

## Staff Briefing Papers

Meeting Date November 12, 2020 Agenda Item \*\*4

Company CenturyLink Qwest and KTF Telecom

Docket No. **P6312,P421/IC-20-522**

**In the Matter of CenturyLink Application for Approval to Discontinue  
Interconnection Services with KTF Telecom**

- Issues
1. Should the Commission grant CenturyLink’s petition for disconnection of KTF Telecom?
  2. If the Commission grants CenturyLink’s petition, should it take any other action to protect the disconnection of service for KTF’s customers?
  3. Should the Commission take any other action?

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 **Relevant Documents**

**Date**

KTF Telecom Letter	August 11, 2020
Department of Commerce Comments	August 31, 2020
CenturyLink Reply Comments	September 10, 2020
MPUC Notice of Supplemental Comment Period	September 15, 2020
CenturyLink Supplemental Comments	September 30, 2020

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

 **Relevant Documents**

**Date**

Minnesota Department of Commerce Supplemental Comments	September 30, 2020
Minnesota Office of the Attorney General Comments	October 14, 2020
CenturyLink Third Set of Comments	October 21, 2020
Minnesota Telecom Alliance Comments	October 21, 2020

## I. Statement of the Issues

1. Should the Commission grant CenturyLink's petition for disconnection of KTF Telecom?
2. If the Commission grants CenturyLink's petition, should it take any other action to protect the disconnection of service for KTF's customers?
3. Should the Commission take any other action?

## II. Background

On June 5, 2020, CenturyLink Qwest ("CenturyLink") filed an application with the Minnesota Public Utilities Commission for approval to disconnect KTF Telecom ("KTF") from CenturyLink's interconnection services for nonpayment. KTF Telecom owed CenturyLink \$160,347.95 at that time. There is a dispute between CenturyLink and KTF whether the outstanding bills have been paid. KTF says that they have paid CenturyLink; CenturyLink says that they have not. CenturyLink asked the Commission for authority to disconnect all services to KTF and require KTF to notify its customers that their services will be disconnected. At the July 9, 2020 agenda meeting, the Commission ordered the following:

- 1) The Commission accepted CenturyLink's formal complaint and found that it met the filing requirements, has jurisdiction over the matter, and that there were reasonable grounds for the Commission to investigate this matter.
- 2) The Commission served CenturyLink's formal complaint on KTF and ordered KTF to file an answer to the complaint within 20 days of the order.
- 3) The Commission asked for initial comments within 30 days and reply comments within 10 days of the end of the initial comment period.

KTF Telecom responded with a letter on August 11, 2020.

The Commission released a Notice of Supplemental Comment Period on September 15, 2020 with a closing comment date of September 30. The notice asked whether:

- 1) CenturyLink's interconnection agreement with KTF set out the disconnection process
- 2) KTF provides internet access and VoIP service to its customers and whether that affects the analysis of the docket
- 3) Past Commission dockets involving customer notice are helpful to this docket and what other state commissions use

## III. Parties' Comments

### A. Minnesota Department of Commerce

#### 1. Minnesota Department of Commerce Reply Comments

The Minnesota Department of Commerce ("Department") commented on August 31, 2020. The Department acknowledges that KTF and CenturyLink continue to dispute whether overdue

payments are owed. “The dispute over payment of KTF’s bill remains unresolved because CenturyLink has not confirmed receipt of KTF’s asserted payments.”<sup>1</sup>

The Department recommends that the Commission consider how best to address the potential loss of service to KTF customers and how to notify customers that they need to sign up with an alternative service provide, if the Commission grants CenturyLink’s request to disconnect KTF. The Department believes that special consideration needs to be taken during the COVID-19 pandemic when customers are working and learning from home.

KTF has 645 internet customers and 108 dial-tone voice over internet protocol (“VoIP”) customers. CenturyLink could be the only provider available to KTF’s customers and that they should be able to receive as least voice service from CenturyLink. “Given that the network already exists, the Commission may wish to make clear that CenturyLink should not apply excess construction charge to current KTF customers. CenturyLink also should be required to come back before the Commission if it wishes to impose any such charges on existing KTF customers.”<sup>2</sup>

However, CenturyLink may not be able to provide internet service. “While the Department is not familiar with the manner in which KTF is currently provisioning internet service, Department staff recall that KTF was purchasing DSL capable unbundled network element (UNE) loops for provisioning internet service.”<sup>3</sup> <sup>4</sup> KTF has the availability to serve customers that are farther from CenturyLink’s central office, and therefore, are able to obtain faster internet speeds. If CenturyLink internet service is unavailable to KTF’s customers, the Department does not know if there are any other viable internet service alternatives.

