

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
SUITE 350  
121 SEVENTH PLACE EAST  
ST. PAUL, MINNESOTA 55101-2147**

Katie Sieben  
Joseph Sullivan  
Valerie Means  
Matthew Schuerger  
John Tuma

Chair  
Vice Chair  
Commissioner  
Commissioner  
Commissioner

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

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

**SUPPLEMENTAL COMMENTS OF THE MINNESOTA  
DEPARTMENT OF COMMERCE**

**September 30, 2020**

## I. BACKGROUND

On June 5, 2020, Qwest Corporation (“CenturyLink”) filed an application with the Minnesota Public Utilities Commission requesting permission to discontinue a physical connection with KTF Telecom. CenturyLink alleged in its application that KTF had failed to pay for the services rendered as required by the interconnection agreement between the companies.<sup>1</sup>

On July 22, 2020, the Commission initiated an investigation into the dispute and ordered KTF to provide an answer to CenturyLink’s allegations within thirty days.<sup>2</sup>

On August 10, 2020, KTF filed its answer to CenturyLink’s allegations. KTF claimed that a certain third-party agreement had created temporary cash flow concerns and that payments had subsequently been made to CenturyLink.<sup>3</sup>

On August 31, 2020, the Minnesota Department of Commerce filed comments addressing the CenturyLink-KTF payment dispute.<sup>4</sup> The Department explained that it could not assess whether public convenience required the continuance of the connection, as provided by Minn. Stat. §§ 237.12, subd. 2, 237.74, subd. 9 (2018), because of unresolved factual questions about KTF’s payment record and retail customer impacts.<sup>5</sup> The Department also discussed how

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<sup>1</sup> *In re Appl. of CenturyLink for Expedited Approval to Discontinue Physical Connection with KTF Telecom Inc.*, Docket No. P6312, P421/IC-20-522 (“KTF Discontinuance Docket”), CenturyLink Initial Filing (June 5, 2020) (eDocket No. 20206-163775-01) (“CenturyLink Appl.”).

<sup>2</sup> KTF Discontinuance Docket, ORD. ACCEPTING FORMAL COMPL., FINDING COMM’N JURISDICTION, INITIATING INVESTIGATION, & ORDERING ANSWER TO COMPL. (July 22, 2020) (eDocket No. 20207-165173-01).

<sup>3</sup> KTF Discontinuance Docket, KTF Trade Secret Letter (Aug. 10, 2020) (eDocket No. 20208-165760-01).

<sup>4</sup> KTF Discontinuance Docket, Initial Comments of the Dep’t of Comm. (Aug. 31, 2020) (eDocket No. 20208-166313-02) (“Dep’t Initial Comments”).

<sup>5</sup> *Id.* at 5.

CenturyLink could ensure that KTF retail customers did not lose services during a global pandemic that has required many Minnesotans to work and study remotely.<sup>6</sup>

On September 10, 2020, CenturyLink filed reply comments asserting that KTF remained delinquent and that KTF's remaining customers would be best served by having a new provider. In addition, CenturyLink responded to the Department's comments discussing the impact of a disconnection on KTF's customers.<sup>7</sup>

On September 15, 2020, the Commission requested supplemental comments addressing the following topics:

- (1) Does section 5.4.3 of CenturyLink's interconnection agreement with KTF set out the entirety of the disconnection process between the two companies?
- (2) How does the fact that KTF provides internet access and voice over internet protocol service to its end user customers affect the analysis in this docket, if at all?
- (3) Are there past Commission dockets involving customer notice that are helpful or instructive to this docket? What customer notice plans do other state commissions use when allowing one carrier to disconnect another?
- (4) Are there other issues or concerns related to this matter?<sup>8</sup>

The Department addresses these topics in the following supplemental comments.

## II. DISCUSSION

There are two issues before the Commission. First, whether public convenience requires the continuance of the physical connection between CenturyLink and KTF. 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

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<sup>6</sup> *Id.* at 6.

