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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

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

**MINNESOTA DEPARTMENT OF  
COMMERCE’S ANSWER TO  
CENTURYLINK’S PETITION FOR  
RECONSIDERATION**

**INTRODUCTION**

The Minnesota Public Utilities Commission should deny Qwest Corporation d/b/a CenturyLink’s petition for reconsideration.<sup>1</sup> CenturyLink has failed to identify any new issues, new and relevant evidence, errors, or ambiguities in the prior order.<sup>2</sup> Instead, CenturyLink recycles the same flawed arguments that the Commission already rejected and attempts to pick-and-choose the portions of the Commission’s final order that should apply to it. None of this should persuade the Commission to rethink its decision.<sup>3</sup> Contrary to CenturyLink’s claims, the Commission’s order is well-reasoned and thoroughly supported by the record and applicable law.

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<sup>1</sup> See ORDER FINDING BREACH OF SERVICE QUALITY RULES & ESTABLISHING REMEDIES (Sept. 17, 2024) (eDocket No. 20249-210276-01); CenturyLink Petition (Sept. 27, 2024) (eDocket No. 20249-210556-01).

<sup>2</sup> See, e.g., *In re Implementation of 2023 Legislation Changes to Xcel Energy’s Community Solar Garden Program*, Docket No. E-002/CI-23-335, ORDER DENYING RECONSIDERATION at 2 (Mar. 12, 2024).

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

## ARGUMENT

The Commission should reject CenturyLink's meritless claim that the order relies on previously unarticulated service quality measures. The Commission should further dismiss CenturyLink's assertions that the only basis for determining whether it is providing adequate service should be its compliance with rule 7810.5900 or that generalized state policy goals excuse its non-compliance. Finally, the Commission should reject CenturyLink's unsolicited and unsupported settlement proposal that would be materially worse for Minnesota consumers.

### **I. THE COMMISSION CORRECTLY DETERMINED THAT CENTURYLINK VIOLATED MINNESOTA RULES 7810.3300, 7810.5000, AND 7810.5800.**

CenturyLink urges the Commission to reconsider its telephone service quality rule findings. Instead of the Commission's plain language readings, CenturyLink proposes several "creative" interpretations that relieve the company's obligation to provide each customer with adequate service or make reasonable efforts to prevent interruptions. None of the arguments justify reconsideration of the Commission's order.

#### **A. The Commission Reasonably Interpreted Rules 7810.3300 and 7810.5000.**

CenturyLink wrongly claims that the Commission's interpretations of rules 7810.3300 and 7810.5000 conflict with the plain language of the rules. In support of its claim, CenturyLink asserts that the Commission relied on previously unarticulated service quality measures.<sup>4</sup> The company is wrong. The Commission reasonably concluded that these rules require CenturyLink to provide each customer with adequate service and that CenturyLink had failed to deliver it to some customers.

The Commission reasonably interpreted rules 7810.3300 and 7810.5000 to require telephone companies, including CenturyLink, to provide all customers with adequate service. The

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<sup>4</sup> CenturyLink Petition at 9-13.

Commission’s decision to adopt the Administrative Law Judge’s “adequate service” interpretation is supported by the plain language of the rules and persuasive precedent from other jurisdictions.<sup>5</sup> To that end, the Commission correctly rejected CenturyLink’s theory that a telephone company provides “safe and adequate service” so long as the company’s equipment causes no injuries and is capable of providing voice service, even if such service is unreliable.<sup>6</sup> The Commission explained that questions of how frequently a company is able to provide landline voice service and the quality of that service all bear on the issue of adequacy.<sup>7</sup>

After adopting this interpretation of “adequate service,” the Commission considered the evidence developed in the record; specifically, that at least 4,460 customers had experienced at least four troubles over 4.5 years.<sup>8</sup> The Commission also considered evidence that CenturyLink has failed to perform adequate proactive maintenance for a network of its size and age, including that the company had only pursued half of the projects that its service technicians identified since 2019.<sup>9</sup> As further evidence of inadequate maintenance, the Commission described how 210 cables were likely contributing to service problems experienced by customers.<sup>10</sup> In addition, the Commission considered evidence that CenturyLink employed a five-year payback threshold to gatekeep rehabilitation projects and significant visual evidence that CenturyLink was allowing its outside plant to deteriorate.<sup>11</sup> Applying the evidence in the record to the “adequate service” requirement in rules 7810.3300 and 7810.5000, the Commission found that CenturyLink had failed

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<sup>5</sup> Comm’n Order at 16-17; ALJ Report at 20-21.

