

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE PETITION OF CENTURYLINK QC TO IMPLEMENT SENATE BILL 53 AND TO ADOPT EMERGENCY RULES	Case No. 17-00186-UT
Initial Comments of Communications Workers of America – District 7	

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I. INTRODUCTION

The Communications Workers of America – District 7 (“CWA”) provides the following comments pursuant to the New Mexico Public Regulation Commission’s (“Commission”) March 20, 2019 Order Issuing Notice of Proposed Rulemaking.¹

CWA is a labor organization and the exclusive bargaining representative, as those terms are understood by the National Labor Relations Act, for certain employees of Qwest Corporation dba CenturyLink QC (“CenturyLink” or the “Company”). CWA Locals 7001, 7011, 7037, and 7009 collectively represent approximately 320 CenturyLink employees in New Mexico who are mostly technicians. CWA represents approximately 6,100 total employees in public and private employment in the State of New Mexico.

As part of its ongoing obligation to its members, CWA conducted an investigation of the conditions at CenturyLink under which its members work. The investigation included a series of focus group panels with CenturyLink technicians regarding the external condition of the plant (readily observable from public streets and sidewalks) in rural and urban areas of New Mexico. CWA’s investigation has revealed that, for many years, CenturyLink has failed to maintain its physical copper plant. The state of deterioration is very advanced, including damaged poles that have not been removed, damaged pedestals with exposed contents, exposed cables above ground, remote terminals without functioning backup batteries, and insufficient redundancies in remote terminals to prevent outages. Damaged cables are not replaced, resulting in repeated technician repair visits. Short-term technician Band-Aid repairs have turned into a permanent solution by

¹ In The Matter of the Petition of CenturyLink QC to Initiate a Rulemaking to Implement Senate Bill 53 and to Adopt Emergency Rules, New Mexico Public Regulation Commission, Case #17-00186-UT, March 20, 2019.

the Company. CenturyLink customers suffer from repeated outages, including 911, and the safety of CenturyLink's employees and the public is jeopardized every day.

Clearly, competition is not working to protect New Mexico consumers' and small businesses' need for quality telecommunications services. For many customers, CenturyLink's copper network is the only source of telecommunication services. For others, a poorly maintained CenturyLink network provides little competitive pressure on alternative providers to provide quality telecommunications service at an affordable price. Therefore, *the Commission should adopt strong quality of service and consumer protection* rules to protect New Mexico customers' access to basic telecommunications services. Extensive deregulation will result in CenturyLink's further abandonment of its copper network, especially since the Company has announced its strategic focus on the enterprise business. Competition is not sufficient to ensure that all New Mexico consumers receive quality, reliable service.

Furthermore, evidence from other states shows that, absent regulatory oversight, there will be a decline in service quality and consumer protections. For example, in 2016, California strengthened its service quality regulation having found that the largest carriers in the state repeatedly failed to meet minimum service quality standards.²

Therefore, CWA urges the Commission to adopt the Commission's proposed rules that were attached as Exhibits "A" and "B" to the Commission's March 20, 2019 Order Issuing Notice of Proposed Rulemaking, and to consider CWA's additional recommendations in Part VI of this Comment.³

² Decision Adopting General Order 133-D, Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modification to Service Quality Rules, Rulemaking 11-12-001, August 29, 2016.

³ In The Matter of the Petition of CenturyLink QC to Initiate a Rulemaking to Implement Senate Bill 53 and to Adopt Emergency Rules, New Mexico Public Regulation Commission, Case #17-00186-UT, March 20, 2019.

II. CUSTOMER COMPLAINTS CONFIRM THAT CENTURYLINK IS NOT PROVIDING REASONABLE AND ADEQUATE SERVICES TO THE PUBLIC

A. Formal and Informal Complaints Filed With the Commission

Through a New Mexico Inspection of Public Records Act request, CWA received copies of informal and formal complaints filed by CenturyLink customers with the Commission.

Customer complaints confirm that CenturyLink customers experience service problems because CenturyLink has failed to maintain its copper infrastructure adequately in many areas.

CenturyLink's New Mexico customers have filed numerous complaints with the Commission regarding service interruptions, static on the line, loss of service during rain, incomplete installations, and other deficiencies. Records obtained from the Commission by CWA show that since 2015 nearly 300 New Mexico customers submitted informal complaints to the Commission about the quality and reliability of service they receive from CenturyLink. It takes time and effort to submit complaints to the Commission, and, for this reason, these complaints are likely the tip of the iceberg – many more customers may be experiencing service quality problems but may not have known how to submit complaints or may not have thought that submitting complaints would change the quality of service they receive. The following are a few examples of CenturyLink customer experiences that are directly related to CenturyLink's failure to maintain its network.

In February 2019, a customer from Cerillos complained: "On September 14, 2013 a flood washed out County Road...The 'repair' that CenturyLink consisted of four cables strung along my neighbors fence, and on top of the ground across driveways. This 'temporary' fix has yet to be resolved, even though CenturyLink had the money and equipment to install empty cabinets at the corner of and Rainbows End and empty fiber optic cable along this last fall. Every time we get any moisture the phones go out or become unusable due to noise and crosstalk. There is no

cell service in this valley, and numerous elderly folks who depend on land lines for 911 emergency medical service. Lack of attention to this situation is bordering on criminal negligence - if someone dies out here because they can't get a medical emergency call through, this complaint will serve as evidence the CenturyLink has known about the problem for years and failed to act.”⁴

In April 2018, CenturyLink responded that they were actively working on a solution and estimated the process to take six months.⁵ In May 2019, CWA visited the County Road 55A (see figure 20). The cables mentioned above are still on the ground or strung along the fence more than a year since the customer’s complaint to the Commission.

In March 2018, a Hanover customer complained: “The CenturyLink telephone lines in the Hanover, NM area are in poor repair and have been for years. We're in a dead zone for cell service making our landlines of critical importance. The Hanover Water Association has filed formal complaints about this since their ability to communicate with customers at emergent times has been compromised. Our postmistress has had to leave the post office and drive to Bayard to make important phone calls. I have REPEATEDLY called CenturyLink for service outages...If I had cell phone coverage here I would not be filing this complaint, I would not be a CenturyLink customer. Unfortunately I am paying \$88 plus dollars every month for landline service that I'm not getting and have no alternative for phone access. If we have a medical or police emergency here in Hanover we are at great risk of not being able to access critical emergency services when needed.”⁶

⁴ Informal Complaint of Robert Hausman, New Mexico Public Utilities Commission, Utility – 216399, created February 28, 2018.

⁵ *Id.*

⁶ Informal Complaint of Carol Sassaman, New Mexico Public Utilities Commission, Utility – 216454, created March 16, 2018.

In January 2019, a customer from Vadito, NM complained: “Our local landline phone service has not worked since Dec 31, 2018...When our power goes out, which it does occasionally, especially in winter, we have no internet or WiFi cell service and have no communication or cannot get to 911 services...We have to drive several miles to be able to make a call, such as to report our power is down, as we had to do last Saturday. We have tried everything we know to do, talked to everyone we have seen to talk to and since we can't get in touch with the CEO of CenturyLink to get them to fix our phone line, filing this complaint is all we know to do.”⁷

In February 2019, a customer from Aztec complained: “I have a landline, no cell and my landline and internet provider is CenturyLink...[T]he phone would go out every time it rained or snowed. I put up with this for about 4 years. It was never the connection I was responsible for. Then I had a serviceman tell me the problem. The only one of many that explained that something called router boxes were the problem. They get old and as a unit stops working the repairman just plugs it in to another. That's fine but the big unit gets old and starts leaking and damaging the individual units. He said the company does not like replacing the unit box until there are almost no individual unit plug-ins left. While that is happening, the company thinks it is cheaper to kept sending out repairmen to ‘fix the problem’ every time it rains. He went way down the road to find a newer, not full unit box. He said it should last a good few years. It lasted five. Now I am back to not having phone and sometimes both phone and internet when it rains and when the snow starts melting. If both go down at once I have no way to report an outage. This month, so far, I have had no phone service for a total of 9&1/2days, so far.”⁸

⁷ Informal Complaint of Bill/Michelle Ratcliff, New Mexico Public Utilities Commission, Utility –217716, created January 16, 2019.

⁸ Informal Complaint of Sharon Tinsley , New Mexico Public Utilities Commission, Utility – 217853, created February 18, 2019.

