

Minnesota Public Utilities Commission
Staff Briefing Paper

Meeting Date: July 10, 2014.....** Agenda Item # _____

Company: CenturyLink, Inc.

Docket No. P-421/AM-14-255
In the Matter of the Petition of CenturyLink, Inc. for Waiver of Minnesota Rules
Part 7810.5800

Issues: Should the Commission grant CenturyLink’s request for variance?

Staff: Kevin O’Grady.....651-201-2218

Relevant Documents

CenturyLink Variance Request..... March 26, 2014
CenturyLink AFOR Plan (09-790) December 30, 2009
Comments: AARP/LSAP April 28, 2014
Comments: Joint CLECs..... April 30, 2014
Comments: CenturyLink..... April 30, 2014
Comments: DOC..... April 30, 2014
Reply Comments: CenturyLink May 21, 2014
Reply Comments: CenturyLink Affidavit May 21, 2014
Order Detailing Disposition of Petition and Initiating Rulemaking Proceeding May 22, 2014
Supplemental Comments: CenturyLink..... June 12, 2014
Supplemental Comments: Joint CLECs..... June 12, 2014
Supplemental Comments: Minnesota Cable Communications Association..... June 12, 2014
Supplemental Comments: DOC..... June 12, 2014

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Background

On March 26, 2014, CenturyLink, on behalf of its affiliated companies, asked the Commission to:

- (i) open a rulemaking proceeding to revise its quality-of-service rules, and
- (ii) grant an immediate variance of Minn. Rules Part 7810.5800 governing service interruptions.

The Commission separated the two requests, assigning the request for rulemaking to Docket 14-256 and the variance request to Docket 14-255. Subsequently, the Commission opened a rulemaking proceeding (Docket 14-413). This Briefing Paper addresses the request for a rule variance.

On April 28, 2014, AARP and the Legal Services Advocacy Project (AARP/LSAP) jointly filed an objection to CenturyLink's petition.

On April 30, 2014, CenturyLink, the Joint CLECs and the Minnesota Department of Commerce (DOC) filed comments.

On May 21, 2014, CenturyLink filed Reply Comments suggesting another, less preferred, modification of the Rule may be adequate on a temporary basis, that is, to reduce the out-of-service standard to 85 percent.

On May 22, 2014, the Commission opened a rulemaking proceeding to consider possible changes to its quality-of-service Rules (Minn. Rules Parts 7810.4100 through 7810.6100).

On June 12, 2014, CenturyLink, DOC, the Minnesota Cable Communications Association (MCCA) and the Joint CLECs filed Supplemental Comments.

Relevant Rules and Order

CenturyLink seeks a variance of Minn. Rule Part 7810.5800 and associated terms in its Alternative Form of Regulation Plan (AFOR Plan). Part 7810.5800 states, in full:

7810.5800 INTERRUPTIONS OF SERVICE.

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. In the event that service must be interrupted for purposes of working on the lines or equipment, the work shall be done at a time which will cause minimal inconvenience to customers. Each utility shall attempt to notify each affected customer in advance of the interruption. Emergency service shall be available, as required, for the duration of the interruption.

Every telephone utility shall inform the commission, as soon as possible, of any major catastrophe such as that caused by fire, flood, violent wind storms, or other acts of God which apparently will result in prolonged and serious interruption of service to a large number of customers.

CenturyLink states that alternatively, in the event the Commission is uncomfortable with a complete waiver, it could consider imposing an 85% standard as a temporary measure while the rulemaking takes place.

CenturyLink is currently bound by an AFOR Plan established pursuant to §§ 237.76 to 237.774. The Plan was initially filed and approved in Docket 09-790. Subsequently CenturyLink sought renewal of the Plan and on November 20, 2013, the Commission approved the renewal request in Docket 13-498. As such, the current AFOR Plan expires on December 31, 2016. Appendix B, Section E.3, of the Plan is directly associated with Part 7810.5800. That section states:

Restoration of Out-of-Service - It shall be the Company's objective to clear 95% of out-of-service trouble report conditions within 24 hours of the time such troubles are reported. Compliance with the objective shall be determined by a 12-month annual statewide average performance for the measure. A service is deemed to be out-of-service if the customer is unable to receive or place calls. This definition includes service affecting troubles such as static severe enough to prevent communications.