<sup>6</sup> Comm’n Order at 16.

<sup>7</sup> *Id.*

<sup>8</sup> Comm’n Order at 6; ALJ Report at 22

<sup>9</sup> Comm’n Order at 6; ALJ Report at 23-24.

<sup>10</sup> Comm’n Order at 6; ALJ Report at 24.

<sup>11</sup> Comm’n Order at 7; ALJ Report at 24-29.

to provide adequate service to the customers who had experienced multiple service disruptions over a 4.5-year period.<sup>12</sup>

Oddly, CenturyLink characterizes the evidence relied upon by the Commission in assessing the company's compliance with rules 7810.3300 and 7810.5000 as new, previously unarticulated service quality standards.<sup>13</sup> CenturyLink is confused. The Commission's order is wholly consistent with its quasi-judicial function.<sup>14</sup> The Commission has not articulated any new service quality standards. Rather, the Commission has interpreted its existing rules—arriving at reasonable interpretations—and considered whether CenturyLink's conduct was consistent with those rules. The Commission should reject CenturyLink's attempt to characterize the simple exercise of applying law to facts as unpromulgated rulemaking.

**B. The Commission Reasonably Interpreted Rule 7810.5800.**

Next, CenturyLink erroneously asserts that the Commission failed to adequately explain the basis for its conclusion that the company had violated rule 7810.5800.<sup>15</sup> The basis for the Commission's decision is not “mysterious,” as CenturyLink claims. Rule 7810.5800 requires that telephone companies “make all reasonable efforts to prevent interruptions of service” and sets a “minimum objective . . . to clear 95 percent of all out-of-service troubles within 24 hours.” In this instance, record establishes that CenturyLink has not come remotely close to meeting this minimum objective in several years.<sup>16</sup> The record also established that CenturyLink made significant layoffs shortly before its performance deteriorated, strongly suggesting a problem of its own making.<sup>17</sup> As a result, the Commission sensibly concluded that CenturyLink was not

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<sup>12</sup> Comm'n Order at 16.

<sup>13</sup> CenturyLink Petition at 9-13.

<sup>14</sup> Minn. Stat. §§ 216A.02, subd. 4, .05, subd. 1 (2022).

<sup>15</sup> CenturyLink Petition at 19.

<sup>16</sup> ALJ Report at 33.

<sup>17</sup> *Id.* at 33-34.

making reasonable efforts to prevent interruptions of service as required by the rule. It should be no surprise to CenturyLink that significant and ongoing noncompliance could be reasonably interpreted as a failure to “make all reasonable efforts” within the meaning of the rule.

## **II. NEITHER RULE 7810.5900 NOR STATE POLICY GOALS EXCUSE CENTURYLINK FROM ITS SERVICE QUALITY OBLIGATIONS.**

To buttress its weak legal arguments, CenturyLink claims the basis for determining whether it is providing adequate service should be its compliance with the 7810.5900 trouble report rate rule. CenturyLink also claims that generalized state policy goals somehow excuse it from comply with specific and long-standing telephone service quality standards.

### **A. The 7810.5900 Trouble Report Rate Rule is Irrelevant.**

CenturyLink asserts that the basis for assessing whether it provides adequate service should be its compliance with rule 7810.5900.<sup>18</sup> Basic principles of legal interpretation, however, preclude CenturyLink’s attempt to subsume all its service quality obligations into rule 7810.5900. Chapter 7810 of the Minnesota Rules must be construed as a whole, giving effect wherever possible to all its provisions.<sup>19</sup> CenturyLink’s argument violates this basic principle because it renders rules 7810.3300, 7810.5000, and 7810.5800 duplicative of rule 7810.5900 by failing to give each rule a distinct meaning. Rule 7810.5900 is a measure of overall network health. In contrast, rules 7810.3300 and 7810.5000 assess, among other things, whether specific customers are receiving “adequate service.” And rule 7810.5800 assesses whether telephone companies are making reasonable efforts to prevent and restore interruptions of service. In short, each rule assesses a separate, but related aspect of telephone service quality. The Commission’s order

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<sup>18</sup> CenturyLink Petition at 9-10, 19-20.

