

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
CenturyLink Communications, LLC  
Damage Prevention Enforcement**

**Case No. PU-17-477**

**ORDER ON CONSENT AGREEMENT**

**June 13, 2018**

**Preliminary Statement**

On December 7, 2017, the Commission received a ND One-Call Complaint from Don Frye, ND One Call Board President (Complainant) alleging a violation by CenturyLink Communications, LLC (CenturyLink) of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

On December 11, 2017, the Commission sent a letter to CenturyLink enclosing the ND One-Call Complaint.

On January 2, 2018, CenturyLink responded to the ND One-Call Complaint.

On May 24, 2018, the Public Service Commission Advocacy Staff (Advocacy Staff) and CenturyLink filed a Consent Agreement for the resolution of the complaint.

**Discussion**

CenturyLink Communications, LLC is a foreign business corporation authorized to do business in North Dakota with offices located at 100 CenturyLink Dr, Monroe, LA, 71203.

Complainant alleges violations by CenturyLink of North Dakota Century Code section 49-23-04(6)(n) for failure to provide positive response to the notification center once it had completed marking the excavation area or determined there are no facilities in the area identified in the ticket. The Complaint did not identify damage to an underground facility.

North Dakota Century Code section 49-23-04(6)(n) provides that "An operator that has completed marking of the excavation area or has determined there are no facilities in the area identified in the ticket shall provide positive response to the notification center in compliance with the notification center's procedures established under subsection 5 for assuring positive response from operators."

As a result of its investigation, Advocacy Staff concluded that CenturyLink violated North Dakota Century Code section 49-23-04(6)(n) Positive Response 25,701 times between August 1, 2017 and December 20, 2017.

CenturyLink and Advocacy Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to avoid further administrative proceedings or litigation.

Under the Consent Agreement, CenturyLink agrees to be assessed a civil penalty of \$25,000. CenturyLink agrees to remit \$10,000 of the \$25,000 payable to the North Dakota Public Service Commission, within ten business days of service of this Order Adopting Consent Agreement (Order). The remaining \$15,000 civil penalty is suspended on the condition that CenturyLink commits no further violations of North Dakota Century Code section 49-23-04(6)(n) within five years of the date of the Order.

Having considered this matter, the Commission finds the Consent Agreement filed on May 24, 2018, is reasonable and acceptable. Therefore, the Commission issues the following:

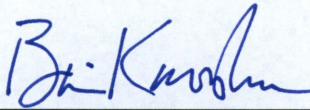
### **Order**

The Commission Orders:

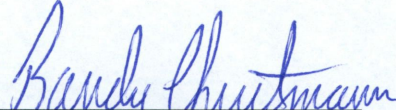
1. CenturyLink violated North Dakota Century Code section 49-23-04(6)(n).
2. The Consent Agreement filed by CenturyLink and Advocacy Staff on May 24, 2018, is approved. A copy of the Consent Agreement is attached to and made a part of this Order.
3. CenturyLink is assessed a civil a penalty of \$25,000.
4. CenturyLink shall remit \$10,000 civil penalty, payable to the North Dakota Public Service Commission within ten business days of service of this Order. The remaining \$15,000 civil penalty is suspended on the condition that CenturyLink commits no further violations of North Dakota Century Code section 49-23-04(6)(n) within five years of the date of this Order.
5. In the event the Commission finds CenturyLink violated North Dakota Century Code section 49-23-04(6)(n) within five years of the date of this Order, CenturyLink shall

remit the suspended portion of the penalty, \$15,000, within the time ordered by the Commission and in addition to any penalties assessed for the subsequent violation.

**PUBLIC SERVICE COMMISSION**



**Brian Kroshus**  
Commissioner



**Randy Christmann**  
Chairman



**Julie Fedorchak**  
Commissioner



Having investigated the alleged violations, Staff has concluded that CenturyLink violated Positive Response 25,701 times between August 1, 2017 and December 20, 2017.