- a. If Qwest fails to reinstate basic primary residential service within 48 hours and basic primary business service within 24 hours of the outage or a later date requested by the customer for the repair to be made, for Company reasons, Qwest will provide the customer a pro rata adjustment (i.e., 1/30th) of

the monthly recurring charge for the first two days (Residential) and one day (Business) that there is a service outage. Qwest shall provide the customer \$5 for each day thereafter that the Residential customer is out-of-service and \$10 for each day the Business customer is out-of-service.

b. The company shall give priority repair commitments to customers who identify critical medical situations. Critical medical situations are identified as infants on monitoring systems, individuals on life support systems, or other life threatening emergencies.

c. If the missed restoration of service is due to events beyond Qwest's reasonable control (e.g., force majeure), then no remedy will be required.

Minn. Rules Part 7829.3200 establishes the conditions for granting variances of Commission Rules. Part 7829.3200 states, in full:

7829.3200 OTHER VARIANCES.

Subpart 1. When granted. The commission shall grant a variance to its rules when it determines that the following requirements are met:

- 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.

Subp. 2. Conditions. A variance may be granted contingent upon compliance with conditions imposed by the commission.

Subp. 3. Duration. Unless the commission orders otherwise, variances automatically expire in one year. They may be revoked sooner due to changes in circumstances or due to failure to comply with requirements imposed as a condition of receiving a variance.

Party Comments

CenturyLink seeks a variance of Minn. Rule Part 7810.5800 and associated terms in its AFOR. In reply comments filed approximately two months after the initial petition was received (in response to a Commission request), CenturyLink stated that, in the event the Commission is

uncomfortable with a complete variance, it could consider imposing an 85% standard as a temporary measure while the rulemaking takes place. Several parties responded separately to each of CenturyLink's filings, and there is considerable overlap of the parties' arguments. As such, the summary below makes no distinction between the dates the arguments were made unless it is necessary for clarity.

In brief, MCCA opposes any variance arguing that the issue should be addressed in the rulemaking docket. The **Joint CLECS** oppose elimination of the rule unless assurances can be put in place to protect wholesale service quality. However, the Joint CLECs do not oppose a variance reducing the 95% standard to 85%. **DOC** recommends denial of both variants of CenturyLink's petition.

Criterion A: Will enforcement of the rule impose an excessive burden upon the applicant or others affected by the rule?

CenturyLink Position

The kind of services CenturyLink's customers demand has changed significantly. CenturyLink requires the flexibility to deploy its financial and personnel resources consistent with the demands of its customers. Its wireline customers are important to CenturyLink and restoring an out-of-service condition is a priority. However, many of these wireline customers are also wireless customers and view the repair of their broadband service of more importance than repair of their landline service. CenturyLink requests the flexibility to dispatch its technicians to reflect its customer's stated needs rather than in response to an outdated rule.

In today's marketplace, there is no justification for imposing onerous standards on CenturyLink, while effectively ignoring those standards for cable providers. Cable providers have just as many customers as CenturyLink. Customers of cable providers should be no less and no more important to this Commission than customers of CenturyLink. If these service quality standards are important to this state, they should be enforced for all providers over which this Commission has jurisdiction as the rules require.

CenturyLink does not suggest that the Commission extend the onerous requirements of Minn. R. 7810.5800. However, the Rule imposes extraordinary costs on CenturyLink and is apparently not needed with respect to other competitors. From all appearances, other providers in the marketplace are able to address customer needs without the burdens associated with this rule. Relief from that standard would even out the competitive landscape between CenturyLink, cable providers, and CLECs and provide the benefits to Minnesota consumers outlined in the petition.

CenturyLink argues that:

The 95% metric provides little or no meaningful protection to customers. CenturyLink appropriately prioritizes customer outages to address emergency situations. In 2014, so far, only 0.27% of customers, per month, have reported outages.

The burden associated with the 95% metric has intensified because CenturyLink has successfully reduced the number of customers that experience out-of-service conditions. CenturyLink's line-count has dropped significantly since 2007 and its outages have declined at an even greater rate since then and, as such, its out-of-service rate has dropped from 0.85% in 2007 to 0.27% in the first months of 2014. The decline in average monthly outages (10,511 in 2007 to 1,573 today) means that each outage has a greater impact on the average of outages (the denominator has declined), thus rendering it more difficult today to meet the metric than it was in 2007.

The 95% metric does not differentiate between customers that are out of service and have no alternative means of communication versus customers where the loss of service is less critical, that is, they have access to other communications devices. Prioritizing emergency situations is standard practice at CenturyLink.

