

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner
Betsy Wergin	Commissioner

In the Matter of A Rulemaking to Consider
Possible Amendments to Minnesota Rules parts
7810.4100 through 7810.6100

Revisor's ID Number R-04269
MPUC Docket No. P999/R-14-413

REPLY COMMENTS OF MINNESOTA TELECOM ALLIANCE

The Minnesota Telecom Alliance (“MTA”) submits these Reply Comments to the Minnesota Public Utilities Commission (“Commission”) in response to the Commission’s December 24, 2014 Notice of Reply Comment Period. That Notice invited reply comments in response to the Comments filed on December 4, 2014. These Reply Comments will not address all points of agreement or disagreement with the Comments of other parties. Rather, MTA continues to support the positions set forth in its Initial Comments and will address only briefly selected parts of the Comments of other parties.

SUMMARY

As explained in its Initial Comments, the MTA strongly supports the Commission’s initiative to amend Minnesota Rules parts 7810.4100 through 7810.6100 (collectively, the “Quality of Service Rules”) and continues to recommend the outright repeal of a number of rules (Minnesota Rules 7810.4100, 7810.4300, 7810.5100, 7810.5300, and 7810.6000) and the modification of other rules (Minnesota Rules parts 7810.4900, 7810.5000, 7810.5200, 7810.5800, and 7810.5900).

These changes are fully justified because the rationale of these rules no longer applies. When implemented decades ago, the Quality of Service Rules were designed to assure service

quality in the context of single (monopoly) providers of service in exclusive service territories. The market has changed dramatically since that time – both in its structure (highly competitive) and the technologies used to provide service. These two changes make many of the rules obsolete. Other rules could be substantially simplified, and some of these rules address topics that are of little or no value to customers. Nothing in the initial Comments of other parties has changed these basic facts.

RESPONSE TO INDIVIDUAL COMMENTS

A. CENTURYLINK AND CITIZENS/FRONTIER.

The MTA agrees with the CenturyLink and Citizens/Frontier Comments which recognize that the Service Quality Rules reflect a monopoly market that no longer exists and are geared toward technology that has long been replaced.

Further, the MTA agrees with the principles outlined by CenturyLink, including recommendations that:

- Rules should be appropriate in a competitive marketplace;
- Rules should be sufficiently flexible to accommodate a marketplace served by continually evolving technology;
- Rules should be applied in a competitively-neutral manner; and
- Rules should only be adopted if evidence establishes that they are necessary and that the particular requirements of the rule will meet the statutory goals that govern this Commission.¹

The MTA also agrees with CenturyLink that the Commission should adopt a complaint based methodology for regulation of retail services provided by incumbent LECs as well as CLECs.

The MTA further agrees with Citizens/Frontier’s observation that the Commission’s rules were “adopted at a time when the telecommunications market and dominant means of

¹ CenturyLink Comments at 2

communication were very different”² and that “The state’s telecommunications market is much different today, both in terms of the services customers rely upon for communication and the number and type of providers that offer those services.”³ The MTA also agrees with Citizens/Frontier’s assertion that “Clearly, customers see wireless and wireline service as direct competitors and substitutes.”⁴

B. OAG

The Office of the Attorney General – Residential Utilities and Antitrust Division (OAG) recognizes that some of the Quality of Service Rules should be modernized.⁵ Unfortunately, the OAG takes an extremely constrained view of the conditions that would justify Rule modifications by substituting market-power analysis designed to assess mergers for a practical assessment of the continued relevance of the Quality of Service Rules.⁶ While market-power analysis is relevant to the evaluation of mergers for antitrust concerns, it is not a suitable replacement for the Commission’s obligation to diligently police its rules for continued relevance in an effort to avoid an “overly prescriptive and inflexible” regulatory program that “increase[s] costs to the state, local governments, and the regulated community and decrease[s] the effectiveness of the regulatory program.”⁷

Even if market-power analysis was determinative, the OAG does not include a relevant market-power assessment, but rather relies on outdated, dissimilar analyses. For example, the

² Citizens/Frontier Comments at 1.

³ Id.

