

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben	Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
Joseph K. Sullivan	Commissioner
John A. Tuma	Commissioner

**In the Matter of a Notice to Rural Digital
Opportunity Fund Grant Winners**

MPUC Docket No. P-999/CI-21-86

COMMENTS OF CENTURYLINK QC

Qwest Corporation dba CenturyLink QC (CenturyLink) submits these comments in reply to comments filed by the Minnesota Department of Commerce (Department), the Office of the Attorney General (OAG), the Department of Public Safety (DPS) and the Communication Workers of America (CWA). CenturyLink does not comment on many of the issues raised in this proceeding and finds the comments of the OAG constructive. These comments focus on requirements suggested by the Department for ETC providers:

The Department recommends that the Minnesota Public Utilities Commission (Commission) impose service quality standards not only on voice service as the Commission does today but also on wireless and broadband services. They propose standards for out of service repair for broadband services and call center answer times based on and Minn. R. 7810.5200 and 5800.

...

3. Proposal. Resolve Service Outages Promptly.

An ETC shall have a goal to resolve outages of 95% outages cleared within 24 hours.¹

...

6. Proposal. Customers shall not be on hold an excessive amount of time.

ETCs shall have the goal of enabling customers to speak to a live operator in a reasonable amount of time of placing a call to customer service.²

Other proposals from the Department raise concerns but not to the extent of these suggestions.

The Department argues that these requirements are in line with standards other states have required.³ To the contrary, the Department's proposals represent an unprecedented use of ETC certification for the purpose of regulating broadband service. Our review of the cites provided by the Department shows that universally the service quality requirements it identifies apply to telecommunications services.⁴

¹ Department Comments, 19.

² Department Comments, 19.

³ Department Comments, 24.

⁴ For example, the Department cites an Oklahoma requirement as applying an 80% out of service in 24 hour standard. It overlooks the fact that the Oklahoma standard applies to regulated voice services.

Oklahoma Statute provides:

A. The Oklahoma Corporation Commission shall not, by entering any order, adopting any rule, or otherwise taking any agency action, impose any regulation upon a provider of high speed Internet access service or broadband service in its provision of such service, regardless of technology or medium used to provide such service.

17 OS 139.110:

The Department similarly overlooks the scope of Washington Commission authority when it cites Washington rules in support of its call center answer time requirement. Those service standards apply to regulated voice service and not to broadband. *See* WAC 480-120-011 WAC (“(1) The rules in this chapter apply ... ***as to rates or services under the provisions of RCW 80.01.040 and chapters 80.04 and 80.36 RCW.***” (emphasis added)).

Nonetheless, the Department argues that such requirements would advance universal service⁵ and therefore the Commission may impose them pursuant to its obligation to certify eligible telecommunication carrier's use of federal ETC funds. In doing so, the Department appears to be moving 180 degrees opposite of the direction taken by the FCC. The FCC has eliminated service quality metric reporting as a part of its review of ETC certification, finding such reporting burdensome and unnecessary.⁶

Compounding the problem, the Department basically applies voice standards to broadband services with absolutely no evidence suggesting such standards are reasonable, appropriate and workable. Adopting such an ill-supported recommendation would be the very definition of arbitrary and capricious action. The Department's proposal lacks any foundation in state law, federal law, or any evidence in this record. As such, the Commission must reject it.

I. The Commission has no state law authority to impose service quality standards on broadband services.

The Department claims that the Commission has authority to impose service quality standards on broadband service despite identifying no state law authority to do so. This admission is fatal to the Department's proposals:

[i]t is elementary that the Commission, being a creature of statute, has only those powers given to it by the legislature. *Great Northern Railway Co. v. Public Service Comm'n*, 284 Minn. 217, 220, [169 N.W.2d 732](#), 735 (1969). The legislature states what the agency is to do and how it is to do it. While express statutory authority need not be given a cramped reading, any enlargement of express powers by implication must be fairly drawn and fairly evident from the agency objectives and powers expressly given by the legislature. "Neither agencies nor courts may under the guise of statutory interpretation enlarge the agency's powers beyond that which

⁵ It is unclear how the Department alleges that its proposed requirements advance universal service.

