



**Jason D. Topp**  
Senior Corporate Counsel - Regulatory  
(651) 312-5364

March 26, 2014

Dr. Burl W. Haar  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
St. Paul, MN 55101

**Re: In the Matter of the Petition of CenturyLink, Inc., on behalf of its  
Affiliated Companies, for Waiver of Minnesota Rule Part 7810.5800 and  
for Rulemaking to Revise Service Quality Standards**

Dear Dr. Haar:

Enclosed for filing is the Petition for Waiver of Minnesota Rule Part 7810.5800 and Request for Rulemaking to Modernize Service Quality Rules regarding the above-referenced matter.

Very truly yours,

/s/ Jason D. Topp

Jason D. Topp

JDT/bardm

Enclosure

cc: Service List



First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	No	GEN_SL_CenturyLink, Inc. CenturyLink Petition for Waiver and Rulemaking
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 500  Saint Paul, MN 55101-2198	Electronic Service	No	GEN_SL_CenturyLink, Inc. CenturyLink Petition for Waiver and Rulemaking
Burl W.	Haar	burl.haar@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	No	GEN_SL_CenturyLink, Inc. CenturyLink Petition for Waiver and Rulemaking
JoAnn	Hanson	joann.hanson@centurylink.com	CenturyLink	200 S 5th St Ste 2200  Minneapolis, MN 55402	Electronic Service	No	GEN_SL_CenturyLink, Inc. CenturyLink Petition for Waiver and Rulemaking
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	No	GEN_SL_CenturyLink, Inc. CenturyLink Petition for Waiver and Rulemaking
Jason	Topp	jason.topp@centurylink.com	CenturyLink	200 S 5th St Ste 2200  Minneapolis, MN 55402	Electronic Service	No	GEN_SL_CenturyLink, Inc. CenturyLink Petition for Waiver and Rulemaking

**STATE OF MINNESOTA  
BEFORE THE PUBLIC UTILITIES COMMISSION**

**Beverly Jones Heydinger  
David Boyd  
Nancy Lange  
Dan Lipschultz  
Betsy Wergin**

**Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner**

**In the Matter of the Petition of  
CenturyLink, Inc., on behalf of its  
Affiliated Companies, for Waiver of  
Minnesota Rule Part 7810.5800 and for  
Rulemaking to Revise Service Quality  
Standards**

**Docket No. \_\_\_\_\_**

**PETITION FOR WAIVER OF MINNESOTA RULE PART 7810.5800 AND  
REQUEST FOR RULEMAKING TO MODERNIZE SERVICE QUALITY RULES**

With this petition, CenturyLink, Inc., on behalf of its affiliated companies (“CenturyLink”), requests that the Commission waive its rule that requires companies to restore out-of-service conditions within 24 hours 95% of the time, and that it also initiate a rulemaking proceeding to undertake a more comprehensive approach to review outdated service quality rules. The nature of the telecommunications industry has changed dramatically over the last several decades since these service quality metrics were adopted. Facilities-based competitors now serve more customers than does CenturyLink. A large segment of the population no longer uses a wireline phone and instead relies exclusively upon wireless service. The technology used to deliver telecommunications services has evolved from a traditional circuit switched network to wireless and internet protocol networks.

Neither the law nor the rules have changed to accommodate this reality, and as a result, CenturyLink must contend with monopoly era service quality rules while facing the

challenges associated with a hotly competitive marketplace. This request for waiver and a rulemaking will benefit Minnesota consumers by making it more likely consumers will choose their provider based on the quality and individual characteristics of the products offered to them, rather than based on regulatory remnants from a bygone era.

## **DISCUSSION**

The Minnesota Public Utilities Commission's Administrative Rules for Telephone Utilities are intended to offer telecommunications providers a more detailed description of the meaning and obligations engendered by the governing statutory provisions. The last major rewrite of Minnesota Statute § 237 took place in 1995 while the associated rule development occurred shortly thereafter. The Minn. R. Chapter 7810, Telephone Utilities requirements largely predate this effort by over a decade. That is, at the time these rules were crafted, CLASS service represented a new frontier, the notion of more than one long distance carrier was cutting edge, access charges were a new concept, the AT&T Divestiture was on the horizon, and competitive local exchange carriers (CLECs) did not exist.

The marketplace within which telecommunications services were delivered was distinctly different as well. A multitude of individual telecommunications providers offered products and services within defined service areas throughout the country. Within their assigned service territory, customers chose from a single provider and some 97% of the population subscribed to landline telephone service.

How times have changed. Wireless phones outnumber their wireline counterparts, more than 200 competitors are certificated to provide local telecommunications services in Minnesota, choices of products and services abound, calling area restrictions are virtually a thing of the past, CenturyLink provides retail wireline telecommunications service to only

35% of its Minnesota market and is one of many voice service providers in Minnesota. In other words, 65% of Minnesota consumers purchase telecommunications service from providers who are either not regulated by the Commission or, at most, face scrutiny if, and only if, a customer files a complaint. Rules developed for a monumentally different period in history no longer fit.

