

**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
600 North Robert Street  
Saint Paul, Minnesota 55101**

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 Seventh Place East, Suite 350  
Saint Paul, Minnesota 55101-2147**

**In The Matter of Formal Complaint Regarding The Services Provided By The  
Qwest Corporation D/B/A CenturyLink In Minnesota, On Behalf Of The  
Communications Workers Of America**

**OAH Docket No. 21-2500-38965  
MPUC Docket No. P-421/C-20-432**

**EXCEPTIONS OF  
QWEST CORPORATION D/B/A CENTURYLINK QC IN MINNESOTA**

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## INTRODUCTION

Qwest Corporation d/b/a CenturyLink QC in Minnesota (CenturyLink or Company) files these Exceptions to the Findings of Fact, Conclusions of Law, and Recommendations (Recommendation) of the Administrative Law Judge (ALJ) in this matter, as this Recommendation fails to accurately reflect either the record or applicable Minnesota law.

As discussed below, the record of this proceeding demonstrates:

1. The strong overall performance of the plain old telephone service (POTS) network operated by CenturyLink to provide landline phone service to its Minnesota customers.
2. CenturyLink prioritizes its POTS voice service customers in Minnesota over other aspects of its business.
3. Customers increasingly prefer wireless and broadband services over POTS service.
4. Competition in the industry and customer preference for wireless and broadband services has resulted in an ongoing loss of POTS customers of approximately 15 percent per year and causing an overall erosion in residential POTS customers for CenturyLink of approximately 90 percent over the past 20 years – from approximately 1.3 million customers in 2000 to approximately 113,000 at the end of 2022.

Moreover, Minnesota law provides:

1. Telecommunications goals that the Minnesota Public Utilities Commission (Commission) should consider in executing its regulatory duties, including: maintaining just and reasonable rates, encouraging economically efficient deployment of infrastructure to higher speed telecommunications services and greater capacity for voice, video and data transmission, and encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner.
2. Aggressive broadband goals that call for all Minnesota businesses and homes to have access to at least one provider of broadband with download speeds of at least 100 megabits per second by 2026.

3. “Telephone utilities” rules written in the 1970s that provide broad “utility obligations” focused on the utility’s overall network performance and the provision of “adequate service.”

The Recommendation ignores the record evidence summarized above, makes only passing reference to the goals of maintaining just and reasonable rates and encouraging economically efficient deployment of infrastructure, and ignores the State’s broadband goals and the goal of encouraging fair and reasonable competition. Instead, the Recommendation adopts previously unarticulated measures of service quality and focuses significant attention on anecdotal evidence to recommend that the Commission find CenturyLink in violation of two extremely broad rules (Minnesota Rules 7810.3300 and 7810.5000) that set forth no specific requirements and one rule (Minnesota Rules 7810.5800) that sets forth an “objective” that the Company has acknowledged it does not currently meet.

The Recommendation further proposes that the Commission order “remedies” wholly unsupported by the record that would require CenturyLink to spend untold millions of dollars to repair or replace copper plant that may or may not be the “cause” of the perceived service quality issues discussed in the Recommendation and that, in any event, will soon be stranded as customers continue to migrate to wireless and broadband services. These recommended “remedies” rely on pronouncements from Department of Commerce (Department) witnesses with no practical experience with telecommunications service and with little or no analysis of the effectiveness of the remedies it suggests. In fact, the Recommendation suggests remedies that no party proposed in post-hearing briefing and that are even less supported by the record.

Creating new service quality measures and then forcing the Company to make economically wasteful investments to address those new service quality measures does not serve CenturyLink's customers or the public interest. Moreover, such mandates would only further tilt the competitive playing field against CenturyLink and further delay its ability to help Minnesota meet the aggressive universal broadband service goals established by the legislature. Such an approach runs directly contrary to the Commission's statutory mandate to encourage "economically efficient deployment of infrastructure"<sup>1</sup> and to act "in a competitively neutral regulatory manner."<sup>2</sup>

While these are the most glaring flaws in the Recommendation, a series of additional problems require the Commission to reject the Recommendation. CenturyLink respectfully requests that the Commission reject the Recommendation and adopt its Proposed Findings of Fact, Conclusions of Law, and Recommendation, attached.<sup>3</sup>

#### **I. BURDEN OF PROOF.**

As an initial matter, there is no question in this proceeding that the Department and the Office of the Attorney General (OAG) bear the burden of proof to establish violations of any telephone service quality requirements set forth in applicable Minnesota Statutes (Chapter 237) and Rules (Chapter 7810).<sup>4</sup> No party in this proceeding has alleged any violation of Minnesota Statutes. In addition, while this proceeding initially implicated

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<sup>1</sup> Minn. Stat. § 237.011 (3)

<sup>2</sup> Minn. Stat. § 237.011 (4)

<sup>3</sup> A copy of CenturyLink's Proposed Findings of Fact, Conclusions of Law, and Recommendation is attached as Exhibit A.

<sup>4</sup> Recommendation at Findings of Fact (Findings) ¶ 3.

several Minnesota Rules, by the time of the evidentiary hearing the parties reduced the scope to the three rules noted above – Minn. R. 7810.3300 (Maintenance of Plant and Equipment), 7810.5000 (Utility Obligations) and 7810.5800 (Interruptions of Service).

**II. THE RECOMMENDATION ERRS IN ITS INTERPRETATION AND APPLICATION OF RULES 7810.3300 AND 7810.5000.**

Minn. R. 7810.3300 provides, in its entirety:

**7810.3300 MAINTENANCE OF PLANT AND EQUIPMENT.**

Each telephone utility shall adopt and pursue a maintenance program aimed at achieving efficient operation of its system so as to permit the rendering of safe and adequate service. Maintenance shall include keeping all plant and equipment in good state of repair consistent with safety and adequate service performance. Broken, damaged, or deteriorated parts which are no longer serviceable shall be repaired or replaced. Adjustable apparatus and equipment shall be readjusted as necessary when found by preventive routines or fault location tests to be in unsatisfactory operating condition. Electrical faults, such as leakage or poor insulation, noise, induction, cross talk, or poor transmission characteristics, shall be corrected to the extent practicable within the design capability of the plant affected.

Minn. R. 7810.5000 provides, in relevant part:

**7810.5000 UTILITY OBLIGATIONS.**

Each telephone utility shall provide telephone service to the public in its service area in accordance with its rules and tariffs on file with the commission. Such service shall meet or exceed the standards set forth in this chapter. Each telephone utility has the obligation of continually reviewing its operations to assure the furnishing of adequate service. Each telephone utility shall maintain records of its operations in sufficient detail as is necessary to permit such review and such records shall be made available for inspection by the commission upon request at any time within the period prescribed for retention of such records. Each utility shall make measurements to determine the level of service for each item included in these rules. Each utility shall provide the commission or its staff with the measurements and summaries thereof for any of the items included herein on request of the commission or its staff. Records of these measurements and summaries shall be retained by the utility as specified by the commission.

The Recommendation interprets these provisions as applying on a line-by-line, customer-by-customer basis.<sup>5</sup> Further, the Recommendation creates two new measures of what constitutes “adequate service” for the purposes of applying these rules.<sup>6</sup> In devising these findings, the Recommendation errs in multiple ways. First, neither the plain language of Minnesota Rules nor prior Commission application of those rules support their application on a line-by-line, customer-by-customer basis. Second, the Recommendation looks to the “volume of service issues”<sup>7</sup> as support for the creation of a new standard, without recognizing that the Commission has specifically set a standard for “volume of service issues” in Minn. R. 7810.5800. Third, in finding that the Company is not providing “adequate service” to certain customers, the Recommendation states that “what constitutes adequate service must consider a variety of factors relating to the service quality that customers are experiencing,”<sup>8</sup> without explaining what those additional “factors” are or where they can be found in Minnesota Rules, while ignoring such statutory factors as the need to maintain just and reasonable rates and encouraging economically efficient deployment of infrastructure for higher speed telecommunication services and greater capacity for voice, video, and data transmission.<sup>9</sup> Fourth, these findings trivialize the substantial record evidence that demonstrates CenturyLink’s strong overall network

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<sup>5</sup> Recommendation at Findings ¶ 55.

<sup>6</sup> See Recommendation at Findings ¶¶ 40, 57 and Recommendations ¶¶ 2, 3.

<sup>7</sup> Recommendation at Findings ¶ 57.