The metric drives CenturyLink to delay scheduled repairs and installation of new service because of the possibility out-of-service conditions will require resources to be made available elsewhere.

Competition for customers increases the importance of this petition.

Eliminating or modifying the 95% standard will have little or no impact on wholesale performance measurements.

Joint CLEC Position

The Joint CLECs oppose CenturyLink's petition for a variance that would eliminate the rule entirely unless and until appropriate conditions are put in place to protect wholesale service quality governed by CenturyLink's Performance Assurance Plan (CPAP). 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 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.

However, the Joint CLECs do not oppose CenturyLink's request for a temporary variance changing the 95% standard to 85%: (i) the 95% retail standard directly influences diagnostic wholesale products within only a single performance measure, (ii) the volumes for these products are low, (iii) CenturyLink's request for a waiver is temporary, and (iv) the remaining parts of the rule require "reasonable efforts to prevent interruptions of service" and reestablishment of "service with the shortest possible delay." A grant of a temporary variance could provide Joint CLECs time to monitor wholesale performance for all products and measures that are directly and indirectly impacted by a relaxation of this retail standard and thus help inform the Joint CLECs' position regarding any permanent rule changes.

AARP/LSAP Position

AARP/LSAP responded only to CenturyLink's petition for elimination of the Rule stating that any waiver or elimination of critical consumer protections should be based upon substantive evidence, not generalized statements contending that compliance with those protections is burdensome to industry interests.

DOC Position

CenturyLink has not fulfilled its burden of proving that enforcement of the 95% standard would impose an excessive burden upon the carrier. In fact, CenturyLink's petition is rife with comments suggesting restoring out-of-service conditions would be a priority of the carrier irrespective of whether or not the restoral requirement were in effect. CenturyLink states, for example, that its wireline customers are important to CenturyLink and restoring an out-of-service condition is a priority.

CenturyLink raises a concern about the significant line loss that it has experienced in recent years, and suggests that the Commission should permit the carrier to prioritize the use of its technicians according to customer demand. CenturyLink's statements suggest that a waiver of the standard would enable CenturyLink to discriminate against its "dwindling base of customers" that subscribe to basic local exchange service, in some cases because they have no viable option, in favor of meeting other, perhaps more lucrative, customers' demands for advanced services.

Minnesota Rule 7810.5800 is linked to CLEC service quality, in particular PID MR-5, which is a parity standard. To the extent that CenturyLink is not held to this standard for its retail customers, or is held to a lesser standard, the parity standard may not provide adequate assurance of wholesale service quality.

With respect to the 85% standard DOC argues that the burdens reported by CenturyLink in its May 21, 2014 comments, are normal burdens experienced by other regulated carriers. To the extent they are normal burdens, they are not “excessive” and, therefore, do not meet the requirements for a waiver.

Finally, even if the Commission were to find that CenturyLink faces alleged burdens from the current repair metric, CenturyLink has provided no evidence to prove that an 85% repair metric is optimal. CenturyLink has not shown, or quantified in dollar terms, that the proposed variance is justified by an excessive burden placed upon the carrier.

Criterion B: Will granting the variance adversely affect the public interest?

CenturyLink Position

Granting the variance will not adversely affect the public interest. CenturyLink does an outstanding job of providing telecommunications service, and its service quality results demonstrate that. Approximately 0.2% of its customers experience an out-of-service condition over the course of a year. Between 2007 and 2013, CenturyLink access lines decreased from 1.6 million to approximately 1 million -- a reduction of approximately 37.5%. However, the number of lines experiencing an out-of-service condition decreased by some 80%. A significantly smaller percentage and absolute number of customers experienced an out-of-service condition in 2013 than in 2007.

Line loss has come about because customers have made the decision to obtain service from competitors. A very significant percentage of Minnesota consumers have chosen to cut the cord and eliminate a wireline phone altogether. At the end of 2012, 33% of Minnesota customers had done so, an increase of 9% in just two years. This trend is exemplified by the AARP website and one of its preferred providers, Consumer Cellular. Consumer Cellular sells its service as a wireline equivalent. Wireless providers in Minnesota do not report and are not required to comply with Commission service quality standards.

Cable companies offer another alternative to Minnesota customers and do so using their own network. As of the end of 2012, Minnesota cable providers and other facilities-based competitors are estimated to serve 31% of Minnesota consumers, an increase of 3% from only

two years earlier. CenturyLink continued to experience line loss in 2013 and expects the trend to continue in 2014 based on state and national trends.