In 2014, CenturyLink and the telecommunications industry are confronted with outdated rules into which business practices of a competitive market are uncomfortably forced. There is some recognition by Minnesota Governor Dayton that the state statutes, including the telecommunications statutes, are replete with antiquated requirements. He seeks to make this legislative session an “Unsession devoted to eliminating excessive laws, rules, and regulations.”<sup>1</sup> In a similar spirit, CenturyLink files this petition requesting that the Commission take a much-needed look at its outdated service quality standards.

The obsolete nature of current regulations is well illustrated by Minn. Rule 7810.5100 which imposes requirements that telephone operators be instructed to be “courteous, considerate and efficient . . .”<sup>2</sup> While everyone would agree that telephone operators should behave in such a fashion, this regulation is quaint and out of date. It only applies to telephone companies, fails to recognize the existence of more than one provider of operator services, and while of significant importance more than a decade ago, now has little relevance to the majority of telecommunications providers in the competitive marketplace.

Less obvious, and of a more urgent concern to CenturyLink, are the Commission’s rules related to service quality. For example, Rule 7810.5800 requires that companies

---

<sup>1</sup> <https://mn.gov/governor/unsession/>.

<sup>2</sup> Minn. R. 7810.5100.

resolve out-of-service conditions within 24 hours and do so 95% of the time. This standard is the most stringent out-of-service standard CenturyLink encounters in its service territory. This, and other similar standards, do not apply to the market as a whole and have become irrelevant to the demands of customers.

This rule ultimately imposes tremendous cost on Minnesota consumers. The resources needed to meet this rule to protect a dwindling customer base would be better used for deployment of advanced services that Minnesota consumers so desire, including broadband. This cost is particularly problematic when it is the responsibility of only a small subset of the marketplace. CenturyLink and Frontier affirmatively report this metric as part of their Alternative Form of Regulation Plans. Even though the out-of-service in 24 hour service quality metric is applicable to most telecommunications service providers, it is selectively enforced and thus disadvantages only a small number of those providers competing for customers.

CenturyLink serves about 35% of the market in its Minnesota service territories. Almost every customer has at least one and usually many more alternatives for purchasing telephone service. A customer dissatisfied with her communications carrier is fully capable of selecting another provider.

Despite this competitive choice being available to customers, CenturyLink stands in a very different position than the companies with which it competes. Cable and wireless companies are not required to make investments to meet similar standards unless their customers demand it. Imposing an expensive and outdated service quality metric is unnecessary. It requires significant use of technicians that could otherwise be used to meet customer demand – either through expanded broadband availability, enhanced network

features or other investment. This petition carries little risk for the customer. If CenturyLink provides service customers consider inadequate, they will move to a competitor. The market, and not government rules and regulations, should dictate how providers behave.

CenturyLink therefore files this petition asking that (1) the Commission grant an immediate waiver of Minn. R. 7810.5800 to all CenturyLink Companies including an alteration of the associated AFOR requirements and (2) the Commission open a rulemaking docket to examine all of its service quality standards, or at a minimum Minn. Rule Parts 7810.4100 through 78710.6100.

### **I. REQUEST FOR A WAIVER**

Pursuant to Minnesota Rule Part 7829.3200, CenturyLink seeks a waiver of Minnesota Rule Part 7810.5800 until the Commission completes the rulemaking process requested in this petition. Minnesota Rule Part 7829.3200 allows the Commission to grant a variance to its rules when it determines the following requirements are met:

- enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- granting the variance would not adversely affect the public interest; and
- granting the variance would not conflict with standards imposed by law.

#### **A. Enforcement of Minn. R. 7810.5800 Imposes an Excessive Burden.**

CenturyLink is dedicated to the provision of quality service to its customers. The kind of services its customers demand has changed significantly. CenturyLink requires the flexibility to deploy its financial and personnel resources consistent with the demands of its customers. Its wireline customers are important to CenturyLink and restoring an out-of-service condition is a priority. However, many of these wireline customers are also wireless



customers and view the repair of their broadband service of more importance than repair of their landline service. CenturyLink requests the flexibility to dispatch its technicians to reflect its customer's stated needs rather than in response to an outdated rule.