<sup>8</sup> Recommendation at Findings ¶ 57

<sup>9</sup> Minn. Stat. § 237.011.

performance. Finally, creating and then applying a new standard to impose unsupported but potentially costly remedial measures raises serious due process concerns.

**A. Minnesota’s General Service Quality Rules Apply on an Overall, Not Line-by-Line or Customer-by-Customer Basis.**

**1. The Language of the Rules and Commission Precedent Analyze Adequacy of Service Based on Overall Company Performance.**

The plain text of each rule suggests the standard applies to overall performance. Minn. R. 7810.3300 requires “Each telephone utility shall adopt and pursue a maintenance program aimed at achieving efficient operation of its system so as to permit the rendering of safe and adequate service.” Minn. R. 7810.5000 requires “telephone service to *the public* in its service area in accordance with its rules and tariffs on file with the commission.” (Emphasis added.) Similarly, Minn. R. 7810.5000 provides: “Each utility shall make measurements to determine *the level of service* for each item included in these rules. Each utility shall provide the commission or its staff with the measurements and summaries thereof for any of the items included herein on request of the commission or its staff.” (Emphasis added.) The language of these rules plainly applies to performance of a provider overall and not with respect to an individual line or customer.

Neither the ALJ nor the parties identified a single instance in which this Commission has applied these standards on a line-by-line basis. No measurements or summaries have been identified to measure such performance on an individual line basis. The Minnesota Commission has not requested measurements or summaries of CenturyLink’s service performance since expiration of its Alternative Form of Regulation (AFOR) plan on December 31, 2016.

Instead, Commission history applies such rules on an overall basis. The AFOR included a service quality plan as appendix B which specifically set forth its definition of “substantial compliance”:

Substantial compliance with retail service quality standards is satisfied if [CenturyLink] 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 [CenturyLink] 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, [CenturyLink] 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. [CenturyLink] shall not be deemed to be out of substantial compliance if failure to meet a standard is the result of circumstances as set forth in Section B.

“Substantial compliance” at least as measured by the Commission under the AFOR – a more heavily regulated regime than that under which the Company currently operates<sup>10</sup> – was measured on a system-wide basis.

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<sup>10</sup> Since 2017, all but five Company exchanges fall under Minn. Stat. § 227.025, Competitive Market Regulation, rather than under Minn. Stat. § 237.76, et seq., Alternative Regulation Plan. MPUC Docket No. P-421/AM-16-496, Order Granting Petition in Part (May 22, 2017).

## **2. Decisions from Other Jurisdictions Cited by the Recommendation Undermine, Rather than Support the Argument that Compliance Is Measured on a Line-by-Line Basis.**

The Recommendation cites decisions from Pennsylvania and Ohio as support for its proposed customer-by-customer application of these rules.<sup>11</sup> Both cases involved substantial differences in the statutory and regulatory authority granted to those commissions. Additionally, those cases involved significant factual differences from that present here.

The Ohio case cited in the Recommendation, *Wilson v. AT&T Communications of Ohio*, No. 03-2294-TP-CSS, 2004 WL 1810707, at \*6 (Ohio P.U.C. June 2, 2004), illustrates the complexity of equating a customer complaint or service ticket to a failure to provide “adequate service.” In that case, the customer submitted repeated repair tickets and escalations between June 9 and September 18, 2003. Ultimately, the provider concluded that the problems the customer was experiencing were due to faulty inside wire within the customer’s premises. Because such faults are the responsibility of the customer, the Commission rejected the complaint and found that the customer failed to meet its burden of proof to demonstrate inadequate service.<sup>12</sup>

The Pennsylvania case cited by the Recommendation, *Cynthia Mosco v. Verizon Penn. LLC*,<sup>13</sup> involved an individual customer complaint and was cited by the Recommendation for the proposition that “... although occasional outages do not

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<sup>11</sup> Recommendation ¶ 56.

<sup>12</sup> A copy of the decision is attached as Exhibit B.

<sup>13</sup> Docket No. C-2018-3006579, 2020 WL 1673955 at \*11 (Pa. PUC Mar. 9, 2020) (copy attached as Exhibit C).

necessarily constitute a violation, losing service on three occasions over 16 months was inadequate service.” However, the complainant in that case “testified that she had made complaints to Verizon 39 times in the last two and a half years, beginning in 2016. This testimony is supported by Verizon’s record which notes a significant number of service calls in the last 18 months. Several of Verizon’s service reports note that the Complainant is disabled or noted the medical necessity for repairs. Therefore, these violations are serious in nature.”<sup>14</sup> Thus, the finding of violation was not predicated simply on three outages but was considered in light of nearly 40 complaints from an individual customer, and the fact that Verizon was aware that the complainant had a medical necessity for repairs and service.

Further, the Pennsylvania Rule in question is no longer in force, having been *repealed* via Pennsylvania PUC rulemaking on August 13, 2022 due to the Commission’s February 2015 decision to reclassify stand-alone basic telephone service as competitive in parts of the Verizon Pennsylvania and Verizon North service territories.<sup>15</sup> In that February 2015 decision, the Commission determined that due to the competition that Verizon faced in certain geographic areas from cable fixed wireline carriers, cellular telephone carriers, and the availability of fiber based services, it was appropriate to classify Verizon’s POTS service as competitive.<sup>16</sup>

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<sup>14</sup> *Cynthia Mosco v. Verizon Penn. LLC*, Docket No. C-2018-3006579, 2020 WL 1673955 at \*11 (Pa. PUC Mar. 9, 2020).

<sup>15</sup> *See* 2022 PA Reg Text 499945, 52 Pa. B. 5049.

<sup>16</sup> *Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of All Retail Services in Certain Geographic Areas and for a Waiver of*

Notably, this Commission has made an analogous determination with respect to areas in which the Company provides telephone service.<sup>17</sup> While this Commission determination has not led to any modification of the applicable rules here, the fact that 104 of the 109 exchange areas in which the Company provides service have been determined to be competitive is relevant to how these nearly 50 year-old rules should be interpreted and applied to participants in the modern telecommunications industry.

Finally, even if it had not been repealed, the Pennsylvania Rule at issue in the cited section of the ALJ's recommendations is not an appropriate parallel to Minn. R. 7810.3300. The Pennsylvania Rule *specifically requires* "continuous service," which the Recommendation argues should be *read into* the Minnesota Rule. The Pennsylvania Rule, 52 Pa. Code § 63.24, provided, in part:

(a) System maintenance. Each public utility shall endeavor to maintain its entire system in such condition as to make it possible to furnish ***continuous service***, and shall take reasonable measures to prevent interruptions of service and to restore service with a minimum delay if interruptions occur. (Emphasis added.)

Unlike the repealed Pennsylvania rule, the Minnesota Rules do not include any discussion of "continuous service." Moreover, as the Department acknowledges, Minnesota's Telephone Utilities Rules do not define "safe and adequate" or "adequate"

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*Regulations for Competitive Services*, Docket Nos. P-2014-2446303, P-2014-2446304 (Pa. PUC Mar. 4, 2015).

<sup>17</sup> See Docket No. P-421/AM-16-496. In that matter, the Commission determined that customers in 104 of CenturyLink's Minnesota exchange service areas have access to, and use, competitive, alternative services.

service and the Commission has not previously addressed this issue.<sup>18</sup> Thus, the interpretation of these terms is a matter of first impression.

Merriam-Webster defines “adequate” as “sufficient for a specific need or requirement,” “of a quality that is good or acceptable,” “of a quality that is acceptable but not better than acceptable” or “lawfully and reasonably sufficient.”<sup>19</sup> Consistent with these definitions, the Company has interpreted “safe and adequate service,” as used in the rules, “to mean not posing a danger and capable of carrying voice service.”<sup>20</sup> The Company submits this is a reasonable definition and that other, more targeted Telephone Utilities Rules (*e.g.* concerning trouble reports or call answer times) provide the necessary context for determining whether the Company is meeting its *general* obligation of providing such “safe and adequate service.” As the Company discussed in detail in its Initial Brief and discusses further, below, the record demonstrates the Company’s strong overall performance with respect to its Minnesota voice customers when viewed in this context. And that strong overall performance is further evidenced by the significant narrowing of issues in this case.<sup>21</sup>

The Company takes seriously the importance of providing safe and adequate service to its voice telephone customers. However, the record of this proceeding demonstrates both

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

<sup>19</sup> <https://www.merriam-webster.com/dictionary/adequate>.