In February 2019, a customer from Questa complained: “In 2018, I reported telephone problems to CenturyLink more than 10 times and in 2019 have reported problems to them at least 3 times. A technician is dispatched to our location and the technician ‘bandaids’ the problem. The telephone problem has been consistent and ongoing for more than a year. Our business relies on customer telephone calls and if our telephone line is out of service we lose revenue and could potentially lose business customers. We have a reputable business and have been in operation since 1989. With the scarcity of jobs/positions in the Questa area, we must rely on CenturyLink telephone to receive and make telephone calls. There are no other telephone carriers in the rural area of Questa and we must rely on CenturyLink to conduct telephone business.”⁹

B. CenturyLink Customers Do Not Have Access to Reliable Service, Including 911 Service

CenturyLink’s failure to maintain its copper infrastructure puts New Mexico residents at risk in gaining access to essential emergency services. This is especially true for the elderly and those living in rural areas without access to alternative forms of communication who rely exclusively on CenturyLink’s copper network to dial 911. In December 2018, an issue with a “network element” resulted in statewide and national outage, including 911.¹⁰ CenturyLink’s outage also caused outages of Verizon’s network in New Mexico.¹¹ The Federal Communications Commission is investigating the outage.¹² While the December 2018 outage received significant coverage, this is by no means unique.

⁹ Informal Complaint of Peggy Rael, New Mexico Public Utilities Commission, Utility – 217918, created February 28, 2019.

¹⁰ Stephen Montoya, *CenturyLink, Verizon services disrupted*, ALBUQUERQUE JOURNAL, December 27, 2018, <https://www.abqjournal.com/1261869/centurylink-verizon-see-widespread-outages-in-abq-area.html> (last visited May 14, 2019).

¹¹ Eric Whitney, *FCC Investigates Widespread CenturyLink Outage That Disrupted 911 Service*, NPR, December 28, 2018 (last visited May 14, 2019).

¹² *Id.*

In December 2018, Kathy London, Chief of Santa Rita VFD, complained: “I am chief of the Santa Rita Volunteer Fire Department, located near Silver City, NM. The taxpayers of New Mexico recently built a new fire station for our department, located at the service address. In order to protect the \$1,000,000 in taxpayer owned apparatus and equipment at our station, we have an alarm system. Operation of the alarm system depends entirely on a reliable landline telephone connection. In the six weeks that we have paid for service from Century Link, we have had 4 major outages. The Century Link technician told us it's an old system and he keeps it running as best he can, so we expect more outages. This is unacceptable. Century Link must provide reliable service. CenturyLink must upgrade the service - it is not acceptable for us to call them every few days for a temporary fix.”¹³

In December 2017, Ken Hansen of La Joya complained: “In the small community of La Joya we have had bad service for many years... There is a loud buzz and hum on the line and then we will hear a click and get disconnected... I don't care what the problem is I just need the service I pay for. I have a heart monitor that sends messages to UNMH and at times they have not gotten them. When the line is out we can not call 911, fire or ambulance.”¹⁴

In October 2017, Daniel Quartieri of Cimarron complained: “We have had over 35 service calls in the last year. We are very rural and have no cell phone service. As of now we haven't had a phone for 11 days. We are a restaurant and bar and are unable to call 911! Help us please!”¹⁵

¹³ Informal Complaint of Santa Rita Volunteer Fire Department, New Mexico Public Utilities Commission, Utility – 217552, December 13, 2018.

¹⁴ Informal Complaint of Ken Hansen, New Mexico Public Utilities Commission, Utility – 216155, created December 15, 2017.

¹⁵ Informal Complaint of Daniel Quartieri, New Mexico Public Utilities Commission, Utility – 216078, created October 26, 2017.

C. Customer Complaints Posted in Online Forums

Many CenturyLink customers resort to online forums to express their frustration with CenturyLink's poor service quality. The following are a few examples of customer complaints submitted to ConsumerAffairs.com.

On June 17, 2018, Bel of Santa Fe, NM complained: "CenturyLink has had outage of internet service going on 5 days already... This started Thursday morning 6/14... as of today 6/17 no internet! This is beyond ridiculous... On Monday I will be asking them for credit on my bill for no service! If anyone else having this problem should call and ask for credit. Maybe if enough people request a credit they will improve their service and customer service! Already made arrangements with another internet provider... Refuse to go through this again! I understand there are outages! But this long??? Will have new service on Monday... I can't wait!"

On March 27, 2019, Ardeth of Santa Fe complained: "I spent 2 hours today online trying to get help for the buzzing problem, which means I can't be heard and I can't hear anyone who calls me. First, CL didn't recognize my account # of 22 years. Then I decided to try Chat, where I was shunted from agent to agent and got absolutely no answers, let alone a promise to send a repair person to check my phone. Tomorrow I will try their 800 number using my cell, and if that doesn't work I'll cancel my account."

On January 7, 2019, James of Las Cruces complained: "Ever since the big CenturyLink outage over Christmas, 2018, my DSL connection is CONSTANTLY FLAKING OUT every few minutes. PLEASE FIX THIS ANNOYANCE. I can't stream anything because of it. Browsing the web is painful because I keep losing the connection."

The comments above confirm what CenturyLink technicians have reported to CWA. CenturyLink has failed to maintain its New Mexico plant and technicians are asked to Band-Aid problems repeatedly leading to service problems.

III. CENTURLINK HAS FAILED TO MAINTAIN ITS FACILITIES WHICH JEOPARDIZES SERVICE QUALITY AND THE SAFETY OF EMPLOYEES AND THE PUBLIC

CWA's investigation has found numerous instances of the appalling state of disrepair of CenturyLink's New Mexico physical plant, which jeopardizes service quality and poses significant safety hazards to utility employees and the public.

A. Damaged Cable and Outside Facilities

CenturyLink's neglect of its network is apparent in its failure to spend money on routine maintenance and repairs. For example, CenturyLink frequently fails to authorize the replacement of damaged cable. Instead, employees are directed to cover damaged areas of cable with plastic coverings, and/or run inside wiring ("I/W") or house cable ("inside cable") around the problem area. Inside wiring and inside cable are not designed for this type of outdoor use, lack a ground (offering the circuit no protection from lightning strikes, as well no resistance to power influence which may cause "noise" on the line), and have only thin coverings that are easily penetrated by animals and weather. Long-term exposure to the New Mexico sun damages the inside wiring and inside cable's plastic covering. These problems cause extensive service quality issues, as the cables are exposed to heavy rains during New Mexico's summer monsoon season.

Unfortunately, these practices appear to be "business as usual" throughout CenturyLink's copper plant, as shown by the following pictures from Albuquerque (figures 1-6).

Figure 1. The White Arrows show inside cable running up the wall and along the ground.



Figure 2. The same inside cable running along an arroyo.

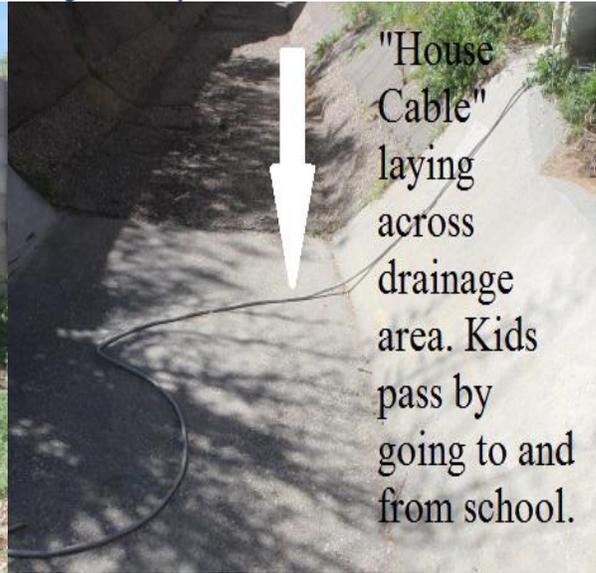


Figure 3.

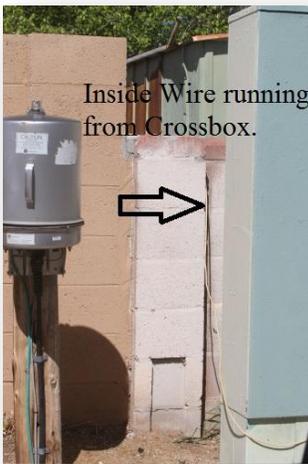


Figure 4.