These statistics demonstrate that Minnesota customers have the ability to select providers and services. In addition, these same customers have selected providers and services from companies that have little or no Commission oversight. Such an environment reduces the importance of public interest considerations associated with measurements. Similarly, if a service quality metric imposes a burden on a competitor that is not demanded by customers, it skews the marketplace and impedes the ability of one competitor to invest in areas and offer services that customers demand. Such requirements run directly contrary to the public interest as defined by the Commission goals stated in Minn. Stats. § 237.011.

An inappropriate service quality standard, by definition, discourages efficient deployment of infrastructure because it directs that resources be used in an inefficient manner. Applying the standard to a very small part of the marketplace discourages rather than encourages fair and reasonable competition and cannot be considered competitively neutral. It detracts from quality service and customer choice because it prevents CenturyLink from using its best judgment to deploy its resources and attract and retain customers.

AARP/LSAP Position

AARP/LSAP responded only to CenturyLink's petition for elimination of the Rule entirely, stating there is no need to sacrifice important consumer protections simply because technology evolves, as the evolution of networks does not necessarily result in effective competition and, indeed, could reduce competitive options. In fact, the level of competition that exists varies by product market and by geographic market. Unless and until the requested rulemaking proceeding demonstrates that effective competition exists in Minnesota, regulatory oversight and service remain essential to address market imperfections, including those that harm consumers, like prolonged service outages. Any decision to waive or eliminate critical consumer protections must be based upon substantive evidence.

Joint CLECs Position

The Joint CLECs are concerned that complete elimination of the service quality standards in Minn. Rules Part 7810.5800 will result in a deterioration of wholesale service quality and therefore is not in the public interest. If CenturyLink is no longer required to comply with basic service requirements, and competitors are not competing based on quality of service (and not every customer in every market may have a competitive choice), incentives for CenturyLink to maintain its existing standards are diminished.

Further, CenturyLink's reliance on wireless competition as part of the relevant market 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.

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 standards for wholesale service quality. The Joint CLECs recommend that before eliminating standards in Minn. Rules Part 7810.5800, CenturyLink be required to negotiate appropriate replacement wholesale service quality standards.

However, the Joint CLECs do not oppose CenturyLink's request for a temporary variance changing the 95% standard to 85%. A grant of a temporary variance could provide Joint CLECs time to monitor wholesale performance for all products and measures that are directly and indirectly affected by a relaxation of this retail standard and thus help inform the Joint CLECs' position regarding any permanent rule changes.

DOC Position

Ensuring that wireline households are adequately served is an important public interest issue given that Minn. Stat. § 237.011 (1, 5 and 7) charges the Commission with the responsibility for supporting universal service, maintaining or improving quality of service and ensuring consumer protections are maintained in the transition to a competitive marketplace.

While many customers have taken advantage of the competitive alternatives to basic regulated telephone service, certain segments of the population, as well as individuals in other segments, are still dependent upon basic regulated telephone service. Recent data reported in the National Health Interview Survey indicates that only 6% of adults aged 65 and over reside in wireless only households. AARP recently filed comments with the FCC stating, "due to spotty wireless service in rural areas, cord cutting rates are lower in rural areas, indicating that rural households continue to view wireline telephone service as a basic necessity." The National Health Interview Survey shows that the availability of reliable competitive alternatives to basic telephone service varies significantly by age and location of the end user customers.

Criterion C: Will granting the variance conflict with standards imposed by law?

CenturyLink Position

Granting a variance will not conflict with standards imposed by law. This Commission has

granted waivers of service quality rules in similar past situations. The Commission granted Qwest a waiver of call answer time standards in 2005 (Docket 05-1081). Additionally, the Commission does not require CLECs to provide service throughout their entire service territories (Dockets 03-712 and 03-658). Furthermore, the terms of CenturyLink's current AFOR contains no language prohibiting modifications to these standards.

Joint CLEC Position

CenturyLink has failed to show that a variance of Part 7810.5800 is consistent with the law.

AARP/LSAP Position

AARP/LSAP did not comment upon this criterion.

DOC Position

DOC is unaware of any legal impediment to the Commission's granting the variance, but argues that whether or not the Commission grants the requested variance, CenturyLink remains subject to the service quality requirements and other terms of its AFOR Plan which remains in force through December 31, 2016.