<sup>20</sup> CenturyLink Response to OAG Information Request 60(b), included in the record at Ex. OAG-1, Sched. 9 at 2-3 (Lebens Direct).

<sup>21</sup> Minnesota Telephone Utilities Rules previously at issue prior to the Joint Stipulation include 7810.1100 and 7810.1200 (complaint handling), 7810.2800 (installation or upgrade times), 7810.4900 (adequacy of service), 7810.5200 (call answer time), and 7810.5900 (trouble reports).

the efforts that the Company has taken and continues to take to provide safe and adequate service (for example, by making POTS voice service repair its highest priority work) and its overall success in achieving such service, as reflected in its low trouble report rates – rates far below the objective set forth in Minnesota Rules and even farther below the rule threshold indicating a need for investigative or corrective action.<sup>22</sup> The Company’s efforts and prioritization of its voice service customers, and the successful performance of its network, demonstrate that the Company is fully in compliance with Minnesota Rules.

**B. The Recommendation Creates Two New “Volume of Service Issues” Service Quality Standards Found Nowhere in Minnesota Rules 7810.3300 or 7810.5000 and Does So While Ignoring the Rule Specifically Addressing Such Issues.**

The Recommendation takes two *qualitative* rules regarding the provision of “adequate service” and creates and applies two new *quantitative* measures found nowhere in any Minnesota Rule. First, the Recommendation finds that each individual customer that experienced four or more trouble tickets between 2019 and 2023 experienced what a Department witness coined “chronic trouble” – a “volume of service issues” standard that considers CenturyLink in violation of Minn. R. 7810.3300 and 7810.5000 as to that customer.<sup>23</sup> In doing so, the Recommendation ignores both the *actual* quantitative “volume

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<sup>22</sup> Minn. R. 7810.5900, setting an objective of an “average rate of all customer trouble reports in an exchange [of] no greater than 6.5 per 100 telephones per month” and indicating “a need for investigative or corrective action” in cases of “customer trouble report rate of more than 8.0 per 100 telephones per month by repair bureau on a continuing basis.”

<sup>23</sup> See Recommendation at Findings ¶¶ 40, 57 and Recommendations ¶¶ 2, 3. The Company notes that Recommendations ¶ 2 incorrectly cites 7810.3000 (Directory Assistance), rather than 7810.3300.

of service issues” objective set forth in Minnesota Rules – the “customer trouble reports” objectives established in Minn. R. 7810.5900 – and the “repeat trouble” objective previously applied by the Commission in the Company’s AFOR.

Minnesota Rule 7810.5900 establishes that “[i]t shall be the objective to so maintain service that the average rate of all customer trouble reports in an exchange is no greater than 6.5 per 100 telephones per month” and that a “trouble report rate of more than 8.0 per 100 telephones per month by repair bureau on a continuing basis indicates a need for investigative or corrective action.” As discussed in Mr. Ardoyno’s testimony, the Company has maintained a monthly average of fewer than 6.5 trouble reports per 100 telephones since January 2019, with less than **[NOT PUBLIC DATA BEGINS** **NOT PUBLIC DATA ENDS]** of the objective on a monthly basis over that time period,<sup>24</sup> meeting the objective set forth in Minn. R. 7810.5900. In fact, the Company’s monthly average of trouble reports has been at or below **[NOT PUBLIC DATA BEGINS** **NOT PUBLIC DATA ENDS]** report per 100 lines for the vast majority of the past 55 months, and has remained below **[NOT PUBLIC DATA BEGINS** **NOT PUBLIC DATA ENDS]** reports per month per 100 lines for the entirety of that time period.<sup>25</sup> The entirety of the Company’s trouble rates from 2019 to present are provided as a schedule to Mr. Ardoyno’s direct testimony.<sup>26</sup>

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<sup>24</sup> Ex. CTL-6 at 5 (Ardoyno Direct).

<sup>25</sup> Ex. CTL-6 at 5 (Ardoyno Direct).

<sup>26</sup> Ex. CTL-7, Sched. 2 (Ardoyno Direct).

The Recommendation acknowledges, as it must, that the Company’s trouble report rates meet the objective set forth in Minn. R. 7810.5900. Indeed, both the DOC and OAG dropped any contention that the Company is not in compliance with the trouble report rule.<sup>27</sup> Nonetheless, the Recommendation finds that the “volume of service issues” experienced by certain customers has been high enough that the Company should be found in violation of the general rules regarding maintenance of the network of utility obligations. However, if the Company was actually failing to meet its responsibilities to maintain its equipment and remain attentive to the quality of service provided by its network, the number of troubles on the network would increase, leading to an increase in the trouble report rate – an increase notably absent in the trouble report data.<sup>28</sup> It is also notable that the trouble report rule includes a specific trouble report rate level – 8.0 per 100 telephones – beyond which “investigative or corrective action” is warranted.<sup>29</sup> As discussed above, the Company’s trouble reports are far below that rate. The fact that the Company’s performance is well in compliance with the objective set forth by this rule, and even further below the level at which regulatory action is suggested, should foreclose any finding that the Company is providing inadequate service.

While the Commission has never discussed “chronic trouble” or created a standard by which such “chronic trouble” should be judged, the Commission did include a “repeat trouble” report metric in CenturyLink’s AFOR, defined as follows:

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<sup>27</sup> See Joint Stipulation (Jan. 4, 2024) (eDocket No. 20241-201849-01).

<sup>28</sup> Ex. CTL-9 at 6 (Ardoyno Rebuttal).

<sup>29</sup> Minn. R. 7810.5900.

POTS Repeat Trouble Report Rate - For all customers who report trouble on their access line, no more than 9.0% of total trouble reports may reflect the same trouble on the same line within 30 days of having the first trouble resolved. For instances of the same trouble reported on the same access line within 30 days, Qwest will credit individual residential customer(s) \$5 for each like-occurrence and business customer(s) \$10 for each like-occurrence. Compliance shall be determined by a 12-month annual statewide average of the performance for the measure. The company shall give priority repair commitments to customers who identify critical medical situations. Critical medical situations are identified as infants on monitor systems, life support systems, or other life threatening emergencies.<sup>30</sup>

As CenturyLink witness Steve Turner pointed out, CenturyLink has met this quantitative measure of troubles as well.<sup>31</sup>

Rather than apply either the objective set forth in Minnesota Rules or the definition of “repeat trouble” adopted by the Commission in the AFOR, the Recommendation creates a new standard that no individual customer should have experienced four or more trouble tickets over the four and a half years running from January 2019 through June 2023, and then applies that standard by ordering the Company to take action on a customer-by-customer basis with respect to every customer meeting this definition. This new standard, a creation of Department witness Mr. Webber, goes far beyond any requirement contemplated under the Telephone Utilities Rules.<sup>32</sup> Moreover, this proposed new “standard” could lead to a finding that “chronic troubles” exist on a line even if those troubles are fundamentally different kinds of problems, or are problems reported multiple years apart. Because of the variation in the nature or kinds of trouble that can be

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<sup>30</sup> AFOR, Appendix B, p. 6 (included as Exhibit D).

<sup>31</sup> Ex CTL-19, Sched. 1 at ¶¶ 89-91 (Turner Rebuttal)

<sup>32</sup> Ex. CTL-19, Sched. 1 at ¶¶ 92-94 (Turner Rebuttal).

experienced on a voice service line, this crude new standard that aggregates troubles across a period spanning multiple years simply does not provide any meaningful insights as to the quality of the service being provided. As Company witness Mr. Ardoyno noted, over a period of years a customer could have had facilities switched, there may have been a construction project creating impacts, or any number of other factors could have come into play that would not indicate “chronic trouble” or a failure to provide “adequate service.”<sup>33</sup>

As Mr. Turner observed, the new standard devised by the Department and now recommended by the ALJ leads to a number of problems, including the fact that it would create:

A new regulatory focus on a broad category of trouble reporting (Code 310), rather than the rate of trouble reports, requiring CenturyLink “to rehab all outside plant that serves customers who have had four or more [such] tickets since 2019, as identified by Mr. Webber,” even though some of these trouble tickets were not generated recently, even though some areas have likely seen problematic copper replaced with fiber, and even though Ms. Gonzalez notes that these customers represent “a small universe of CenturyLink’s total customers.”<sup>34</sup>

For all of these reasons, this newly created quantitative standard must be rejected.

