

STATE OF MINNESOTA  
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
David C. Boyd	Commissioner
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Betsy Wergin	Commissioner

**In the Matter of the CenturyLink, Inc.  
Petition for Waiver of Minnesota Rule Part  
7810.5800**

**Docket No. P421/AM-14-255**

**COMMENTS OF JOINT CLECS**

Eschelon Telecom of Minnesota, Inc. d/b/a Integra, Integra Telecom of Minnesota, Inc. d/b/a Integra, **tw telecom of minnesota llc**, US Link Inc. d/b/a/ TDS Metrocom, and Velocity Telephone, Inc. (“Joint Competitive Local Exchange Carriers,” or “Joint CLECs”) respectfully submit these comments in response to CenturyLink’s *Petition for Waiver*.<sup>1</sup>

**Background**

On March 26, 2014, CenturyLink filed a petition for waiver of Minnesota Rule Part 7810.5800 and a request for a rulemaking to review service quality rules. CenturyLink cited changes in the telecommunications industry “over the last several decades”<sup>2</sup> and increased consumer use of “wireless service”<sup>3</sup> as justifications for a review of the service quality rules. The Commission opened dockets P-421/AM-14-256,<sup>4</sup> to address the petition for rulemaking, and P-421/AM-14-

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<sup>1</sup> *Petition for Waiver of Minnesota Rule Part 7810.5800 and Request for Rulemaking to Modernize Service Quality Rules*, In the Matter of the Petition of CenturyLink, Inc. for Waiver of Minnesota Rule Part 7810.5800, PUC Docket Number 421/AM-14-255, March 26, 2014 (“Petition for Waiver”).

<sup>2</sup> *Petition for Waiver*, p. 1.

<sup>3</sup> *Petition for Waiver*, p. 1.

<sup>4</sup> In the Matter of the CenturyLink, Inc. Petition for Rulemaking to Revise Service Quality Rules, PUC Docket Number 421/AM-14-256, March 26, 2014.

255,<sup>5</sup> to address the Rule 7810.5800 waiver request, and solicited comments regarding CenturyLink's petition.<sup>6</sup>

## **Introduction**

The Joint CLECs opposed CenturyLink's *Request for Waiver* unless and until appropriate conditions are put in place to protect wholesale service quality governed by CenturyLink's Performance Assurance Plan ("CPAP"),<sup>7</sup> which is part of a participating carrier's interconnection agreement. This protection can be achieved by:

- 1) Clarifying that the *Request for Waiver* applies solely to retail service quality, and that any changes to wholesale service quality plans must be made via the CPAP<sup>8</sup> incorporated into a competitive carrier's interconnection agreement.
- 2) Refraining from allowing any changes in retail service quality associated with Minnesota Rule Part 7810.5800 until CenturyLink and competitive carriers are able to negotiate acceptable protections for the wholesale service quality measures impacted.

## **Response to Commission Questions**

1. *Does a waiver of Minn. Rule Part 7810.5800 comport with Minn. State. § 237.06?*<sup>9</sup>

Minnesota Statute § 237.06 requires "reasonably adequate service,"<sup>10</sup> but leaves discretion to the Commission to determine what is *reasonably adequate*. Rule 7810.5800 establishes expectations in order to ensure reasonably adequate service, such as requiring:

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<sup>5</sup> *Petition for Waiver*.

<sup>6</sup> *Notice of Comment Period*, In the Matter of the CenturyLink, Inc. for Waiver of Minnesota Rule Part 7810.5800, P421/AM-14-255, April 2, 2014 .

<sup>7</sup> The Minnesota CPAP can be found at <http://www.centurylink.com/wholesale/clecs/nta.html> under Exhibit K.

<sup>8</sup> Section 17.2 and 17.3 of the Minnesota CPAP.

<sup>9</sup> *Notice of Comment Period*, p. 1.

<sup>10</sup> Minnesota Statute § 237.06.