DOC argues that there is no provision in CenturyLink's AFOR Plan that permits changes to the service quality requirements during the term of the Plan. Further, Minnesota statutes applicable to AFOR Plans, as well as the Commission's prior Orders, prevent the Commission from altering the terms of CenturyLink's AFOR Plan.

Minn. Stat. §237.765 (a) requires that for an AFOR to be approved "the plan must contain an existing service quality plan or settlement for retail customers approved by the commission" Subpart (c) requires that the "terms of an existing service quality plan or settlement approved by the commission **must be offered to extend through the duration of an alternative regulation plan filed under this section.**" Section 237.766 (Plan Duration and Extension), subd. 1, states that an "alternative regulation plan approved by the commission under section 237.764 **must remain in force as approved for the term specified in the plan**, which must be for no less than three years." Subd. 3(b) states that if "the company elects to extend a plan, the rates for price-regulated services shall be capped at the rate levels in effect at the time the extension commences, provided, however, exceptions to a price cap contained in the plan being extended may remain in force. **Unless otherwise specified in the plan, all other provisions of the plan shall continue in effect throughout the extension period.**" [emphasis added by DOC]

On November 13, 2013, the Commission issued an order approving CenturyLink's request to extend the terms of its AFOR plan (including the Service Quality Plan) through December 31, 2016. The Commission noted in its order approving the extension, the statute specifically provides that "unless otherwise specified in the plan, all other provisions of the plan shall continue in effect throughout the extension period."

CenturyLink cites a Commission order issued in Docket 05-1081 that granted a variance to service quality rules in the context of an AFOR. However, that variance was granted in the context of the Plan approval process and not after the approval of a Plan.

Staff Analysis

Minn. Rules Part 7829.3200 governs the granting of variances to rules. It states, in full:

Subpart 1. When granted. The commission shall grant a variance to its rules when it determines that the following requirements are met:

- 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.

Subp. 2. Conditions. A variance may be granted contingent upon compliance with conditions imposed by the commission.

Subp. 3. Duration. Unless the commission orders otherwise, variances automatically expire in one year. They may be revoked sooner due to changes in circumstances or due to failure to comply with requirements imposed as a condition of receiving a variance.

Clarification of Petition Variants

CenturyLink has proposed two options for changing its service outage restoration requirements in 7810.5800 and in its AFOR:

Preferred Option: Staff understands that, in addition to eliminating 7810.5800, CenturyLink seeks to modify its AFOR by eliminating the requirements in Appendix B, Section E.3. Although no party addressed the specific modifications of the AFOR Staff suggests that this option should also include modification in Appendix B, Section C, as follows: “Substantial compliance with retail quality service standards is satisfied if Qwest meets 65 out of 76 of its individual service quality standards each year.”

Alternative Option: Staff understands that, effectively, the language in 7810.5800 and the AFOR, Appendix B, Section E.3, would be modified by replacing 95% with 85%.

Conditions and Duration of Variance

Staff believes the Commission has the authority to grant CenturyLink’s request for a variance in both of its variants: (i) elimination of the Rule entirely, or (ii) reducing the standard from 95% to 85%. With respect to the duration of a variance, the Commission could tie the termination of a variance to the date of the final promulgation of rules in the quality-of-service rulemaking docket (Docket 14-413). Alternatively, it could grant a variance for some shorter period. In either case, the Commission could require CenturyLink to submit accounts to the Commission providing outage information for a period after a variance is granted.

Impediments in Law

Staff is unaware of any law that would prevent the Commission from granting a variance to CenturyLink. However, as noted by DOC, the Commission may be barred from modifying CenturyLink’s AFOR and, as such, the effect of a rule variance would be mooted. DOC makes reference to Minn. Stat. §§ 237.765 and 237.766:

For an alternative regulation plan to be approved by the commission ... the plan must contain an existing service quality plan or settlement for retail customers approved by the commission ... [237.765(a)]

The terms of an existing service quality plan or settlement approved by the commission must be offered to extend through the duration of an alternative regulation plan ... [237.765(c)]

An alternative regulation plan approved by the commission ... must remain in force as approved for the term specified in the plan ... [237.766, subd. 1]

A telephone company may elect to extend a plan ... in lieu of proposing a new plan ... If the company elects to extend a plan, the rates for price-regulated services shall be capped at the rate levels in effect at the time the extension commences Unless otherwise specified in the plan, all other provisions of the plan shall continue in effect throughout the extension period. A plan may not be extended for less than one year or more than three years, and may only be extended once. [237.766, subd. 3(b)]

The AFOR Plan does not appear to contemplate a change to service quality standards during its term. Appendix B, Section A, states in full:

During the term of the Revised Plan, Qwest will comply with specific quality of service standards and customer remedies as shown in this Appendix[.]