The Recommendation creates a second new service quality standard by finding that a certain volume of trouble reports on any given 100-pair cable also puts the Company in violation of Minn. R. 7810.3300 and Minn. R. 7810.5000.<sup>35</sup> Under this new standard, if a 100-pair cable had 10 closed trouble tickets in 12 months *and* 75% or more of the troubles on that cable were coded with CenturyLink’s general category of cause code 310, the

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<sup>33</sup> Evid. Hrg. Tr. at 225 (Dec. 13, 2023) (Ardoyno).

<sup>34</sup> Ex. CTL-21, Sched. 1 at ¶ 26 (Turner Surrebuttal)

<sup>35</sup> See Recommendation at Recommendations ¶ 4.

Company would be required to “review and rehab” that cable – presumably because such a number and coding again indicates “deteriorated plant.”<sup>36</sup> However, CenturyLink witnesses Mr. Turner and Mr. Ardoyno both explained that cause code 310 is a widely-used and very general cause code that technicians tend to use as a “catch-all,” even when a more precise code could be used.<sup>37</sup> Simply put, the use of cause code 310 does not, in and of itself, indicate “deteriorated plant” requiring rehab. Moreover, nothing in the Telephone Utilities Rules suggests anything approximating an analysis of every 100-pair cable of a telephone utility, and determining which of those cables may have had certain number of trouble tickets tagged with a general code, in order to determine a company’s compliance with Minn. R. 7810.3300 and Minn. R. 7810.5000, particularly given the explicit Minnesota Rules emphasis on trouble report *rates*.<sup>38</sup> This second new standard, having no basis in Minnesota law, must also be rejected.

**C. The Recommendation Becomes Even More Arbitrary in Stating that an Unspecified “Variety of Factors” Must Be Considered in Determining a Telephone Utility’s Compliance with Minnesota Rules 7810.3300 and 7810.5000, While Ignoring Cost and Other Relevant Factors.**

The Recommendation invites arbitrary and *ad hoc* application of the Telephone Utilities Rules in stating “adequate service must consider a variety of factors relating to the service quality that customers are experiencing.”<sup>39</sup> The Recommendation fails to articulate the “variety” of factors which the ALJ believes are relevant. However, at least in fashioning

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<sup>36</sup> *Id.*

<sup>37</sup> Ex. CTL-21, Sched. 1 at ¶¶ 10, 11, 17, 26 (Turner Surrebuttal); Ex. CTL-11 at 8 (Ardoyno Surrebuttal).

<sup>38</sup> Ex. CTL-21, Sched. 1 at ¶ 11 (Turner Surrebuttal).

<sup>39</sup> Recommendation at Findings ¶ 57.

its “remedies,” the Recommendation clearly rejects any consideration of costs, benefits, economic efficiency or resulting impacts on customer rates, contrary to Minnesota’s telecommunications goals as articulated in statute.

On this point, the Recommendation wildly mischaracterizes CenturyLink’s position. Specifically, the Recommendation claims “CenturyLink points to no law that conditions regulatory compliance on maximizing profitability.”<sup>40</sup> *CenturyLink made no such argument.* Rather, CenturyLink correctly pointed to the telecommunications goals set forth in Minn. Stat. § 237.011 that call out the need to maintain just and reasonable rates and the need to encourage economically efficient deployment of infrastructure. Both of these goals require consideration of cost and resulting benefits, to avoid inefficient use of resources that do not serve the public interest.

The Recommendation further misstates the Company’s position in this matter by claiming that CenturyLink only fixes service when the repair meets a five-year payback calculation, stating:

*CenturyLink’s practice of undertaking maintenance projects only if the project satisfies a five-year payback period threshold leads to interruptions of service, broken or deteriorated equipment and plant, impairing CenturyLink’s ability to fulfill its obligations under Minn. R. 7810.3300, .5000, and .5800. CenturyLink is required to maintain its equipment in a state of good repair regardless of whether the payback period of the investment needed to make that repair is financially attractive to CenturyLink.*<sup>41</sup>

This finding is simply wrong. It parrots allegations made by the Department and OAG in Direct Testimony that the Company *directly and unequivocally refuted* in Rebuttal

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<sup>40</sup> Recommendation at Findings ¶ 103.

<sup>41</sup> Recommendation at Findings ¶ 73.

Testimony. As Mr. Ardoyno, CenturyLink’s Director of Network Service Operations explained, “the five-year payback threshold is only applied to projects that are under consideration as *transformation* projects. Projects that do not meet the five-year payback measure may be done out of a local expense budget and assigned through the construction maintenance system (CMS).”<sup>42</sup>

To be clear, CenturyLink *does* believe the Commission must consider issues such as economic efficiency, costs, benefits, Minnesota’s interest in leading the nation in broadband deployment and the broad public interest in interpreting rules that are now half a century old. Indeed, Minnesota Statutes call for the Commission to consider such factors in making decisions.

In 1997, the legislature set out Minnesota’s telecommunications goals, stating in Minnesota Statutes, Section 237.011:

The following are state goals that should be considered as the commission executes its regulatory duties with respect to telecommunication services:

1. supporting universal service;
2. maintaining just and reasonable rates;
3. encouraging economically efficient deployment of infrastructure for higher speed telecommunication services and greater capacity for voice, video, and data transmission;
4. encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner;
5. maintaining or improving quality of service;
6. promoting customer choice;

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<sup>42</sup> Ex. CTL-9 at 8 (Ardoyno Rebuttal) (emphasis added).

7. ensuring consumer protections are maintained in the transition to a competitive market for local telecommunications service; and
8. encouraging voluntary resolution of issues between and among competing providers and discouraging litigation.

While certain of these goals can at times conflict with each other – for example, “gold-plating” a network may improve quality of service while simultaneously leading to substantial rate increases – none can be ignored.

More recently, the legislature also set out ambitious *broadband* goals for Minnesota, stating in Minnesota Statutes Section 237.012:

It is a state goal that:

- (1) no later than 2022, all Minnesota businesses and homes have access to high-speed broadband that provides minimum download speeds of at least 25 megabits per second and minimum upload speeds of at least three megabits per second; and
- (2) no later than 2026, all Minnesota businesses and homes have access to at least one provider of broadband with download speeds of at least 100 megabits per second and upload speeds of at least 20 megabits per second.

....

It is a goal of the state that by 2022 and thereafter, the state be in:

- (1) the top five states of the United States for broadband speed universally accessible to residents and businesses;
- (2) the top five states for broadband access; and
- (3) the top 15 when compared to countries globally for broadband penetration.

To meet these goals, Minnesota’s service quality requirements must take into account (1) maintaining just and reasonable rates; (2) deployment of broadband

infrastructure and (3) “economically efficient deployment of infrastructure.” Spending unknown millions of dollars on infrastructure that is unlikely to be used for its useful life runs directly contrary to such requirements.

As the FCC wrote in 2019: “Given the sweeping changes in the communications marketplace since the passage of the 1996 Act...we find that *the public interest is no longer served* [emphasis added] by maintaining...legacy regulatory obligations and their associated costs.”<sup>43</sup> The FCC noted that these legacy requirements can trap “incumbent LECs into preserving outdated technologies and services at the cost of a slower transition to next-generation networks and services that benefit American consumers and businesses.”<sup>44</sup> The same document notes that the FCC has worked hard to “encourage and facilitate the ongoing technology transitions and to promote broadband deployment,” not least because POTS “voice service—particularly that provided over copper—is rapidly becoming obsolete.”<sup>45</sup>

#### **D. CenturyLink’s Network Shows Strong Performance.**

Viewed from a system-wide basis, the ALJ recognizes and the record mandates that the Commission find CenturyLink to be providing adequate service. CenturyLink is meeting or exceeding the objectives set forth in the Telephone Utilities Rules, with the single exception the restoration of service objective set forth in Minnesota Rule 7810.5800.<sup>46</sup>

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<sup>43</sup> Ex. CTL-19, Sched. 1 at ¶ 36 (Turner Rebuttal).

<sup>44</sup> Ex. CTL-19, Sched. 1 at ¶ 36 (Turner Rebuttal).

<sup>45</sup> Ex. CTL-19, Sched. 1 at ¶ 36 (Turner Rebuttal).

<sup>46</sup> See CTL Initial Br. at 21-32.

