

STATE OF MINNESOTA

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of the Application of
CenturyLink for Expedited Approval to
Discontinue Physical Connection with KTF
Telecom Inc.

Docket No. P-6312, P-421/IC-20-522

CENTURYLINK'S REPLY COMMENTS

CenturyLink submits these reply Comments in support of its petition to disconnect KTF.

BACKGROUND

In reviewing this petition, the Minnesota Public Utilities Commission ("Commission") should consider the following timeline:

- May 15, 2019 - KTF was advised that it had \$36,217.80 in unpaid bills and that CenturyLink was pursuing disconnection.
- February 12, 2020 - CenturyLink sent a disconnection notice identifying \$116,845.74 in unpaid undisputed bills not paid by KTF.
- March 3, 2020 - CenturyLink sent a reminder notice and suspended service order activity.
- June 5, 2020 – After a delay associated with COVID, CenturyLink filed the petition for discontinuance in this docket.
- July 9, 2020 – The Commission held a meeting to address the petition. KTF failed to attend. The Commission ordered that the complaint be served on KTF.
- August 11, 2020 – KTF filed a letter that did not dispute the amounts owed but claimed it had made payment.

- August 21, 2020 – The Department of Commerce (“Department”) filed for an extension of its deadline to file comments.
- August 31, 2020 – The Department filed comments suggesting that the Commission commence a 90-day process before disconnection and consider ordering CenturyLink to provide internet service to KTF customers if suitable alternatives cannot be reached.

CenturyLink and the Commission have provided KTF with ample opportunity to pay the amounts it admits it owes. Nonetheless, KTF’s unpaid bills continue to grow and currently sit at \$214,470.69. KTF’s answer is the latest in a series of situations where it has claimed to have paid its bills to CenturyLink without CenturyLink receiving payment. A provider that is unable to pay its bills, does not attend hearings regarding termination of its service, and appears to mislead the Commission about having made payments needs to be disconnected. The remaining customers KTF serves will be best served by having another provider.

RESPONSE TO DEPARTMENT OF COMMERCE COMMENTS

The Department filed comments with the Commission that, disappointingly take no position on disconnection but suggest a 90-day process before disconnection could occur. According to the Department, KTF provides internet access and voice over internet protocol (“VOIP”) service to its end user customers.

Such services are not regulated by the Commission or the Department. The Eighth Circuit has held that VOIP is an information service and that state regulation of such service is preempted. *Charter Advanced Svcs. (MN), LLC v. Lange*, 903 F.3d 715, 720 (8th Cir. 2018). Nonetheless, the Department proposes a process that goes far beyond the requirements for disconnecting voice service:

If the Commission grants CenturyLink’s request to disconnect services to KTF, the process prior to the disconnection should be clear. The following is a timeline the Department offers for the Commission’s consideration, if disconnection is approved:

Day 1: Commission Order

Day 11: Draft notice provided by KTF to CAO for approval, with Department consultation. The notice should include:

- CenturyLink as an alternative for telephone service and state that there may or may not be an alternative for internet service.
- CAO contact information.
- The link to the local carrier look up, accessible from the Commission's website: <https://mn.gov/puc/telecommunications/utility/>

Day 14: CAO approval of notice.

Day 21: Notice mailed by KTF to customers, providing 60 days for customers to find an alternative provider.

Day 66: KTF provides list of customers that have not switched to an alternative provider to CAO and Department. The list will be reviewed to determine if the continuance of a connection is critical to public health, safety, or welfare.

Day 70: Any connections that are critical to public health, safety, or welfare are to be raised with the Commission, and brought to the attention of CenturyLink. These connections are not to be terminated without further approval by the Commission.

Day 81: CenturyLink terminates service to those connections not identified as critical to public health, safety, or welfare.¹

The Department suggests that CenturyLink should bear additional burdens that go far beyond offering tariffed services within its territory:

- Requiring CenturyLink to provide internet service to KTF customers, regardless of CenturyLink's technical standards for offering such service;²
- Seek Commission approval to discontinue internet service to such customers;³

¹ Department Comments, p. 5-6.