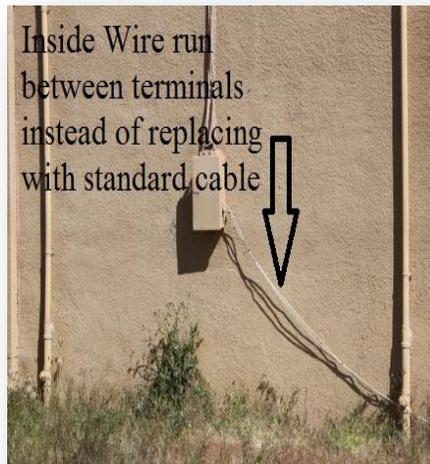


Figure 5.



The pictures below are two temporary special service circuit cables from Clovis, which have been on the ground, in front of six residential driveways, since 2015. This temporary special service circuit cable provides service to a business. This is a public safety issue, as cars run over temporary cables and pedestrians walk over them on a daily basis.

Figure 6.



Figure 7.



Figure 8. A cable can become so deteriorated that CenturyLink mandates coverage with plastic for weather protection. The plastic coverings are intended to be used only as a temporary solution. However, CenturyLink uses them as a permanent solution. As shown in this picture from Portales, the plastic coverings, which resemble heavy-duty plastic trash bags, deteriorate due to sun exposure or chewed by animals. The result can be animals and insects nesting inside, which pose a serious hazard to utility workers if they work near and inside the coverings.



Figures 9 and 10 provide an example of a deteriorated cable that has been covered by plastic bags more than once.

Figure 9. Tucumcari



Figure 10. Tucumcari



B. Damaged Cross-Connect Cabinets, Pedestal, and Outside Facilities

Cross-connect cabinets (“cross boxes”) are vitally important facilities on the copper network. Large cables (containing hundreds of pairs of the individual conductors that serve customers) enter the cabinet and are then split into individual circuits. A pedestal serves as a ground-level housing of connection points for underground cables. Damaged cross boxes and pedestals have a direct impact on the reliability of service to customers, as wires get damaged, rained on, chewed by animals, or disconnected. CenturyLink does not replace damaged cross boxes and pedestals, and allows these types of hazards (resulting in poor service quality) to proliferate. The following are a few examples of damaged pedestals exposed to the elements in Santa Fe, Taos, Curry, and Roosevelt counties.

Figure 11. Santa Fe



Figure 12. Santa Fe



Figures 13-15 show three “temporary” solutions to the deteriorating plant conditions that became a permanent fix in Taos County.

Figure 13.



Figure 14.



Figure 15.



Figure 16. Portales



In Figure 16, a cut off hanging drop, adjacent to the fire department, is tied around the pedestal to keep from blowing in the wind and hitting passing vehicles and pedestrians. Also, the pedestal is missing a lid and has been bagged for a great length of time.

Damaged pedestals and cross boxes (even seemingly small openings) are also subject to infestation by insects and animals, creating a significant safety hazard to utility workers who must access them, as well as a potential public health problem.

Figure 17. Clovis



Figure 18. Portales



Figure 19. Portales



Figure 20. These two pictures from Santa Fe County show parts of a mile long portion of CenturyLink’s cables, traveling between three remote terminals and two repeaters, serving the residents off of County Road 55A. The picture above shows the cables exposed on the ground, and the picture below shows the cables wrapped around a fence on their route.



In February 2018, Robert Hausman of Cerillos filed an informal complaint with the Commission. In April 2018, CenturyLink responded that they are working on a fix and the project could take six months to complete. As of May 2019, over a year since Mr. Hausman’s complaint, the cables remain exposed.

C. CenturyLink Lacks a Backup Battery Infrastructure

CenturyLink’s Remote Terminal (“RT”) serves as a small Central Office in the field. The RT can house numerous pieces of telephone equipment, which include pair gain systems and/or multiplexers. Pair gain systems allow transmission of multiple telephone signals over a twisted pair of copper cable, which provides an easy solution to solve subscriber line shortage issues. The RT is equipped with backup batteries that should last a minimum of four hours in case of a commercial AC power outage. This important redundancy is designed to protect CenturyLink’s customers’ dial tone service during commercial AC power outages and provides the company with sufficient time to restore AC power by fixing the problem or connecting a generator. However, CenturyLink’s batteries are ineffective as a redundancy backup system. This is because the batteries have dead cells or hold much less than four hours of backup charge, as they have not been replaced in over 10 years. In addition, there are often other issues with the RT

power plant, such as defective rectifiers and blown fuses. This is likely due to CenturyLink's reported practice of not consistently performing routine battery plant maintenance.

When a battery is in trouble or goes out, an alarm goes out to the CenturyLink service center in Salt Lake City, Denver, or other service centers throughout the United States.

Technicians report that these alarms are typically filtered and often ignored by the management.

When an RT experiences an AC power outage, many CenturyLink customers experience service outages, as well. This outage could be prevented if CenturyLink had fully maintained its backup batteries and its redundancy network.

The failure of a remote terminal may cause a ripple effect throughout the CenturyLink network that could impact thousands of residential and business customers, including the 911 service, hospitals, government building, and military bases.

D. Dangerous Double Poles

When a new pole replaces an existing pole, often by the utility company, CenturyLink fails to move its facilities to the new pole or fails to remove the old pole after they move their facilities, resulting in what is known as a double pole. There are large numbers of double poles in New Mexico. The photos below from Portales illustrate several examples of double poles marked for facilities transfer or removal. Unfortunately, when a double pole is left in place, it continues to deteriorate, resulting in old poles that are bent, broken, and even sheared off at the base.

Figure 21.



Figure 22.



Figure 23.



Figures 24-26 show three poles in Tucumcari where CenturyLink never completed the pole transfer.

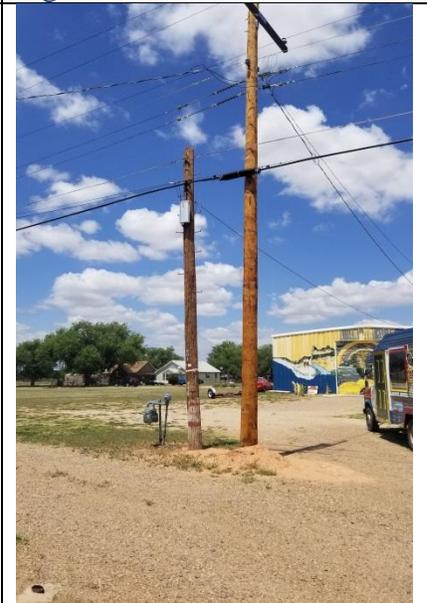
Figure 24.



Figure 25.



Figure 26.



Double poles are not only unsightly, but pose a hazard to line workers who must climb poles to

work on the lines and other equipment. Having two poles in such close proximity reduces worker maneuverability, which can be essential when an animal or insect infestation or other hazard requires the worker to move quickly to avoid harm.

IV. UNREASONABLE METRICS AND INADEQUATE STAFFING HINDER SERVICE QUALITY

Quality service depends upon adequate staffing of trained, career employees. The decline in CenturyLink's New Mexico infrastructure is closely correlated with the number of technicians in the field. CWA represents the frontline technicians at CenturyLink. According to CWA's analysis, the number of non-management technicians at CenturyLink declined by 24% (or 102 technicians) from 2015 to 2019. CWA's focus groups also revealed that there is a shortage of technicians in the field. There are simply not enough technicians to maintain the aging facilities. For example, there are no routine maintenance crews dedicated to respond to system problem alerts. Automated system alerts, which notify problems across CenturyLink's plant are filtered by management, and not assigned to field technicians for follow-up, unless there is an outage or customer reported problem. Technicians report that their requests for follow-up maintenance visits often fall on deaf ears by CenturyLink management.