<sup>19</sup> Minn. Stat. § 615.16 (2022); *Eclipse Architectural Grp., Inc. v. Lam*, 814 N.W.2d 692, 701 (Minn. 2012).

sensibly recognizes these differences by giving each rule its own meaning. CenturyLink's effort to reduce its service quality obligations to rule 7810.5900 should be rejected.

**B. State Telecommunications Policy Goals Do Not Excuse CenturyLink's Failures.**

CenturyLink asserts that the Commission could not have adequately considered state telecommunication policy goals because it claims the Department did not offer any evidence relating to costs or benefits.<sup>20</sup> These goals are found in Minn. Stat. §§ 237.011 and 237.012. These generalized goals, however, do not exempt CenturyLink from complying with the specific requirements of the chapter 7810 rules. Moreover, the Commission – as CenturyLink admits – did consider state telecommunication policy goals.

The generalized policy statements found in sections 237.011 and 237.012 do not create any enforceable rights or obligations for CenturyLink. General introductory or explanatory provisions must give way to the specific language.<sup>21</sup> Moreover, even if sections 237.011 and 237.012 were not directory provisions,<sup>22</sup> there is nothing in either section that expressly requires the Commission to consider quantitative cost or benefit information as CenturyLink claims. Instead, the Commission could reasonably rely on the totality of the record, qualitative considerations, and draw reasonable inferences based on its own specialized expertise.<sup>23</sup>

Finally, the record establishes both that the Commission considered the totality of the goals and that the parties, including the Department offered evidence relevant to them. In its order, the Commission detailed various state goals, explaining it had “considered CenturyLink's arguments,

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<sup>20</sup> CenturyLink Petition at 13-16.

<sup>21</sup> Minn. Stat. § 645.26, subd. 1; *see In re Appl. of Atkinson*, 291 N.W.2d 396, 400 (Minn. 1980); *In re PERA Police & Fire Plan Line of Duty Disability Benefits of Brittain*, 724 N.W.2d 512, 518 n.6 (Minn. 2006).

<sup>22</sup> *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 156 (Minn. 2014) (holding the use of the word “should” in a rule or a statute is not mandatory.)

<sup>23</sup> *See* Minn. Stat. § 216A.03, subd. 1.

but ultimately rejected them” due to concerns about the health and safety of consumers dependent on landline service.<sup>24</sup> Similarly, the Department did offer evidence relating to the totality of the state’s telecommunications goals. The Department and other intervenors offered extensive evidence relating to “quality of service,” “universal service,” and “consumer protections.”<sup>25</sup> The Department also carefully considered efficacy and potential financial impacts when recommending remedies. Plant Pride programs, for example, have been successfully implemented by CenturyLink’s peers in other jurisdictions, which suggests that such programs are neither cost-prohibitive nor likely to be ineffective.<sup>26</sup> Likewise, the Department limited the numbers of customers it recommended receive repairs to a small fraction of CenturyLink’s total customers.<sup>27</sup> Targeting relief to a narrow universe of consumers who are most intensely affected by CenturyLink’s inadequate service again reflects a consideration to avoid undue costs.

In short, neither rule 7810.5900 nor state policy goals should cause the Commission to reconsider its well-reasoned and thoroughly supported order.

### **III. THE COMMISSION SHOULD REJECT CENTURYLINK’S UNSOLICITED AND UNSUPPORTED OFFER OF SETTLEMENT.**

The Commission should reject CenturyLink’s offer of settlement that attempts to discard the parts of the order the company finds inconvenient. CenturyLink styles its proposal as a “service quality plan,”<sup>28</sup> but it would be materially worse for POTS consumers than the Commission’s order in several respects.

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<sup>24</sup> Comm’n Order 19-20.

