

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
David C. Boyd
Nancy Lange
Dan Lipschultz
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the CenturyLink, Inc. Petition
for Rulemaking to Revise Service Quality Rules

ISSUE DATE: May 22, 2014

DOCKET NO. P-421/AM-14-256

In the Matter of the Petition of CenturyLink,
Inc. for Waiver of Minnesota Rule Part
7810.5800

DOCKET NO. P-421/AM-14-255

DOCKET NO. P-999/R-14-413

In the Matter of a Rulemaking to Consider
Possible Amendments to Minnesota Rules,
parts 7810.4100 through 7810.6100

ORDER DETAILING DISPOSITION
OF PETITION AND INITIATING
RULEMAKING PROCEEDING

PROCEDURAL HISTORY

On March 26, 2014, CenturyLink, Inc. (CenturyLink) filed a petition requesting that the Commission initiate a rulemaking proceeding to examine the Commission's rules governing service quality. The petition included a request for a variance to Minn. R. 7810.5800 pending the completion of the rulemaking process. The variance request is being separately considered by the Commission in Docket No. P-421/AM-14-255

On April 2, 2014, the Commission issued a notice requesting comments on the petition and on the possible scope of a rulemaking proceeding.

On April 14, 2014, the Commission received comments on its notice from CenturyLink and from the Department of Commerce (the Department). The Commission also received joint comments from: Eschelon Telecom of Minnesota, Inc.; Integra Telecom of Minnesota, Inc.; twtelecom of Minnesota, llc; US Link Inc.; and Velocity Telephone, Inc. (the Joint Competitive Local Exchange Carriers, or Joint CLECs). Joint comments were also received from Citizens Telecommunications Company of Minnesota, LLC and Frontier Communications of Minnesota, Inc. (collectively, Frontier).

Between April 24 and April 28, the Commission received reply comments from: the Minnesota Telecom Alliance; Minnesota Cable Communications Association; CenturyLink; the Department; and jointly from the AARP and Legal Services Advocacy Project.

On May 15, 2014, the Commission met to consider the petition.

FINDINGS AND CONCLUSIONS

I. Petition for Rulemaking Under Minn. Stat. §14.09

Minn. Stat. § 14.09 governs petitions for rulemaking. The statute requires that the petition be specific as to the action requested and the need for the action. Within 60 days of receiving a petition, an agency must respond with a specific and detailed reply in writing as to the disposition of the request and its reasons for its decision.

II. Background

Under its rules, the Commission has direct oversight of retail service quality for telecommunications services. The rules are set forth in Minn. R. Ch. 7810, which includes provisions in parts 7810.4100 through 7810.6100 that govern, for example, adequacy of service, interruptions of service, and call center answering times. These standards apply to all retail service, whether provided by an incumbent local exchange carrier or a competitive local exchange carrier.

The Commission's oversight of service quality extends to wholesale service quality standards as well. Those standards are separately set forth in interconnection agreements or performance plans subject to Commission approval.¹ Those standards govern the provision of wholesale service by an incumbent carrier to a competitive carrier, which in turn provides retail service to end-user consumers. The retail service quality standards contained in Chapter 7810 provide a standard by which to consider wholesale service quality standards.

Federal law also governs service quality by requiring that an interconnection with a competitive carrier be at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.²

Direct oversight of service quality is also among the state's telecommunications goals, as found in Minn. Stat. § 237.011, which directs the Commission to consider, in its execution of its regulatory duties for telecommunications services, maintaining or improving service quality.

¹ Minn. Stat. § 237.765 requires that a carrier's Alternative Form of Regulation plan include a service quality plan. Agreements between a large or small competitive local exchange carrier and an incumbent local exchange carrier are governed by Minn. R. Chapters 7811 and 7812. Specifically, Minn. R. parts 7812.0700 and 7811.0700 both require the interconnection agreement to include service quality standards; those agreements are subject to Commission approval under Minn. R. parts 7811.1800 and 7812.1800.

² 47 U.S.C. § 251(c)(2).

III. The Petition

CenturyLink's petition, filed under Minn. Stat. § 14.09 and Minn. R. 1400.2040, requests that the Commission initiate a rulemaking proceeding to examine all of its service quality standards, or at a minimum Minn. R. parts 7810.4100 through 7810.6100.

