

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

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

Case No. DM-22-325

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	
)	
vs.)	CONSENT AGREEMENT
)	
)	
CenturyLink Communications, LLC)	
)	
Respondent.)	

This Consent Agreement is entered into by and between CenturyLink Communications LLC (CenturyLink) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case No. DM-22-325.

Discussion

On July 13, 2022, the Commission received a North Dakota One-Call Complaint from Larry Larson. The complaint alleges a violation by CenturyLink of N.D.C.C. § 49-23-03(3)(b) of the One-Call Excavation Notice System by failing to update the information provided to the notification center on a timely basis.

On June 30, 2022, Mr. Larson provided an excavation notice to the North Dakota One-Call Notification Center (NDOC) with a work begin date of July 7, 2022. NDOC assigned ticket number 22064543 to the excavation notice, which indicated the type of work to be performed was “install anchors for a portable gazebo.” Mr. Larson noted the

ticket did not list a telephone company under the members notified; however, he recalled a telephone line being located on a locate request he submitted four years earlier.

Mr. Larson contacted NDOC and was informed they had no telephone company on record to add to the locate request, but if Mr. Larson knew the name of the company, NDOC could add them.

Shortly after June 30, 2022, Mr. Larson contacted Staff requesting assistance. Staff located ticket number 18077361 within the NDOC "Search & Status" system for North Dakota with an original call date of July 7, 2018. Ticket number 18077361 was placed by Mr. Larson and it encompassed approximately the same locate area as ticket number 22064543. Furthermore, ticket number 18077361 identified CenturyLink as the telephone operator and showed CenturyLink located and marked their facility on July 10, 2018.

On July 8, 2022, Mr. Larson provided a second excavation notice to NDOC with a work begin date of July 13, 2022, and requested CenturyLink be added to the ticket. NDOC updated the original ticket number from 22064543 to 22069524 and added CenturyLink.

On July 12, 2022, CenturyLink located and marked their facility under ticket number 22069524.

On July 26, 2022, Staff issued a letter informing CenturyLink of Mr. Larson's complaint filing. Additionally, Staff contacted NDOC to determine why CenturyLink was not included as an operator on ticket number 22064543. NDOC provided a map showing that Mr. Larson's property is located outside what NDOC has on file for CenturyLink's notification area.

On August 22, 2022, CenturyLink responded to Staff's request affirming CenturyLink located their facilities in response to ticket number 22069524, acknowledged that CenturyLink was not included on ticket number 22064543, but failed to address why CenturyLink was not identified on the original locate request, ticket number 22064543.

On October 26, 2022, Staff requested additional information from CenturyLink as to why NDOC did not have the most current CenturyLink underground facility information.

On November 16, 2022, CenturyLink responded to Staff's request for additional information stating "This particular facility was initially identified as aerial in our systems and that would not require a utility locate. . . .As a result of Mr. Larson's inquiry CenturyLink conducted further investigation and review of the site including an onsite review. At that time it was noted that the facility was buried and not aerial." Additionally, CenturyLink indicated that maps have been updated to reflect the information.

Violation 1. Failure to Maintain NDOC System Information

N.D.C.C. 49-23-03(3) states an operator shall participate in and share the costs of the one-call excavation notice system. N.D.C.C. § 49-23-03(3)(b) states participation includes updating the information provided to the notification center on a timely basis.

CenturyLink violated N.D.C.C. § 49-23-03(3)(b) by failing to ensure NDOC had accurate and current system information.

Agreement

The Parties engaged in good faith settlement discussions resulting in this Consent Agreement. Staff's records indicate this was CenturyLink's first violation and since CenturyLink agreed to their culpability, the matter resulted in a reduced penalty amount. 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, the Parties agree to the following, subject to the approval and acceptance of the Commission:

1. CenturyLink violated N.D.C.C. § 49-23-03(3)(b) by failing to ensure NDOC had accurate and current system information.
2. CenturyLink agrees to be assessed a civil penalty of \$2,000, payable to the North Dakota Public Service Commission within ten (10) business days of service of an Order accepting or approving the Consent Agreement.
3. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in this case.
4. CenturyLink consents to the filing of the Consent Agreement and an Order and hereby waives any further procedural requirements with respect to the Order's issuance. Provided the Commission adopts this Consent Agreement and issues an Order consistent with it, CenturyLink understands and agrees to waive all rights to contest the violation, 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, including all rights to administrative or judicial hearings or appeals.
5. For purposes of the identification requirement of Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), the performance is restitution, remediation, or an amount paid to come into compliance with the law. Accordingly, CenturyLink agrees to provide the Commission with a U.S. Department of the Treasury Internal Revenue Service Form W-9 for this purpose.

6. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.
7. 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.
8. 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 25th day of April, 2023

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By:  _____

Brian Johnson
Special Assistant Attorney General Bar ID 07397
North Dakota Public Service Commission
600 East Boulevard Avenue Dept. 408
Bismarck, ND 58505
701-328-2407

Dated this 31st day of March, 2023

CenturyLink Communications LLC

By:  _____

Jason Topp, Counsel

Crockford, Konrad S.

From: Topp, Jason D <Jason.Topp@lumen.com>
Sent: Friday, March 31, 2023 08:54
To: Crockford, Konrad S.
Cc: Schriener, Andrew
Subject: Fwd: CenturyLink Damage Prevention Consent Agreement
Attachments: Century Link Consent Agreement 03-24-2023.pdf

***** **CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. *****

Conrad

My signature is on the document. To avoid issues with unlicensed practice, I would like my title to read:

Assistant General Counsel (not licensed in North Dakota and not in Attorney role for this agreement)

Otherwise, I could have Andy Schriener sign the document.

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From: Barthel, Dianne <Dianne.Barthel@lumen.com>
Sent: Wednesday, March 29, 2023 10:10:44 AM
To: Topp, Jason D <Jason.Topp@lumen.com>
Subject: RE: CenturyLink Damage Prevention Consent Agreement

Consent agreement with your signature

From: Anderson, Kristofer <Kristofer.Anderson@lumen.com>
Sent: Monday, March 27, 2023 10:51 AM
To: Barthel, Dianne <Dianne.Barthel@lumen.com>
Cc: Giles, Brad <Brad.Giles@lumen.com>; Ardoyno, John <John.Ardoyno@lumen.com>; Schriener, Andrew <Andrew.Schriener@lumen.com>; Topp, Jason D <Jason.Topp@lumen.com>
Subject: FW: CenturyLink Damage Prevention Consent Agreement

Ticket can be found at:

<https://www.searchandstatus.com/ndrecApp/ticketSearchAndStatus.jsp?enc=nmMcANVMW1NSJgQVaVqTkkk0eLcObC/Muo1Ggf1nHo8=>

Ticket # 22064543