REMEDIES ARE FIRMLY WITHIN THE COMMISSION’S AUTHORITY TO REGULATE TRADITIONAL TELEPHONE SERVICE.**

To remedy CenturyLink’s failure to provide 4,460 customers with adequate service, the Department recommended that the company be required to investigate and promptly rehab deficient plant and equipment identified by the Department’s expert. The Department also recommended that the Commission require the company to implement a preventative “Plant Pride” program to prevent future network deterioration.

#### **A. The Commission Has Authority to Order CenturyLink to Rehabilitate POTS Facilities That Are Not Delivering Adequate Service.**

CenturyLink wrongly asserts that the Department’s recommendations have “no basis in Minnesota statutes or rules and no precedent in case law.”<sup>38</sup> The Commission has had broad authority to regulate traditional POTS service for more than a century.<sup>39</sup> More recently enacted statutes similarly grant the Commission authority to make orders regarding the “practices and services of telephone companies,” and the authority to “compel performance” or “other appropriate action.”<sup>40</sup> The Commission, moreover, could condition CenturyLink’s ongoing possession of a

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<sup>38</sup> *Id.* at 53.

<sup>39</sup> 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 originally was created in 1871, Minn. Laws. 1871, ch. 22, and has regulated telephone service since 1915. Minn. Laws. 1915, ch. 152.

<sup>40</sup> Minn. Stat. §§ 237.081, subd. 4(2)–(3), .461, subd. 1; *In re Deregulation of the Installation & Maint. of Inside Wiring*, Docket No. C-86-743, FINDINGS OF FACT CONCLUSION OF LAW & ORDER, 1986 WL 1299676, at \*2 (Dec. 31, 1986) (eDocket No. [129138](#)).

certificate of authority upon compliance with any remedy ordered in this matter.<sup>41</sup> Even following the enactment of the Telecommunications Act of 1996, federal law likewise still reserves jurisdiction over the “regulations for or in connection with intrastate communications service” to the states.<sup>42</sup> Moreover, all parties agree that this matter only involves POTS service which remains subject to the full scope of the Commission’s traditional authority.<sup>43</sup> To that end, CenturyLink acknowledged at the hearing that the Commission has authority over telecommunication services including POTS service.<sup>44</sup> Because CenturyLink is failing to provide 4,460 customers with adequate service, it is firmly within the Commission’s authority to order CenturyLink to rehab, including both repair and replace, the responsible plant and equipment.

**B. A “Plant Pride” Program is a Modest Requirement to Ensure Adequate Service on an Ongoing Basis.**

Responding to the Department’s Plant Pride program recommendations, CenturyLink asserts that the Department and Commission lack authority to insert themselves “into the Company’s relationship with its collective bargaining partner.”<sup>45</sup> CenturyLink overstates the scope of the Department’s modest recommendations. The Department has not attempted to rewrite the collective bargaining agreement between CenturyLink and the Communications Workers of America (“CWA”). The Department’s recommendations are squarely aimed at ensuring compliance with the Commission’s rules by improving CenturyLink’s proactive rehab practices.

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<sup>41</sup> 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.”).

<sup>42</sup> 47 U.S.C. § 152(b) (2021).

<sup>43</sup> CTL Initial Br. at 5 (“[T]his proceeding concerns only the non-VoIP voice telephone service, referred to as plain old telephone service (“POTS”), provided by the Company to its Minnesota customers.”).

<sup>44</sup> Evid. Hrg. Tr. at 150–151 (Mohr).

<sup>45</sup> CTL Initial Br. at 53.

Moreover, the Department’s recommendations, in many ways, mark only a modest extension or codification of CenturyLink’s claimed existing practices.

The Department’s recommendations do not intrude into the CenturyLink-CWA collective bargaining relationship. The Department has 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.<sup>46</sup> The only recommendation that lightly touches the CWA is the requirement that CenturyLink and CWA representatives meet on a quarterly basis to discuss proposed proactive rehab projects submitted by field technicians from the prior three months. This should not be a major imposition for the company. CenturyLink already claims to meet with CWA officials on a regular basis.<sup>47</sup> This recommendation, moreover, is consistent with practices agreed to by CenturyLink’s peer competitors in other states.<sup>48</sup>

While it amounts to only a modest extension of CenturyLink’s claimed existing practices, quarterly meetings between CenturyLink and CWA to discuss proposed proactive rehab projects is a critical component to the success of the “Plant Pride” program concept. Ultimately, the program is intended to empower field technicians to identify and report plant and equipment that is not delivering adequate service to customers.<sup>49</sup> It is further intended to ensure that CenturyLink reviews and takes action on these reports within a reasonable amount of time.<sup>50</sup> These meetings coupled with regular reporting to the Commission on the status of these proposed proactive rehab

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<sup>46</sup> National Labor Relations Act, 29 U.S.C. § 158(a)(5), (d) (2022) (identifying wages, hours, and other terms and conditions of employment as issues subject to mandatory bargaining).

<sup>47</sup> Ex. CTL-11 at 11 (Ardoyno Surrebuttal); CTL Initial Br. at 54.

<sup>48</sup> Ex. DOC-2 at 9–10 (Gonzalez Rebuttal).

<sup>49</sup> *Id.* at 14.

<sup>50</sup> *Id.* at 12–13.

projects will help ensure that CenturyLink is responsive to field technician submissions.<sup>51</sup> As the record in this matter demonstrates, CenturyLink currently allows problems identified by technicians to linger unaddressed for years at a time.<sup>52</sup> Regular meetings between CenturyLink and CWA leadership coupled with ensuring that reporting technicians receive notification of how their proposed proactive rehab projects were ultimately resolved is again intended to empower field technicians to assist in remedying ongoing plant deterioration that negatively impacts customer service.<sup>53</sup> Absent evidence that CenturyLink takes these reports seriously and is endeavoring to resolve them, there will be little incentive for field technicians to meaningfully participate.

Ultimately, CenturyLink is responsible for determining how to resolve proposed rehab projects identified by field technicians under the Department's Plant Pride program recommendation. Hopefully, quarterly meetings with the CWA will result in a consensus outcome, but if not, the Department's recommendation only requires that CenturyLink note the disagreement with CWA in the reporting to the Commission.<sup>54</sup> And, again, the purpose of the reporting is not for the Commission or the Department to then mediate disputes between CenturyLink and the 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.<sup>55</sup> The experience of similar programs in New York and Pennsylvania, moreover,

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<sup>51</sup> *Id.* at 14–15.

<sup>52</sup> DOC Initial Br. at 18–21; Ex. DOC-5 at 12–14 (Webber Rebuttal); Ex. DOC-5, JDW-R-2 at 6 (Webber Rebuttal).

<sup>53</sup> Ex. DOC-2 at 14 (Gonzalez Rebuttal).

<sup>54</sup> *Id.* at 14–15.

<sup>55</sup> *Id.* at 15.



suggests that regular meetings and reporting will create incentives for CenturyLink to pursue better outcomes for customers.<sup>56</sup>

## CONCLUSION

For the reasons provided in the Department's initial brief and above, the Department respectfully requests that the Administrative Law Judge find that CenturyLink has violated rules 7810.3300, 7810.5000, and 7810.5800, and recommend that the Commission adopt the Department's proposed remedies.

Dated: February 7, 2024

Respectfully submitted,

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<sup>56</sup> *Id.* at 10–12.