The Recommendation inaccurately portrays CenturyLink's position as arguing that compliance with Rules 7810.3300 and 7810.5000 should be measured by compliance with trouble report rate measurements set forth in Minn. R. 7810.5900, stating:

CenturyLink's compliance with Minn. R. 7810.5900 cannot be used as a proxy for assessing adequate service under Minn. R. 7810.3300 and Minn. R. 7810.5000. The canons of construction did not permit such a substitution because it would fail to give each of the rules a distinct meaning. It would lead to absurd results, for example, if the same seven customers out of 100 reported once a month, every month, that they lack service, to conclude nevertheless that CenturyLink is in compliance with Minn. R. 7810.5900, and therefore providing adequate service under Minn. R. 7810.3300 and Minn. R. 7810.5000, even as those customers would continuously lack the ability to place or receive calls.<sup>47</sup>

This analysis fundamentally misstates CenturyLink's position and the record. CenturyLink presented its analysis of its compliance with Rules 7810.3300 and 7810.5000 through the testimony of its witness Steven Turner. As Mr. Turner discussed, the Company is in substantial compliance with these rules, based not solely on CenturyLink's trouble report rate, which the Administrative Law Judge concedes significantly exceeds the standard set forth in rule, but by CenturyLink's performance against all metrics entered into evidence in this proceeding. Such performance is addressed extensively in the Report of Mr. Turner, who concludes:

- CenturyLink has achieved at least a 98.3% installation commitment level within three days in every year from 2019 and 2023 (against a standard of 90%) in compliance with Minn. R 7810.2800.<sup>48</sup>
- Minnesota rules provide an *objective* of maintaining service so that the average rate of all customer trouble reports in an exchange is no greater than

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<sup>47</sup> Recommendations at Findings ¶ 82.

<sup>48</sup> Ex. CTL-19, Sched. 1 at ¶ 76-77 (Turner Rebuttal).

6.5 per 100 telephones per month,<sup>49</sup> CenturyLink's statewide annual average trouble report rates were 0.85% for 2019; 0.77% for 2020; 0.78% for 2021; and 0.69% for 2022.<sup>50</sup> Moreover, when measured *monthly* at the *wire-center* level, CenturyLink is meeting the trouble report rate objective well over 99 percent of the time.<sup>51</sup>

- CenturyLink is performing well with respect to Repeat Trouble Rates. While such a standard does not exist in the rules, it indicates efficient operation of the network.<sup>52</sup>
- CenturyLink is performing well with respect to the 90 percent of repair appointment commitments met standard, established in its last AFOR plan.<sup>53</sup> CenturyLink met its repair appointment commitments 93.7% of the time in 2019; 97.5% of the time in 2020; 94.1% of the time in 2021; and 91.2% of the time in 2023.<sup>54</sup>

In short, CenturyLink presented evidence that:

CenturyLink's robust repeat trouble report performance offers evidence that the company maintains its copper-based network in good repair, even as a significant technology transition moves toward its closing chapters. CenturyLink's responsiveness to customer complaints is strong, and its records in this area are admirable. Out-of-service repair timeliness is CenturyLink's sole area of performance weakness, but is explained by significantly decreased customer concentration in comparison to the period in which the standard itself was defined. After considering the Webber Report's allegations against CenturyLink, I find that the Webber Report's methodology often obscures and distorts CenturyLink's true service performance. I also find that the company displays a clear and consistent commitment to meeting or exceeding Minnesota PUC performance standards.<sup>55</sup>

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<sup>49</sup> Minn. R. 7810.5900.

<sup>50</sup> Ex. CTL-19, Sched. 1 at ¶ 81 (Turner Rebuttal); Ex. CTL-21, Sched. 1 at ¶ 8 (Turner Surrebuttal).

<sup>51</sup> Ex. CTL-19, Sched. 1 at ¶ 80 (Turner Rebuttal).

<sup>52</sup> Ex. CTL-19, Sched. 1 at ¶ 89-96 (Turner Rebuttal).

<sup>53</sup> Ex. CTL-19, Sched. 1 at ¶¶ 105-109 (Turner Rebuttal). Chapter 7810 does not establish a standard for the timeliness of customers repair appointment commitments. Ex. CTL-19, Sched. 1 at ¶ 105 (Turner Rebuttal).

<sup>54</sup> Ex. CTL-10, Sched. 1 at ¶ 106 (Turner Rebuttal).

<sup>55</sup> Ex. CTL-19, Sched. 1 at ¶ 123 (Turner Rebuttal).

While CenturyLink did not rely *solely* on its trouble report rate performance, it did advocate that this measurement is the best metric for analyzing adequacy of service. Company expert witness Mr. Steven Turner has over 35 years of experience in the telecommunications industry, including work in a variety of engineering and operating positions and being responsible for designing and engineering AT&T's local networks across a five-state region.<sup>56</sup> As Mr. Turner explained:

Trouble report rates are a useful metric for evaluating the “efficient operation” and “adequacy” of CenturyLink’s copper-based telephone service, and the Company’s trouble report rates are unambiguously outstanding.<sup>57</sup>

Indeed, while Minnesota rules provide an *objective* of maintaining service so that the average rate of all customer trouble reports in an exchange is no greater than 6.5 per 100 telephones per month,<sup>58</sup> CenturyLink’s statewide annual average trouble report rates were 0.85% for 2019; 0.77% for 2020; 0.78% for 2021; and 0.69% for 2022.<sup>59</sup> Moreover, when measured *monthly* at the *wire-center* level, CenturyLink is meeting the trouble report rate objective well over 99 percent of the time.<sup>60</sup> Thus, in addition to demonstrating CenturyLink’s compliance with the trouble report rule, Mr. Turner noted the these “exceptionally low trouble report rates” demonstrate that “CenturyLink’s maintenance

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<sup>56</sup> Ex. CTL-19, Sched. 1 at ¶ 2 (Turner Rebuttal).

<sup>57</sup> Ex. CTL-21, Sched. 1 at ¶ 8 (Turner Surrebuttal).

<sup>58</sup> Minn. R. 7810.5900.

<sup>59</sup> Ex. CTL-19, Sched. 1 at ¶ 81 (Turner Rebuttal); Ex. CTL-21, Sched. 1 at ¶ 8 (Turner Surrebuttal).

<sup>60</sup> Ex. CTL-19, Sched. 1 at ¶ 80 (Turner Rebuttal).

practices appear to support precisely the ‘efficient operation of its system,’” discussed in Minnesota Rule 7810.3300.<sup>61</sup>

CenturyLink shows similar strong performance across other measures, including meeting its installation commitments well over the 90 percent metric in Minnesota Rule 7810.2800.<sup>62</sup> The Company’s continued exceedance of this metric, despite the challenges imposed by its prioritization of voice telephone out-of-service repairs, further demonstrates CenturyLink’s strong commitment to voice customer service and to maintaining its copper-based network.

The record also contains substantial evidence of the Company’s overall commitment to its voice service customers, as demonstrated by its prioritization of voice service customers’ needs. For example, CenturyLink demonstrated the efforts it has taken to meet the call answer time rule objective of answering 90 percent of calls within 20 seconds<sup>63</sup> - a significantly more onerous standard than the requirement to answer 90 percent of calls within 60 seconds established in the Company’s 2009 AFOR plan. As Company witnesses explained, CenturyLink’s efforts included investing to upgrade its call center systems by acquiring the Genesys call routing platform - considered the best call routing platform in the industry - to improve response time; and utilizing alternative technologies such as click-to-chat.<sup>64</sup> Most critically, CenturyLink also prioritizes calls from Minnesota regulated voice telephone service customers, despite the risk of dissatisfaction

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<sup>61</sup> Ex. CTL-21, Sched. 1 at ¶ 34 (Turner Surrebuttal).

<sup>62</sup> Ex. CTL-9 at 2 (Ardoyno Rebuttal).

<sup>63</sup> Minn. R. 7810.5200.

<sup>64</sup> Ex. CTL-13 at 8 (Rejanovinsky Direct).

from customers with competitive unregulated service who may not receive the same level of timely response as voice customers.<sup>65</sup>

Similarly, the Company prioritizes POTS out-of-service restorations, which are assigned to technicians before all other technician work, including installation requests or repairs of broadband services.<sup>66</sup> The Company utilizes a route optimizer to generate job lists for each technician based on many variables that include the technician's location, the proximity of various tasks to one another, and the technician's skill set to most efficiently dispatch its technicians skilled in voice service repair to those repair sites.<sup>67</sup> The requirement that POTS out-of-service restoration jobs are prioritized means that the route optimizer does not always assign tasks in the most efficient way from an overall system perspective.<sup>68</sup> For example, the route optimizer may end up assigning a new voice out-of-service restoration to a technician that is located far away because the technicians who are closer may not have the proper skillset or were fully-allocated to other jobs by the time the out-of-service call came in.<sup>69</sup> These efforts to service its voice service customers ahead of its other customers demonstrates the Company's commitment to its POTS voice customers and to working toward the objectives set forth in Minnesota Rules.