CenturyLink identified these provisions as outdated, irrelevant, costly, and rooted in the regulatory paradigm of a bygone, monopoly era. Specifically, CenturyLink's petition contends that rule language referring to "telephone operators" is no longer applicable; that the requirement to restore service within 24 hours 95 percent of the time is irrelevant; and that the resources needed to meet the current rule requirements would be better used for the deployment of services such as broadband.³

CenturyLink's position is that its operations are disadvantaged by the rules and that the existing standards actually impede service quality. It argues that in such a hotly competitive marketplace where customers can choose service from competitors not directly subject to the same service quality standards and their costs, the result is customer line loss and a dwindling customer base. Further, standards limiting efficient deployment of resources discourage fair and reasonable competition and reduce service quality.

While CenturyLink identifies these concerns as a basis for repealing the Commission's service quality rules, it requests that the Commission initiate a rulemaking proceeding to explore these issues.

IV. Comments of Interested Persons

A. Joint Comments of Eschelon Telecom of Minnesota, Inc.; Integra Telecom of Minnesota, Inc.; twtelecom of Minnesota, llc; US Link Inc.; and Velocity Telephone, Inc. (Joint CLECs)

The Joint CLECs did not make a recommendation on whether the Commission should initiate a rulemaking proceeding but did urge the Commission to take steps to protect wholesale service quality if a rulemaking proceeding is initiated. The Joint CLECs recommended two key approaches to further this goal.

First, they recommended exempting wholesale service quality from any rule changes by clarifying that the changes would apply only to retail service quality. Second, they recommended that the Commission refrain from making any changes to retail service quality that would indirectly bear on wholesale service quality standards governed by CenturyLink's Performance Assurance Plan, unless separate protections are made available.⁴

³ The term "telephone operator" is found at Minn. R. 7810.5100; the out-of-service standard is found at Minn. R. 7810.5800.

⁴ CenturyLink's Performance Assurance Plan is subject to Commission approval and contained in interconnection agreements with participating carriers.

Removal of service quality standards, they argued, could lead to a race to the bottom in quality of service, and they questioned what incentives CenturyLink would have to maintain service quality.

Further, the Joint CLECs argued that the petition does not comply with Minn. R. 1400.2040 (B), which requires a petition for rulemaking to identify the specific action requested.

B. Citizens Telecommunications Company of Minnesota, LLC and Frontier Communications of Minnesota, Inc. (Frontier)

Frontier supported CenturyLink's characterization of the competitive marketplace and the request for a rulemaking proceeding.

Frontier asserted that the Commission's service quality rules apply to a dwindling market share and that the rules are no longer appropriate in today's competitive marketplace. It claims that Minnesota's customers are more likely to have a cellphone than a landline voice connection, and with shifting customer priorities, the Commission's service quality rules assign misplaced priority on voice service, rather than broadband. For example, while Frontier seeks to restore interrupted voice service to comply with the Commission's rules, the market demands that it place a higher priority on restoring interrupted broadband service than landline voice service.

According to Frontier, the Commission's rules no longer accurately reflect the customer's expectations, desires, or values and are no longer needed to drive carrier behavior. Instead, market pressures drive the quality of service that customers demand.

C. Minnesota Telecom Alliance (MTA)

The MTA represents 80 member companies offering communications services and is seeking a legislative initiative to align regulations with the competitive marketplace. It stated that it would support a comprehensive review involving Minn. R. Ch. 7810, and in particular, a thorough review of the Commission's service quality rules. The MTA recommended that the Commission initiate a rulemaking proceeding.

D. Minnesota Cable Communications Association (MCCA)

The MCCA represents cable communications companies that provide video, voice, and high-speed data services.

The Association made no recommendation on whether the Commission should initiate a rulemaking proceeding but echoed the concerns expressed by the Joint CLECs regarding wholesale service quality. Emphasizing the need to strictly limit the rulemaking proceeding to retail service quality without implicating the performance of wholesale service quality, MCCA recommended that any rule changes avoid changes to retail service quality rules that are used to set measures for wholesale service quality in interconnection agreements with CenturyLink. MCCA also argued that the petition fails to identify specific action for a rulemaking proceeding, as required by Minn. R. 1400.2040 (B).

E. Department of Commerce

The Department recommended that the Commission initiate a rulemaking proceeding to look comprehensively at Minn. R. Ch. 7810. There has not been a detailed examination of the rules since they were promulgated decades ago, and in particular, the opportunity to amend the service quality rules would enable the Commission to better tailor its rules to meet the current demands and needs of today's consumers. Advancements in technology have likely led to outdated rule language in need of amending.