“reasonable efforts to prevent interruptions of service;”<sup>11</sup> service reestablishment “with the shortest possible delay;”<sup>12</sup> scheduled maintenance to “cause minimal inconvenience to customers;”<sup>13</sup> and customer notification “in advance of the interruption.”<sup>14</sup> This rule also creates an out-of-service standard of 95 percent of troubles cleared within 24 hours.<sup>15</sup>

Certainly the Commission can modify Rule 7810.5800 and still uphold Minnesota Statute § 237.06, but CenturyLink failed to demonstrate how a complete waiver of the rule is consistent with the statute. Rule 7829.3200 subpart 1 provides the requirements that must be met in order for a variance to the rules to be granted. These requirements are:

- A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. granting the variance would not adversely affect the public interest; and
- C. granting the variance would not conflict with standards imposed by law.<sup>16</sup>

CenturyLink attempts to address these requirements,<sup>17</sup> but CenturyLink’s only argument with respect to the law is that the “Commission has granted waivers of service quality rules in similar past situations,”<sup>18</sup> and that CenturyLink’s “AFOR contains no language prohibiting modifications to these standards.”<sup>19</sup>

CenturyLink’s reference to past Commission action is misplaced. CenturyLink relies upon the Commission’s 2005 AFOR Order,<sup>20</sup> but in that docket CenturyLink did not ask

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<sup>11</sup> Minnesota Rule Part 7810.5800.

<sup>12</sup> Minnesota Rule Part 7810.5800.

<sup>13</sup> Minnesota Rule Part 7810.5800.

<sup>14</sup> Minnesota Rule Part 7810.5800.

<sup>15</sup> Minnesota Rule Part 7810.5800.

<sup>16</sup> Minnesota Administrative Rule 7829.3200 Subp. 1.

<sup>17</sup> *Petition for Waiver*, pp. 5-8.

<sup>18</sup> *Petition for Waiver*, p. 8, referencing a 2005 AFOR order.

<sup>19</sup> *Petition for Waiver*, p. 8.

<sup>20</sup> *Petition for Waiver*, p. 8, footnote 5.

for a waiver of rules, but a “variance,”<sup>21</sup> and the standard associated with Minnesota Rule Part 7810.5200 was changed, not eliminated.<sup>22</sup>

2. *How would granting a waiver of Minn. Rule Part 7810.5800 support the Commission’s telecommunication service goals of (i) maintaining or improving quality of service and (ii) ensuring consumer protections are maintained in the transition to a competitive market for local telecommunications service?*<sup>23</sup>

(i) *Maintain or improve quality of service*

CenturyLink argues that waiver of Minnesota Rule Part 7810.5800 will provide it “the flexibility to dispatch its technicians to reflect its customer’s stated needs rather than in response to an outdated rule.”<sup>24</sup> CenturyLink suggests that relieving the “burden”<sup>25</sup> from the service quality standard in Rule 7810.5800 will improve repair of “broadband service.”<sup>26</sup> However, CenturyLink fails to provide any information that could support this such as: the amount of technician time that they expect to become available as a result of not having to comply with the current rule; the current out-of-service performance for broadband services; and the expected out-of-service performance improvement for broadband services. As a result, CenturyLink has failed to demonstrate that a waiver will maintain or improve quality of service.

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<sup>21</sup> In the Matter of the Petition of Qwest Corporation for Approval of its Revised Alternative Form of Retail Regulation Plan, Docket No. P-421/AR-05-1081, Order Approving Alternative Form of Regulation Plan, as Modified, December 23, 2005, p. 9.

<sup>22</sup> In the Matter of the Petition of Qwest Corporation for Approval of its Revised Alternative Form of Retail Regulation Plan, Docket No. P-421/AR-05-1081, Order Approving Alternative Form of Regulation Plan, as Modified, December 23, 2005, p. 9.

<sup>23</sup> Notice of Comment Period, p. 1.

<sup>24</sup> *Petition for Waiver*, p. 6.

<sup>25</sup> *Petition for Waiver*, p. 5.

<sup>26</sup> *Petition for Waiver*, p. 6.

(ii) *Ensure consumer protections*

The Joint CLECs are concerned that removal of service quality standards will result in a deterioration of wholesale service quality<sup>27</sup> and therefore is not in the public interest.<sup>28</sup> For example, CenturyLink refers to the current retail rules as “outdated,”<sup>29</sup> “monopoly era,”<sup>30</sup> “stringent,”<sup>31</sup> and “expensive.”<sup>32</sup> If CenturyLink is no longer required to comply with basic service requirements, and competitors are not competing based on quality of service<sup>33</sup> (and not every customer in every market may have a competitive choice), incentives for CenturyLink to maintain its existing standards, that it claims are *stringent* and *expensive*, are diminished. Further, CenturyLink’s reliance on wireless competition as part of the relevant market that will “dictate how providers behave”<sup>34</sup> is troublesome, as wireless service quality has been criticized for its poor signal, dropped calls, network busy signals, power issues, lack of coverage, and privacy issues.<sup>35</sup> In fact, instead of removing quality of service standards based on wireless competition as CenturyLink has suggested, some

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<sup>27</sup> For example, Oregon Staff recognized the risk that wholesale service quality could deteriorate when retail service quality standards are reduced. *Staff Comments*, In the Matter of Telecommunication Service Standard Revisions – Repair Clearing Time, AR 575, December 13, 2013, p. 2.

