

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

BEK Communications Cooperative
Valley City Exchange
Public Convenience & Necessity

Case No. PU-25-285

BEK Communications Cooperative
Designated Eligible Carrier Application

Case No. PU-25-286

Reply Comments of BEK Communications Cooperative

This Commission has twice granted rural incumbent local exchange carriers authority to provide telecommunications service inside overbuilt North Dakota exchanges of CenturyLink Communications, LLC (“CenturyLink”), and has further granted authority to include those exchanges in the carriers’ respective study areas. Now, for the first time, CenturyLink questions the Commission’s jurisdiction in the instant proceeding.¹ The Comments conclude that BEK’s petition should be rejected or should be subject to a hearing on the merits, including CenturyLink’s jurisdictional argument.

CenturyLink’s jurisdictional argument is contrary to this Commission’s established precedent and, moreover, there is no conflict between the exercise of jurisdiction by the Commission and the FCC with respect to section 251(h)(2) of the Communications Act of 1934, as amended (47 U.S.C. § 251(h)(2)). This Commission’s Orders are separable and therefore not subject to FCC preemption jurisdiction.² Perhaps most importantly, the Commission’s authority to reassign CenturyLink’s exchanges is squarely in the Commission’s police power jurisdiction under the Tenth Amendment of the U.S. Constitution and the Commission’s own statutory authority. These points are discussed in order.

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¹ See CenturyLink Communications, LLC Comments, filed December 31, 2025.

² See *La. Pub. Svc. Comm'n v. FCC*, 476 U.S. 355, 368; 106 S. Ct. 1890, 1898; 90 L. Ed. 2d 369, 381 (1986).

I. The Commission’s Prior Orders Support Grant of BEK’s Application Here

As noted, CenturyLink argues that this North Dakota Commission has no jurisdiction to grant BEK’s requested relief based upon North Dakota law and the Communications Act. Specifically, it argues that there is no legal authority for this Commission to designate BEK as an Incumbent Local Exchange Carrier (“ILEC”), citing Section 251(h)(2) of the Communications Act. CenturyLink Comments, (pp. 2-3) refers to the FCC as the “Commission”, (having ILEC designation authority in section 251(h)), which CenturyLink concludes thus deprives this Commission from the authority to designate BEK an ILEC. *Id.*

As a threshold matter, this Commission has already decided it possesses the authority CenturyLink now challenges. In Case Nos. PU-24-386/387 and PU-25-185/190, the Commission applied its certificate authority to grant materially identical relief — approving applications for incumbent LEC telecommunications service in CenturyLink exchanges, relinquishing those exchanges from CenturyLink’s study area, and granting ETC designation. Those orders represent this Commission’s considered interpretation of its own statutory authority. CenturyLink’s Comments do not engage with the reasoning of those orders or explain why they were incorrectly decided. CenturyLink cites Section 251(h)(2) and *Charter Advanced Services* but does not address why the Commission’s analytical framework — applying Section 251(h) criteria as a yardstick within its own certificate authority — was an error. That CenturyLink, directly affected as a party, raised no jurisdictional objection in either prior proceeding is not merely a question of timeliness. It is evidence that the argument lacks merit. If CenturyLink’s jurisdictional theory were correct, it would have had every incentive and opportunity to raise it when its own exchanges were being relinquished. Its decision to raise the argument now, in the third such proceeding, suggests a position of litigation convenience rather than legal conviction. As discussed below, the Commission’s prior orders were correctly decided, grounded in the U.S.

Constitution, the Commission's own statutory authority, and the complete absence of intrusion into the federal sphere.

II. The Constitutional and Statutory Roots of Commission Authority

As the Commission is aware, CenturyLink has essentially abandoned the Valley City exchanges in a way that directly implicates public safety. Exhibit 9 to BEK's Application for Expansion of Eligible Telecommunications Carrier Designation contains a number of photographs of Lumen's outside plant in its Valley exchange. Four of these photographs depict network pedestals, open to the weather, with visible wiring. BEK affirmatively states that at least some of these pedestals are still powered and could be accessible to children. See Exhibit 9; Affidavit of Derrick Bulawa. Other photographs show aerial wire actually hanging from the telephone poles into the public streets or fields and in a general state of neglect.