The Department stresses the importance of notifying customers. “...if the Commission finds that the public convenience does not require this physical connection and grants the CenturyLink petition to terminate service, the notice provided to customers will be critical.”<sup>5</sup> The Department believes that its possible that a notice to KTF customers may be the first time that they are learning their service will be disconnected, beyond just the requirement of changing providers. The Department states that it is KTF’s responsibility to develop and send a notice to customers and that they should be required to receive approval from the Consumer Affairs Office (“CAO”) and asks for Department consultation.

The Department recommends that the Commission should set up time frames for the disconnection. They recommend the following schedule over approximately two-three months:

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<sup>1</sup> Minnesota Department of Commerce comments, August 21, 2020, p. 4

<sup>2</sup> Minnesota Department of Commerce comments, August 21, 2020, p. 4

<sup>3</sup> Minnesota Department of Commerce comments, August 21, 2020, p. 4

<sup>44</sup> The Department notes that while the Commission does not have the authority to regulate retail internet service, it may regulate provision of DSL capable UNE loops.

<sup>5</sup> Minnesota Department of Commerce comments, August 21, 2020, p. 5

<i>Day</i>	<i>Item</i>	<i>Notes</i>
<b>Day 1</b>	Commission Order	N/A
<b>Day 11</b>	Draft notice provided by KTF to CAO for approval with Department consultation	The notice should include: <ul style="list-style-type: none"> <li>- CenturyLink as an alternative for telephone service and state that there may or may not be an alternative for internet service</li> <li>- CAO contact information</li> <li>- Link to the local carrier lookup tool<sup>6</sup></li> </ul>
<b>Day 14</b>	CAO approval of notice	N/A
<b>Day 21</b>	Notice mailed by KTF to customers	Notice provides 60 days for customers to find an alternate provider
<b>Day 66</b>	KTF provides list of customers that have not switched to an alternative provider to CAO and the Department	The list will be reviewed to determine if the continuance of a connection is critical to public health, safety, or welfare.
<b>Day 70</b>	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.
<b>Day 81</b>	CenturyLink terminates service to those connections not identified as critical to public health, safety, or welfare.	N/A

“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.”<sup>7</sup> While existing KTF customers may not meet the proper performance metrics, CenturyLink should be able to continue service to KTF customers as the larger and more technically sophisticated company. The Department notes that there is no evidence in the record that suggests that CenturyLink could not provide the same service at the same price as KTF and not turn a profit. The Department acknowledges that there may be a need to obtain a customer list from KTF, determine what entity is to mail the notice, whether there should be media outreach, etc. if KTF fails to meet the proposed timeline.

The Department does not make a recommendation on CenturyLink’s petition. Since the Department does not know whether it is more convenient for the public to continue to the

<sup>6</sup> Local telecom carrier look-up website on Commerce’s website:

<https://mn.gov/puc/telecommunications/utility/>

<sup>7</sup> Department of Commerce comments, August 21, 2020, p. 6

CenturyLink-KTF connection or not, they do not know the impact of disconnection on current KTF customers. Also they think CenturyLink could file a proposal to prove that customers will not lose their internet service, even if the service doesn't meet CenturyLink's performance metrics.

## 2. Minnesota Department of Commerce Supplemental Comments

The Department lays out that there are two decisions before the Commission: 1) Whether public convenience requires continuing physical connection between CenturyLink and KTF; and 2) If CenturyLink does craft a voluntary proposal, the Commission will need to make other decisions including a notice process to inform KTF's customers.

The Department believes that letting CenturyLink disconnect KTF service quickly will leave rural customers without service, and therefore, thinks that the connection should continue until CenturyLink voluntarily crafts a proposal to continue essential services for KTF customers that lack alternatives.

The Department believes that Section 5.4.3 of the CenturyLink-KTF Telecom interconnection agreement does not address the mechanics of how a physical connection would be discontinued. The section describes when CenturyLink can seek disconnection approval but not what steps should be taken to disconnect. Therefore, section 5.4.3 can be used to determine whether CenturyLink can disconnect, but not how the disconnection should happen.