² Department Comments, p. 6 "If it is learned that there are no viable alternatives for internet service, and the Commission finds that it is not in the public interest for consumers to lose their internet service during the pandemic, the Commission could condition the termination of service to KTF on CenturyLink's agreement to continue service to those customers as the retail service provider."

³ Department Comments, p. 7, decision option C "require CenturyLink to continue offering those services that are provisioned on its network that have not transitioned to an alternative service provider after receiving notice. CenturyLink may seek Commission approval to disconnect service to such customers, when it believes its provision of service is no longer critical to these customers."

- Prohibit CenturyLink from charging for voice service under its tariffs to KTF's customers even though such customers are not purchasing regulated voice service today;⁴
- Deny the application;⁵ or
- Require CenturyLink to come up with a solution that includes providing internet service to KTF customers even if their loops do not qualify for CenturyLink service.⁶

The Department admits that the Commission would not have the authority to order CenturyLink to take such actions if the customers were their own, but suggests the Commission has the authority to impose such requirements through its authority to regulate wholesale connections.⁷ An attempt by the Commission to regulate internet services indirectly would raise significant legal issues. Such an approach is particularly inappropriate in this proceeding given that the FCC has eliminated Unbundled Loops from services CenturyLink is required to provide to KTF on an unbundled basis.⁸

The public interest will be best served by the Commission making a clear declaration that providers are expected to pay for the services they purchase and authorize disconnection when they fail to do so. Ultimately, KTF customers will be better served by a provider with the ability to continue service.

CenturyLink's Interconnection agreement with KTF sets forth the process for disconnection:

⁴ Department Comments, p. 7, decision option D.

⁵ Department Comments, p. 7, decision option E.

⁶ Department Comments, p. 8 "the Department believes that CenturyLink could craft a proposal to ensure that customers do not lose the services provisioned over its network, such as internet service, even though the service may not meet the performance metrics CenturyLink uses for its current customers."

⁷ Department Comments, p. 4, n. 4.

⁸ See *Petition of US Telecom et al. for Forbearance*, WC Dkt. No. 18-141, Memorandum Opinion and Order, FCC Release 19-72; Released August 2, 2019 ("*UNE Analog Loop and Resale Forbearance Order*"), and the *Report and Order on Remand and Memorandum Opinion and Order*, FCC Release 19-66; Released July 12, 2019 ("*UNE Transport Order*").

5.4.3 With the Commission's permission, the billing Party may disconnect services for failure by the billed Party to make full payment, less any good faith disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services provided under this Agreement within sixty (60) Days following the payment due date. The billed Party will pay the applicable reconnect charge set forth on Exhibit A required to reconnect each service disconnected pursuant to this paragraph. The billing Party will notify the billed Party at least ten (10) business days prior to disconnection of the service(s). In case of such disconnection, all applicable undisputed charges, including termination charges, shall become due. If the billing Party does not disconnect the billed Party's service(s) on the date specified in the ten (10) business day notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the billing Party's right to disconnect services of the non-complying Party without further notice. For reconnection of the services to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the service. Additionally, the billing Party will request a deposit (or recalculate the deposit) as specified in Section 5.4.5 and 5.4.7 from the billed Party, pursuant to this Section. If the Billed Party is a new CLEC customer of CenturyLink, the application of this provision will be suspended for the initial three (3) billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, each Party reserves the right to seek equitable relief, including injunctive relief and specific performance.

CenturyLink has met its obligations under these provisions. KTF should notify its customers that they will be disconnected and need to make other arrangements. CenturyLink should have the ability to disconnect without further notice at the earliest possible date.

CONCLUSION

CenturyLink should not be placed in the position of guaranteeing the services that a wholesale carrier chooses to offer to its customers. The Commission should grant CenturyLink's petition for disconnection and reject the Department's suggestion that the Commission should attempt to regulate VOIP and internet service. The Department's proposed timeline forces CenturyLink to continue offering KTF service an additional three months with little likelihood of ever being compensated for those services.

The Commission may consider ordering KTF to notify its customers thirty days before the disconnection date if it concludes it has such authority. Regardless, CenturyLink respectfully requests that the Commission issue an order granting its petition as soon as possible.

Dated this 10th day of September, 2020.

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CENTURYLINK QC

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