⁶ *In the Matter of Connect America Fund ETC Annual Reports and Certifications*, Report and Order, WC Docket No. 10-9; 14-58, rel. July 6, 2017 (eliminating reporting on network outages, unfulfilled service requests, complaint reporting, pricing information and service quality certifications as a part of form 481, finding such information is available elsewhere or unnecessary to enable the Commission to monitor whether ETCs are using high-cost universal service support for its intended purpose).

was contemplated by the legislative body.” *Waller v. Powers Department Store*, [343 N.W.2d 655](#), 657 (Minn. 1984).⁷

The only state statute the Department cites is Minn. Stat. 237.435 which states “In determining whether to provide the annual certification of any eligible telecommunications carrier for continued receipt of federal universal service funding, the commission shall apply the same standards and criteria to all eligible telecommunications carriers.” The idea that this provides the Commission with unfettered authority to impose service quality standards on non-telecommunications services makes no sense.

This analysis applies with particular force to “information services” such as broadband.

The Eighth Circuit has stated:

How a service is classified affects a state’s ability to regulate the service. Telecommunications services are generally subject to “dual state and federal regulation.” See *Louisiana Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 375, 106 S. Ct. 1890, 90 L. Ed. 2d 369 (1986). By contrast, “any state regulation of an information service conflicts with the federal policy of nonregulation,” so that such regulation is preempted by federal law. See *Minn. PUC v. FCC*, 483 F.3d 570, 580 (8th Cir. 2007); see also 47 C.F.R. § 64.702. The FCC has so far declined to classify VoIP services as either information or telecommunications services, despite repeated opportunities to do so. See *Clark v. Time Warner Cable*, 523 F.3d 1110, 1113 (9th Cir. 2008) (footnotes omitted) (quoting *In re IP-Enabled Services*, 19 F.C.C.R. 4863, 4880-81 ¶¶ 26-27, 4886 ¶ 35 (2004)) (explaining that the FCC “solicited comment on whether VoIP services should be classified as ‘telecommunications services’ or ‘information services’ under the Act”).⁸

The Eighth Circuit held that Charter’s VoIP offerings are an information service under the Act. Therefore, attempts by the state of Minnesota to regulate that service conflicted with the federal policy of nonregulation and were therefore preempted.

Any attempt by the Commission to evade this precedent through imposing service quality requirements on broadband services runs contrary to this clear federal law.

⁷ *Peoples Natural Gas Co. v. Minn. Pub. Util. Comm.*, 369 N.W.2d 530, 534 (Minn. 1985).

⁸ *Charter Advanced Servs. (MN), LLC v. Lange*, 903 F.3d 715, 718 (8th Cir. 2018).

II. The Department's proposed requirements are inconsistent with the letter and spirit of federal law.

The regulations proposed by the Department also are inconsistent with federal law. In 2005, the FCC established mandatory requirements for ETC designation proceedings in which the FCC acts pursuant to Section 214(e)(6) of the federal Communications Act.⁹ As recommended by the Federal-State Board on Universal Service (Joint Board), the FCC encouraged states that exercise jurisdiction over ETC designations to adopt the FCC requirements when deciding whether a common carrier should be designated as an ETC.¹⁰ Doing so, the FCC noted, would allow for a more predictable ETC designation process and improve the long-term sustainability of the universal service fund.¹¹

Among other things, the *FCC ETC Requirements Order* required applicants seeking ETC designation from the FCC to demonstrate that they will satisfy consumer protection and service quality standards.¹² For wireless ETC applicants, the FCC found that a commitment to comply with CTIA's Consumer Code for Wireless Service would satisfy this requirement.¹³ Notably, the CTIA Code was, and continues to be, limited to basic commitments, such as disclosing rates and terms of service to customers; publishing coverage maps; providing contract terms to customers;

⁹ 47 U.S.C. 214(e)(6); *Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371 (2005) (*FCC ETC Requirements Order*).

¹⁰ *FCC ETC Requirements Order*, 20 FCC Rcd at 6372 ¶ 1.

¹¹ *FCC ETC Requirements Order*, 20 FCC Rcd at 6372 ¶¶ 1, 2. The Department erroneously claims that some of the FCC requirements are "meaningless" unless translated into prescriptive regulations. Department Comments at 8. On the contrary, the FCC's broad ETC designation requirements enable flexibility in evaluating ETC applications submitted by providers using various types of technology to provide service.

¹² *FCC ETC Requirements Order*, 20 FCC Rcd at 6383 ¶ 28.