<sup>7</sup> KTF Discontinuance Docket, Reply Comments of CenturyLink (Sept. 10, 2020) (eDocket No. 20209-166509-01) ("CenturyLink Reply Comments").

<sup>8</sup> KTF Discontinuance Docket, NOTICE OF SUPPLEMENTAL COMMENT PERIOD (Sept. 15, 2020) (eDocket No. 20209-166576-01) ("Supplemental Notice").

pandemic. As a result, the Department believes that public convenience requires the continuance of the physical connection provided to KTF unless CenturyLink voluntarily crafts a proposal to continue essential retail services for KTF customers that lack other alternatives.

Second, if CenturyLink does craft such a voluntary proposal, the Commission will likely need to make other decisions including adoption of a notice process to inform KTF's retail customers. However, if CenturyLink declines to craft a proposal to continue service to KTF's retail customers or the Commission otherwise decides that public convenience requires the continuance of the KTF physical connection, then there is no need for any other Commission determinations. Instead, the Commission may simply require CenturyLink to continue service to KTF.

#### **A. Discontinuance Process**

##### **1. Section 5.4.3 of the Interconnection Agreement**

The first Supplemental Notice question asks whether section 5.4.3 of the CenturyLink-KTF interconnection agreement sets forth the entire disconnection process.<sup>9</sup> The short answer is no. Section 5.4.3 does not address the mechanics of how a physical connection may be discontinued. Rather, it describes the conditions that must be present in order for CenturyLink to seek Commission permission to discontinue a physical connection provided to KTF via the interconnection agreement. In part, section 5.4.3 provides:

*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. . . .*<sup>10</sup>

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<sup>9</sup> *Id.* at 1.

<sup>10</sup> CenturyLink Appl. at 2–3 (emphasis added).

Section 5.4.3 essentially allows CenturyLink to seek Commission permission to discontinue service. The section also describes what fees and charges may be applicable should a discontinuance be approved.<sup>11</sup> Section 5.4.3 further provides a few common contractual protections for CenturyLink and KTF (e.g., notice for KTF and a waiver provision for CenturyLink).<sup>12</sup> Finally, section 5.4.3 does not establish procedures for retail customer notices in the event of service discontinuance.

It is possible that the interconnection agreement addresses discontinuance mechanics elsewhere, but it does not occur in section 5.4.3.<sup>13</sup> Put simply, this section describes *when* CenturyLink may seek Commission permission to discontinue services purchased via the interconnection agreement, but it does not address *what* should happen to effectuate a discontinuance after Commission approval. That section 5.4.3 makes no mention of KTF's retail customers further underscores its limited relevance to the discontinuance process. As a result, consideration of section 5.4.3 should be limited to determining whether CenturyLink appropriately brought a payment dispute relating to interconnection agreement services to the Commission's attention.

Importantly, even if section 5.4.3 governed the discontinuance process for services purchased under the interconnection agreement, it is not applicable to those services KTF purchases from CenturyLink via other commercial agreements or tariffs. The Department

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> CenturyLink failed to file its interconnection agreement with KTF in this docket. This agreement also is more than 660 pages long. *See generally In re Joint Appl. for Approval of a Negotiated Agreement for Interconnection & Resale Between KTF Telcom, Inc. & Qwest Corp.*, Docket No. P6312, 421/IC-03-1802, Initial Filing (Nov. 12, 2003) (eDocket No. 1609271). It is unclear whether another provision might, in CenturyLink's view, address discontinuance procedures.

understands that KTF does purchase services from CenturyLink under these types of arrangements.<sup>14</sup> Each commercial transaction is governed by its own terms.<sup>15</sup> A termination provision in the interconnection agreement cannot be used to seek Commission permission to terminate services purchased under a separate arrangement.

Ultimately, regardless of whether a physical connection or service subject to Commission jurisdiction is purchased under the interconnection agreement, a tariff, or some other commercial agreement, CenturyLink may not terminate it without Commission approval.<sup>16</sup> And, if discontinuance is approved, the Commission may set the notice procedures for retail customers.