<sup>25</sup> Minn. Stat. § 237.011(1), (5), (7).

<sup>26</sup> See Ex. DOC-2 at 9-12 (Gonzalez Rebuttal) (discussing New York and Pennsylvania programs).

<sup>27</sup> *Id.* at 8; Ex. DOC-5 at 19-20 (Webber Rebuttal).

<sup>28</sup> It also is not clear that the Commission could approve CenturyLink’s purported service quality plan in this proceeding. The Commission can only approve a service quality plan in conjunction with an alternative form of regulation plan (“AFOR”). Minn. Stat. §§ 237.76, .765(a); see, e.g., *In re Petition of CenturyLink, Inc. for a Variance to Minnesota Rules*, Docket No. P-421/AM-14-

First, CenturyLink seeks relief from the Commission's order to end the practice of declining to complete maintenance projects for failure to satisfy a five-year payback threshold.<sup>29</sup> As a substitute, CenturyLink proposes to continue its current practices. That is unacceptable. The record establishes that in recent years CenturyLink has identified few projects and completed less than half of them, despite the size and age of its network.<sup>30</sup> Allowing CenturyLink to perpetuate the status quo will fail customers. Nor is the relief sought by CenturyLink justified by the service quality rules. As the Commission recognized, the rules do not make service quality contingent on cash flow.<sup>31</sup>

Second, CenturyLink seeks to eliminate the Commission's requirement that it schedule repair appointment within a period of no more than four hours.<sup>32</sup> Instead, CenturyLink proposes to hire three dedicated dispatchers to improve its performance under rule 7810.5800.<sup>33</sup> While CenturyLink's proposal may improve its rule 7810.5800 performance, there is no guarantee of improvement. There also is no recourse under CenturyLink's settlement proposal if three dispatchers prove insufficient. By contrast, the requirement in the Commission's order focuses on the desired outcome and directs CenturyLink to continue working until it reaches the required result. This approach is consistent with how the Commission oversees most regulated entities; it prescribes outcomes and directs regulated entities to determine the most effective methodology for achieving it.

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255, 2014 WL 4050187, ORDER DENYING VARIANCE REQUEST at \*2 (Aug. 11, 2014). CenturyLink, however, has not proposed an AFOR along with its service quality plan.

<sup>29</sup> CenturyLink Petition, Attach. A at 3.

<sup>30</sup> Ex. DOC-5 at 10-11 (Webber Rebuttal); Ex. DOC-5, JDW-R-10 at 3-4 (Webber Rebuttal); Ex. DOC-5, JDW-R-8 at 4 (Webber Rebuttal).

<sup>31</sup> Comm'n Order at 22.

<sup>32</sup> CenturyLink Petition, Attach. A at 3.

<sup>33</sup> *Id.* at 1.



Third, CenturyLink asserts that the Commission should amend its order to add a *force majeure* provision to the Plant Pride program and reduce the percentage of reports the company must resolve within 90 days. While a *force majeure* provision is not unreasonable, the Commission's order already provides flexibility to deal with circumstances beyond CenturyLink's control. The order provides that "resolve" shall include the possibilities of "no action" and "alternative resolutions."<sup>34</sup> This flexible definition accommodates on-the-ground circumstances such as frozen ground that precludes immediate remediation or copper facilities scheduled for fiber replacement soon.<sup>35</sup> For the same reason, the Commission should reject CenturyLink's attempt to reduce its obligation to resolve all reports with 90 days to 70% within 90 days. The Commission's definition of resolve is broad enough to accommodate permitting delays or supply chain shortages or other unanticipated occurrences.

In sum, the Commission should not abandon its order for CenturyLink's purported service quality plan. It is a poor substitute for the meaningful relief provided to consumers in the Commission's order.

## CONCLUSION

The Commission's order is well-reasoned, and thoroughly supported by the record and the law. The Commission should deny CenturyLink's reconsideration petition.

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<sup>34</sup> Comm'n Order at 24-25.

<sup>35</sup> Ex. DOC-2 at 13 (Gonzalez Rebuttal).

Dated: October 7, 2024

Respectfully submitted,

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