The Department continues to argue that "public convenience requires the continuance of the physical connection."<sup>8</sup> If the Commission finds that public convenience doesn't require continuing the connection, it's important for an orderly transition in light of the fact that we are in the middle of a global pandemic. The Department finds that the Governor's guidance that Minnesotans work from home and the fact that many school districts are continuing remote learning requires the continuance of the physical connection unless CenturyLink commits to serving KTF's former customers.

The Department clarifies that they are not asking the Commission to challenge their jurisdiction over internet and VoIP services. Instead, they are "asking the Commission to consider how public convenience will be impacted by discontinuance of a physical connection that supports a range of retail services,"<sup>9</sup> and clarifies that nothing in statute limits the Commission's analysis of telecommunications services.

The Department was unable to identify other useful notices but note that it's common for parties to reach a compromise before the Commission to settle the matter. They again propose their notice plan and note that since no other providers have been identified, a robust notice plan is even more important.

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<sup>8</sup> Department of Commerce supplemental comments, September 30, 2020, p. 6

<sup>9</sup> Department of Commerce supplemental comments, September 30, 2020, p. 9

To conclude, in light of the COVID-19 pandemic, the Department recommends that the Commission deny CenturyLink's application to discontinue the physical connection **or** allow CenturyLink to discontinue the physical connection in accordance with the notice plan **if** CenturyLink voluntarily agrees to continue retails services offered by KTF Telecom.

## **B. CenturyLink**

### **1. CenturyLink Reply Comments**

CenturyLink filed reply comments on September 10, 2020. They expressed disappointment that the Department didn't take a position on the disconnection but suggested a 90-day process before disconnection could happen.

CenturyLink argues that despite the Department saying that KTF provides internet access and VoIP service to its customers, those services aren't regulated the Commission or the Department. CenturyLink says that the Department's proposed "process goes far beyond the requirements for disconnecting voice service."<sup>10</sup> CenturyLink points that the Department admits the Commission does not have authority to regulate retail internet services. CenturyLink hypothesizes that this could open the Commission to legal issues, particularly because the FCC has ruled that CenturyLink is not required to provide Unbundled Loops service to KTF. CenturyLink would like the Commission to "[make] a clear declaration that providers are expected to pay for the services they purchase and authorize disconnection when they fail to do so."<sup>11</sup>

CenturyLink and KTF Telecom's interconnection agreement states the following:

"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)

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<sup>10</sup> CenturyLink reply comments, September 10, 2020, p. 2

<sup>11</sup> CenturyLink reply comments, September 10, 2020, p. 4

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.”<sup>12</sup>

CenturyLink maintains that they have met their obligations, but KTF has not.

Therefore, CenturyLink should be able to disconnect KTF Telecom, and KTF should notify their customers that their service is being terminated. CenturyLink proposes that KTF notify their customers 30 days before the disconnection date. They dislike the Department’s timeline because CenturyLink would have to continue serve for three months without likely being paid by KTF. Furthermore, CenturyLink says that they should not be required to guarantee services.

## **2. CenturyLink Supplemental Comments**

CenturyLink filed supplemental comments on September 30, 2020. They request that the Commission act urgently on their disconnection petition. “In the meantime, CenturyLink is providing service without payment to an entity that apparently wants to cease operations.”<sup>13</sup>

Century’s interconnection agreement with KTF addresses the contract obligations of the parties. CenturyLink agrees that Commission approval is necessary for them to disconnect service.

CenturyLink says that since they have an interconnection agreement, the Commission’s question about whether KTF’s internet access or VoIP services affect the docket is moot. “However, the services offered by KTF to its customers has a great effect on the Commission’s authority to order CenturyLink to provide internet access or VoIP service to KTF customers as the Department of Commerce has suggested.”<sup>14</sup> CenturyLink points to the Eighth Circuit decision of *Charter Advances Svcs. (MN), LLC vs. Lange*, which they believe prohibits the Commission from ordering CenturyLink to offer VoIP or internet services to KTF’s former customers as a condition of granting the disconnection.

CenturyLink is not aware of other Minnesota Commission decisions that require similar notices. They maintain that the Commission should give KTF a clear notice due date that is early enough for their customers to make other arrangements.