¹³ *FCC ETC Requirements Order*, 20 FCC Rcd at 6383 ¶ 28. *See also* 47 C.F.R. 54.202(a)(3) (codifying requirement for wireless ETCs to comply with the CTIA code). The Department acknowledges that the Commission has required wireless Lifeline-only ETCs to commit to follow the CTIA code. Department Comments at 7.

and providing ready access to customers.¹⁴ The FCC concluded that requiring an ETC applicant to demonstrate that it will comply with these consumer protection requirements would further the universal service principles in Section 254.¹⁵

The FCC noted that state commissions exercising jurisdiction over ETC designations could follow the FCC's framework or "impose other requirements *consistent with federal law* to ensure that supported services are offered in a manner that protects consumers."¹⁶ But that authority is not unlimited. For example, the FCC cautioned states against requiring ETCs to submit to the same state laws concerning consumer protection that the incumbent LEC must follow. In considering consumer protection requirements as a prerequisite to ETC designation, states are to consider "the extent to which a particular regulation *is necessary to protect consumers in the ETC context*, as well as the extent to which it may disadvantage an ETC specifically because it is not the incumbent LEC."¹⁷ The FCC also agreed with the Joint Board that "states should not require regulatory parity for parity's sake."¹⁸ Thus, a state commission should impose requirements on an ETC "only to the extent necessary to further universal service goals."¹⁹

The Department ignores both the spirit and the letter of the FCC's 2005 order. For example, while the FCC requires an ETC applicant to demonstrate its ability to remain functional in emergency situations - to gauge the applicant's preparation and ability to handle such situations²⁰ - the Department recommends that the Commission require ETC to report 911 service

¹⁴ *FCC ETC Requirements Order*, 20 FCC Rcd at 6383 ¶ 28 n.71. See CTIA website, *Wireless Industry Commitment: Consumer Code for Wireless Service*, <https://www.ctia.org/the-wireless-industry/industry-commitments/consumer-code-for-wireless-service> (last visited Dec. 9, 2021).

¹⁵ *FCC ETC Requirements Order*, 20 FCC Rcd at 6383 ¶ 28.

¹⁶ *FCC ETC Requirements Order*, 20 FCC Rcd at 6385 ¶ 30 (emphasis added).

¹⁷ *FCC ETC Requirements Order*, 20 FCC Rcd at 6385 ¶ 30.

¹⁸ *FCC ETC Requirements Order*, 20 FCC Rcd at 6385 ¶ 30 (citation omitted).

¹⁹ *FCC ETC Requirements Order*, 20 FCC Rcd at 6385 ¶ 30.

²⁰ *FCC ETC Requirements Order*, 20 FCC Rcd at 6383 ¶ 25.

disruptions.²¹ And the Department does not even attempt to explain how this regulation would further federal universal service goals. Instead, it notes that this requirement will help fill a perceived gap in the Commission's regulations that requires only CenturyLink to report disruption of service to the Department.²² The purpose of the ETC process is to ensure that ETC applicants are qualified to provide USF-supported services, not to expand otherwise constrained Commission regulation. Similarly, the Department's proposals that ETCs be required to promptly resolve outages and not put customers on hold for an excessive amount of time smack of prescriptive regulation, rather a means of assessing the fitness of a prospective ETC.²³

Also, it is telling that national VoIP providers, such as Charter and Comcast, rarely, if ever, operate under such regulations, yet have very successfully lured phone customers from more heavily regulated ILECs, such as CenturyLink. Through their actions, these former ILEC customers have demonstrated that they do not need to be protected from VoIP providers through the prescriptive and backward-looking regulation sought by Department. For all these reasons, adoption of Department's proposed regulation would violate federal law.

III. The Department's suggestion vastly understates the burden that would be imposed by its proposed requirements related to repairing out of service conditions and responding to consumer calls.

The Department claims that its proposed additional requirements are "minimal." CenturyLink has detailed the burdens associated with very similar existing requirements for voice service before this Commission.²⁴ Because there is no advance warning of an outage, a provider

²¹ Department Comments at 11.

²² See Department Comments at 11-12.

²³ See Department Comments at 16, 19-20.

²⁴ See *In the Matter of a Petition for a Rulemaking Regarding Minnesota Rules Chapter 7810*, Docket No. P-421/M-21-381; Qwest Corporation Petition Requesting that the Commission Modernize Minnesota's Landline Telephone Rules, 14-20 (June 7, 2021).

is required to block off a significant block of technician time in the event a repair is necessary. That evidence relates to voice service and adds millions in operating costs for voice.

