



Cam Winton
Of Counsel
DORSEY & WHITNEY LLP
Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498
winton.cam@dorsey.com
612-655-6178

October 21, 2020

VIA E-FILING

Mr. Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

Re: **In the Matter of the Application of CenturyLink for Expedited Approval to Discontinue Physical Connection with KTF Telcom Inc.**

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

Dear Mr. Seuffert:

Enclosed are the Comments of Minnesota Telecom Alliance regarding the above-referenced matter. Please feel free to let me know if there are questions about this filing.

Sincerely,

/s/ R. Cameron Winton

R. Cameron Winton

On behalf of the Minnesota Telecom Alliance

Enclosure

cc: Service List

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

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

COMMENTS OF MINNESOTA TELECOM ALLIANCE

INTRODUCTION

The Minnesota Telecom Alliance (“MTA”) submits the following comments in support of the Application (“Application”) of Qwest Corporation dba CenturyLink QC (“CenturyLink”) to disconnect KTF Telcom, Inc. (“KTF”).

MTA is a trade association comprised of more than 70 telecommunications companies across Minnesota. Those companies range from family-owned companies and local cooperatives with storefronts on Main Street Minnesota to companies with multi-state operations, like CenturyLink. MTA’s members provide voice, video, and high-speed internet throughout the state.

As CenturyLink has set forth in its Application, KTF Telcom, Inc. (“KTF”) has accrued an unpaid bill to CenturyLink of more than \$215,000 for services that CenturyLink has provided. That amount continues to grow each day. Furthermore, KTF has sought to hide its failure to pay its bills by giving CenturyLink conflicting explanations of whether it had

paid. KTF even went so far as to submit what appear to be forged receipts of non-existent payments. KTF does not dispute that it owes the unpaid amounts to CenturyLink.

Given these facts, since June 5, 2020, CenturyLink has been seeking permission from the Commission to disconnect KTF in accordance with the applicable tariff, interconnection agreement, and Minnesota law. MTA supports CenturyLink's Application and encourages the Commission to approve it promptly. As set forth below, (1) public convenience does not require the continuance of the connection, and (2) denying the Application would negatively impact all telecommunications carriers across Minnesota.

DISCUSSION

(1) Public convenience does not require the continuance of the connection.

The Department of Commerce argues that public convenience requires CenturyLink to maintain the connection to KTF. Respectfully, the Department of Commerce has not met its statutory requirements and accordingly has no basis for its position.

The statute requires that “[u]pon the filing of an application for discontinuance of . . . a connection, *the department shall investigate and ascertain* whether public convenience requires the continuance of such physical connection[.]” Minn. Stat. 237.12, subd. 2. (Emphasis added.) To “ascertain” means “to find out or learn with certainty.” (“Ascertain.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/ascertain>. Accessed 20 Oct. 2020.)

In this situation, though, the record does not indicate that the Department investigated how CenturyLink's disconnection of KTF would actually impact current customers, and the Department has presented guesses rather than any facts it has ascertained. The information underlying the Department's statements is far from certain: “The Department believes that

permitting CenturyLink to discontinue service will *likely* result in KTF's rural retail customers losing services that *may* not be replaceable, but are essential, during the present pandemic." Supplemental Comments of the Minn. Dept. of Commerce, September 30, 2020, page 3. The Department's Supplemental Comments continue with similar uncertainty:

In the absence of such a voluntary commitment by CenturyLink, the impact on rural Minnesota customers who lack other service options, and who will be uniquely harmed during the pandemic, is *most likely* too great. As a result, without such a commitment, and *without a clear understanding of the specific customer impacts*, the Department finds that 'public convenience requires the continuance of the physical connection'

Id. at 7-8.

Despite these unfounded assertions, public convenience does *not* require CenturyLink to continue providing a connection to KTF, as illustrated by the facts set forth below. When evaluating public convenience, the PUC has considered the impact upon (a) customers' ability to obtain alternative service; and (b) the impact of the termination on competition. In this situation, KTF's present customers will be able to obtain alternative service from various providers after CenturyLink disconnects KTF and there will be competition between those service providers.

Currently, KTF is utilizing CenturyLink's services to provide retail services to customers in Mora, Pine City, and Rush City, Minnesota. Publicly-available information demonstrates that customers in those areas have options other than KTF for obtaining telecommunications services. For example, Midco and Spectrum both offer wireline telephone service and AT&T Wireless, Sprint, T-Mobile, and Verizon offer wireless phone service.¹ If the Commission grants the Application, consumers will have a variety of options

and those service providers will continue to compete against each other. Accordingly, public convenience does not require CenturyLink to continue providing a connection to KTF.

Additionally, MTA notes the assertion by the Department of Commerce that “[n]othing in the physical connection discontinuance statutes limits the Commission’s analysis to telecommunications services.” Supplemental Comments of the Minn. Dept. of Commerce, September 30, 2020, page 9. Respectfully, that statement is not accurate—either under a plain reading of the applicable statutes or in the context of the multiple court cases holding flatly that the Public Utilities Commission may not regulate information services.

The physical discontinuation statutes—Minnesota Statutes Sections 237.12 and 237.74—are plainly directed at telecommunications and accordingly limit the Commission’s public convenience inquiry to the topic of the statute: telecommunications.

Minnesota Statutes Section 237.12 is entitled “Service Connection Between Telephone Companies”:

Wherever a physical connection or connections exist between any telephone exchange system operated by a telephone company and the toll line or lines operated by another telephone company or between its toll line or lines and the telephone exchange system of another telephone company, or between its toll line and the toll line of another telephone company . . . [u]pon the filing of an application for discontinuance of such a connection, the department shall investigate and ascertain whether public convenience requires the continuance of such physical connection”

Minn. Stat. 237.12, subd. 2.