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<sup>65</sup> Ex. CTL-13 at 8 (Rejanovinsky Direct); Ex. CTL-4 at 5-6 (Mohr Rebuttal).

<sup>66</sup> Ex. CTL-6 at 6 (Ardoyno Direct).

<sup>67</sup> Ex. CTL-6 at 6-7 (Ardoyno Direct).

<sup>68</sup> Ex. CTL-6 at 7 (Ardoyno Direct).

<sup>69</sup> Ex. CTL-6 at 7 (Ardoyno Direct).

**E. Creating, Applying and Enforcing Previously Unidentified Service Quality Standards Violates CenturyLink's Due Process Rights.**

As noted above and discussed in more detail in CenturyLink's Initial Brief and Reply Brief, Minnesota Rules Parts 7810.3300 and 7810.5000 both contain extremely broad and vague language concerning the need for a telephone utility to provide "adequate service." The Recommendation now takes this broad and undefined term and creates two new measures of what is (or, in this case, is not) "adequate service" – (1) service to a single customer on whose line there are four or more trouble tickets created in a four and a half year time frame, and (2) a 100-pair cable on which there are 10 closed trouble tickets in 12 months and on which 75 percent or more of those troubles were coded with CenturyLink's general category of cause code 310. The Commission has never articulated either of these standards or suggested that anything approximating them would be applied to a voice telephone service provider to determine compliance with Minnesota Rules. Nonetheless, the Recommendation not only adopts them, but it also applies them, judges CenturyLink to be in violation of them, orders specified "remedies" of an undetermined cost to address these "violations," and recommends that the Commission consider referring these "violations" to the Attorney General for consideration of bringing a penalty proceeding in District Court. In doing so, the Recommendation raises serious due process issues.

If the Commission wishes to articulate new service quality standards, it has available the legitimate means for doing so. First, the Commission could open a rulemaking proceeding to amend Minnesota Rules Chapter 7810. Second, the Commission could

announce its new standards prior to attempting to apply and enforce them, so that all providers are put on notice of the standards to which they will be held. As courts have held, when acting in an enforcement capacity, an agency “has the responsibility to state with ascertainable certainty what is meant by the standards [it] has promulgated.”<sup>70</sup> Courts “ask whether by reviewing the regulations and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform.”<sup>71</sup> Moreover, a regulation’s “underlying purpose cannot provide the fair notice required by due process. Before an agency can sanction a company for its failure to comply with regulatory requirements, the agency must have either put this language into the regulation itself, or at least reference this language in the regulation.”<sup>72</sup>

In the current case, the record demonstrates unequivocally that the Company complied with Minnesota’s “Customer Trouble Reports” rule, Minn. R. 7810.5900. Moreover, the record demonstrates the Company’s compliance with the only “repeat trouble” metric ever applied to it – the metric developed for CenturyLink’s AFOR. If the Commission now wishes to create *new* metrics, it may do so prospectively, but it cannot find CenturyLink in violation of standards never previously articulated by the Commission.

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<sup>70</sup> *Diamond Roofing Co. v. OSHRC*, 528 F.2d 645, 649 (5th Cir. 1976).

<sup>71</sup> *Trinity Broad. of Fla., Inc. v. F.C.C.*, 211 F.3d 618, 628 (D.C. Cir. 2000).

<sup>72</sup> *Id.* at 631.

### III. THE RECOMMENDATION IMPROPERLY APPLIES MINN. R. 7810.5800.

The Recommendation finds the Company in violation of Minn. R. 7810.5800. That rule provides:

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. (Emphasis added.)

By its plain language, this rule provides a *requirement* that “the utility shall reestablish service with the shortest possible delay,” and also provides a measurable *objective*, that is just that – an objective. Nonsensically, the Recommendation argues that the inclusion of the term “minimum” somehow changes this analysis.

...Although typically an “objective” would not be mandatory given the plain meaning of the word, a fair reading of the rule indicates that restoring service to 95 percent of customers within 24 hours is a “minimum” requirement, or a floor on CenturyLink’s performance....<sup>73</sup>

The term “minimum” cannot be stretched to modify the language of the rule to convert the 95 percent measure from an “objective” to a mandate. This legal analysis cannot withstand scrutiny.

Moreover, this rule was adopted at a time when POTS was the industry standard in telecommunications, and virtually every home and business had a traditional telephone line. As a result of the significant changes to the telecommunications landscape, due in no small part to the modern importance of internet service as recognized by the state of Minnesota’s broadband policy, there are far fewer overall POTS customers today that are

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<sup>73</sup> Recommendation. ¶ 95.

no longer located in close proximity to one another.<sup>74</sup> That said, as discussed in greater detail below, the Company has taken, and will continue to take, measures designed to help meet this objective.

An “objective” is “something toward which effort is directed: an aim, goal, or end of an action.”<sup>75</sup> The Company has acknowledged it is not clearing 95 percent of its out-of-service troubles within 24 hours, so is not currently meeting this objective. However, the Company has demonstrated its commitment to restoration of voice services “with the shortest possible delay,” as actually required in the rule, by prioritizing such repairs over all other technician work.<sup>76</sup> The Company complies with the mandate that it reestablish service with “the shortest possible delay,” and continues to make efforts to meet the objective established by the rule. The realities of the current telecommunications landscape, however, have effectively moved the goalposts relative to what is “possible” with respect to the time necessary to restore service in each case, and meeting the objective set forth by the rule has become more difficult.

In addition, the Company has made, and continues to make, efforts to meet the 95 percent objective. Specifically, throughout the time period spanned by this matter, the Company has prioritized POTS out-of-service tickets in the route optimizer that assigns work to technicians<sup>77</sup> and places telephone calls from customers with POTS out-of-service

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<sup>74</sup> Ex. CTL-6 at 3 (Ardoyno Direct).

<sup>75</sup> <https://www.merriam-webster.com/dictionary/objective>.

<sup>76</sup> Ex. CTL-6 at 6, 8 (Ardoyno Direct).

<sup>77</sup> Ex. CTL-9 at 4 (Ardoyno Rebuttal).

at the head of the queue in its call center.<sup>78</sup> However, prioritizing POTS out-of-service calls cannot solve the primary challenge with restoration within 24 hours, which is the significant decline in the number of POTS customers and their geographic distribution.<sup>79</sup>

As noted by Company witness Mr. Ardoyno:

Tasks are assigned using a route optimizer that generates job lists for each technician based on that technician's work load, skill set and location . . . [and because] POTS out of service calls are prioritized, the route optimizer that is used to spread out tasks among technicians cannot assign tasks in the most efficient way. The route optimizer may end up assigning a new POTS out of service call to a technician that is located far away for the customer needing service, because technicians who are closer may be fully booked, or may not have the proper skill set. And, because there are fewer and fewer POTS customers on the Company's geographically large network, the POTS out of service call needing attention on a given day may be very far apart and a technician can be required to travel a significant distance just to get to the customer's location. A repair that might take an hour to address at the customer's site may require 2 hours to get to the address, and another 2 hours to get to the technician's next job.<sup>80</sup>

This is not an issue that can be solved simply by hiring more technicians. First, as discussed above, there are challenges with hiring additional personnel to do this work. Second, the Company's technician workforce is aligned with the amount of work that needs to be completed.<sup>81</sup> As a practical matter, the Company cannot employ technicians to be located at various places in the state, some with a very low number of customers spread out geographically, to simply sit idly waiting for out of service calls.<sup>82</sup> As Mr. Turner

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<sup>78</sup> Ex. CTL-13 at 8 (Rejanovinsky Direct).

<sup>79</sup> Minn. R. 7810.5800, like the other rules at issue in this proceeding, was adopted at a time when nearly every person had a POTS line at their home or business, meaning customers were far more densely clustered than they are today.

<sup>80</sup> Ex. CTL-6 at 7 (Ardoyno Direct).

<sup>81</sup> Ex. CTL-9 at 12-13 (Ardoyno Rebuttal).