⁴ Citizens/Frontier Comments at 7.

⁵ OAG Comments at 1.

⁶ See OAG Comments at 6 (“But this claim is at best conjecture at present, and at worst displays a fundamental misunderstanding of antitrust law. And absent sufficient evidence of effective competition, any rollback of the Service Quality Rules will leave consumers at the mercy of a monopolist who has no incentive – regulatory or economic – to maintain adequate service quality.”) and 7 (defining effective competition on the basis of antitrust law).

⁷ Minn. Stat. § 14.002.

Phoenix Forbearance Order,⁸ quoted at length by the OAG,⁹ relied on data from the second half of 2009 as evidence of a lack of competition.¹⁰ That information is now over 5 year old, and it is clear that there have been significant changes in the telecommunications market since that time.

As shown in the MTA's Comments,¹¹ competitive alternatives, both wireless and VoIP, have grown significantly since the the *Phoenix Forbearance Order*.¹² The Department of Justice (DOJ) report cited by the OAG is similarly outdated.¹³ Finally, the DOJ's assessment of the AT&T Wireless T-Mobile merger,¹⁴ while more recent, is not on point because it is predicated on the unsurprising conclusion that wireline service is not an alternative to wireless service because of a lack of mobility. While the lack of mobility makes wired service a poor substitute for wireless, the opposite is not true.

The OAG also makes several questionable statements regarding the nature of competition in different areas of the State. The "isolated rural consumer in Minnesota whose only method of communication is through wireline telephone" described by the OAG is inconsistent with the facts.¹⁵ Federal data shows that almost the entire state served by at least two wireless providers and a vast majority of the state has at least four providers to choose from.¹⁶ The expansion of wireless has helped foster significant increases in the number of wireless-only householders,

⁸ *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, FCC 10-113, Memorandum Opinion and Order (2010) [*hereinafter Phoenix Forbearance Order*].

⁹ OAG Comments at 11-12.

¹⁰ Phoenix Forbearance Order at ¶ 55, n 164 (citing 2010 CDC Wireless Substitution Report).

¹¹ MTA Comments at 6-8.

¹² The FCC's citation to its findings in 2005 and 2007 are similarly (and even more) outdated. *See Phoenix Forbearance Order* at ¶ 57.

¹³ OAG Comments at 12 (citing 2008 United States Department of Justice, *Video and Broadband: The Changing Competitive Landscape and Its Impact on Consumers* at 65-66 (Nov. 2008)).

¹⁴ OAG Comments at 13 (citing *United States of America v. AT&T, Inc. et al.*, No. 11-cv-01560, ¶ 12 (D.D.C. Aug. 31, 2011)).

¹⁵ OAG Comments at 5. *See also* OAG Comments at 14.

¹⁶ MTA Comments at 9.

which are not overly-concentrated in the Metro Area.¹⁷ Also, there are at least 15 wireless carriers that have been approved as eligible telecommunications carriers for Lifeline.¹⁸ And contrary to the OAG's assertion,¹⁹ there is substantial wireline competition in communities of all sizes.²⁰

Overall, the OAG's adheres to an unreasonably and unsupported standard for modifying the Quality of Service Rules, reflecting a preference for regulation over reliance on the market. That stance is fundamentally inconsistent with federal and state policy that clearly has moved in the opposite direction. Such a stance supports preservation of arbitrary standards like those in Rules 7810.5200 and 7810.5300 that are completely divorced from the modern telecommunications system.²¹ The Legislature, however, proscribes a different approach that requires agencies, including the Commission, to remain flexible and responsive to changes in the areas subject to regulation.²²

C. TELECOMMUNICATIONS CONSUMER AND SMALL BUSINESS COALITION

The Telecommunications Consumer and Small Business Coalition (the Coalition) is even more extreme than the OAG, recommending no changes to the Quality of Service Rules.²³ The Coalition's position should not be accepted for several reasons. First, the Coalition focuses virtually all attention on CenturyLink and fails to acknowledge or address the fact that the Quality of Service Rules have broader application. The Coalition also justifies retention of each and every Quality of Service Rule because of its concerns regarding restoration time.²⁴ The MTA agrees that restoration of service is an important standard, so important that whatever

¹⁷ MTA Comments at 8.