Similarly, Minnesota Statutes Section 237.74 is entitled “Regulation of Telecommunications Carrier:

If a physical connection exists between a telephone exchange system operated by a telephone company and the toll line or lines operated by a telecommunications carrier . . . [u]pon the filing of an application for discontinuance of the connection, the department shall investigate and ascertain whether public convenience requires the continuance of the physical connection

... .

Minn. Stat. 237.74, subd. 9.

Despite the fact that both statutes explicitly focus on telephone companies and telecommunications, and the fact that those statutes provide the basis for the Commission’s public convenience inquiry, the Department encourages the Commission to consider customers’ access to information services. As noted, the Department’s rationale is that “[n]othing in the physical connection discontinuance statutes limits the Commission’s analysis to telecommunications services.” Supplemental Comments of the Minn. Dept. of Commerce, September 30, 2020, page 9.

By the Department’s rationale, there would be no limiting principle whatsoever to the Commission’s public convenience inquiry. For example, nothing in the statute explicitly prohibits the Commission from considering healthcare, water quality, the weather, or any other dynamic that impacts consumers—but obviously the Commission does not consider those dynamics in the public convenience inquiry because the statute does not empower it to do so. Rather, the enabling statute is directed at telecommunications services—and accordingly, the Commission must focus its public convenience inquiry on the presence or absence of telecommunications services.

In addition to the applicable statutes, multiple court cases have held that the Commission does not have jurisdiction over information services. *See Charter Advanced*

Servs. (MN), LLC v. Lange, 903 F.3d 715 (8th Cir. 2018). See also *Vonage Holdings Corp. v. Minn. Pub. Utils. Comm'n*, 394 F.3d 568 (8th Cir. 2004). Nevertheless, the Department is encouraging the Commission to evaluate the provision of an information service and base its legally-binding order on the results of that analysis. In other words, the Department is advocating for backdoor regulation of an area which it knows the Commission is legally prohibited from regulating. Given the consistent holdings of the Eighth Circuit Court of Appeals that the Commission may not regulate information services, MTA respectfully encourages the Commission to decline to follow the recommendation of the Department of Commerce.

Nevertheless, if the Commission chooses (improperly) to consider information services in its public convenience analysis, then the Commission will recognize that various information services will be available to consumers in the impacted areas even after CenturyLink disconnects KTF for failure to pay its bills—providing yet more evidence that public convenience does not require the continuance of the connection.

Regardless of the degree to which the Commission considers information services in its public convenience analysis, MTA appreciates the Dept. of Commerce’s recognition that “the Commission cannot require CenturyLink to provide an information service to retail customers absent some express statutory authorization” (Supplemental Comments of the Minn. Dept. of Commerce, September 30, 2020, page 9)—an authorization which does not exist.

(2) Denying the Application would negatively impact all telecommunications carriers across Minnesota.

As noted, MTA is a trade association comprised of more than 70 telecommunications companies across Minnesota ranging in size. To provide voice, data, and high-speed internet

to Minnesotans, MTA's member companies rely on revenue to which they are entitled under various service contracts. Put simply, MTA's member telecommunications companies cannot provide telecommunications services to Minnesotans effectively if contract counterparties can walk away from their payment obligations with no consequences.

The Commission's decision in this matter will have industry-wide ramifications, especially on the Main Street Minnesota providers for which regular cash-flow is essential for business survival. It would be a dangerous precedent if companies could simply not pay their bills to telecommunications providers but nevertheless continue to obtain service from those providers.

As noted, KTF does not dispute that it owes CenturyLink more than \$215,000 for services that CenturyLink has provided. Since CenturyLink will continue to provide services until the Commission approves the Application, the unpaid amount will continue to grow. KTF has acted in bad faith, going so far as to submit what appear to be forged receipts of non-existent payments. Application, June 5, 2020, Exhibit 5.

The Commission should not allow this situation to continue, and should not create a precedent that would be harmful to all of Minnesota's telecommunications providers. Rather, the Commission should grant the Application.

CONCLUSION

In conclusion, (1) public convenience does not require the continuance of the connection, and (2) denying the Application would negatively impact all telecommunications carriers across Minnesota. Accordingly, MTA supports CenturyLink's Application and encourages the Commission to approve it promptly.

Dated this 21st day of October, 2020.

MINNESOTA TELECOM ALLIANCE



Brent J. Christensen

President/CEO

1000 Westgate Drive, Suite 252

St. Paul, MN 55114

651-288-3723

ⁱ Sources: Service area search function on each provider's website and <https://www.cellularstatus.com/coverage-mn>

STATE OF MINNESOTA

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie Sieben	Chair
Valerie Means	Commissioner
Matt Schuerger	Commissioner
Joseph K. Sullivan	Commissioner
John Tuma	Commissioner

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

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

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of October, 2020, I served the attached filing electronically on the attached service list via the Minnesota Public Utilities Commission's eFiling System.

/s/ R. Cameron Winton
R. Cameron Winton
Dorsey & Whitney LLP
50 South Sixth Street
Suite 1500
Minneapolis, MN 55402-1498

On behalf of the Minnesota Telecom Alliance

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_20-522_IC-20-522
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_20-522_IC-20-522
Adam	King	dialupmaster@youbetnet.net	KTF Telcom Inc	449 W Forest Ave Mora, MN 55051	Electronic Service	Yes	OFF_SL_20-522_IC-20-522
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_20-522_IC-20-522
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th PI E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_20-522_IC-20-522
Jason	Topp	jason.topp@lumen.com	CenturyLink	200 S 5th St Ste 2200 Minneapolis, MN 55402	Electronic Service	Yes	OFF_SL_20-522_IC-20-522