The Department also asked the Commission to keep in mind, if a rulemaking proceeding to examine service quality rules proceeds, the potential effects on wholesale service quality as a result of possible changes to retail service quality standards.

F. AARP and Legal Services Advocacy Project

AARP and Legal Services Advocacy Project emphasized the need for any possible rule changes to be evidence-based. Because competitive options vary according to product market and geographic market, it is unreasonable to make assumptions about the effects of evolving technology on competition and consumer choice without evidence to support the changes. Further, they stated that the essential nature of telephone service, particularly for older consumers, does not justify sacrificing service quality that could result in prolonged outages and harm consumers.

G. CenturyLink Reply Comments

In its reply comments, CenturyLink stated that while it does not oppose the Department's recommendation to consider changes to the entirety of Minn. R. Ch. 7810, it finds the service quality rules contained in parts 7810.4100 through 7810.6100 most problematic and supports a rulemaking proceeding targeted to those rules.

CenturyLink also took issue with the request to limit the scope of the rulemaking proceeding to retail service quality standards without addressing wholesale service quality standards. CenturyLink disputed claims that wholesale service quality performance would be adversely affected by rule changes and recommended considering the merits of those arguments in the rulemaking proceeding.

V. Commission Action

Minn. Stat. § 237.011 (5) requires the Commission to consider, in its oversight of telecommunications services, the state's policy goal of maintaining or improving service quality. After years of dynamic changes in the industry, this core duty remains at the center of the Commission's regulatory responsibilities.

The Commission also recognizes, however, that the development of significant technological advancements, as well as the evolution of a competitive marketplace not envisioned when the rules were first promulgated, has vastly altered the consumer experience. The extent to which these shifts require different rules to more accurately and effectively meet the current demands and

needs of consumers is not known. Nor is it clear, based on the information in front of the Commission today, that the existing standards are irrelevant or discourage fair and reasonable competition. It is essential that substantive evidence be provided to demonstrate the need for rule changes that would more effectively implement the state's policy goals.

The Commission concurs that a rulemaking proceeding would enable it to consider how to best promote a key objective of the regulatory framework, the duty to maintain and improve service quality, and to explore whether possible rule changes would more accurately and appropriately further this policy.

The Commission will therefore initiate a rulemaking proceeding to consider possible changes to Minn. R. parts 7810.4100 through 7810.6100. The Request for Comments will solicit specific language suggestions and substantive evidence supporting any suggested changes. Anyone requesting rule changes will be required to include:

- a. Evidence of competition, including the level and scope of such competition in relation to different types of customers (large business, small business, residential, etc.) and geography, and the extent to which existing competition supports the rule changes being recommended;
- b. A demonstration of how the recommended rule changes would impact retail service quality and the extent to which service quality would be adequately protected by competition and/or the recommended rule changes;
- c. Evidence of the impact any recommended changes would potentially have on competitive carriers and wholesale service quality;
- d. Any other relevant evidence and arguments supporting any recommended rule changes and the impact of such changes on telecommunications consumers;
- e. Any arguments or evidence as to why rule changes should or should not be made regardless of evidence related to competition.

The Commission will also delegate to the Executive Secretary the authority to develop the Request for Comments, to include any additional issues relevant to this rulemaking proceeding, and to set the schedule in a manner consistent with the agency's other priorities.

ORDER

1. The Commission hereby initiates a rulemaking proceeding to consider possible changes to Minn. R. parts 7810.4100 through 7810.6100.
2. The Commission hereby directs that the Request for Comments solicit specific language suggestions and substantive evidence supporting any such suggested changes. Those requesting any changes must, at a minimum, include:

- a. Evidence of competition, including the level and scope of such competition in relation to different types of customers (large business, small business, residential, etc.) and geography, and the extent to which existing competition supports the rule changes being recommended;
 - b. A demonstration of how the recommended rule changes would impact retail service quality and the extent to which service quality would be adequately protected by competition and/or the recommended rule changes;
 - c. Evidence of the impact any recommended changes would potentially have on competitive carriers and wholesale service quality;
 - d. Any other relevant evidence and arguments supporting any recommended rule changes and the impact of such changes on telecommunications consumers;
 - e. Any arguments or evidence as to why rule changes should or should not be made regardless of evidence related to competition.
3. The Commission delegates to the Executive Secretary the authority to develop the Request for Comments and to include any additional issues relevant to this rulemaking proceeding.
4. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary



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