CenturyLink technicians are also required to meet unreasonable performance metrics, encouraging them to Band-Aid problems quickly, often at the detriment of a long-term solution that takes more time and resources. For example, it is common practice for the technicians repeatedly to splice and bag the same bad cables in order to restore service to the customer instead of implementing structural repairs, such as replacement of the bad cable. CenturyLink's current Technician Performance Plan (Link2Success) creates benchmarks that measure an outside plant technician's "productive" time. "Productive time" is coded as time that an outside

plant technician spends on customer-initiated work (repair calls or installation orders) Preventive maintenance or the time spent tracing a network problem to its source and preparing the paperwork to escalate the problem for cable or other repair is coded as “non-productive time.” As a result, management directs technicians to focus on productive time which leads to Band-Aid solutions rather than repair of the network problem.

V. CENTURYLINK CUSTOMERS REQUIRE STRONG COMMISSION RULES TO ENSURE SERVICE QUALITY

Competition alone will not ensure that all New Mexico residents and businesses have access to quality basic local exchange services. *First*, many CenturyLink customers in New Mexico do not have reliable and affordable alternatives to CenturyLink’s basic local exchange service and continue to rely on CenturyLink for voice service. *Second*, CenturyLink’s increasing emphasis on its business operations and fiber-based services,¹⁶ the small size of CenturyLink’s New Mexico basic local exchange service operations relative to CenturyLink’s global \$23.4 billion operations,¹⁷ CenturyLink’s recently announced “strategic review” of alternatives for the consumer segment of its operations,¹⁸ and its focus within the consumer segment on urban areas

¹⁶ Shortly after the announcement of the Level 3 transaction, Chief Financial Officer Sunit Patel stated that “the key here is...that 76% of the combined company's revenue is business revenue, which is enterprise carrier-type revenue, and the consumer business is 24%. So it really is -- becomes the primary business of the company going forward.” Bank of America Merrill Lynch Leveraged Finance Conference, November 29, 2016. *See also*, Baldwin Direct Testimony in Case No. 18-00295-U, at page 5 and footnote 6.

¹⁷ CenturyLink 2018 Annual Report and 2019 Proxy Statement. <http://ir.centurylink.com/Cache/1500119180.PDF?O=PDF&T=&Y=&D=&FID=1500119180&iid=4057179>. A-100. CenturyLink serves customers in more than 60 countries. *Id.*, at letter to shareholders from President and CEO Jeff Storey.

¹⁸ Earlier this month, CenturyLink stated in a press release:

As part of CenturyLink's regular evaluation of its asset portfolio, the Company announced that it has initiated a strategic alternatives process for its Consumer business and has engaged external advisors to assist in the review. The Company cannot predict the outcome or timing of this work, whether any transactions will be consummated or, if they are, what the form of those transactions may be. The Company does not plan to modify its normal operations or investment patterns in these businesses while it undertakes this review.

with “good socioeconomic demographics”¹⁹ make it even more important that the Commission maintain strong oversight of the quality of service that CenturyLink provides to New Mexico consumers and small businesses. Absent strong regulatory oversight, CenturyLink’s strategic focus on more profitable lines of business, customers, and geographies will starve New Mexico, particularly but not exclusively rural areas, of the financial and human resources necessary to ensure that all New Mexico consumers, including rural, low- and moderate income, and elderly residents, receive quality service.

A. Many CenturyLink Customers Do Not Have Access to Alternatives For Telecommunications Services

Competitive forces are insufficient in New Mexico’s local telecommunications markets to yield adequate basic local exchange service quality (e.g., reliable dial tones and timely installation and repair of basic local exchange service) and to protect consumers from harm (such as unwarranted disconnection of service, incomplete information about rates, terms and conditions, and delayed resolution of consumer complaints). The primary alternatives to an incumbent local exchange carrier (ILEC) such as CenturyLink’s s’ basic local exchange service are Voice over Internet Protocol (“VoIP”) and wireless service, which, for the reasons discussed

"Our Consumer business continues to make significant contributions to our profitability and Free Cash Flow and we are performing well where we are investing," said Storey. "We are comfortable operating this business for the long term, but the strategic review will help us better understand whether there are opportunities to better maximize the value of this asset."

The Company does not intend to comment further regarding the strategic review process until it is complete or further disclosure is required.

Press release, “CenturyLink Reports First Quarter 2019 Results,” May 8, 2019.
<http://ir.centurylink.com/file/Index?KeyFile=397858083>

¹⁹ According to Sunit Patel, CenturyLink CFO, CenturyLink capital investment on the consumer side will focus “in urban areas, we want to make sure that where we are spending the capital, we’re generating pretty good returns. So things like MDUs [multi-dwelling units] make a lot more sense, areas where households coexist with businesses make a lot more sense, **areas that have good socioeconomic demographics**, close to our network, close to the central office where we could easily enable quite a few households with high speeds,” (emphasis added).S&P Global Market Intelligence, *CenturyLink, Inc. NYSE:CTL Company Conference Presentation*, February 28, 2018, at 8.

below, cannot be relied upon to yield effective competition throughout ILECs' service territories. Satellite-based voice service, which is a rarity, also cannot be relied upon to exert competitive pressure on ILECs' basic local exchange service as the discussion below demonstrates.

1. VoIP.

Cable VoIP, the primary landline alternative to ILECs' basic local exchange service, typically depends on a broadband platform. Therefore, VoIP can be considered to be a functional equivalent for basic local exchange service where broadband is actually available. Broadband platforms are not reasonably available throughout ILECs' service territories.

The most rural areas of the state are most likely to lack access to broadband. In New Mexico's rural areas, only 42.8 percent have access to broadband internet access.²⁰ For the approximate 60 percent of rural New Mexico households that lack broadband access, VoIP is a non-option and so does not create any competitive pressure for ILECs' basic service. Moreover, not only must broadband be available, but customers must be willing and able to purchase the service. Throughout the state (in urban and rural areas), only 38 percent of New Mexico's households subscribe to broadband connections at 25 Mbps download and 3 Mbps upload, and only 43 percent of New Mexico's households subscribe to broadband connections at 10 Mbps/1 Mbps, which is significantly less than the corresponding national averages of 54 percent and 68

²⁰ In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, GN Docket No. 17-199, 2018 BROADBAND DEPLOYMENT REPORT, released February 2, 2018 ("FCC 2018 Broadband Deployment Report"), at pages 61-62, Table D1 in Appendix D. Moreover, the FCC overstates broadband availability because even if only a single customer in a census block has access to broadband, the FCC reports that the entire census block is served with broadband. Census blocks can cover large areas and so this misrepresentation by the FCC's data of availability particularly misconstrues residential wireline alternatives to CenturyLink's service. See, e.g., <https://blogs.microsoft.com/on-the-issues/2019/04/08/its-time-for-a-new-approach-for-mapping-broadband-data-to-better-serve-americans/>

percent levels of broadband adoption.²¹ That is, VoIP is far less of a substitute for basic local exchange service in New Mexico than it is in other states.

For the approximate 60 percent of households throughout the state that do not subscribe to broadband (either because it is not offered or because they do not want (or cannot afford) the service), fixed VoIP is not an option. Moreover, the percentage of households lacking the platform that is required for fixed VoIP is higher in rural areas, among households with low or limited incomes, and as the age of household members increases.²²

Further reducing the reasonable comparability of fixed VoIP is the fact that often it is not offered on a stand-alone basis but instead must be purchased as part of a double- or triple-play (with broadband internet access and TV), and even if it is offered on a stand-alone basis, it is typically offered at prices significantly above ILECs' price for basic local exchange service. Indeed, of the 163,000 VoIP lines in New Mexico (residence and business), 153,000 are purchased with internet access service as well, demonstrating that few consider stand-alone VoIP to be a reasonably comparable substitute for basic voice service.²³

Yet further differentiating fixed VoIP from basic local exchange service is the fact that the *terms* may differ from those associated with basic local exchange service, especially if there are termination fees associated with the purchase of VoIP (particularly if bundled with other services). The *conditions* differ in that VoIP depends on battery back-up (typically only 8 hours) and so during prolonged power outages, the performance differs from that of basic service, which continues to operate during prolonged power outages.

²¹ FCC Report "Internet Access Services: as of June 30, 2017," Industry Analysis and Technology Division, Wireline Competition Bureau, November 2018 ("FCC's Internet Access Report"), at Figure 32.

²² Pew Research Center, *Internet/Broadband Fact Sheet*, February 5, 2018, available at <https://www.pewinternet.org/fact-sheet/internet-broadband/>.

²³ FCC, Voice Telephone Services Report, November 2018, available at <https://www.fcc.gov/voice-telephone-services-report> (See State Level Subscriber Counts).