<sup>82</sup> Ex. CTL-6 at 13 (Ardoyno Direct); Ex. CTL-19, Sched. 1 at ¶ 102 (Turner Rebuttal).

correctly observed, the Department recommendation now reflected in the Recommendation presumes functionally infinite resources that could be invested in multiple strategic directions at once, which ignores the realities of actually operating the Company's business.<sup>83</sup> While the Company will continue to prioritize POTS out-of-service calls and make reasonable efforts to meet the 95 percent in 24 hours objective, due to the geographic spread of the Company's declining POTS customers, obtaining that objective will continue to be extremely challenging.

#### **IV. THE REMEDIES SUGGESTED BY THE RECOMMENDATION GO BEYOND THE COMMISSION'S LEGAL AUTHORITY AND LACK FACTUAL SUPPORT.**

##### **A. The Remedies Related to Repairing Plant Are Shots in the Dark with No Reasonable Factual Foundation.**

The Recommendation relies on the testimony of Department witness Ms. Gonzalez for the "remedies" it suggests.<sup>84</sup> Ms. Gonzales has never been responsible for designing, operating or maintaining a network and does not claim expertise on such matters.<sup>85</sup> Similarly, Ms. Gonzalez has never been responsible for managing a technician workforce.<sup>86</sup> In developing her recommendations, Ms. Gonzalez did not attempt to determine the cost of the actions she recommends be required of the Company.<sup>87</sup> Moreover, to the extent her recommendations apply on a customer-by-customer basis,

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<sup>83</sup> Ex. CTL-19, Sched. 1 at ¶ 102 (Turner Rebuttal).

<sup>84</sup> See Recommendation at Findings ¶ 96; Evid. Hrg. Tr. (Dec. 13, 2023) at 107-108 (Webber) (noting that Ms. Gonzalez sponsors all of the Department's recommendations); OAG Initial Br. at 16 (generally supporting the Department recommendations).

<sup>85</sup> Evid. Hrg. Tr. (Dec. 13, 2023) at 80-81 (Gonzalez).

<sup>86</sup> Evid. Hrg. Tr. (Dec. 13, 2023) at 80 (Gonzalez).

<sup>87</sup> Evid. Hrg. Tr. (Dec. 13, 2023) at 87-88 (Gonzalez).

Ms. Gonzalez did not attempt to determine whether that customer has the option of taking voice service from another provider.<sup>88</sup> Finally, nothing in either Ms. Gonzalez's testimony, nor in any other witness's testimony, attempts to quantify the benefits of imposing the recommended obligations on the Company. Lacking any expert testimony regarding either the cost or benefits of the Department's recommendations, the record cannot support imposing these obligations on the Company.<sup>89</sup>

While the record does not support these remedies, the record does call into question their wisdom. For example, Company witness Mr. Turner analyzed six potential rehab projects highlighted by the Department.<sup>90</sup> As he noted, if these potential rehab projects were causing substantial problems, one would expect the wire centers where these projects were proposed to have seen higher trouble report rates.<sup>91</sup> However, *none* of the wire centers where these projects were proposed had average trouble report rates anywhere near the trouble report rule objective of 6.5 troubles or fewer per 100 lines.<sup>92</sup> For example, the

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<sup>88</sup> Evid. Hrg. Tr. (Dec. 13, 2023) at 82-83 (Gonzalez).

<sup>89</sup> The recommended "remedies" in this case consist of unsupported speculations of a witness with no relevant experience. Thus, they fail to be supported by substantial evidence. See [\*In re NorthMet Project Permit to Mine Application\*, 959 N.W.2d 731, 749 \(Minn. 2021\)](#) (*NorthMet*) (quotations omitted), *reh'g denied* (Minn. June 15, 2021). (explaining the substantial evidence requirement as analyzing (1) "whether the agency has adequately explained how it derived its conclusion," and (2) whether that conclusion is "reasonable on the basis of the record"). A decision is supported by substantial evidence when there is "relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and more than a scintilla, some, or any evidence." *Id.* (quotations omitted). But when an agency makes "conclusory statements," with "no analysis of [their] scientific basis," substantial evidence is lacking. *Id.* at 753.

<sup>90</sup> Ex. CTL-21, Sched. 1 at ¶ 19 (Turner Surrebuttal).

<sup>91</sup> Ex. CTL-21, Sched. 1 at ¶ 19 (Turner Surrebuttal).

<sup>92</sup> Ex. CTL-21, Sched. 1 at ¶ 19 (Turner Surrebuttal).

technician's notes related to one of the highlighted projects stated that thousands of customers could be impacted. A review of trouble report data, however, showed a trouble report rate in 2022 of less than 0.8 per 100 lines for the wire center at issue, reflecting a network that is performing well on behalf of its customers.<sup>93</sup> Requiring the Company to perform work of unknown cost in an area demonstrating exceptional overall network performance is neither reasonable nor justified.

**B. The Recommendation Errs in Justifying Its Remedies by Stating that the Impacted Customers Are Rural and Do Not Have Other Options.**

The Recommendation makes findings contrary to the record when it bases its decision in part on the necessity of landline telephone service for making critical calls and on the speculation that the customers at issue are rural. For example, the Recommendation states that **most consumers** require telephone service to conduct essential communications:

Given that most consumers **require telephone service to conduct essential communications in emergency situations, to conduct their jobs or businesses, and to communicate with friends and family**, adequate service means that service must be nearly continuous. Customers who regularly, repeatedly, or predictably lose service each year due to older or failing utility-maintained equipment cannot be receiving adequate service...<sup>94</sup>

The Recommendation further claims that the 4,460 customers identified by the Department witness are rural:

86. In this instance, the record shows that while CenturyLink's overall statewide network performs satisfactorily, certain customers—**most commonly located in the rural periphery**—are not receiving adequate service. CenturyLink serves approximately 233,000 customer lines in

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<sup>93</sup> Ex. CTL-21, Sched. 1 at ¶ 19 (Turner Surrebuttal).

<sup>94</sup> Recommendation at Findings ¶ 57 (emphasis added).

Minnesota. About 4,460 of them are receiving inadequate service, which is two percent of CenturyLink's landline customers. These Minnesotans are among the population for whom the Commission rejected, out of concern for the public interest, CenturyLink's prior attempts to escape its regulatory obligations.<sup>95</sup>

Neither statement is accurate. Mr. Turner noted the dynamic telecommunications marketplace and the significant strides already made in Minnesota that has left just over 1.5 percent of the households in CenturyLink's copper-network service areas without access to competitive voice services.<sup>96</sup> This vibrant competition not only means that customers are not left "stranded," with no alternative, it incentivizes companies like CenturyLink to provide strong voice service at competitive prices.<sup>97</sup>

Attached with these recommendations is a sworn statement of CenturyLink witness Susan Mohr that includes a map showing the location of the 4,460 customers identified by the Department and called out in the Recommendation, as well as a listing of competitors that report serving a customer within a small area surrounding each customer. That data shows that over nearly half of customers are located in *urban* areas.<sup>98</sup> A significant percentage of such customers have fiber service available from CenturyLink affiliates or other fiber providers. A higher percentage are likely to have cable service available and nearly every customer has wireless service available in the area. Certainly, connectivity

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<sup>95</sup> Recommendation at Findings ¶ 86 (emphasis added).

<sup>96</sup> Ex. CTL-19, Sched. 1 at ¶ 49 (Turner Rebuttal); Ex. CTL-21, Sched. 1 at ¶ 25 (Turner Surrebuttal).

<sup>97</sup> Ex. CTL-21, Sched. 1 at ¶ 27 (Turner Surrebuttal).

<sup>98</sup> Mohr Affidavit, attached as Exhibit E (using the US Census Bureau's urban areas and definition: <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html>).

that enables voice transmissions continues to be an essential service. However, that connectivity is now provided by far more than just landline POTS voice telephone service providers.

Mr. Turner explained that remedies now suggested by the Recommendation not only seek to micro-manage the Company's maintenance of its network, but would "ultimately create economic waste, requiring the Company to expend significant financial resources to continue augmenting a copper network that is no longer the voice service preference of the vast majority of Minnesotans" and limiting its ability to deploy newer technologies that customers largely prefer, and that support the State's universal broadband access goals.<sup>99</sup>

The Recommendation also looks to other jurisdictions and claims that those jurisdictions took "similar regulatory actions" to those recommended by the ALJ.<sup>100</sup> They did not. The Company has already noted the dramatic differences between the Pennsylvania case noted in the Recommendations - and the Pennsylvania statutes and rules underlying that case - and the current case. The Recommendation also cites *In re Qwest Corp.*<sup>101</sup> for its assertion that the Oregon Commission ordered Qwest to restore basic telephone service to all customers in its service territory after a wildfire by December 1, 2020.<sup>102</sup> As an initial matter, to be clear, the Oregon commission *originally* ordered that

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<sup>99</sup> Ex. CTL-21, Sched. 1 at ¶ 28 (Turner Surrebuttal).