<sup>28</sup> Minnesota Administrative Rule 7829.3200(B) requires that any variance to Commission rules not “adversely affect the public interest.”

<sup>29</sup> *Petition for Waiver*, pp. 1 and 3.

<sup>30</sup> *Petition for Waiver*, p. 2.

<sup>31</sup> *Petition for Waiver*, p. 4.

<sup>32</sup> *Petition for Waiver*, p. 4.

<sup>33</sup> Every customer in every market may not have a competitive choice, let alone choice of a competitor competing based upon service quality.

<sup>34</sup> *Petition for Waiver*, p. 5.

<sup>35</sup> See, for example, <http://www.tdstelecom.com/CustomerService/WhyLandline.aspx>.

commissions are looking at imposing standards for wireless and other alternative technologies.<sup>36</sup>

One method to help ensure consumer protection is to not allow changes in retail service quality standards that are used as a comparison for wholesale service quality. The Joint CLECs purchase wholesale services from CenturyLink, which they rely upon along with their own network investments, to provision final products to end user customers within the CenturyLink service territory. The Joint CLECs are concerned that CenturyLink's petition for a rulemaking could potentially hamper the Joint CLECs' ability to offer high quality customer service to end users.

CenturyLink's petition should not directly impact its legal requirements with respect to its wholesale obligations as changes to the Minnesota CPAP are governed by interconnection agreements and the associated CPAP document.<sup>37</sup> CenturyLink's petition could, however, indirectly impact wholesale service quality reporting and wholesale service quality performance. CenturyLink's petition for a waiver raises concerns because some of the wholesale measures within the CPAP are measured against CenturyLink's retail performance contained in Rule 7810.5800.<sup>38</sup> The Joint CLECs oppose changes in retail service quality standards on which wholesale service quality performance relies, unless and until carriers can agree upon replacement

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<sup>36</sup> In a recent docket in California regarding universal service and provider of last resort obligations, the California Commission also expressed concerns about wireless service quality and recognized there may be a "need to identify, adopt, and enforce standards for wireless and other alternative technologies." See *Decision Adopting Basic Telephone Service Revisions*, Order Instituting Rulemaking Regarding Revisions to the California High Cost Fund B Program, Rulemaking 09-06-019, Decision 12-12-038, December 20, 2012, p. 46.

<sup>37</sup> The Commission recently approved changes to the CPAP in docket 13-733 MODIFICATION OF MN PERFORMANCE ASSURANCE PLAN TO MAKE IT CONSISTENT WITH SETTLEMENT AGREEMENT. October 25, 2013. Effective January 1, 2014

<sup>38</sup> See Table 1.

standards for wholesale service quality. For example, Mean Time to Restore (MR-6) for unbundled loops is measured in comparison to retail residential and business POTS, which is governed by Minnesota Administrative Rule 7810.5800. Relaxing the repair standard could result in a corresponding decrease in wholesale service quality performance. CenturyLink may still be able to comply with the current wholesale standard, parity with retail, despite declining wholesale service quality. CenturyLink should not be allowed to relax wholesale service quality performance as a result of eliminated rules associated with retail service quality performance.

**Table 1: List of Minnesota CPAP Measures with Corresponding Retail Service Quality Standard**

<b>Minnesota CPAP Measure</b>	<b>Products with Retail Comparison</b>	<b>Related Minnesota Administration Rule</b>
MR-5 – Troubles Cleared within Specified Intervals	DS1 Loops, DS1 EELs and LIS Trunks	7810.5800 INTERRUPTIONS OF SERVICE
MR-5 – Troubles Cleared within Specified Intervals (Diagnostic)	Sub-loops and Resale Business Single Line Service	7810.5800 INTERRUPTIONS OF SERVICE
MR-6 – Mean Time to Restore	Resale Residential Single Line Service, Sub-loops, LIS Trunks, analog loop, 2-wire non-loaded loop, xDSL capable loop, ADSL capable loop, DS1 Loop, and DS1 EEL	7810.5800 INTERRUPTIONS OF SERVICE
MR-9 – Repair Appointments Met (Diagnostic)	Residential Single Line Service	7810.5800 INTERRUPTIONS OF SERVICE