In conclusion, CenturyLink says that the Commission should issue a simple, clear order mandating disconnection and mandating KTF notice its customers 30 days after the Commission order is released.

## **3. CenturyLink Third Set of Comments**

CenturyLink finds that “the Department takes an extraordinary position – that in order for the Commission to find that disconnection is appropriate, CenturyLink should be required to

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<sup>12</sup> CenturyLink comments, September 10, 2020, p. 5

<sup>13</sup> CenturyLink supplemental comments, September 30, p. 1

<sup>14</sup> CenturyLink supplemental comments, September 3



identify the location of every KTF customer and ensure that each customer has access to the 'full range of retail services currently offered by KTF.'"<sup>15</sup> CenturyLink says that the Department also asks the Company to determine the services KTF provides, create similar products, and offer them to KTF's customers; and if not, CenturyLink should offer free service to KTF's customers. CenturyLink particularly finds this egregious because the end services to KTF's customers are broadband which the Commission doesn't regulate. Their main point is that Therefore, CenturyLink should be entitled to disconnect KTF Telecom without being required to offer broadband service to their customers.

CenturyLink says that the Department's suggestions that CenturyLink provide service to KTF without expectation of being paid for service and offer broadband to KTF customers are unsupported by law. The Company says that no authority for these recommendations are given, outside of Minnesota Statute 237.74 Subd. 9, which stipulates that the Department "shall investigate and ascertain whether public convenience requires the continuance of the physical connection, and if the department so find, the commission shall fix the compensation, terms, and conditions of the continuance of the physical connection and service between the telephone company and the telecommunications carrier."<sup>16</sup> However, CenturyLink says that the Department didn't explain or analyze their legal opinion or cite any precedence for why the Company must require connection without payment or offer broadband.

CenturyLink states that the public convenience standard is old and has a long history but was not designed to maintain broadband connections to companies that have not paid for service. In 1915, the standard was written for maintaining voice connections to continue the flow of communication and is less applicable in 2020, and certainly not applicable in this situation.

CenturyLink's interconnection agreement with KTF mandates that KTF, not CenturyLink, has the obligation to notify customers of a pending disconnection that they need to make other arrangements, which the Company says was ignored by the Department.

CenturyLink says that "every single KTF customer appears to have broadband service available to it at speeds higher than CenturyLink's basic speed... Most will have service available from CenturyLink and many have service available from other wireline providers."<sup>17</sup> CenturyLink says that the Department's analysis that service in rural areas may be poor is misleading since broadband providers do not need to obtain a certificate of authority from the Commission. Furthermore, CenturyLink says that broadband as the Department suggested it has very low download speeds and that satellite broadband provides much faster service. Furthermore, the counties currently served by KTF are also covered by mobile wireless carriers. "Every customer

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<sup>15</sup> CenturyLink 3<sup>rd</sup> set of comments, October 21, 2020, p. 1

<sup>16</sup> Minnesota Statute 237.74 Regulation of Telecommunication Carrier Subd. 9 Discontinuance  
<https://www.revisor.mn.gov/statutes/cite/237.74>

<sup>17</sup> CenturyLink 3<sup>rd</sup> set of comments, October 21, 2020, p. 4

currently served by KTF appears to have multiple alternatives for internet access on par with CenturyLink's slowest DSL speeds."<sup>18</sup>

To conclude, CenturyLink would like the Commission to issue an order mandating the Company to disconnect KTF and require KTF to notify their customers. They do not support the Department's suggestion of CenturyLink either continuing service without payment or creating new retail broadband services to ensure that KTF's customers receive the same level of broadband service.

### **C. Minnesota Office of Attorney General Comments**

The Minnesota Office of the Attorney General ("Attorney General" or "OAG") well summarized the Department's positions.

They pointed to the Department's Information Request ("IR") No. 9 where CenturyLink responds that KTF appears to offer service to the Mora, Pine City, and Rush City wire centers. The OAG notes that "the Department suspects that CenturyLink may maintain more detailed records of those locations whether its network exists and is used to provide retail service."<sup>19</sup> The OAG argues that the CenturyLink cannot state that there are alternative service providers for KTF customers if they do not know the locations KTF serves on CenturyLink's network. CenturyLink has not demonstrated that they know of multiple service provider alternatives.