The closest the Plan comes to language permitting changes mid-term is language that makes no explicit reference to service quality. Sections IV.G and IV.H (pp. 13-15) make reference to cost recovery for network investments imposed by governmental authority and for “new costs” imposed on CenturyLink by government entities. It is difficult to fit service quality changes into these provisions. And, even if a fit could be fashioned, the remedies would dictate changes to retail rates, not service quality.

If the Commission grants CenturyLink a variance of 7810.5800, but does NOT modify the AFOR, CenturyLink may be placed in a position where it is compliant with service quality rules but not with the AFOR. Appendix B, Section C, addresses non-compliance with the AFOR service quality requirements:

Substantial compliance with retail service quality standards is satisfied if Qwest meets 6 out of 7 of its individual service quality standards each year. For purposes of determining substantial compliance, compliance with the individual service quality standards will be measured on an annual statewide basis. Qwest will not be in substantial compliance with the service quality standards if it fails to meet the same individual service quality standards for two consecutive years. Failure to substantially comply with the service quality standards for two consecutive years will require Qwest to meet and confer with the Department and OAG to negotiate a voluntary resolution to the matters. If successful resolution of the matter cannot be negotiated, Qwest will present the Department and OAG with a plan to bring service quality into compliance including specific actions the Company will take to remedy the situation. If the plan is not acceptable to the Department or OAG, the

Department or OAG may file a complaint with the Commission for the purpose of determining whether reasonable additional customer remedies or other actions are warranted.

No party has addressed the ramifications of placing CenturyLink in a position where it could be in substantial non-compliance with the AFOR while maintaining compliance with 7810.5800, as varied by the Commission.

Burden on CenturyLink and Others

Staff believes that CenturyLink's core concerns are its position in the market vis-à-vis other carriers, its ability to shift resources to other uses, and a desire to prioritize service restoration differently than the Rule would dictate:

Cable and wireless companies are not required to make investments to meet similar standards unless their customers demand it. Imposing an expensive and outdated service quality metric is unnecessary. It requires significant use of technicians that could otherwise be used to meet customer demand -- either through expanded broadband availability, enhanced network features or other investment. [Petition, pp. 4-5]

And,

Its wireline customers are important to CenturyLink and restoring an out-of-service condition is a priority. However, many of these wireline customers are also wireless customers and view the repair of their broadband service of more importance than repair of their landline service. CenturyLink requests the flexibility to dispatch its technicians to reflect its customer's stated needs rather than in response to an outdated rule. [Petition, pp. 5-6]

With respect to burden Staff believes that CenturyLink's strongest argument is that the shrinking number of outages (in absolute terms and relative to line count) makes it more difficult to meet the metric. That, is, as outages decline, each outage weighs more in the calculation of the metric (the denominator has declined). Thus, in effect, the 95% metric is a relatively higher hurdle today than it was at the time it was originally adopted.

However, in order to grant a variance pursuant to Minn. Rules Part 7829.3200, subpart 1.A, the Commission must find the rule causes an "excessive burden." CenturyLink's Haggerty Affidavit

provides information as to how CenturyLink allocates its resources to meet various needs within the Company, and no party has challenged the reasonableness of those choices. Nor does Staff. However, there is no evidence in the record quantifying the excessiveness of the burden. Clearly, CenturyLink has experienced a decreased line count over the last decade, but one can reasonably speculate that CenturyLink's costs have also decreased (at least for those lost lines). Nor has CenturyLink quantified the cost that the 95% metric imposes upon it, or how that cost might decrease if the metric is reduced to 85%. That said, the Commission need not require that evidence be quantifiable in nature.

If the Commission approved a modification of CenturyLink's AFOR, reducing the metric from 95% to 85% CenturyLink may actually experience an increase in penalties. Appendix B, Section E.3, of CenturyLink's AFOR Plan states, in part:

Restoration of Out-of-Service - It shall be the Company's objective to clear 95% of out-of-service trouble report conditions within 24 hours of the time such troubles are reported. Compliance with the objective shall be determined by a 12-month annual statewide average performance for the measure. A service is deemed to be out-of-service if the customer is unable to receive or place calls. This definition includes service affecting troubles such as static severe enough to prevent communications.