The Commission's authority to address these hazards is rock solid. The Tenth Amendment of the U.S. Constitution reserves Police Power to the states. Such Police Power includes the maintenance of public safety. State agencies with jurisdiction on this subject include state regulatory commissions.³ In North Dakota, the state legislation has entrusted this Commission with the maintenance of public safety for public utility operations, which includes telecommunications. See, N.D.C.C. sections 49-02-01(2) and 49-04-01, establishing jurisdiction over safety of public utilities and defining telecommunications within that category.

In the previous two cases decided by the Commission involving CenturyLink's overbuilt exchanges, the lack of maintenance and repair have been placed before the Commission and are

³ The Tenth Amendment reserves to the States the general police power, including the authority to protect the health, safety, and welfare of their citizens. *See Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996); *United States v. Lopez*, 514 U.S. 549, 566 (1995). Regulation of public safety infrastructure through state commissions is a paradigmatic exercise of that retained sovereign authority.

essentially un rebutted. BEK now respectfully requests the issuance of a public safety finding in the Commission's final order. Specifically, BEK requests a finding that, based on the evidence, Lumen's relinquishment of the Valley City exchange is justified on grounds of public safety, in addition to service considerations already present in this record.

III. This Commission's Application of the Section 251(h)(1) and (2) Standard Is Not Preempted

CenturyLink spills much ink in arguing this Commission's lack of jurisdiction over section 251(h) of the Communications Act. The argument would be correct if the Commission sought to bind CenturyLink for federal purposes, but that is not the case here. In the preceding two cases involving Griggs County Telephone and Red River Telephone Association, the Commission employed the "public interest, convenience and necessity" standard common to state regulatory law, together with elements of section 251(h) (for example), finding Griggs County Telephone Company to have "... occupied a market position" comparable to a legacy incumbent LEC. The Commission went on to: a) approve Griggs County's application for a certificate of "public convenience and necessity" to provide incumbent LEC telecommunications services in CenturyLink's Leonard and Kindred exchanges; b) order that the Leonard and Kindred exchanges were "relinquished" from CenturyLink's study area and added to Griggs County rural study area; and c) granted Griggs County's request for ETC designation in the Leonard and Kindred telephone exchanges.

Strikingly absent in the previous Orders relinquishing CenturyLink exchanges is any North Dakota pretension to set interstate rates or to assert powers reserved to the FCC. A true analysis of this Commission's actions thus far, and as requested here is the use of section 251's statutory elements as a yardstick (along with public safety concerns) to amend CenturyLink's Certificate of Convenience and Public Necessity – all entirely within the Commission's organic,

statutory authority. CenturyLink’s analysis is only about labels – and not the effect the previous orders actually have. Neither field preemption nor conflict preemption is implicated. The Commission has not entered the federal field of ILEC designation; it has exercised its own certificate authority using Section 251(h)’s criteria as an analytical framework, and nothing in its Orders prevents the FCC from independently exercising authority under Section 251(h)(2).

Indeed, in order to truly engage the study area mechanisms on the interstate side, BEK will need to file a section 251(h) Petition with the FCC and plans to do so. Assuming success, BEK will then need to take other federal steps to complete the process. And, at bottom, the FCC will have plenary jurisdiction over the matter, while no doubt, giving due consideration to the Commission's Orders on this subject; the factual development that this and other state commissions possess are relied upon from time to time by the FCC.

In sum, this Commission’s reliance section 251(h)’s standard and its incorporation of that analysis within its Order – all for purely intrastate purposes – is squarely within this Commission’s jurisdiction. The fact that public safety is so obviously at stake buttresses that conclusion.

IV. Scope of CenturyLink’s Opposition

CenturyLink’s comments significantly narrow the dispute before the Commission. CenturyLink does not oppose BEK’s request for ETC designation.⁴ CenturyLink states it “has no basis to question the fitness and ability of BEK to provide local exchange services.”⁵ The sole basis for CenturyLink’s opposition is its contention that the Commission lacks authority to designate BEK as an incumbent local exchange carrier and to relinquish CenturyLink’s certificate — a jurisdictional argument addressed above. On the merits, CenturyLink’s comments

⁴ CenturyLink Comments at 2, 6.