## **2. Public Convenience Requires Continuance Unless Retail Customers Are Protected**

If CenturyLink is permitted by section 5.4.3 to bring this dispute to the Commission, then the discontinuance decision and notice process (i.e., what should happen next) are guided by state law and rules. Chapter 237 and Commission rules require the Commission and Department to assess whether “public convenience requires the continuance of the physical connection.”<sup>17</sup> After reviewing the Department’s public convenience assessment, the Commission may decide whether to “fix the compensation, terms and conditions of the continuance of the physical

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<sup>14</sup> Attach. A., CenturyLink Responses to Information Requests Nos. 1–3 (Sept. 21, 2020).

<sup>15</sup> It is possible that these separate contracts cross-reference and incorporate section 5.4.3 into each other. CenturyLink, however, has not asserted that such an arrangement exists.

<sup>16</sup> See Minn. Stat. §§ 237.74, subd. 9, 237.12, subd. 2; Minn. R. 7812.2210. The Department notes that Minnesota Rule 7812.2210, subp. 11, is applicable to CenturyLink, given that CenturyLink operates under market regulation pursuant to Minn. Stat. § 237.025 (2018). Minnesota Rule 7812.2210, subpart 11, requires Commission approval before discontinuing a service or physical connection if end users would be deprived of service.

<sup>17</sup> Minn. Stat. §§ 237.74, subd. 9, 237.12, subd. 2; see also Minn. R. 7812.2210, subp. 11 (requiring Commission approval before disconnection).

connection.”<sup>18</sup> The Department recommends that the Commission similarly consider public convenience when crafting a discontinuance notice process.<sup>19</sup>

If the Commission decides that public convenience does not require the continuance of the physical connection, it is important that an orderly transition occur that protects KTF’s retail customers from losing service during a public health emergency.<sup>20</sup> The Department notes that all school districts across the state are required to offer remote learning in accordance with relevant state guidance and that all Minnesotans are encouraged to work from home where possible.<sup>21</sup> In light of these factors, the Department finds that public convenience requires the continuance of the physical connection unless CenturyLink is willing and able to continue providing the full range of retail services currently offered by KTF. 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

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<sup>18</sup> *Id.*

<sup>19</sup> Crafting notice processes that consider public convenience likely would be consistent with the with the Commission’s mandates to support universal service and maintain service quality. Minn. Stat. § 237.011(1), (5) (2018) (listing telecommunication goals that the Commission must consider).

<sup>20</sup> Emerg. Exec. Order No. 20-01 (Mar. 13, 2020) (declaring a peacetime emergency). All of Minnesota’s Emergency Executive Orders regarding COVID-19 are available online at [www.leg.state.mn.us/lrl/execorders/eoresults?gov=44](http://www.leg.state.mn.us/lrl/execorders/eoresults?gov=44).

<sup>21</sup> Emerg. Exec. Order No. 20-82 ¶ 4 (July 30, 2020) (“[A]ll districts and charter schools must offer a distance learning model that meets the educational needs of all students of families who choose not to receive in-person instruction.”); Emerg. Exec. Order No. 20-74 ¶ 7(a) (June 5, 2020) (“Any worker who can work from home must do so.”).

physical connection” and recommends that “the commission shall fix the compensation, terms, and conditions of the continuance of the physical connection.”<sup>22</sup>

### **B. Information Services Analysis Impact**

The second Supplemental Notice question asks how KTF’s provision of internet access and voice over internet protocol service to its end user customers affects the analysis in this docket.<sup>23</sup> The Commission’s authority over the wholesale services that CenturyLink provides to KTF via interconnection agreement, commercial agreement, and tariff, are independent from the Commission’s authority over the retail services that KTF provides to its customers. The Department understands that CenturyLink is not challenging the Commission’s jurisdiction over the wholesale services that CenturyLink provides to KTF. The Commission clearly does have jurisdiction.<sup>24</sup>

The Department agrees with CenturyLink that the Commission does not regulate information services. The internet services provided by KTF are classified as information services. The Department, however, is uncertain about whether the voice service that KTF has represented as voice over internet protocol (VoIP) service requires a net protocol conversion to terminate calls on the public switched telephone network (PSTN), in a manner similar to Charter Advanced Services. If KTF voice calls destined for the PSTN undergo a net protocol

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<sup>22</sup> Minn. Stat. §§ 237.74, subd. 9, 237.12, subd. 2.