This impact multiplies if applied to broadband services. For CenturyLink technicians, currently, approximately 80% of the workload is for broadband services and 20% is for voice, and those percentages will continue to trend upward for broadband and down for voice. If a rule requires performance beyond the performance that would occur based on customer demand, such performance can only be achieved by either having more technicians available than would otherwise be required to perform the tasks or by prioritizing the rule-required tasks above other projects.

Minnesota weather amplifies this effect. Minnesota networks experience some of the highest seasonal variation in network load of any area in the country. Increased rainfall and customer moves peak in late summer. Work volumes at that time of year are approximately 60% higher than in winter. This variation has a compounding effect on service quality metrics because a larger proportion of the statistics are generated at times of the year when the strain on resources is the highest. These factors make the current out of service in 24 hours standard, Minn. R. 7810.5800, onerous. The impact would likely be even more pronounced for broadband services because there would be no chance for a provider to shift technician resources to focus on voice as happens today.

Furthermore, there additional complexities associated with maintaining and repairing broadband service. A customer that experiences slow broadband speeds could be having that experience due to a number of factors that have nothing to do with the quality of broadband service she is receiving from her provider. More devices could be connected than the customer realizes. There may be a large download taking place. Wireless signals may be weak at a particular portion

of the house. Inside wiring may be inadequate. It is unclear how large of an impact such a requirement could have but at a minimum, the Commission should assume that such a requirement would dramatically increase operational costs associated with broadband service.

A similar analysis applies to responding to customer calls. As an analogy, the average wait time for calls to customer service at the Department of Vehicle services is currently listed as 29 min. 57 sec.²⁵ While the Department does not specifically identify what it means as far as the time it considers “reasonable,” if it means something close to the 20 second standard for voice customers, such a requirement would impose dramatic costs on providers.

The Department demonstrates an outdated view of the industry when it states “Access to a customer service representative is a necessary first step for customer to get an issue resolved.” Increasingly, this assertion is inaccurate. If the customer calls for service, more often such issues are resolved through automated actions such as testing the quality of signal to the house, resetting the wireless router or having the customer identify and unplug devices connected to the broadband network.

Furthermore, customers across industries increasingly use online tools to resolve such issues.²⁶ Use of such approaches is increasing and improves the ability of customer service representatives to focus on more complicated issues. This is but an example of why out of date voice service quality standards are particularly difficult to apply to other services. If the Commission is interested in pursuing the Department’s proposals and thinks it has the authority to do so, it should undertake to fully understand their implications of any proposed requirement applied to broadband and wireless services. The Department has failed to provide the Commission

²⁵ <https://dps.mn.gov/divisions/dvs/Pages/dashboard.aspx> (retrieved December 12, 2021).

²⁶ Even if broadband is out, a sufficient connection is available through a wireless phone.

with sufficient information to reach any conclusion about the appropriateness of the Department's suggestions.

IV. Response to specific proposals.

A. The OAG's proposals appropriately relate to certification of the use of ETC Funds. CenturyLink does not oppose them.

The OAG sets forth two reasonable requirements for ETC applicants, (1) a deployment update and (2) providing a one-page consumer service summary.²⁷ While CenturyLink disagrees with aspects to the legal analysis put forth by the OAG, it does not oppose these proposed requirements which seem in line with federal policy and reasonably designed to ensure that federal ETC funds are used for their intended purposes.

B. The Department's proposals overreach and raise a series of legal and practical problems.

In contrast, the Department proposes six requirements that would dramatically alter the regulatory landscape in Minnesota by imposing service quality regulation on broadband and wireless services – in violation of federal law and with zero record support. Many of CenturyLink's general concerns have been addressed above. For clarity, CenturyLink responds to each proposal specifically.

1. The Department's proposal related to reporting of Disruption of 911 Service should align with federal standards.

The Department proposes:

An ETC shall report promptly to the Department of Public Safety (DPS), the PUC, and Commerce, any specific occurrence or development which disrupts the service of 50 or more of its customers or which may impair the utility's ability to furnish service to a substantial number of customers. Notifications need to explain the area affected, number of customers affected, and expected length of outage.

²⁷ OAG Comments, 21.

Immediately upon restoration of service, the notice shall report the duration of the outage and the root cause of the outage.