⁵ *Id.* at 2.

address only two substantive points: that BEK's reliance on National Broadband Map data is misplaced because the NBM reflects broadband rather than telecommunications service, and that CenturyLink has not abandoned telephone service to the exchange. Both points are addressed below.

a. CenturyLink's Characterization of the National Broadband Map Evidence Is Incorrect

CenturyLink contends that BEK's reliance on National Broadband Map data is misplaced because the NBM reflects broadband service availability rather than telecommunications service, and cites *Charter Advanced Services (MN), LLC v. Lange*, 903 F.3d 715 (8th Cir. 2018) for the proposition that broadband and telecommunications services are distinct. This argument mischaracterizes both the evidence and BEK's position. BEK does not argue that broadband service gaps alone constitute abandonment of telecommunications obligations. BEK's position is that CenturyLink's physical network does not reach a substantial portion of the Valley City Exchange, that voice service is not available at those unserved locations, and that the NBM data — corroborated by independent field verification, CenturyLink's own representations, and the record as a whole — demonstrates that CenturyLink is not furnishing service throughout the exchange as required under N.D.A.C. § 69-09-05-12.

The National Broadband Map data cited in BEK's application reflects CenturyLink's own certified filings to the FCC identifying the locations its physical plant can serve. When CenturyLink reports that it can serve only 2,456 of the 3,661 locations in the Valley City Exchange, it is representing the reach of its network infrastructure. These are not abstract broadband classifications; they are statements about where CenturyLink's facilities exist. The Commission is entitled to treat them as credible evidence of the state of CenturyLink's network,

particularly given that Broadband Data Collection filings are submitted under certification requirements and inform federal funding and regulatory decisions.

BEK has confirmed that voice service is also not available at sampled locations CenturyLink does not report as served on the NBM.⁶ BEK acknowledges that the NBM does not directly map voice availability, and that a carrier could theoretically provide voice through infrastructure or arrangements not reflected in broadband filings. However, BEK’s field verification demonstrates that this is not the case in the Valley City Exchange. CenturyLink’s own comments confirm as much: it describes its Connected Voice with Air-Line service — a VoIP product using 4G LTE backhaul — only in the context of the Leonard exchange, and states that it “currently has no plans to for a similar transition within the Valley City exchange.”⁷ CenturyLink has placed no alternative delivery mechanism on the record for this exchange. If voice service were available beyond CenturyLink’s copper plant footprint through some other facility or arrangement, CenturyLink — the party with exclusive knowledge of its own network — would be the one entity able to demonstrate that. Its silence on this point is significant.

CenturyLink states that it serves 276 voice lines and 85 broadband lines in the exchange.⁸ CenturyLink offers these figures as evidence that it has not abandoned the exchange. But CenturyLink does not assert that any of those 276 voice customers are located at the 1,205 locations it reports to the FCC as unserved and, absent any such assertion, CenturyLink confirms that these voice customers are, like its broadband customers, situated within the same limited portion of the exchange where its copper plant exists. CenturyLink provides no maps, no location-level data, and no description of facilities through which voice service is delivered

⁶ Application at ¶ 7 n.5.

⁷ CenturyLink Comments at 6.

⁸ CenturyLink Comments at 2.

beyond the NBM-reported footprint. BEK’s survey of the non-BEK market found only 84 locations indicating they receive any service from CenturyLink.⁹ The most reasonable inference from the record is that CenturyLink’s service presence — voice and broadband alike — is concentrated within the 2,456 locations served by its copper network, primarily within the city limits of Valley City, shown on the NBM.