CenturyLink and Staff engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving this administrative action, Staff and CenturyLink agree to the following, subject to the approval and acceptance of the Commission:

1. CenturyLink violated North Dakota Century Code section 49-23-04(6)(n) in Case No. PU-17-477 25,701 times by failing to provide positive response to the notification center once it had completed marking the excavation area or determined there are no facilities in the area identified in the tickets.
2. CenturyLink agrees to be assessed a civil penalty of \$25,000. CenturyLink agrees to remit \$10,000 of the \$25,000, payable to the North Dakota Public Service Commission within ten business days of service of an Order Adopting Consent Agreement (Order). The remaining \$15,000 civil penalty is suspended on the condition that CenturyLink commits no further violations of North Dakota Century Code 49-23-04(6)(n) within five years of the date of the order.
3. In the event the Commission finds CenturyLink violated N.D.C.C. § 49-23-04(6)(n) within five years of the date of the Order, CenturyLink shall remit

the suspended portion of the penalty, \$15,000, within the time ordered by the Commission, in addition to any additional fines or penalties imposed for the subsequent violation.

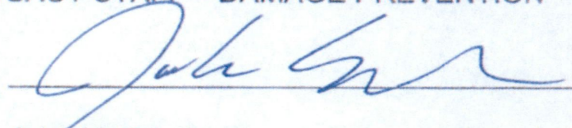
4. If within five years of the date of the Order there is no subsequent violation of the N.D.C.C. § 49-23-04(6)(n) by CenturyLink, the suspended portion of the penalty, \$15,000, is withdrawn.
5. CenturyLink's compliance with the requirements in this Consent Agreement is contingent upon it receiving accurate login and password information from the One Call Center. If a change is made to the One Call Center's login and password information, CenturyLink will not be in violation of this Consent Agreement unless there is a showing that the correct login and password information was provided to CenturyLink.
6. CenturyLink consents to the filing of the Consent Agreement and an Order Adopting this Consent Agreement (Order) and hereby waives any further procedural requirements with respect to its issuance. Subject to approval of the Order, CenturyLink understands and agrees to waive all rights to contest the violations, the right to be represented by counsel, the right to present evidence and arguments to the Commission, the right to cross examine witnesses, or contest the validity of this Consent Agreement and the Order, including all rights to administrative or judicial hearings or appeals.

7. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and the Order.
8. This agreement may be executed in counterparts and duplicate copies, each which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.
9. The undersigned is authorized to act on behalf of CenturyLink and bind CenturyLink for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 24<sup>th</sup> day of May, 2018.

PUBLIC SERVICE COMMISSION  
ADVOCACY STAFF – DAMAGE PREVENTION

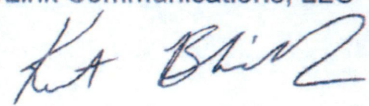
By: \_\_\_\_\_

  
John M. Schuh  
Advocacy Counsel  
12<sup>th</sup> Floor, Dept. 408  
600 Boulevard Ave.  
Bismarck, ND 58505-0480

Dated this 24th day of May, 2018.

CenturyLink Communications, LLC

By: \_\_\_\_\_

  
Kent Blickensderfer  
State Legislative Affairs Director  
220 N 5<sup>th</sup> Street  
Bismarck, ND 58501

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24th day of May, 2018, the original and seven copies of the attached were served upon the following party:

Mr. Darrell Nitschke  
Executive Secretary  
North Dakota Public Service Commission  
600 East Boulevard Avenue, 12<sup>th</sup> Floor  
Bismarck, ND 58505-0480

and copies sent electronically, addressed to the following:

Kent P. Blickensderfer  
State Legislative Affairs Director  
CenturyLink  
220 North 5<sup>th</sup> Street  
Bismarck, ND 58501  
[Kent.blickensderfer@centurylink.com](mailto:Kent.blickensderfer@centurylink.com)

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Dianne Barthel