2. Wireless Service

Cord-cutters have found wireless service to provide a functionally equivalent service. However, those consumers who continue to subscribe to both wireless service and landline service (that is, those who have not “cut the cord”) have not found wireless service to provide a functionally equivalent service. Wireless services are not substitutable for landline service for all consumers. Some residents have no or poor cellular signals due to distance and geography,²⁴ and in other instances, unreliable wireless services may not be capable of supporting commonly used medical alert devices and may not be suitable for certain family situations. Approximately seven in ten people over 65 continue to subscribe to landline service.²⁵

3. Satellite-based voice services.

Sometimes ILECs point to satellite-based voice service as a substitute for ILECs’ voice service, but CWA cautions the Commission not to place too much stock in this purported alternative. Simply because a service is available does not mean that is viewed by consumers as a reasonable alternative. Among other things, satellite-based service is expensive (for installation, monthly charges, and equipment), requires a clear line of sight (as vegetation and trees grow, this can obstruct signals)²⁶, and depends on customer maintenance of the satellite dish (e.g., keeping

²⁴ Karl Bode, The FCC Is Investigating Cell Carriers' Wireless Coverage Maps, Vice, December 12, 2018, available at: https://www.vice.com/en_us/article/mbykvn/the-fcc-is-investigating-cell-carriers-wireless-coverage-maps.

²⁵ “Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January–June 2018,” Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, Released 12/2018, page 6
<https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201812.pdf>

²⁶ One site explains: “A clear line of sight is essential, so the first is to relocate the dish or aerial further away from the tree, on the other side of it, or above it. ... Satellite engineers will tell you that a signal amplifier will have no effect when trees are blocking the line of sight, so it is not worth investing in one of those.”
<http://www.dbsinstall.com/whatis/Whatisgood-2.asp>. Another site states: “A satellite dish must have a clear line of sight to the satellite. The largest mistake an inexperienced or careless installer will make is locating a dish where trees will partially block the satellite signal, resulting in a lower than (sic) normal signal level. ANY signal blockage is unacceptable. Even if you have a clear picture, you can have signal blockage.
<https://www.sustainablepreparedness.com/index.php/blog/options-for-rural-internet-access>

the dish clear of snow). As one report states: “Satellite broadband can be the right solution in very sparsely populated areas, but it often suffers from high latency, lack of significant bandwidth, and high data costs.”²⁷ For all of these reasons, satellite-based voice service does not provide competitive pressure on ILECs’ basic voice service.

Moreover, consumer demand unequivocally indicates that customers do not perceive satellite-based voice to be a reasonable substitute for ILECs’ voice service. The FCC’s data regarding satellite-based voice shows an infinitesimal demand: Out of 119,220,000 (residential and business) switched access and VoIP voice lines nationwide, only 81,000 are provided over satellite and fixed wireless technology (the numbers being so small that the FCC aggregates these two services).²⁸ This could, of course, change in future years,²⁹ but CWA urges the Commission to base its decision on the local markets that exist today, rather than on speculations about future markets.

4. Consumers continue to rely on ILECs’ copper networks.

The universe of customers who continue to rely on ILECs’ services *despite the purported availability of alternatives*, of course, includes among them precisely the customers who lack reasonably comparable substitutes, perhaps because they live in the most remote neighborhoods of the wire center service area. They continue to subscribe to ILECs’ basic local exchange service because they have no reasonable alternative and depend on ILECs for their connection to the public switched network.

²⁷ “A Rural Broadband Strategy - Connecting Rural America to New Opportunities,” Microsoft, July 10, 2017, at 8.

²⁸ Voice Telephone Services: Status as of June 30, 2017, Industry Analysis and Technology Division, FCC Wireline Competitions Bureau, November 2018, Table 1.

²⁹ It is not as though satellite is a new technology or satellite providers are new entrants to the voice market. They have had many years to attract more customers, and yet have failed to do so.

5. Barriers to entry.

Economic and technological barriers to market entry are greater in sparsely populated communities than in the more urban areas as is evidenced by the fact that broadband (which supports the alternative VoIP service) is less likely to be deployed in rural areas, and wireless service is more likely to be non-existent³⁰ or unreliable.

Information in the Commission's effective competition docket (CenturyLink's response to CWA 1-8, Case No. 18-00295-UT) includes the Company's market share analysis by wire center, separately identifying market shares attributable to different types of competitors. Several CenturyLink wire centers appear to lack access to cable company voice services; in those wire centers, the only meaningful alternative to ILEC services is wireless services (which may not be available throughout the entire wire center service area, especially those wire center service areas that are extremely large and sparsely populated).

6. FCC's Connect America Fund Phase II ("CAF II) auctions.

Some point to the CAF II program as providing a path for alternatives for ILECs' basic local exchange service. However, there are various reasons not to rely on the CAF II monies as evidence of potential competition. The CAF II process is only beginning. The deployment of services made possible through CAF II funds is still, at best, several years away. Reliance on the changes in broadband/voice availability that may be made available by CAF II is also speculative because CAF funds are not unlimited. This makes it highly unlikely that, with rural areas throughout the country competing for CAF II monies, there will be sufficient CAF monies to cover all of the areas in New Mexico that lack broadband (and again, it is that broadband deployment that would provide the platform for voice service). Decisions regarding the

³⁰ Karl Bode, *The FCC Is Investigating Cell Carriers' Wireless Coverage Maps*, Vice, December 12, 2018, available at: https://www.vice.com/en_us/article/mbykvn/the-fcc-is-investigating-cell-carriers-wireless-coverage-maps.

continuing need for service quality and consumer protection rules should be informed by choices that exist today for consumers in rural areas rather than speculations about what might be an option in future years.

In conclusion, the lack of reasonable alternatives for ILECs' basic local exchange service demonstrates the continuing importance of service quality and consumer protection rules.

B. Where There is Competition, Investment is Made in Profitable Zones, to the Detriment of Rural and Low-Income Customers

Broadband Internet which is not regulated demonstrates that absent regulatory oversight, investments in competitive markets neglect rural and low-income communities. Investment in broadband platforms is the key area of new investment for telecommunications companies.³¹ It is well-known that such investment bypasses (or comes at a much slower pace to) rural areas. Rural areas are less profitable to serve: fewer people reside in rural areas and so generate fewer revenues; the cost of serving rural areas is high – networks must extend over longer distances, possibly traversing mountainous or rocky terrain. Broadband deployment statistics are consistent with this disparate pattern of investment in densely and sparsely populated areas.

Nationally, as of year-end 2016, 92.3 percent of the overall population had access to broadband at speeds of 25 Mbps/3 Mbps. There is a substantial gap, however, in rural and Tribal America: 30.7 percent of Americans in rural areas and 35.4 percent of Americans in Tribal lands

³¹ See CenturyLink's statement on page A-19 of its 2019 Annual Report: "In order to remain competitive and attract additional residential broadband subscribers, we believe it is important to continually increase our broadband network's scope and connection speeds. As a result, we continue to invest in our broadband network, which allows for the delivery of higher-speed broadband services to a greater number of customers."

lack access to fixed terrestrial 25 Mbps/3 Mbps broadband, as compared to only 2.1 percent of Americans in urban areas.³²

This disparity in urban versus rural broadband investment is even greater in New Mexico than as measured on a national basis:

- Statewide, 80.6 percent of the population has access to 25/3.
 - In New Mexico's urban areas – 92.2 percent have access to 25/3.
 - In New Mexico's rural areas – 42.8 percent have access to 25/3.³³
- Low-income communities are also affected negatively in competitive

telecommunications markets. For example, a Haas Institute study looking into AT&T's deployment of fiber-to-the-home (FTTH) service in California showed that early deployment of the company's "gigapower" all-fiber service is concentrated in wealthy communities.³⁴

Furthermore, an analysis of FCC's broadband availability data by Connect Your Community and the National Digital Inclusion Alliance shows that AT&T "systematically discriminated against lower-income Cleveland neighborhoods in its deployment of home Internet and video technologies over the past decade."³⁵

With a deregulated competitive voice telephone service, rural and low-income communities in New Mexico will be left behind as CenturyLink will focus new investments in urban and wealthy neighborhoods.