- a. If Qwest fails to reinstate basic primary residential service within 48 hours and basic primary business service within 24 hours of the outage or a later date requested by the customer for the repair to be made, for Company reasons, Qwest will provide the customer a pro rata adjustment (i.e., 1/30th) of the monthly recurring charge for the first two days (Residential) and one day (Business) that there is a service outage. Qwest shall provide the customer \$5 for each day thereafter that the Residential customer is out-of-service and \$10 for each day the Business customer is out-of-service.

If the Commission granted a variance of the Rule and modified the first paragraph of the AFOR above, the second paragraph stands unaffected (CenturyLink did not propose a change to the second paragraph). Thus, if CenturyLink reduced its outage restoration to just meet an 85% requirement it would most likely face higher penalties.

Public Interest

It is not within the Commission's authority to regulate cable and wireless carriers as it does CenturyLink. However, the Commission is charged with protecting service quality for the carriers it does regulate. And there is no reason to believe that even a highly competitive market would provide service quality that wireline consumers enjoy today. Thus, CenturyLink's request boils down to the question of a tradeoff between the Company's bottom line and customer service quality (at least for some customers).

One of CenturyLink's arguments goes to a desire to prioritize service repairs to allow it to restore service to broadband customers before other customers. Although 7810.5800 draws no distinction between customers, the AFOR does distinguish between business and residential customers. The penalties for out-of-service events for business customers are double that of residential customers. To the extent that businesses are more likely to purchase broadband services than residential customers, and to the extent that businesses receive voice service in combination with high-speed services, the AFOR currently does recognize a difference between customers to some extent, a difference favoring broadband business customers. However, the AFOR does not distinguish between residential customers with and without broadband, or between business customers with and without broadband. Staff presumes that CenturyLink, in addition to reducing its overall burden, seeks to prioritize service restoration to better retain its higher-valued customers and, perhaps, to encourage customers to shift from away from plain old telephone service to higher-value services.¹

CenturyLink has argued that it may be more appropriate to restore service to customers with no alternative service before it restores service to those with an alternative method of communication. CenturyLink can do that today without a variance.

Staff Recommendation

If, as DOC argues, Minnesota statutes prohibit the Commission from modifying CenturyLink's AFOR, Staff recommends the Commission deny CenturyLink's petition in both of its variants. The variance would be ineffective until at least December 31, 2016 when the current AFOR expires and it may not be in the public interest to grant a variance 30 months before it could take

¹ On May 12, 2014, a group of consumer advocates filed a petition with the FCC arguing that, by allowing the copper network to deteriorate, some local carriers are forcing customers away from traditional copper-based service to new technologies that may not serve their needs. That petition did NOT refer to CenturyLink or to Minnesota. However, the petition illustrates forces at play in the industry today. See *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket No. 12-353. <http://apps.fcc.gov/ecfs/document/view?id=7521122642>.

effect. CenturyLink could seek a rule variance at that time. The petition begs an interesting question that may not need an answer today. If the Commission chooses to modify the AFOR midstream, are there any impediments to the Commission modifying other terms in the AFOR at any time?

If the Commission wishes to examine the other arguments presented by the parties Staff suggests the Commission give significant weight to CenturyLink's argument that it now faces a higher hurdle than it did at the time the rule was put in place, simply because the denominator of the metric (outages) has declined, in absolute terms and relative to line-count. However, Staff believes that there are limitations to that argument. CenturyLink must show that its burden is excessive. CenturyLink's Haggerty Affidavit indicates what appears to be a reasonable approach to resource allocation, but it is difficult to draw from that discussion clear evidence suggesting that its resource allocation practices are not business-as-usual or that 7810.5800 creates an excessive burden. Clearly, CenturyLink's market share is declining but we know little of its costs.

A variance to eliminate the burden of 7810.5800, by its nature, most likely represents a decline in quality of service for at least some customers (depending on how CenturyLink would choose to allocate its resources: expanding broadband capability, enhancing network features, other investments, or prioritizing repair work in a manner different than it does today). On this record CenturyLink has not shown otherwise. Thus, the Commission must balance competing claims to public interest.