¹⁸ MTA Comments at 9.

¹⁹ OAG Comments at 14.

²⁰ MTA Comments at 5.

²¹ Compare OAG Comments at 5 with MTA Comments at 15-16.

²² Minn. Stat. §§ 14.002, 14.05, subd. 5.

²³ Coalition Comments at 1.

²⁴ Coalition Comments at 2-4.

standard is adopted should apply equally to all telecommunications providers subject to the Commission's jurisdiction.²⁵ But those concerns do not justify retention of the other outdated parts the Quality of Service Rules.

The Coalition is also mistaken that modifying the Quality of Service rules would cause a "race to the bottom."²⁶ As an initial matter, except for its discussion of restoration times, the Coalition provides no substantive discussion of how the other Quality of Service Rules contributed to service that is in the public interest. Similar to the OAG, the Coalition appears to favor regulation over reliance on market forces, a stance that has been rejected at both federal and state levels. Further, as discussed above and in the MTA's initial Comments, customers throughout the state have a variety of telecommunications options. The provider that intentionally and continually provides poor service will lose customers to others that are better able to meet customers' expectations, not just a governmental mandate.

D. Minnesota Cable Communications Association and Joint CLECs.

The Comments of both the Minnesota Cable Communications Association and Joint CLECs raise the same concern, that the amendment of the Commission's Service Quality Rules not be allowed to undercut wholesale service quality standards.²⁷ The Commission's Service Quality Rules are limited to retail service quality and do not address wholesale service quality requirements. Accordingly, amendment of the Commission's Service Quality Rules poses no risk of affecting wholesale service quality standards.

²⁵ MTA Comments at 17.

²⁶ Coalition Comments at 4.

²⁷ Minnesota Cable Communications Association Comments at 1-2; Joint CLECs Comment at 2-3.

E. CONCLUSION.

The MTA appreciates the opportunity to provide these Reply Comments and respectfully renews its recommendation that the Commission amend and repeal its Service Quality Rules as provided in the MTA Initial Comments.

Dated: March 13, 2015

MINNESOTA TELECOM ALLIANCE

By: /s/ Richard J. Johnson
Richard J. Johnson
Patrick T. Zomer

Moss & Barnett
A Professional Association
150 South 5th Street, Suite 1200
Minneapolis, MN 55402
Telephone: (612) 877-5000

Attorneys on Behalf of Minnesota Telecom
Alliance

CERTIFICATE OF SERVICE

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Maureen A. Montpetit certifies that on the 13th day of March, 2015, she filed a true and correct copy of the **Reply Comments of Minnesota Telecom Alliance**, by positing it on www.edockets.state.mn.us. Said document was served via U.S. Mail and/or e-mail as designated on the Official Service List on file with the Minnesota Public Utilities Commission and attached hereto.

/s/ Maureen A. Montpetit
Maureen A. Montpetit

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_14-413_Official
Scott	Bohler	scott.bohler@ftr.com	Frontier Communications Corporation	2378 Wilshire Blvd Mound, MN 55364-1652	Electronic Service	No	OFF_SL_14-413_Official
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_14-413_Official
Douglas	Denney	douglas.denney@integratelcom.com	Integra Telecom	1201 Lloyd Blvd, Suite 500 Portland, OR 97232	Electronic Service	No	OFF_SL_14-413_Official
Ron	Elwood	relwood@mnlisap.org	Mid-Minnesota Legal Aid	2324 University Ave Ste 101 Saint Paul, MN 55114	Electronic Service	No	OFF_SL_14-413_Official
Deborah L.	Kuhn	deborah.kuhn@verizon.com	Verizon Wireless	205 N Michigan Ave FL 7 Chicago, IL 60601	Electronic Service	No	OFF_SL_14-413_Official
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_14-413_Official
Jason	Topp	jason.topp@centurylink.com	CenturyLink	200 S 5th St Ste 2200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_14-413_Official
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_14-413_Official