

August 31 2020

**PUBLIC DOCUMENT**

Will Seuffert  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, Minnesota 55101-2147

RE: **PUBLIC Comments of the Minnesota Department of Commerce**  
Docket No. P6312, P421/IC-20-522

Dear Mr. Seuffert:

Attached are the **Public** comments of the Minnesota Department of Commerce (Department) in the following matter:

In the Matter of Qwest Corporation dba CenturyLink QC's Application to Discontinue Physical Connection with KTF Telecom, Inc.

The petition was filed on June 5, 2020 by:

Jason D. Topp  
Assistant General Counsel  
CenturyLink  
200 South 5<sup>th</sup> Street, Room 2200  
Minneapolis, MN 55402

The Department recommends the following and is available to answer any questions the Commission may have.

The Department makes no recommendation on CenturyLink's petition, as it has not ascertained whether the public convenience requires the physical connection between CenturyLink and KTF to continue. Thus, it is unclear what the impact of the disconnection would be on the existing customers of KTF. Further, 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.

Sincerely,

/s/ BRUCE L. LINSCHIED  
Financial Analyst

/s/ LISA GONZALEZ  
Telecommunications Analyst

BLL/LG/ja  
Attachment



## Before the Minnesota Public Utilities Commission

### Public Comments of the Minnesota Department of Commerce

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

#### I. BACKGROUND

On June 5, 2020, Qwest Corporation d/b/a CenturyLink QC (CenturyLink) filed a petition with the Minnesota Public Utilities Commission (Commission) to disconnect services provisioned to a competitive local exchange carrier (CLEC), KTF Telecom, Inc. (KTF). CenturyLink's petition stated that KTF failed to pay overdue and undisputed bills. CenturyLink further urged the Commission to enforce KTF's obligation to notify its customers pursuant to Minn. R. 7811.0600, subp. 6 (2019).

CenturyLink is regulated as a telephone company under Minnesota law and interconnects with KTF for the purpose of exchanging traffic and provisioning other services. KTF obtained authority to provide local niche telecommunications service in Docket No. 03-1459 and purchases services from CenturyLink under interconnection agreements and CenturyLink tariffs.

In its June 5, 2020 petition to disconnect, CenturyLink stated that KTF owed approximately \$160,347.95 of which \$144,779.06 was 30 days past due. CenturyLink also asserted that KTF did not dispute this amount was overdue. CenturyLink further stated that KTF had been advised of its outstanding bills, and requests for payment had been made on multiple occasions:

- On May 15, 2019, KTF was advised that it had \$36,217.80 in unpaid bills and that CenturyLink was pursuing disconnection.
- On February 12, 2020, CenturyLink sent a disconnection notice identifying \$116,845.74 in unpaid undisputed bills.
- On March 3, 2020, CenturyLink sent a reminder notice and suspended service order activity.

CenturyLink stated that KTF responded to the demands for payment by claiming that it made payment. However, CenturyLink asserts that it had not received payment and contacted KTF repeatedly during March and April 2020. CenturyLink stated:

- KTF made inconsistent claims about payment being made by check and through other methods, culminating in a message dated April 14, 2020, claiming payment was in the mail.
- CenturyLink never received payment and informed KTF that the proceeding to disconnect KTF would move forward.
- Finally, CenturyLink argued that, with Commission approval, it has the right to disconnect KTF as provided in its Access Service Tariff and its Docket No. 03-1802 interconnection agreement with KTF.

On July 22, 2020, the Commission issued its *ORDER ACCEPTING FORMAL COMPLAINT, FINDING COMMISSION JURISDICTION, INITIATING INVESTIGATION, AND ORDERING ANSWER TO COMPLAINT*. The Order required KTF to file an Answer to the complaint within 20 days of the Order, pursuant to Minn. R. 7829.1800, subps. 2 and 4. The Order also stated that any person wishing to comment on CenturyLink's formal complaint may do so within 30 days, with reply comments due 10 days after the expiration of the initial comment period.

On August 11, 2020, KTF filed an Answer to CenturyLink's formal complaint. The letter includes the following:

**[TRADE SECRET DATA HAS BEEN EXCISED]**

## **II. STATEMENT OF ISSUES**

Should CenturyLink be granted Commission approval to terminate services provisioned to KTF via interconnection agreement and tariffs?

## **III. APPLICABLE STATUTES AND RULES**

### **MINN. STAT. § 237.12 SERVICE CONNECTION BETWEEN TELEPHONE COMPANIES.**

#### **Subd. 2. Discontinuance.**

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, neither of the companies shall cause such connection to be severed or the service between the companies to be discontinued without first obtaining an order from the commission upon an application for permission to discontinue such physical connection. Upon 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, and if the department so finds, the commission shall fix the compensation, terms and conditions of the continuance of the physical connection and service between the telephone companies.