**B. Granting the Waiver Will Not Adversely Affect the Public Interest.**

While there is no doubt that restoring service for customers is a top priority for any telecommunications company, the customer is best served if the customer never experiences a loss of service. CenturyLink does an outstanding job of providing telecommunications service, and its service quality results demonstrate that. Approximately .2% of its customers experience an out-of-service condition over the course of a year. As the following chart demonstrates, the number of customers that experience out-of-service conditions has declined dramatically from 2007 to 2012:

<b>Year</b>	<b>Customers Out of Service</b>
2007	126,128
2008	103,870
2009	93,426
2010	90,585
2011	69,390
2012	30,140
2013	27,073

Line loss accounts for some of this result, but improved performance is a more determinative factor. Between 2007 and 2013, CenturyLink access lines decreased from 1.6 million to approximately 1 million – a reduction of approximately 37.5%. However, the number of lines experiencing an out-of-service condition decreased by some 80%. A significantly smaller percentage and absolute number of customers experienced an out-of-service condition in 2013 than in 2007.

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

Cable companies offer another alternative to Minnesota customers and do so using their own network. As of the end of 2012, Minnesota cable providers and other facilities-based competitors are estimated to serve 31% of Minnesota consumers, an increase of 3% from only two years earlier. CenturyLink continued to experience line loss in 2013 and expects the trend to continue in 2014 based on state and national trends.

These statistics demonstrate that Minnesota customers have the ability to select providers and services. In addition, these same customers have selected providers and services from companies that have little or no Commission oversight. Such an environment reduces the importance of public interest considerations associated with measurements.

Similarly, if a service quality metric imposes a burden on a competitor that is not demanded by customers, it skews the marketplace and impedes the ability of one competitor to invest in areas and offer services that customers demand. Such requirements run directly contrary to the public interest as defined by state law which includes the following considerations:

- (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;
- (7) ensuring consumer protections are maintained in the transition to a competitive market for local telecommunications service.<sup>3</sup>

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

**C. Granting the Waiver Will Not Conflict with Standards Imposed by Law.**

This Commission has granted waivers of service quality rules in similar past situations. The Commission granted Qwest a waiver of call answer time standards in 2005.<sup>4</sup> The Commission does not require CLECs to provide service throughout their entire service territories.<sup>5</sup> Furthermore, the terms of CenturyLink's current AFOR contains no language prohibiting modifications to these standards.

---

<sup>3</sup> Minn. Stat. § 237.011.

<sup>4</sup> See *In the Matter of the Petition of Qwest Corporation for Approval of its Revised Alternative Form of Retail Regulation Plan*, Dkt. P-421/AR-05-1081, Order Approving Alternative Form of Regulation Plan, as Modified, p. 9 (Dec. 23, 2005).

<sup>5</sup> *In the Matter of Brooks Fiber Communications of Minnesota, Inc., MCI WorldCom Communications, Inc. and MCImetro Access Transmission Services, Inc. Petition Service Area Deadlines*, MPUC Docket No. P-5487, 3012, 5321/M-03-712; and *In the Matter of the Petition of Sprint Communications Company L.P. for a Time Extension and Variance of Commission Rules*, MPUC Docket No. P-466/EM-03-658.

## **II. REQUEST THAT THE COMMISSION OPEN A RULEMAKING**

While a waiver addresses immediate issues associated with the Commission's service quality rules, in the long term, the Commission should re-evaluate those rules in light of today's competitive environment. Minn. Stat. § 14.09 provides that "Any person may petition an agency requesting the adoption, amendment, or repeal of any rule. The petition shall be specific as to what action is requested and the need for the action." The statute requires the Commission to determine whether or not to move forward with the rulemaking within 60 days of the petition.<sup>6</sup> CenturyLink believes a strong case can be made that all of the service quality rules adopted by the Commission in Minnesota Rules, Chapter 7810 should be eliminated. No doubt, others will have different views. In light of the new competitive realities in the telecommunications marketplace as well as the clearly obsolete nature of some of the requirements included in the current rules, CenturyLink asks the Commission to open a rulemaking to explore these issues.

### **CONCLUSION**

The telecommunications industry has undergone a transformation over the last three decades, and it is critical that the Commission's rules keep up with those changes. Of immediate concern is the Commission's requirement that a small part of the industry make a substantial investment to ensure that a dwindling number of customers have service restored within 24 hours. CenturyLink respectfully requests a waiver of this rule until the Commission completes a fresh look at its service quality rules in Minnesota. CenturyLink

---

<sup>6</sup> "Upon receiving a petition an agency shall have 60 days in which to make a specific and detailed reply in writing as to its planned disposition of the request and the reasons for its planned disposition of the request. . . ." Minn. Stat. § 14.09.

further requests that the Commission start this process now, to ensure that its regulations promote, rather than detract from, the important policy goals that they impact.

Dated this 26th day of March, 2014.

QWEST CORPORATION dba  
CENTURYLINK QC

/s/ Jason D. Topp

Jason D. Topp  
200 South 5<sup>th</sup> Street, Room 2200  
Minneapolis, MN 55402  
(651) 312-5364