³² In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, GN Docket No. 17-199, 2018 BROADBAND DEPLOYMENT REPORT, released February 2, 2018 ("FCC 2018 Broadband Deployment Report"), page 22, Table 1. In its 2018 Broadband Deployment Report, the FCC stated: "We find that the current speed benchmark of 25 Mbps/3 Mbps remains an appropriate measure by which to assess whether a fixed service provides advanced telecommunications capability." The FCC's 2019 Broadband Deployment Report is still in draft form.

³³ *FCC 2018 Broadband Deployment Report*, at pages 61-62, Table D1 in Appendix D.

³⁴ Haas Institute for a Fair and Inclusive Society at UC Berkeley, *AT&T's Digital Divide in California*, April 24, 2017, available at <https://haasinstitute.berkeley.edu/atts-digital-divide-california>.

³⁵ Bill Callahan, *AT&T's Digital Redlining Of Cleveland*, National Digital Inclusion Alliance, March 10, 2017.

VI. THE COMMISSION SHOULD ADOPT THE PROPOSED RULES

A. CWA's Recommendations on Quality of Service

The Commission should adopt the proposed service quality and consumer protection rules, with the modifications discussed in this section. As the direct testimony of Susan Baldwin that was submitted Case No. 18-00295-UT demonstrates, there is ample experience in other jurisdictions to corroborate the importance of the PRC's continuing and comprehensive oversight of LILECs' service quality.³⁶ Among other reasons for ongoing accountability by LILECs to the PRC is that there is insufficient competition to yield reliable basic local exchange service.³⁷ A shift in LILEC focus from maintaining copper networks to its other lines of business puts customers at risk of losing access to the public switched network (and access to 9-1-1 and other public safety and public health services). This is especially a concern for older residents and those living in the state's most sparsely populated communities where alternatives such as VoIP (which requires a broadband platform) may not be available or such as wireless service (which may be spotty) cannot be depended on for reliable phone service.

1. Importance of Service Quality Rules and Oversight

The Commission's Proposed Rules, included as Exhibit A to the Commission's NOPR, are critically important to protect consumers from LILECs' premature disinvestment in their copper networks and from LILECs' inadequate allocation of resources to the repair and maintenance of the dial tone lines that connect New Mexico's homes and businesses to the public switched network. CWA recommends that the Commission adopt the metrics and

³⁶ See, e.g., Baldwin Direct Testimony in Case No. 18-00295-UT, at pages 11-14, discussing Maryland, New York, and Pennsylvania. See also, Minnesota Public Utilities Commission Docket No. P407, 405/CI-18-122, In re Commission Inquiry into the Service Quality, Customer Service, and Billing Practices of Frontier Communications, Report of the Minnesota Department of Commerce, January 4, 2019.

³⁷ See, e.g. Baldwin Direct Testimony in Case No. 18-00295-U, at pages 31-35; and CWA responses to CTL 1-6, CTL 1-7, and CTL 1-8.

performance levels that the Commission proposes for the reasons discussed below. However, these rules, while essential, may not be sufficient to yield adequate service quality in light of CenturyLink's increasing emphasis on its business operations and fiber-based services,³⁸ the small size of CenturyLink's New Mexico basic local exchange service operations relative to CenturyLink's global \$23.4 billion operations,³⁹ and CenturyLink's recently announced "strategic review" of alternatives for the consumer segment of its operations.⁴⁰ Performance-based oversight by the Commission of the quality of service that LILECs offer (that is, the PRC's ongoing assessment of such metrics as LILECs' timeliness of repair and installation of dial tone lines, and the numbers of troubles and repeat troubles reported by consumers) continues to be necessary. However, it is CWA's experience that this assessment is insufficient to deter and detect service quality deterioration, especially if and as LILECs shift their strategic focus to other parts of their business. It is preferable to prevent service quality decline than to detect its occurrence.

³⁸ See, Baldwin Direct Testimony in Case No. 18-00295-U, at page 5 and footnote 6.

³⁹ CenturyLink 2018 Annual Report and 2019 Proxy Statement. <http://ir.centurylink.com/Cache/1500119180.PDF?O=PDF&T=&Y=&D=&FID=1500119180&iid=4057179>. A-100. CenturyLink serves customers in more than 60 countries. Id., at letter to shareholders from President and CEO Jeff Storey.

⁴⁰ Earlier this month, CenturyLink stated in a press release:

As part of CenturyLink's regular evaluation of its asset portfolio, the Company announced that it has initiated a strategic alternatives process for its Consumer business and has engaged external advisors to assist in the review. The Company cannot predict the outcome or timing of this work, whether any transactions will be consummated or, if they are, what the form of those transactions may be. The Company does not plan to modify its normal operations or investment patterns in these businesses while it undertakes this review.

"Our Consumer business continues to make significant contributions to our profitability and Free Cash Flow and we are performing well where we are investing," said Storey. "We are comfortable operating this business for the long term, but the strategic review will help us better understand whether there are opportunities to better maximize the value of this asset."

The Company does not intend to comment further regarding the strategic review process until it is complete or further disclosure is required.

Press release, "CenturyLink Reports First Quarter 2019 Results," May 8, 2019. <http://ir.centurylink.com/file/Index?KeyFile=397858083>

Based on its in-depth examination of network conditions in other states (e.g., New York and Pennsylvania), CWA recommends that the Commission, in addition to monitoring LILECs' performance relative to the well-founded Commission-proposed benchmarks, also routinely examine LILECs' efforts to maintain their New Mexico networks. CWA is fully prepared to collaborate with the Commission and LILECs to identify a limited set of additional metrics that monitor the "health" of New Mexico's telecommunications infrastructure. Such "barometers" of the network's resiliency could include, for example, LILECs' annual submissions of the (a) locations of remote terminals including the most recent dates that batteries were replaced in those remote terminals; (b) number and locations of requests by field technicians to replace or repair defective outside cable as well as the work orders that were completed versus those work orders that are still pending resolution; (c) number and location of double poles as well as the number of double pole situations eliminated; (d) copper plant remediation plans; and (e) other metrics to be collaboratively determined. It is critically important that LILECs be accountable for maintaining their networks adequately. That is, CWA urges the Commission not to rely solely on a review of after-the-fact troubles reported and timeliness of repair –the overarching goal instead should be to ensure that LILECs seek to minimize the times that customers' dial tone lines don't work and to allocate sufficient resources so that if and when dial tone lines are out of service are fixed in a timely manner in such a way to prevent customers from experiencing a repeat of the same problem.

In summary, LILECs' reporting of their performance, consistent with the Commission's proposed rules, is extremely important, but, also, CWA urges the Commission to take stock of whether LILECs are allocating sufficient resources to (1) prevent problems from occurring in the first place and (2) remedy those problems that do occur in a timely and effective manner (e.g.,

such that repeat problems do not recur and so those rural consumers whose dial tone lines are served by remote terminals can count on the LILECs' timely replacement of out-of-date batteries and so count on having service during prolonged power outages). Toward this end, the Commission should require additional information to be submitted annually by LILECs so that the Commission can assess whether LILECs are taking the steps to ensure that consumers throughout the state, including those who live in the state's most sparsely populated areas – which typically encompass those communities with the fewest alternatives – continue to have access to reliable adequate service.

2. Specific observations about the Commission's Proposed Rules

CWA fully supports the Commission's proposed rules and offers some comments in this section on various particular elements of the proposed rules.

Trouble reports include out-of-service troubles and service-affecting troubles. The Commission's proposed rules (see Section 17.11.24.7) only define out-of-service trouble reports, but not do not define service-affecting troubles. For the sake of completeness, CWA recommends that the rules include a definition for service-affecting troubles (which include troubles such as cross-talk or static).

The Commission's proposed rules appropriately retain the continuing requirement for geographic granularity (see, e.g., Sections 17.11.24.8, 17.11.24.16 and 17.11.25.10).⁴¹ This level of reporting is important to ensure that statewide averages do not mask areas where service quality problems may exist and persist.

⁴¹ As the rules are drafted, they would appear to give the LILEC the option to report at the wire center, exchange or county level. The rule would be strengthened by clarifying that the LILEC should report at the wire center *and* county level.

CWA is uncertain why Commission proposes to eliminate information about the duration of held orders for non-designed services (see existing rules, part G(1)(f) through (i)), and absent any additional information proposes that the Commission retain this level of information.

The requirement in proposed Section 17.11.24.29 regarding outage reporting is important: the PRC should be fully informed when network outages occur because of the public safety and welfare implications of such outages.