### **MINN. STAT. § 237.74 REGULATION OF TELECOMMUNICATIONS CARRIER.**

#### **Subd. 6. Tariff or price list change.**

(a) Telecommunications carriers may:

- (1) decrease the rate for a service, or make any change in a tariff or price list that results in a decrease in rates, effective without notice to its customers or the commission; and

- (2) offer a new service, increase the rate for a service, or change the terms, conditions, rules, and regulations of its service offering effective upon notice to its customers. Subject to subdivisions 2 and 9, a telecommunications carrier may discontinue a service, except that a telecommunications carrier must first obtain prior commission approval before discontinuing service to another telecommunications carrier if end users would be deprived of service because of the discontinuance.

#### **Subd. 9. Discontinuance.**

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, neither of the companies shall have the connection severed or the service between the companies discontinued without first obtaining an order from the commission upon an application for permission to discontinue the physical connection. Upon 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, and if the department so finds, 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. Prior commission approval is not required for severing connections where multiple local exchange companies are authorized to provide service. However, the commission may require the connections if it finds that the connections are in the public interest, but may not require connections with a telecommunications carrier certified to provide only interexchange service.

#### **MINN. R. 7812.2210 COMPETITIVE LOCAL EXCHANGE CARRIERS (CLEC'S).**

##### **Subp. 11 Commission approval to discontinue service or physical connection to another carrier.**

In accordance with Minnesota Statutes, section 237.74, subdivisions 6, paragraph (a), and 9, a CLEC must obtain prior commission approval before discontinuing a service or physical connection to a telephone company or a telecommunications carrier if end users would be deprived of service because of the discontinuance or disconnection.

#### **IV. ANALYSIS**

*Should CenturyLink be granted Commission approval to discontinue wholesale service to KTF?*

##### **A. KTF AND CENTURYLINK CONTINUE TO DISPUTE WHETHER OVERDUE PAYMENTS ARE OWED**

In its August 11, 2020, Answer to CenturyLink's Application, KTF stated **[TRADE SECRET DATA HAS BEEN EXCISED]** In a subsequent communication,<sup>1</sup> KTF stated that it had sent payments totaling \$203,293.35 on August 11, 2020, to CenturyLink and believed the account balance to be zero through August 31, 2020. KTF states that the payments were sent via U.S. Mail.

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<sup>1</sup> KTF's August 11, 2020, response to the Department's August 11, 2020 request asking for the details to the total payments made to CenturyLink

CenturyLink stated that it believed KTF payments sent by U.S. Mail would require seven to ten days to post and that no payments had been received as of August 21, 2020.<sup>2</sup> The dispute over the payment of KTF's bill remains unresolved because CenturyLink has not confirmed receipt of KTF's asserted payments.

*B. IF THE COMMISSION FIND THAT THIS CONNECTION IS NOT REQUIRED BY PUBLIC CONVENIENCE AND GRANTS CENTURYLINK'S APPLICATION TO DISCONNECT SERVICE TO KTF, THE COMMISSION SHOULD CONSIDER HOW TO BEST ADDRESS THE POTENTIAL LOSS OF SERVICE BY CUSTOMERS AND THE MEANS TO NOTIFY CUSTOMERS OF THEIR NEED TO TRANSFER TO AN ALTERNATE SERVICE PROVIDER, IF ONE IS AVAILABLE.*

Minnesota Statutes sections 237.12, subdivision 2 and 237.74, subdivision 9, respectively, direct the Department to "investigate and ascertain whether public convenience requires the continuance of the physical connection." If public convenience requires the continued connection, then the Commission "shall fix the compensation, terms, and conditions of the continuance of the physical connection." *Id.* The Department believes a determination of the public convenience must give consideration to the present pandemic, making access to reliable communication services essential to Minnesotans working or studying at home. KTF reports having 645 Internet customers and 108 dial tone VoIP customers.<sup>3</sup> For the provision of voice service, as the incumbent telephone company, CenturyLink may be the only provider available to customers. The lack of alternative providers for voice service in some rural areas was highlighted in the 18-122 Docket. While CenturyLink may be the only alternative to current KTF customers for voice service, customers will at least be able to receive voice service from CenturyLink, as it is KTF's underlying service provider. 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.

For the provision of internet service, CenturyLink may not be an alternative. 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>4</sup> KTF was capable of bringing internet service to customers that are more distant from the CenturyLink central office by providing internet at speeds that may be slower than CenturyLink minimum standards for the provision of internet service. In an August 28, 2020 email exchange, CenturyLink stated, "Whether or not internet is available (from CenturyLink) depends on the plant available to serve each customer and whether it meets our requirements to offer internet service." If

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<sup>2</sup> CenturyLink's August 21, 2020 response to the Department's August 21 request asking if the KTF payments have been received.