In the Department's IR No. 8, CenturyLink lists county-by-county service providers. The Department points out that actual service reliability can differ for customers based on their location, i.e. "in town" or in the country; therefore, a county-by-county list has little value. Furthermore, the Department noted that providers may get Commission approval to serve an area and then never actually do so, and therefore, the Commission should not rely upon CenturyLink's list.

The Department recommends that: "(1) the Commission should deny CenturyLink's application to discontinue the physical connection; or (2) if CenturyLink voluntarily agrees to continue retail services offered by KTF, then allow CenturyLink to discontinue the physical connection in accordance with the notice plan proposed by the Department."<sup>20</sup>

### **D. Minnesota Telecom Alliance**

The Minnesota Telecom Alliance ("MTA") submitted comments in support of CenturyLink. MTA states that public convenience doesn't require continuing the connection between CenturyLink and KTF and that denying CenturyLink's application would negatively affect all of Minnesota's telecom carriers.

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<sup>18</sup> CenturyLink 3<sup>rd</sup> set of comments, October 21, 2020, p. 6

<sup>19</sup> Minnesota Office of the Attorney General comments, October 14, 2020, p. 1

<sup>20</sup> Minnesota Office of the Attorney General comments, October 14, 2020, p. 2

MTA says that the Department of Commerce hasn't met its statutory requirements to argue that public convenience requires CenturyLink to maintain their connection to KTF. Despite the public convenience statute, the record doesn't indicate how CenturyLink disconnecting KTF's customers would impact them with any certainty. "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."<sup>21</sup> MTA points out multiple specific carriers that offer service in the wire centers of Mora, Pine City, and Rush City. MTA says that the Department's statement that "nothing in the physical connection discontinuance statutes limits the Commission's analysis to telecommunications services"<sup>22</sup> is not accurate. Physical discontinuance is directed at solely telecommunications and not broadband or information services. Legal cases have maintained that the Commission doesn't have jurisdiction over information services. MTA does not support the Department's recommendation.

MTA argues that denying CenturyLink's application to disconnect KTF would negatively impact all telecom carriers. "Put simply, MTA's member telecommunication companies cannot provide telecommunication services to Minnesotans effectively if contract counterparts can walk away from their payment obligations with no consequences."<sup>23</sup> MTA points out that they are a trade organization representing more than 70 telcos in Minnesota of various sizes. "The Commission's decision on this matter will have industry-wide ramifications, especially on the Main Street Minnesota providers for which regular cash-flow is essential for business survival."<sup>24</sup> KTF's unpaid bill to CenturyLink is continuing to grow while "KTF has acted in bad faith."<sup>25</sup>

To conclude, MTA encourages the Commission to approve CenturyLink's Application promptly.

#### **IV. Staff Analysis**

##### **A. Step 1: Whether the Commission Should Order Disconnection**

The central question in this docket is whether the Commission can or should allow CenturyLink to disconnect interconnection services with KTF. It has been established in numerous places that the Commission can order disconnection, but should they?

KTF Telecom followed the Commission's July 9 order and filed a letter. They stated that their past due amounts owed to CenturyLink had been paid. CenturyLink has maintained throughout this docket that KTF Telecom has not made any payments to them. Therefore, it can be presumed that KTF still owes CenturyLink the total amount past due.

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<sup>21</sup> Minnesota Telecom Alliance comments, October 21, 2020, p. 3

<sup>22</sup> Minnesota Telecom Alliance comments, October 21, 2020, p. 4

<sup>23</sup> Minnesota Telecom Alliance comments, October 21, 2020, p. 6

<sup>24</sup> Minnesota Telecom Alliance comments, October 21, 2020, p. 7

<sup>25</sup> Minnesota Telecom Alliance comments, October 21, 2020, p. 7

It is worth noting that in order for KTF to have obtained a certificate of authority from this Commission, it was required that the Commission find KTF have the “financial, technical, and managerial capability to provide [regulated] services.”<sup>26</sup> A core part of KTF’s obligations under its certificate, therefore, were to pay its financial obligations to entities such as CenturyLink.

As CenturyLink points out, just in the time this docket has been pending before the Commission, KTF’s debts to CenturyLink have increased by another \$70,000 for a total of \$230,000.<sup>27</sup> This is funding that could have been invested in CenturyLink’s Minnesota network or used to pay for Minnesota employment positions.