<sup>100</sup> Recommendations at Findings ¶108.

<sup>101</sup> Docket No. UM 2129, Order No. 20-431, 2020 WL 6886274, at \*1 (Ore. PUC Nov. 18, 2020).

<sup>102</sup> Recommendation at Findings ¶110.

“[f]or those customers Qwest finds it impracticable to serve using its own facilities, it will provide comparable voice service via other technology at no additional cost by December 1, 2020, and provide service to these customers using its own facilities by January 1, 2021.”<sup>103</sup> However, that original order was replaced by a settlement agreement that modified the order requirements. Moreover, the situation faced by the Oregon commission is clearly distinguishable in that it concerned restoration of service after an emergency and the commission relied, in part, on Oregon statutes related to public health and safety.<sup>104</sup> The commission also relied on the Oregon legislature’s general broad grant of authority to the PUC,<sup>105</sup> which provides that “[t]he commission is vested with power and jurisdiction to supervise and regulate every public utility and telecommunications utility in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction.”<sup>106</sup> Thus, the Oregon matter was grounded on an interpretation of statutes and emergency authority not present in the current matter before the Minnesota Commission.

**C. A Four-Hour Repair Window Would Hinder Company Performance and Is Not Mandated by Commission Rules.**

The Recommendation suggests the Commission order CenturyLink to reduce its repair appointment windows from eight to four hours to remedy the alleged harm

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<sup>103</sup> *In re Qwest Corp.*, 2020 WL 6886274, at \*1.

<sup>104</sup> *See In re Qwest Corp.*, Docket. No. UM 2129, Staff Report at 5 (Ore. PUC Nov. 10, 2020).

<sup>105</sup> *In re Qwest Corp.*, Docket. No. UM 2129, Staff Report at 5 (Ore. PUC Nov. 10, 2020).

<sup>106</sup> 57 Ore. Rev. Stat. § 756.040(2).

associated with CenturyLink's alleged violation of Minn. R. 7810.5800.<sup>107</sup> No rule language imposes such an obligation. Aside from questions of the Commission's authority to dictate business practices of a company to this degree, Company witness Mr. Ardoyno explained that such an order would have unintended and adverse consequences for customers. As Mr. Ardoyno explained, restricting the Company to a four-hour repair window will lead to more missed repair appointments, and will also lead to less efficiency in assigning technicians to repair tickets, which will, if anything, negatively impact the Company's ability to restore service in 24 hours.<sup>108</sup> As discussed above, the Company assigns repair tickets to technicians through a route optimizer that assigns tickets based on priority (with POTS out-of-service tickets at the highest priority), geography, workload, and skill sets.<sup>109</sup>

Adding an additional restriction based on a four-hour repair window would be a Minnesota-specific or manual adjustment that will add more complexity to the routing system and negatively impact the efficient assignment of tickets. Mr. Ardoyno also indicated that with a narrower repair window, more appointments, not fewer appointments, will likely be missed.<sup>110</sup> Finally, restricting the repair window would not address the main challenge in completing repairs in a timelier manner - the Company's dwindling POTS customer base and the geographic spread of those customers.<sup>111</sup>

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<sup>107</sup> Recommendation ¶¶ 129-131.

<sup>108</sup> Ex. CTL-11 at 12 (Ardoyno Surrebuttal).

<sup>109</sup> Ex. CTL-11 at 12 (Ardoyno Surrebuttal).

<sup>110</sup> Ex. CTL-11 at 12 (Ardoyno Surrebuttal).

<sup>111</sup> Ex. CTL-11 at 12 (Ardoyno Surrebuttal).

This recommended relief is not supported by the record and should be rejected.

**D. The Record Does Not Support an Inquiry Into Penalties.**

On January 30, 2023, the Commission issued an order referring the following issues to the Office of Administrative Hearings:

- A. whether CenturyLink has violated Minnesota rules identified in the August 30, 2021 joint recommendation of the Minnesota Department of Commerce and the Minnesota Office of the Attorney General-Residential Utilities Division, and
- B. if so, the appropriate remedy.<sup>112</sup>

At the conclusion of the hearing, the parties submitted proposed findings of fact and conclusions of law. Those filings provided the fact basis and the relief that the parties requested. No party suggested that this case involved “knowing and intentional” violations of Commission rules. Nonetheless, the Recommendation suggests that the Commission consider whether the Company committed “knowing and intentional” violations subject to civil penalties pursuant to Minn. Stat. § 237.461, recommending:

The Commission consider whether, having failed to secure a variance from Minn. R. 7810.5800 in 2014, CenturyLink’s subsequent violation of that rule is knowing and intentional, and subject to civil penalties of up to \$5,000 per day of violation.<sup>113</sup>

The Recommendation drops this bombshell without any advocacy from the parties and without any record addressing the claim. It does so without any record of the Company’s performance during this time or any notice that activities from ten years ago

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<sup>112</sup> *In the Matter of a Formal Complaint Regarding the Services Provided by the Qwest Corporation d/b/a CenturyLink in Minnesota, on Behalf of the Communications Workers of America*, NOTICE OF AND ORDER FOR PUBLIC HEARING AND CONTESTED CASE HEARING, DKT No. P-421/C-20-432 (January 30, 2023) (“Referral Order”).

<sup>113</sup> Recommendation at Recommendations ¶ 8.

would be relevant to the proceeding. To the contrary, other than citing past efforts by CenturyLink to change the rules at issue in this case, the evidence in this proceeding addressed activities between 2019 and 2023.

The record in this case and the advocacy of the parties does not establish a basis for exploring penalties. Such considerations should be set aside until the Commission (1) clarifies its interpretation of the rules in dispute; (2) finds the Company in violation of any such further articulation of how the Commission interprets these rules; (3) orders a remedy; and (4) the Company willfully and intentionally chooses to not comply with its order.

**V. THE RECOMMENDATION FINDING OF “CARRIER OF LAST RESORT” OBLIGATIONS IS NOT SUPPORTED BY MINNESOTA LAW, NOT RELEVANT TO RESOLUTION OF THE ISSUES IN THIS PROCEEDING AND SHOULD BE DISREGARDED.**

The Recommendation states that CenturyLink is a “statutorily mandated ‘carrier of last resort.’”<sup>114</sup> The Recommendation cites no legal authority for such a statement, but instead cites erroneous testimony from an expert witness hired by the Department.<sup>115</sup> “Carrier of last resort” is an industry legal term referring to specific rights and obligations that exist in some states. Minnesota statutes do not explicitly apply such an obligation. Because this proceeding relates to service quality rules and not the scope of any “carrier of last resort” obligations, such issues are not relevant to this proceeding and the ALJ’s finding unnecessarily creates a thorny legal issue that could lead to complex litigation.

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<sup>114</sup> Recommendation at Findings ¶ 14.

<sup>115</sup> *Id.*

Because this issue does not need to be decided in the current case, and has not been briefed by the parties, CenturyLink recommends the Commission not adopt this proposed finding.<sup>116</sup>

## **CONCLUSION**

The record of this proceeding demonstrates CenturyLink's ongoing commitment to the provision of safe, reasonable and adequate performance, in compliance with Minnesota rules. After four years of investigation and litigation, the Department and OAG have failed to meet their burden to demonstrate the Company is violating these rules. In fact, the record demonstrates the contrary – it demonstrates both the Company's strong overall network performance and its prioritization of Minnesota voice service customers over other aspects of its business. Creating new service quality measures and then forcing the Company to make economically wasteful investments to address those new service quality measures does not serve CenturyLink's customers or the public interest. Moreover, such mandates would only tilt the competitive playing field against CenturyLink and further delay its ability to help Minnesota meet the aggressive universal broadband service goals established by the legislature. Therefore, and for all of the reasons set forth above and in its Initial and Reply Briefs in this matter, CenturyLink respectfully requests that the Commission adopt the Company's Proposed Findings of Fact, Conclusions of Law, and Recommendation in this matter.

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<sup>116</sup> If the Commission were to make such a finding, CenturyLink specifically reserves its right to appeal.

Dated: April 2, 2024

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