<sup>23</sup> Supplemental Notice at 1.

<sup>24</sup> CenturyLink Reply Comments at 4 (acknowledging the Commission’s authority over wholesale connections); Attach. A., CenturyLink Response to Information Request No. 4 (Sept. 21, 2020).

conversion, like voice calls by Charter Advanced customers, then its VoIP services would be classified as an information service.<sup>25</sup>

Regardless, the classification of KTF's retail services is not relevant to the Commission's authority over the wholesale services CenturyLink provides to KTF. The Department is not asking the Commission to either regulate an information service, or to determine the classification of KTF's voice service. Instead, the Department is asking the Commission to consider how public convenience will be impacted by discontinuance of a physical connection that supports a range of retail services. Nothing in the physical connection discontinuance statutes limits the Commission's analysis to telecommunications services.<sup>26</sup> Accordingly, the Department's initial comments noted:

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. For the provision of voice service, as the incumbent telephone company, CenturyLink may be the only provider available to customers. . . . [However,] if CenturyLink is unavailable to provide internet service, it is unclear whether there are viable internet service alternatives to the existing KTF customers.<sup>27</sup>

To be clear, the Department agrees that the Commission does not regulate any information services offered by KTF. The Department also agrees that the Commission cannot require CenturyLink to provide an information service to retail customers absent some express statutory authorization. However, the Commission should consider that KTF does provide those services and that these retail customers may not have a viable alternative for internet service. Nothing in

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<sup>25</sup> See *Charter Advanced Servs., LLC v. Lange*, 903 F.3d 715, 718 (8th Cir. 2018); *Minn. Pub. Utils. Comm'n. v. FCC*, 483 F.3d 570, 580 (8th Cir. 2007); see also 47 U.S.C. § 153(24) (2018) (defining "information service").

<sup>26</sup> Minn. Stat. §§ 237.74, subd. 9, 237.12, subd. 2; see also Minn. R. 7812.2210, subp. 11 (requiring Commission approval before disconnection).

<sup>27</sup> Dep't Initial Comments at 4–5.

Minn. Stat. §§ 237.12, subd. 2, 237.74, subd. 9, directs the Commission to ignore the full range of services facilitated by the “physical connection” as it assesses whether public convenience requires continuance.<sup>28</sup> Nothing prevents CenturyLink, moreover, from voluntarily offering services currently provided by KTF in order to flip the public convenience analysis in its favor.

### C. Customer Notice Plans

The third Supplemental Notice question asks whether there are other retail customer notice plans either from prior dockets or other states that are helpful or instructive to this docket.<sup>29</sup> At this time, the Department is unable to identify other notice plans that are particularly instructive in this matter. In a more relevant docket, *In the Matter of Three Petitions to Discontinue Service to Access Plus*, the Department found that the Commission prohibited local exchange carriers from terminating service with a long-distance carrier until all customers had chosen new permanent service providers.<sup>30</sup> While researching this issue, the Department also found that it was common for parties to reach a compromise before the Commission was required to ultimately resolve the matter.<sup>31</sup>

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<sup>28</sup> *In re Compl. & Request for Expedited Hearing of Neutral Tandem, Inc., Against Level 3 Commc'ns, LLC*, Docket No. P-5733/C-07-296, ORD. REAFFIRMING JURISDICTION, DENYING DISCONNECTION, & ESTABLISHING TERMS FOR CONTINUED CONNECTION at 8–9 (Mar. 24, 2008) (eDocket No. 5029183) (finding that Telecommunications Act of 1996 does not preempt the MPUC from regulating the severance of physical connections).