Staff recommends the Commission deny both variants of CenturyLink's petition as having failed to show that 7810.5800 is an excessive burden. The Commission need not reach a conclusion on excessive burden if it believes that it is not free to modify the AFOR mid-stream. The appropriateness of 7810.5800 may be addressed in the rulemaking docket (14-413).

Although Staff recommends denying the petition Staff is closer to ambivalence regarding the option to reduce the metric from 95% to 85%. It would be less drastic than complete elimination of the metric and the Commission and other parties could use the period of variance to monitor consumer response to the changed metric. Such information may be useful for the rulemaking docket.

Commission Options Re: Eliminating the Service Outage Metric

- A.1 Grant CenturyLink's request for a variance of Minn. Rules Part 7810.5800, and modify the associated terms in CenturyLink's AFOR, **eliminating entirely** the

- service outage metric (and redefining substantial compliance as 5 out of 6) **until such time as the Commission establishes new quality-of-service rules** in its open rulemaking docket (14-413). CenturyLink shall file a quarterly report with the Commission indicating, on a monthly basis, the proportion of service outages that it restored within 24 hours. Out-of-service is defined by the AFOR.
- A.2 Grant CenturyLink's request for a variance of Minn. Rules Part 7810.5800, and modify the associated terms in CenturyLink's AFOR, **eliminating entirely** the service outage metric (and redefining substantial compliance as 5 out of 6) **for a period of one year**. CenturyLink shall file a quarterly report with the Commission indicating, on a monthly basis, the proportion of service outages that it restored within 24 hours. Out-of-service is defined by the AFOR.
- A.3 Grant CenturyLink's request for a variance of Minn. Rules Part 7810.5800, and modify the associated terms in CenturyLink's AFOR, **eliminating entirely** the service outage metric (and redefining substantial compliance as 5 out of 6) **until such time as the Commission establishes new quality-of-service rules** in its open rulemaking docket (14-413). CenturyLink shall file a quarterly report with the Commission indicating, on a monthly basis, the proportion of service outages that it restored within 24 hours. Out-of-service is defined by the AFOR. Additionally, (i) the variance applies solely to retail service quality, and any changes to wholesale service quality plans must be made via the CPAP incorporated into competitive carriers' interconnection agreements, and (ii) CenturyLink shall not implement changes allowed by the variance until CenturyLink and competitive carriers negotiate acceptable protections for the affected wholesale service quality measures.
- A.4 Grant CenturyLink's request for a variance of Minn. Rules Part 7810.5800, and modify the associated terms in CenturyLink's AFOR, **eliminating entirely** the service outage metric (and redefining substantial compliance as 5 out of 6) **for a period of one year**. CenturyLink shall file a quarterly report with the Commission indicating, on a monthly basis, the proportion of service outages that it restored within 24 hours. Out-of-service is defined by the AFOR. Additionally, (i) the variance applies solely to retail service quality, and any changes to wholesale service quality plans must be made via the CPAP incorporated into competitive carriers' interconnection agreements, and (ii) CenturyLink shall not implement changes allowed by the variance until CenturyLink and competitive carriers negotiate acceptable protections for the affected wholesale service quality measures.

A.5 Do not grant CenturyLink's request for a variance of Minn. Rules Part 7810.5800, or modify the associated terms in CenturyLink's AFOR, eliminating entirely the service outage metric.

A.6 Take other action.

Staff recommends option A.5.

Commission Options Re: Reducing the Service Outage Metric from 95% to 85%

B.1 Grant CenturyLink's request for a variance of Minn. Rules Part 7810.5800, and modify the associated terms in CenturyLink's AFOR, reducing the service outage metric **from 95% to 85% until such time as the Commission establishes new quality-of-service rules** in its open rulemaking docket (14-413). CenturyLink shall file a quarterly report with the Commission indicating, on a monthly basis, the proportion of service outages that it restored within 24 hours. Out-of-service is defined by the AFOR.

B.2 Grant CenturyLink's request for a variance of Minn. Rules Part 7810.5800, and modify the associated terms in CenturyLink's AFOR, reducing the service outage metric **from 95% to 85% for a period of one year**. CenturyLink shall file a quarterly report with the Commission indicating, on a monthly basis, the proportion of service outages that it restored within 24 hours. Out-of-service is defined by the AFOR.

B.3 Do not grant CenturyLink's request for a variance of Minn. Rules Part 7810.5800, or modify the associated terms in CenturyLink's AFOR, reducing the service outage metric from 95% to 85%.

B.4 Take other action.

Staff recommends options B.3.