The repeat trouble report rate, which the rules appropriately would require LILECs to report, is an important measure of the condition of the copper network. If an LILEC fails to fix outside plant adequately on the field technician's first visit, the consequence is a repeat trouble report – i.e., the dial tone line will malfunction again. All else being equal, the higher the repeat trouble report rate, the less adequately an LILEC is repairing its outside plant (i.e. the more likely that a temporary “Band-Aid” fix has been applied rather than a permanent fix). The repeat trouble report rate standard (not to exceed 18% of total monthly trouble reports, on a wire center basis) proposed by the Commission retains the existing standard, which is lenient.⁴² Under the proposed standard for repeat troubles, the Commission would tolerate network conditions such that almost one in five troubles that customers report could lead to subsequent troubles on the same line, which is a high level of tolerance for chronic problems that likely require the replacement or repair of defective plant to remedy. At a minimum, CWA recommends that the reporting rules require an LILEC, for any wire centers with repeat troubles above 12 percent, to

⁴² See the record in a Massachusetts service quality proceeding for a discussion by a Verizon witness regarding the desired range for a repeat trouble report rate. Note that the Massachusetts Attorney General's reply brief explains as follow, citing the evidence in the investigation: “Yet Verizon's witness, Mr. Sordillo, clearly testified that Verizon seeks to achieve a range of 12% to 14% repeat trouble reports. ‘Our goal is between the 12 and 14 percent. Anything under 12 is excellent. Anything over 14 percent is an issue to us.’ Tr. Vol. 4, p. 762.” Reply Brief of the Massachusetts Attorney General, In re Verizon Service Quality in Western Massachusetts, Massachusetts Department of Telecommunications and Cable D.T.C. 09-1.

describe the specific proactive maintenance steps the LILEC intends to pursue to address the issues. If the Commission retains the lenient standard of 18 percent that now exists and that the Commission proposes, it should supplement the rules such that if the repeat trouble report rate exceeds 15 percent for more than three months during any part of a consecutive twelve-month period, the LILEC would be required to submit a remediation plan for addressing the chronic problems.

CWA supports the Commission's rules but CWA does not address each every proposed rule in these comments. In addition to the measures discussed above, for example, CWA fully supports Section 17.11.25.9, which importantly provides the Commission with access to and the option to audit data relating to the service quality rules and Section 17.11.25.10, which requires LILECs to maintain a record of oral and written customer complaints.

17.11.24.18 and 17.11.24.20. These two sections, respectively, address financial compensation to customers and financial incentives for LILEC to meet standards. Retaining the individual customer credit (17.11.24.18) is important but in and of itself does not provide a financial incentive to an LILEC to take steps to prevent similar problems because it likely is less expensive for the LILEC to pay the customer credit than to repair the network.

The proposed penalty mechanism that Section 17.11.24.20 encompasses is important to create a financial incentive for adequate service quality but is not sufficiently large to deter service quality deterioration, that is, it is likely that it would be less expensive to pay a fine than to repair the network. Specifically Section 17.11.24.20 states: "Enforcement of service quality standards under 17. I I.XX is provided by the Commission's fining authority set forth in Section 63-7-23 NMSA 1978 and the authority to seek an injunction set forth in Section 63-9-9 NMSA 1978."

The Commission should adopt financial consequences for poor service quality performance such that carriers take measures to prevent future service quality problems. The model adopted by the California Public Utilities Commission (“PUC”) includes a useful mechanism that is intended to achieve this goal. In California, fines for failure to meet service quality standards may be suspended if a company makes investments designed to cure service quality deficiencies in an amount equal to twice the fine.⁴³ The California PUC’s rationale for this approach applies equally to LILECs’ operations in New Mexico. The California PUC explains the mechanism and the reasoning for its mechanism as follows:

In their annual filings, carriers that incur a fine may propose for the Commission’s consideration an alternative set of expenditures to address the service quality standard resulting in the fine, provided that the carrier demonstrates that the expenditures are incremental, directed at the service quality deficiencies leading to the fine, and in an amount that is twice the amount of the tabulated fine. This option better aligns carriers’ expenditures with improving actual customer service.⁴⁴

The merit of this approach – whereby carriers invest in fixing their networks -- is that it addresses the root cause of the service quality problems, which in turn, decreases the chance of future consumer harm and also increases the resiliency of the telecommunications network.

Finally, all service quality data should be public for at least two reasons: (1) to increase accountability by LILECs to regulators, legislators, communities and consumers; and (2) to allow for informed decision-making by those consumers who may have alternatives – information is essential for efficient market place decisions.

⁴³ Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modification to Service Quality Rules. Rulemaking 11-12-001 Decision Adopting General Order 133-D, August 29, 2016, at 2, 22-23. See also *id.*, at 23 (cite omitted), stating: “As the Office of Ratepayer Advocates (ORA) pointed out, the continuing failure of AT&T and Verizon to meet CPUC adopted minimum service quality measures and standards demonstrates that competition has not been sufficient to ensure quality service.”

⁴⁴ *Id.*, at 22-23.

B. CWA's Recommendations on Consumer Protection

1. Overview of Consumer Protection

The PRC proposes to repeal and replace Rule 17.11.25 NMAC, "Consumer Protection Standards Applicable to Mid-Size Carriers" with the rules proposed in Appendix B to the Commission's NOPR. In addition to replacing references to mid-sized carriers with references instead to local incumbent local exchange carriers, the Commission's proposal adds to and, in places, modifies existing rules.

Just as there is insufficient competition to yield adequate service quality,⁴⁵ so too is there insufficient competition to protect consumers adequately from harm caused by consumers' lack of negotiating strength with LILECs when consumers purchase basic local exchange service.⁴⁶ Also, as CWA demonstrates above, LILECs' management and strategy focus on lines of business other than the consumer segment. For these reasons, CWA fully supports the Commission's proposed continuation and strengthening of consumer protection rules. Moreover, it is likely that the Commission's consumer relations division's experience with the application of existing consumer protection rules have informed the Commission's proposed rules. Therefore the Commission's proposed consumer protection rules likely are based on the administrative expertise uniquely acquired with that experience.

CWA has compared the Commission's proposed rules with the rules that now apply to mid-sized carriers and summarizes its analysis below. CWA's discussion is not intended to address each and every element of the proposed rules but rather (1) highlights some of the

⁴⁵ See discussion in the Service Quality portion of these comments showing the lack of effective competition.

⁴⁶ Some examples of consumer harm include unwarranted disconnection of basic local exchange service; inadequately addressed consumer complaints; insufficient information about the rates, terms and conditions of service; ambiguous or deceptive representation of services that consumers must purchase; and discontinuance of service to seriously and chronically ill persons who lack the financial resources to pay for service.

additions proposed by the Commission that improve upon existing consumer protection rules by increasing LILECs' accountability to consumers and to the Commission; and (2) suggests modifications to or clarifications of the Commission's proposed rules.

2. Discussion of Proposed Rules (the references to section numbers correspond with the Commission's proposed rules)

Definitions (Section 17.11.25.7). The Commission appropriately expands the definitions section of consumer protection rules by adding key terms (e.g., "billing agent," "chronically delinquent," and "medical professional").

Disconnection/Allocation of Partial Payments (Section 17.11.25.8). The proposed additional text in this section importantly strengthens the language to protect against "ambiguous, deceptive, or misleading language" in the context of the disconnection of basic local exchange service. Also, regarding partial payments, the proposed rules increase accountability by LILECs to consumers and to the Commission by adding this language: "A LILEC shall provide to the consumer or the consumer relations division of the commission upon request of either written verification of oral instructions given by a consumer."

Access to and Audit of Data (Section 17.11.25.9). The Commission appropriately retains rules regarding the Commission's access to and audit of LILEC data. The Commission also proposes to replace the portion of the rule that now allows the Commission's periodic audit of "the timeliness, accuracy, and courteousness of mid-size carriers' consumer service and repair bureau representatives" with this language: "The commission, or staff with the consent of the commission, may periodically audit the timeliness and accuracy of carriers' consumer service and repair records." The language eliminates the reference to representatives' "courteousness," but this aspect of consumer service would be addressed in Commission's proposed Section 17.11.25.12 (see discussion below). The proposed language in Section 17.11.25.9 could be read

to refer to the timeliness and accuracy of consumer service *records* rather than consumer service. If the intent is to refer to consumer service, the language could be clearer as follows: “The commission, or staff with the consent of the commission, may periodically audit (1) the timeliness and accuracy of carriers' consumer service; (2) the timeliness and effectiveness of carriers' repair; and (3) the comprehensiveness and accuracy of carriers' consumer service records and repair records.”