<sup>3</sup> KTF's August 11, 2020 response to the Department's August 11, 2020 request asking the number of customers served by KTF.

<sup>4</sup> While retail internet service is not regulated by the Commission, the provision of DSL capable UNE loops is subject to the Commission's jurisdiction.

CenturyLink is unavailable to provide internet service, it is unclear whether there are viable internet service alternatives to the existing KTF customers.

More information would be beneficial in understanding the impact of the CenturyLink petition to disconnect service to KTF, such as:

- Of the 645 KTF internet customers, how many have an alternative internet provider?
- Since CenturyLink is the underlying provider for KTF services, is there any technical reason why CenturyLink could not continue internet service to customers as the retail provider, with the same limited service capacity customers currently have, for some period of time?
- How many of the 645 KTF internet customers have children that rely upon distance learning during the Covid-19 pandemic?
- How many of the 645 KTF internet customers depend upon the internet to telework during the pandemic?
- If internet service is available to customers via satellite, do pricing and data caps prevent the service from being a viable option?
- There appears to be at least one significant government entity that receives service from KTF. Are there other entities that provide service that is critical to public health, safety and welfare of Minnesotans?

While the Department has not determined whether the public convenience requires continuance of the connections between CenturyLink and KTF, 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. It is possible that this notice will inform customers not only that they must change telephone service providers, but that their internet service also will be terminated without the possibility of replacement. As KTF is the retail service provider, it is KTF's responsibility to develop and send out the notice. Because of the possible significance of this notice to KTF customers, the Department believes it should receive approval from the Commission's Consumer Affairs Office (CAO) prior to its mailing. The Department would appreciate the opportunity to discuss the notice with the CAO prior to its approval.

*C. IF THE COMMISSION GRANTS CENTURYLINK'S APPLICATION TO DISCONNECT SERVICE TO KTF, THE COMMISSION ALSO SHOULD PROVIDE DIRECTION ON THE TIME FRAMES FOR DISCONNECTION AND HOW TO PROCEED WITH KTF CUSTOMERS THAT HAVE NOT TRANSFERRED TO AN ALTERNATIVE SERVICE PROVIDER.*

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.

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. While existing KTF internet customers may not meet the performance metrics required by CenturyLink, as the underlying provider of the service, and a significantly larger and likely a more technically sophisticated company than KTF, CenturyLink should, from a technical standpoint, be able to continue service to KTF customer that is at the same quality that KTF customers receive service today. There is currently no evidence in the record in this case whether CenturyLink could provide the same service at the same prices currently charged by KTF, and do so at a profit.<sup>5</sup>

In the event that KTF does not meet the time lines established by the Commission, there may be a need to obtain the customer list from KTF, for the Commission to determine what entity is to mail the notice, whether there should be any media outreach, etc.

## V. COMMISSION ALTERNATIVES

In the event that payment by KTF is not received by CenturyLink, the Commission alternatives include the following:

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<sup>5</sup> Although CenturyLink is clearly entitled to the prices in its interconnection agreement and tariff for the services purchased by KTF, the actual damages to CenturyLink are not fully known without knowing CenturyLink's cost to provision these services.

- A. 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.
- B. 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:
  - 1) Day 1: Commission Order
  - 2) Day 11: Draft notice provided by KTF to CAO for approval, with Department consultation. The notice should include:
    - (a) CenturyLink as an alternative for telephone service and state that there may or may not be an alternative for internet service.
    - (b) CAO contact information.
    - (c) The link to the local carrier look up, accessible from the Commission's website:  
<https://mn.gov/puc/telecommunications/utility/>
  - 3) Day 14: CAO approval of notice.
  - 4) Day 21: Notice mailed by KTF to customers, providing 60 days for customers to find an alternative provider.
  - 5) 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.
  - 6) 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.
  - 7) Day 81: CenturyLink terminates service to those connections not identified as critical to public health, safety, or welfare.
- C. 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.
- D. 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.
- E. Find that the public convenience requires the connections between CenturyLink and KTF to continue, and deny CenturyLink's application.
- F. Take other action the Commission deems appropriate.



## **VI. DEPARTMENT RECOMMENDATION**

The Department makes no recommendation on CenturyLink's petition, as it has not ascertained whether the public convenience requires the physical connection between CenturyLink and KTF to continue. Thus, it is unclear what the impact of the disconnection would be on the existing customers of KTF. Further, 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.

/ja

## **CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce  
Public Comments**

**Docket No. P6312, 421/IC-20-522**

**Dated this 31<sup>st</sup> day of August 2020**

**/s/Sharon Ferguson**

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@centurylink.com	CenturyLink	200 S 5th St Ste 2200  Minneapolis, MN 55402	Electronic Service	Yes	OFF_SL_20-522_IC-20-522