*(3) Does the Commission have the authority to place conditions on a waiver to allow, for example, incrementally reducing the outage frequency standard and/or incrementally*

*increasing the outage duration standard? If so, what conditions should be place on the waiver?*<sup>39</sup>

Yes. Minnesota Administrative Rules contemplate that the Commission may place conditions prior to granting a request for a variance to its rules. Rule 7829.3200 subpart 2 states that, “A variance may be granted contingent upon compliance with conditions imposed by the commission.”<sup>40</sup> In addition, Rule 7829.3200 subpart 3 allows the Commission to revoke a variance to the service quality rules for “failure to comply with requirements imposed as a condition of receiving a variance.”<sup>41</sup> As a result, the Commission could place conditions such as incrementally changing the standard<sup>42</sup> or requiring wholesale service quality protections.

To the extent the Commission opens a rulemaking to address service quality rules,<sup>43</sup> Rule 7810.5800 can be addressed in that proceeding. To the extent changes are made to Rule 7810.5800 in this docket, the Joint CLECs recommend that the impact of such changes be limited to retail service quality. The Joint CLECs recommend that before changes are allowed for retail service quality measures used as a parity standard for wholesale service quality measures, CenturyLink be required to negotiate appropriate replacement wholesale service quality standards.

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<sup>39</sup> Notice of Comment Period, p. 1.

<sup>40</sup> Minnesota Administrative Rule 7829.3200 Subp. 2.

<sup>41</sup> Minnesota Administrative Rule 7829.3200 Subp. 3.

<sup>42</sup> Notice of Comment Period, p. 1.

<sup>43</sup> See *In the Matter of the CenturyLink, Inc. Petition for Rulemaking to Revise Service Quality Rules*, PUC Docket Number 421/AM-14-256, March 26, 2014.



*(4) Should the waiver be granted?*<sup>44</sup>

No. The Joint CLECs recommend a waiver not be granted as requested. The Joint CLECs do not currently have a position as to whether any changes to Rule 7810.5800 are warranted.

*(5) What is the maximum period of time for which the Commission may grant a waiver of its rules?*<sup>45</sup>

The Joint CLECs do not currently have a position regarding this question. However Rule 7829.3200 Subp. 3 states, “Unless the commission orders otherwise, variances automatically expire in one year.”<sup>46</sup>

*(6) Are there impediments in statute or rule that would prevent the Commission from altering the terms of CenturyLink’s AFOR Plan prior to its expiration in December, 2016?*<sup>47</sup>

The Joint CLECs do not currently have a position regarding this question.

## **Conclusion**

Rule 7829.3200 subpart 1 states the requirements that must be met in order for a variance to the rules to be granted. These requirements are:

- A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. granting the variance would not adversely affect the public interest; and
- C. granting the variance would not conflict with standards imposed by law.<sup>48</sup>

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<sup>44</sup> Notice of Comment Period, p. 2.

<sup>45</sup> Notice of Comment Period, p. 2.

<sup>46</sup> Minnesota Administrative Rule 7829.3200 Subp. 3.

<sup>47</sup> Notice of Comment Period, p. 2.

<sup>48</sup> Minnesota Administrative Rule 7829.3200 Subp. 1.

CenturyLink has argued Rule 7810.5800 is an excessive burden,<sup>49</sup> but has failed to show that the public interest is protected, especially with respect to wholesale service quality;<sup>50</sup> and has failed to demonstrate that a complete waiver of Rule 7810.5800 is consistent with the law.<sup>51</sup>

The Joint CLECs do not take a position as to whether any changes to Rule 7810.5800 are warranted. However, to the extent the Commission does grant a waiver or make changes to this rule, the Joint CLECs request the Commission protect wholesale service quality provided by CenturyLink to competitive carriers through the Minnesota CPAP. The Joint CLECs recommend, to the extent the Commission grants a waiver or makes changes to Rule 7810.5800, the Commission clarify the rulemaking is intended to address retail service quality and not impact wholesale service quality. In addition, the Commission should require CenturyLink to negotiate acceptable wholesale service quality standards for wholesale performance currently relying upon retail service performance, prior to any changes taking effect.

Dated this 30<sup>th</sup> day of April, 2014.

On behalf of the Joint CLECs



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<sup>49</sup> *Petition for Waiver*, pp. 5-6. The Joint CLECs do not take a position regarding this claim.

<sup>50</sup> See Joint CLEC response to Commission question 2(ii).

<sup>51</sup> See Joint CLEC response to Commission question 1.