MTA makes a very compelling point. It will set a bad precedent if the Commission rules that a telecommunications carrier does not have to pay another carrier for services used without any consequences incurred. If carriers cannot be disconnected for failure to pay their bills to other carriers, one wonders under what circumstances a carrier could be disconnected.

Finally, it is worth reviewing KTF’s trade secret letter, filed August 11, 2020 in the current docket. This is the most recent communication to the Commission from KTF; staff has attempted to contact KTF for other administrative and procedural matters and has had difficulty getting a response. This represents a further concern about KTF’s obligations under their Certificate of Service; at this time, they do not seem to have the managerial capability to respond to the Commission.

The Department makes an interesting point that special consideration needs to be taken during the COVID-19 pandemic; however, this relates more to making sure there is a robust communication and transition plan if disconnection occurs, so that no customer loses service. The first step the Commission needs to decide is whether to approve disconnection.

The Department lays out an entire 81-day disconnection plan, including a procedure for creating and disseminating the customer notice. The plan allows for critical services to continue their interconnection service with CenturyLink. It has not been established in the record whether any critical services – healthcare, schools, etc. – are served by interconnection services with CenturyLink. Even if there are, it would be unfeasible economically for CenturyLink to continue to serve them indefinitely without payment from KTF.

## **B. Step 2: Appropriate Transition Plan and Customer Notice**

If the Commission orders disconnection, then the next step is to determine what type of transition plan and customer notice should be approved.

In the Department’s plan, they rely on KTF to propose a customer notice and issue it to their customers. CenturyLink too maintains that KTF must notice their own customers, because the two companies’ interconnection agreement states it clearly. For whatever reason, KTF has been

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<sup>26</sup> Minnesota Rules 7812.0300 Local Facilities-Based Service Certification, Subpart 3 Decision criteria. <https://www.revisor.mn.gov/rules/7812.0300/>

<sup>27</sup> CenturyLink Third Set of Comments, October 21, 2020, p. 1

largely unresponsive in this docket, so it may be presumptive to assume that KTF can propose and issue a notice.

During the notice process, the Department recommends CAO work with KTF to craft the notice. CAO does this frequently and it is a best practice for utilities issuing notices.

The Notice for Supplemental Comment Period asked about notices used in other Commission dockets. Two were identified: 01-1599 and 10-1198. In Docket 01-1599, Winstar issued a notice to Corcoran/First Com's customers notifying them of the disconnection and offering service.<sup>28</sup> In Docket 10-1198, Digital Telecommunications Inc. notified their own customers of their impending bankruptcy.

Staff recommends the following process be adopted for notifying customers:

- 1) Within ten (10) business days of an agenda meeting authorizing disconnection, KTF must contact the Commission's Consumer Affairs Office to agree on a customer notice. KTF has two (2) business days to finalize the language of the notice with CAO and must make a compliance filing indicating it will be sending out the notice to its customers.
- 2) if KTF does not contact CAO within ten (10) business days of the agenda meeting authorizing disconnection, the Executive Secretary will issue a notice directing CenturyLink to draft such notice; the Executive Secretary will also open a docket asking KTF to show cause why its certificate should not be revoked.
- 3) The customer notice shall indicate that customers have 60 days to find a new provider. The notice may refer to the Telephone Service Provider Look Up webpage<sup>29</sup> on the Department's website, but it may also clarify that services unregulated by the Commission may not be on this webpage. Customers that have trouble finding an alternative provider may contact the CAO for mediation services and assistance.

### **C. Step 3: Whether CenturyLink Should Continue Service**

The parties strongly disagree about whether CenturyLink shall continue to provide service to customers that would be disconnected by KTF and have not found another provider. They disagree both on policy as well as on legal grounds. Part of the source of the legal dispute is that it appears KTF is providing services that are regulated by the Commission as well as those that are not regulated.<sup>30</sup>

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<sup>28</sup> The service in question was local voice, which Winstar was able to provide and the Commission had jurisdiction.

<sup>29</sup> Department of Commerce Telephone Service Provider Look Up webpage  
<https://www.edockets.state.mn.us/eAssessment-public/company/phoneServiceProvider.action>

<sup>30</sup> An important question from CenturyLink is whether the Commission can order them to serve KTF customers that were mostly using VoIP or internet service. From IR No. 4: "CenturyLink has not taken the position that the Commission does not have jurisdiction over CenturyLink's connections to KTF."

it appears KTF serves business and government customers, who should be sophisticated enough to find a new provider once they receive 60 days' notice. The Department says that "there appears to be at least one significant government entity that receives service from KTF."<sup>31</sup> Staff notes that the type of services KTF Telecom offers overall, in particular web hosting, are likely designed for business customers.

