

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

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

**Case No. PU-18-201**

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

**Case No. PU-18-308**

**ORDER ON CONSENT AGREEMENT**

**February 26, 2019**

**Preliminary Statement**

On June 14, 2018, the Commission received a ND One-Call Complaint from Danny Haller, Extreme Underground HDD LLC (EUH) alleging a violation by CenturyLink Communications, LLC (CenturyLink) of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System, Case No. PU-18-201.

On June 18, 2018, the Commission sent a letter to CenturyLink enclosing the June 14, 2018 ND One-Call Complaint.

On June 29, 2018, CenturyLink filed a response to the June 14, 2018 ND One-Call Complaint.

On August 17, 2018, the Commission received a ND One-Call Complaint from Darryl Heim, Bob's Oil Field Service, Inc. (BOFS) alleging a violation by CenturyLink Communications, LLC (CenturyLink) of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System Case No. PU-18-308

On August 20, 2018, the Commission sent a letter to CenturyLink enclosing the August 17, 2018 ND One-Call Complaint.

On September 4, 2018, CenturyLink filed a response to the August 17, 2018 ND One-Call Complaint.

On February 8, 2019, a Consent Agreement among Public Service Commission Advocacy Staff (Advocacy Staff) and CenturyLink was filed for the resolution of the complaints.

**Discussion**

Extreme Underground HDD LLC is a limited liability company with office(s) located at 1661 I94 Business Loop E, Dickinson, North Dakota 58602.

Bob's Oil Field Service, Inc. is a North Dakota business corporation with office(s) located at 3364 Hwy 85 N, Belfield, North Dakota 58622.

In Case No. PU-18-201, EUH alleges violations by CenturyLink of North Dakota Century Code section 49-23-04(6)(n) for providing positive response to the notification center prior to completing marking of the excavation area. The Complaint indicated there was no damage to an underground facility.

In Case No. PU-18-201, BOFS alleges violations by CenturyLink of North Dakota Century Code section 49-23-04(6)(n) for providing positive response to the notification center prior to completing marking of the excavation area. 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) in Case No. PU-18-201 and Case No. PU-18-308.

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 \$5,000 in Case No. PU-18-201 and \$5,000 in Case No. PU-18-308, for a total of \$10,000 payable to the North Dakota Public Service Commission, within ten business days of service of this Order on Consent Agreement (Order).

Having considered this matter, the Commission finds the Consent Agreement filed on February 8, 2019, is reasonable and acceptable. Therefore, the Commission issues the following:

### **Order**


The Commission Orders:

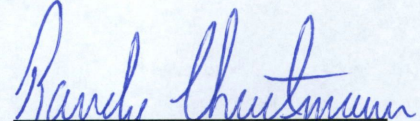
1. CenturyLink violated North Dakota Century Code section 49-23-04(6)(n).

2. The February 8, 2019 Consent Agreement of CenturyLink and Advocacy Staff 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 \$10,000.
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.

**PUBLIC SERVICE COMMISSION**

  
Julie Fedorchak  
Commissioner

  
Brian Kroshus  
Chairman

  
Randy Christmann  
Commissioner

**BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA**

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<b>PUBLIC SERVICE COMMISSION,</b>	)	
	)	
<b>Complainant,</b>	)	<b>Case No. PU-18-201</b>
	)	<b>PU-18-308</b>
<b>vs.</b>	)	
	)	<b>CONSENT AGREEMENT</b>
<b>CenturyLink Communications, LLC,</b>	)	
	)	
<b>Respondent .</b>	)	

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**Preliminary Statement**

This Consent Agreement is entered into by and between CenturyLink Communications LLC (CenturyLink) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket Nos. PU-18-201 and PU-18-308.

On June 14, 2018, the Commission received a ND One-Call Complaint from Danny Haller at Extreme Underground HDD, LLC under Case No. PU-18-201. The complaint alleged a violation by CenturyLink of North Dakota Century Code section 49-23-04(6)(n) for providing positive response to the notification center prior to completing marking of the excavation area. 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."

On August 17, 2018, the Commission received a ND One-Call Complaint from Darryl Heim at Bob's Oil Field Service, Inc. under Case No. PU-18-308. The complaint alleged a violation by CenturyLink of North Dakota Century Code section 49-23-04(6)(n) for providing positive response to the notification center prior to completing marking of the excavation area.

Having investigated the alleged violations, Staff has concluded that CenturyLink violated North Dakota Century Code section 49-23-04(6)(n) in Case Nos. PU-18-201 and PU-18-308.

CenturyLink and Staff engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of these proceedings 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 Nos. PU-18-201 and PU-18-308 by providing positive response to the notification center prior to completing marking of the excavation area.
2. CenturyLink agrees to be assessed a civil penalty of \$5000 in Case No. PU-18-201 and \$5000 in Case No. PU-18-308 for a total of \$10,000, payable to the North Dakota Public Service Commission within ten business days of service of an Order Adopting Consent Agreement (Order).
3. CenturyLink consents to the filing of the Consent Agreement and an Order and

hereby waives any further procedural requirements with respect to its issuance. Subject to 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 Order Adopting this Consent Agreement, including all rights to administrative or judicial hearings or appeals.

4. Centurylink and Staff agree that the intent of the penalty suspended in Case No. PU-17-477 was for Centurylink to ensure a properly functioning positive response system as it relates to the notification center and did not contemplate the violation contained within the captioned cases. Centurylink and Staff agree that the \$15,000 penalty suspended on 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 June 13, 2018 Commission Order in Case No. PU-17-477 will continue to be suspended. However, If Centurylink commits any type of future violation of North Dakota Century Code section 49-23-04(6)(n) within five years of June 13, 2018, Commission Order, Centurylink shall remit the suspended penalty, \$15,000, within the time ordered by the Commission, in addition to any additional fines or penalties imposed for the subsequent violation.
5. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Agreement and Order.
6. 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.

7. 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 8<sup>th</sup> day of February, 2018 2019

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 6<sup>th</sup> day of February, 2018 2019

CenturyLink Communications, LLC

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

Kent Blickensderfer  
State Legislative Affairs Director  
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Julie Darrington

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