CenturyLink fully agrees that appropriate reports of 911 outages is crucial but suggests that the Department's proposal could create more problems than it solves. Its proposal is inconsistent with the Commission's rules related to the reporting of outages for voice service. Minn. R. 7810.5800 provides:

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

Minn. R. 7810.0600 provides:

Each telephone utility shall report promptly to the commission any specific occurrence or development which disrupts the service of a substantial number of its customers, or which may impair the utility's ability to furnish service to a substantial number of customers.

While the Commission has never specifically defined these requirements, the Department's proposed requirements go far beyond current rules by applying the standard to different technologies and by defining "substantial number of customers" at a number that could be affected by any standard fiber cut. If the Commission seeks to modify these reporting requirements it should modify its existing rules rather than use the ETC certification process.

In the meantime, CenturyLink recommends that current reporting requirements remain consistent with federal requirements. Such a standard should better ensure compliance as multistate providers already have systems in place to meet this standard.

2. CenturyLink does not object to the Department's proposal to require that 911 Plans be approved by DPS.

CenturyLink does not oppose this proposal.

3. CenturyLink opposes the Department's proposal related to service outages.

The Department proposes that "An ETC shall have a goal to resolve outages of 95% outages cleared within 24 hours." CenturyLink objects to this requirement in its entirety. Most of its arguments have been made above but to summarize:

- Directly contrary to FCC approach which has been to eliminate such requirements as burdensome and unnecessary.
 - There is no state law authority to impose on broadband and wireless services.
 - The standards are pulled out of the air and lack any evidentiary foundation.
 - The Department has failed to identify any state that has imposed such requirements on broadband and wireless services.
 - The proposal would exponentially increase cost to maintain a network.
 - Record-keeping costs could be significant - systems modifications, data gathering, data storage, etc.
- 4. CenturyLink does not oppose the proposal to require that prices and terms be made available to customers.**

The Department proposes the following requirements:

1. An ETC shall keep an updated price list on the company's website of the service offerings supported as an ETC.
2. ETCs shall make all contract terms including early termination fees and automatic renewals explicit to customers prior to customer purchase of supported services.

CenturyLink does not oppose these requirements which appear to dovetail with general consumer services requirements in Minnesota.

5. CenturyLink is concerned that the Department's proposal related to Consumer Affairs Office (CAO) information could lead to unnecessary confusion.

The Department proposes:

Upon enrolling a customer, the ETC shall make the customer aware of how to file a complaint with the CAO and provide the CAO contact information. ETCs shall cooperate with CAO to resolve customer issues.

CenturyLink's concern regarding this proposal is that it suggests the CAO has jurisdiction to broadband and wireless consumer issues. While CenturyLink works with the CAO on such issues, CenturyLink is not aware that it has formal authority over non-telecommunications issues. CenturyLink opposes this proposed requirement.

6. CenturyLink opposes the Department's proposal related to customer hold times.

The Department proposes:

ETCs shall have the goal of enabling customers to speak to a live operator in a reasonable amount of time of placing a call to customer service.

CenturyLink opposes this requirement. Its general arguments above address most of its concerns but to summarize:

- The Commission does not appear to have state law authority to impose service quality requirements on broadband and wireless services.
- The requirement interferes with federal policy related to information services and regulation of wireless services.
- Such a requirement raises preemption issues by imposing specific regulation on services the FCC has thus far chosen to not regulate or regulate lightly.
- The requirement is vague and subject to a wide variety of interpretations.
- There is no record to support such a requirement.
- The processes and technologies used to respond to consumer issues are evolving and the assumption that this requirement serves customers well is purely speculation.

CONCLUSION

The Commission's role with respect to certification of ETC's should be focused on ensuring that providers are spending universal service funds for the purposes identified in federal programs. Several Department of Commerce proposals go far beyond this role and instead adopt regulatory policies that reverse FCC policies to avoid unnecessary requirements. Following that path would be an enormous expansion of the Commission's role. Adopting those recommendations would raise a host of legal and policy concerns as is set forth in these comments.

CenturyLink respectfully opposes the Departments proposed requirements 3 (out of service repair), 5 (CAO information) and 6 (live operator requirements). It suggests modifying proposed requirement 1 (outage reporting) to align with federal reporting requirements and does not oppose proposed requirements 2 (911 Plan approval) and 4 (customer information).

CenturyLink does not object to the requirements proposed by the OAG.

Dated this 20th day of December, 2021.

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