<sup>29</sup> Supplemental Notice at 1.

<sup>30</sup> Docket No. P-999/CI-92-1061, ORD. PERMITTING DISCONTINUANCE OF SERVICE, REQUIRING 30-DAY WAIVER OF NONRECURRING CHARGES, & REQUIRING ACCESS PLUS TO SHOW CAUSE at 6–7 (Sept. 4, 1992) (eDocket No. 403380).

<sup>31</sup> *See, e.g., In re Compl. by Rochester Telecom Sys. Against Norlight, Inc. & Norlight Telecommc'ns Inc. Regarding Bus. Pracs.*, Docket No. P-5041, 6660, 480/C-09-427, ORD. APPROVING SETTLEMENT AGREEMENT, REQUIRING COMPLIANCE, & CLOSING DOCKET (Aug. 13, 2009) (eDocket No. 20098-40745-01); *In re Qwest's Formal Compl. & Request for Comm'n Action Against Redwood Cty. Telephone Co.* Docket No. P-421, 424/M-08-700, ORD. APPROVING SETTLEMENT & DISMISSING DOCKETS (May 12, 2009) (eDocket No. 20095-37431-01).

Given the lack of established past practice, in the event the Commission finds that continuance of the service is not required for the public convenience, the Department recommends that the Commission adopt the notice plan articulated in the Department’s Initial Comments:

<b>Day</b>	<b>Event</b>
Day 1	Commission Order
Day 11	KTF provides a draft notice to the Consumer Affairs Office for approval. 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>○ A link to the local carrier look-up on the Commission’s website.</li> </ul>
Day 14	CAO approves notice.
Day 21	KTF mails notice and provides customers 60 days 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. <sup>32</sup>

In the post-1996 Telecommunications Act era, the Commission has recognized “customer notification of impending disconnection is now more important than ever. . . . In the past customers facing disconnection were typically dealing with payment issues; there was no issue

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<sup>32</sup> Dep’t Initial Comments at 5–6.

as to which company would serve once those were resolved. In the competitive era, a customer . . . could be facing the need to do a significant amount of ‘comparison shopping’ before selecting another carrier.”<sup>33</sup> This, of course, assumes that another provider exists. In this instance, where customers may have no other options, a robust notice plan is even more important, so that creative solutions might be developed.

Finally, even if there was an established past practice, the facts in this case are distinguishable. There simply has not been a global health crisis that required the continuance of physical connections since the current regulatory scheme was established. As a result, the Department recommends:

- (1) The Commission 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.

#### **D. Other Issues**

The fourth Supplemental Notice question asks whether there other issues or concerns related to this matter that should be considered.<sup>34</sup> The Department is not aware of any other issues or concerns relating to this matter that should be brought to the Commission’s attention at this time.

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<sup>33</sup> *In re Joint Appl. of KMC Telecom Inc. & U.S. WEST Commc’ns, Inc. for Approval of an Interconnection Agreement*, Docket No. P-5426, 421/M-97-850, ORD. REJECTING INTERCONNECTION AGREEMENT at 3 (Aug. 13, 1997) (eDocket No. 1296962).

<sup>34</sup> Supplemental Notice at 1.

### III. RECOMMENDATIONS

The Department recommends that the Commission adopt either Option No. 1 or No. 2, as shown in Section II(C), for the reasons discussed in the Department's above supplemental comments.

Dated: September 30, 2020

Respectfully submitted,

Keith Ellison  
State of Minnesota  
Attorney General

**/s/ Richard Dornfeld**  
RICHARD DORNFELD  
Assistant Attorney General  
Attorney Reg. No. 0401204

445 Minnesota Street, Suite 1400  
St. Paul, MN 55101-2131  
(651) 757-1327 (Voice)  
(651) 297-1235 (Fax)  
richard.dornfeld@ag.state.mn.us

ATTORNEY FOR MINNESOTA  
DEPARTMENT OF COMMERCE