Rather than venture into the legal dispute here as to discontinuance of service and try to fashion a broad brush ordering point, staff suggests that the 60 day notice give the CAO contact information and instruct affected customers to contact CAO if they have trouble finding an alternative provider. If that situation occurs, CAO's mediators can confer with CenturyLink to see if CenturyLink can provide continued service to that individual customer and their particular situation. Staff notes that CenturyLink as an ETC would have to provide certain regulated services if the end user requested it.

## V. Decision Options

### A. Department of Commerce Decision Options

1. Find that the public convenience does not require the connections between CenturyLink and KTF to continue and approve CenturyLink's petition to disconnect KTF with no conditions.
2. Find that the public convenience does not require the connections between CenturyLink and KTF to continue, and approve CenturyLink's petition to disconnect KTF with the following timeline/conditions:
  - a) Day 1: Commission Order
  - b) Day 11: Draft notice provided by KTF to CAO for approval, with Department consultation. The notice should include:
    - (1) CenturyLink as an alternative for telephone service and state that there may or may not be an alternative for internet service
    - (2) CAO contact information
    - (3) The link to the local carrier look up, accessible from the Commission's website: <https://mn.gov/puc/telecommunications/utility/>
  - c) Day 14: CAO approval of notice
  - d) Day 21: Notice mailed by KTF to customers, providing 60 days for customers to find an alternative provider

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CenturyLink's position is outlined in its comments to the Commission. The Commission does not have jurisdiction over the services KTF offers its customers which, according to the Department, consist of broadband services and voice over internet protocol. The Department's proposed suggestions to the Commission include mandates to require CenturyLink to offer such services to KTF customers. It is CenturyLink's position that the Commission does not have the authority to order such services as the Eighth Circuit has held in *Charter Advanced Svcs. (MN), LLC v. Lange*, 903 F.3d 715, 720 (8th Cir. 2018)."

<sup>31</sup> Department of Commerce public comments, August 31, 2020, p. 5

- e) 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.
  - f) Day 70: Any connections that are critical to public health, safety, or welfare are to be raised with the Commission, and brought to CenturyLink's attention. These connections are not to be terminated without further approval by the Commission.
  - g) Day 81: CenturyLink terminates service to those connections not identified as critical to public health, safety, or welfare.
3. Find that the public convenience does not require the connections between CenturyLink and KTF to continue, and approve CenturyLink's petition to disconnect service to KTF, but 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.
  4. CenturyLink should not apply an excess construction charge to current KTF customers that subscribe to voice service from CenturyLink, given the existence of CenturyLink's network. CenturyLink should obtain Commission approval prior to imposing any such charges to existing KTF customers.
  5. Find that the public convenience requires the connections between CenturyLink and KTF to continue and deny CenturyLink's application.
  6. Take other action the Commission deems appropriate.

#### **B. CenturyLink Decision Option**

1. Grant CenturyLink's petition.

#### **C. Staff Decision Options**

1. The Commission shall order CenturyLink to disconnect service to KTF Telecom, subject to the process below.
  - a) Within ten (10) business days of an agenda meeting wherein the Commission authorizes disconnection, KTF shall contact the Commission's Consumer Affairs Office to agree on a customer notice that gives customers 60 days to find a new provider. KTF has two (2) business days to finalize the language of the notice with CAO and must make a compliance filing indicating it will be sending out the notice to its customers.
  - b) if KTF does not contact CAO within ten (10) business days of the agenda meeting wherein the Commission authorizing disconnection, the Executive Secretary will issue a notice directing CenturyLink to draft such notice; the Executive Secretary will also open a docket asking KTF to show cause why its certificate should not be revoked.

- c) The customer notice shall indicate that customers have 60 days to find a new provider. Further, the notice may:
  - (1) Refer to the Look Up webpage on the Department's website and clarify that services unregulated by the Commission may not be on this webpage; and
  - (2) State that customers having trouble finding an alternative provider may contact CAO for mediation services and assistance.