Consumer Complaint Tracking (Section 17.11.25.10). Consumer complaints provide an invaluable perspective on how well markets are functioning, and so CWA fully supports the Commission's proposed retention of this section. CWA observes that instead of requiring LILECs to retain the name and address of the consumer or complainant, the Commission proposes that the LILEC record “the region within the state (e.g., by wire center, exchange, county)” applicable to the complaint. CWA appreciates the benefit of not disclosing consumers' identity, but questions how the Commission would be able to cross-check any complaints with particular consumers if such information is not retained (subject to confidentiality treatment). Also, rather than give the LILEC the option of wire center, exchange or county, CWA highly recommends that the rules eliminate the reference to county and instead specify “by wire center or exchange” (this change to the Commission's proposed rules would apply to Section 17.11.25.10.A.4 and Section 17.11.25.10.C.2).

Complaints can assist the Commission in identifying those parts of a LILEC's service territory where problems may be relatively greater, and county-wide information would obscure community-specific issues that may exist. The Commission's proposed rules improve upon the requirements regarding the categorization of complaints (by having the categories track “the consumer relations division's list of complaint categories”) – though CWA recommends that the

rule indicate whether the consumer relations division is associated with the LILEC or the PRC. The Commission proposes to eliminate requirements that LILECs record the resolution of complaints and the dates of such resolution. CWA welcomes the Commission's explanation for such elimination – it would seem important to know the outcome of consumers' complaints (to increase carrier accountability) as well as the dates of such resolution (so one could assess the timeliness of resolution by comparing the date the complaint is lodged and the date that it is resolved).

Access to Product and Pricing Information (Section 17.11.25.11). The Commission proposes to replace a short single section that now addresses two topics (pricing information and fair marketing practices) with two distinct sections. The proposed pricing section greatly expands and delineates LILECs' requirements for making pricing information available by adding important requirements such as making information available in English and Spanish, and in a form accessible by disabled consumers; informing consumers about the timing of service installation; and expanding requirements for conveying information about the low income telephone assistance program ("LITAP"). CWA fully supports the Commission's proposed expansion of requirements relating to product and pricing information.

Fair Marketing Practices (Section 17.11.25.12). CWA supports the Commission's proposed expansion of rules relating to fair marketing practices because they provide specificity as to the Commission's expectations about important elements of consumer service such as requirements for timely, courteous, and accurate information; not representing discretionary services as essential; making "a good-faith effort to identify the service that is the most economical for the consumer, based on the consumer's representation of his or her

telecommunications requirements”; providing the Commission or Staff with LILECs’ “sales scripts, marketing materials, and sales and marketing practices and procedures.”

Tariffs and Boundary Maps (Section 17.11.25.13). The Commission proposes minor changes to this section.

Bills (Section 17.11.25.14). The Commission appropriately proposes to retain the rules that now exist to ensure that LILECs provide easily readable and readily understandable bills.

Information Required Semi-Annually (Section 17.11.25.15). The Commission appropriately proposes to continue Part A of the existing rules but for reasons that are not readily apparent to CWA, the Commission does not propose to continue part B of the rules, which now require carriers to notify consumers that they have the right to request that carriers not disclose to persons (other than to the carriers’ employees who require the information to provide telecommunications services to the consumer) information about the consumer, including the consumer’s calling patterns. In CWA’s view, protection against the disclosure of consumers’ information is important. Even better than continuing the existing rule (which places the burden on consumers to *opt out* of such disclosure) would be to add a rule that affirmatively prevents carriers from disclosing consumers’ information unless consumers affirmatively *opt in* to such disclosure.

Billing Disputes and Errors, General Refunds and Bill Credits (Section 17.11.25.16). CWA supports the Commission’s clarifying changes to the title and text of this section of the rules.

Discontinuance or Interruption of Service (Section 17.11.25.17). The Commission appropriately retains this section of the rules.

Prohibitions on Discontinuance of Service (Section 17.11.25.18). The Commission appropriately retains and clarifies this section of the rules. It is appropriate that the existing rule, which, among other things, prohibits the discontinuance of service to those seriously or chronically ill persons who lack the financial resources to pay for service.

Requirements Prior to Discontinuance of Service (Section 17.11.25.19). The Commission appropriately proposes to continue these requirements, with some additional language (e.g., carriers must also include a statement that basic local exchange service cannot be discontinued for failure to pay charges for toll or discretionary services and also regarding the application process for LITAP). The Commission's proposed additional rule that limits the hours and days of the week during which LILECs' may discontinue service (linked to the carriers' hours of operations and times when carriers have personnel available to restore service) provides an important additional consumer protection.

Payment Plans (Section 17.11.25.20). The Commission appropriately retains important consumer protection regarding consumers' payment plans.

Restoration of Service (Section 17.11.25.21). CWA supports the Commission's proposed change to this section of the rules such that carriers must restore service within one business day (rather than the existing limit of within two business days) after payment of past-due charges. The Commission retains the twelve-hour limit for restoring service to ill persons.

Informal Complaints (Section 17.11.25.22). The Commission proposes to replace the existing section, entitled "Complaints and Appeals" with two separate sections, one entitled "Informal Complaints" and the other (which would create new rules) entitled "Formal Complaints."

The Commission proposes to change the process for consumers' escalation of complaints by eliminating the interim step of carriers offering consumers the option to discuss the complaint with the consumer representative's supervisor. Under the Commission's proposed rules, if the consumer representative does not resolve the matter to a consumer's satisfaction, the representative will then provide the consumer with contact information for the Commission's consumer relation division. CWA supports this proposed change because it likely will expedite the resolution of consumer complaints and because, since the Commission has proposed this change, the Commission has likely considered any additional administrative burden that may fall on the Commission's consumer relation division as a result of the proposed change.

The Commission also importantly changes language regarding carriers' disposition of complaints from the Commission on behalf of a consumer or applicant. The existing language simply requires carriers to provide a written response that details their disposition of such complaints. The Commission's proposed rules instead state: "When the LILEC has concluded its investigation of a complaint, the LILEC shall provide a written response to the commission detailing the results of the LILEC's investigation and its proposed resolution. A complaint forwarded by the commission on behalf of a consumer shall not be considered resolved until the consumer relations division closes the complaint." This new language is important because it properly assigns to the Commission the role of determining whether the carrier has resolved adequately the complaint in question.

Formal Complaints (Section 17.11.25.23). CWA supports the Commission's additional rules that would provide a mechanism by which interested parties can submit formal complaints to the Commission regarding carriers' that contend "any formal act or omission by a LILEC for the provision of telecommunications services alleged to be in violation of any provision of the

New Mexico Telecommunications Act or any order or rule of the commission issued pursuant to that act.”

Privacy (Section 17.11.25.24). CWA supports the Commission’s proposed rule that adopts and cross-references the consumer proprietary network interface rules of the Federal Communications Commission.

Trouble Isolation Charge (Section 17.11.25.25). The Commission appropriately retains the rule that prevents a carrier from charging a consumer when it determines whether a consumer-reported trouble is on the carrier’s or consumer’s side of the network interface.

Medical Certification Form (Section 17.11.25.26) and Financial Certification Form (Section 17.11.25.27). The Commission’s proposed additions to the rules that include medical certification and financial certification forms strengthen the rules.

VII. CONCLUSION

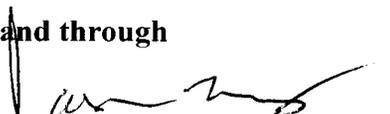
CenturyLink has failed to maintain its physical copper plant, the only source of telecommunication services for many. The state of deterioration is very advanced and many customers across the state do not have access to the “reasonable and adequate services” that they need. Competition is not working to protect consumers. Therefore, the Commission should adopt the Commission’s proposed rules, attached as Exhibits “A” and “B” to the Commission’s March 20, 2019 Order Issuing Notice of Proposed Rulemaking, and to consider CWA’s additional recommendations in Part VI of this Comment.

Respectfully Submitted.

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