CenturyLink’s citation to *Charter Advanced Services* does not assist its position. That case addressed the regulatory classification of services delivered over existing infrastructure. It did not address whether an ILEC’s physical plant reaches the locations within its certificated territory. The question before this Commission is not whether broadband is a telecommunications service. It is whether CenturyLink is furnishing service — including voice service — throughout the exchange as required under N.D.A.C. § 69-09-05-12. CenturyLink’s own filings, BEK’s field verification, and CenturyLink’s failure to place contrary evidence on the record all indicate it is not.

b. The State of CenturyLink’s Network in the Valley City Exchange

Even accepting CenturyLink’s representations at face value, they do not support the conclusion CenturyLink urges. The network CenturyLink has built in the Valley City Exchange delivers speeds of 10/1 Mbps, the minimum threshold established by the FCC over a decade ago, to only 2,456 of the 3,661 locations in the exchange.¹⁰ That infrastructure is now physically deteriorating, as documented in Exhibit 9 to BEK’s application. CenturyLink acknowledges that “copper TDM/voice technology and the traditional ILEC concept is nearing end-of-life,”¹¹ yet states it has no plans to deploy any replacement technology in Valley City.

⁹ Application at ¶ 9.

¹⁰ Application at ¶ 10.

¹¹ CenturyLink Comments at 5.

CenturyLink’s claim that it “does not qualify for ongoing federal high-cost support in North Dakota”¹² is accurate in the present tense but omits that it received nearly \$34 million in CAF Phase II model-based support in this state between 2016 and 2021. More significantly, the CAF Phase II program integrated voice and broadband deployment obligations — carriers accepted support in exchange for deploying both services. CenturyLink’s argument to this Commission that broadband and telecommunications service are unrelated is difficult to reconcile with its acceptance of \$34 million under a federal program premised on their integration.

While CenturyLink’s subsidized copper network has been declining, BEK has built a fiber-to-the-premises network serving 100% of the 3,661 locations in the exchange at speeds up to 10 Gbps, funded by RDOF, Community Connect grants, and BEK’s own investment. BEK now serves approximately 538 voice customers over 858 voice lines — more than three times CenturyLink’s 276 voice lines — representing an estimated 86.5% of the active landline phone market. BEK has received no telecommunications service complaints before this Commission. CenturyLink, by contrast, accounts for approximately 87% of all telecommunications complaints filed with the Commission between 2014 and 2025.¹³ The question before the Commission is not whether Valley City will have service if CenturyLink’s certificate is relinquished. It already does.

c. CenturyLink’s Recommendation to Defer to Legislation

CenturyLink recommends that the Commission and stakeholders “consider the best policy for addressing rural areas that have been overbuilt” and suggests legislative changes.¹⁴

¹² CenturyLink Comments at 4.

¹³ Application at ¶¶ 9-10.

¹⁴ CenturyLink Comments at 5.

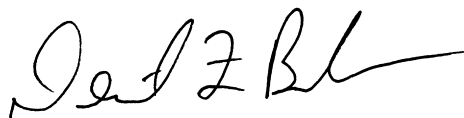
CenturyLink characterizes BEK's entry into the Valley City Exchange as a product of "significant governmental funding and different business models" that allow rural ILECs to overbuild, and frames this as a policy problem requiring a legislative solution.

This recommendation should be rejected. The Commission has existing statutory authority under which it has already acted twice in substantially similar circumstances.¹⁵ The consumers of Valley City should not be required to wait for a legislative process of uncertain timing and outcome while CenturyLink's copper network continues to deteriorate. CenturyLink itself acknowledges the trajectory: its technology is "nearing end-of-life," it has "no plans" for Valley City, and investment "is not likely to be feasible soon absent unique circumstances."¹⁶ CenturyLink is not arguing that it will improve service; it is arguing that the Commission should not act while service declines.

BEK's presence in the Valley City Exchange is not an overbuild in the pejorative sense CenturyLink implies. It is a carrier fulfilling the obligations CenturyLink has been unable or unwilling to meet. BEK has built fiber to every location in the exchange, now serves the substantial majority of customers, and maintains a zero-complaint record before this Commission. The relief BEK requests is consistent with the Commission's prior orders, supported by the factual record, and in the public interest.

Respectfully submitted,

BEK COMMUNICATIONS COOPERATIVE



Derrick Bulawa
Chief Executive Officer

¹⁵ See Order, Case Nos. PU-24-386 and PU-24-387, adopted March 26, 2025; Order, Case Nos. PU-25-185 and PU-25-190, adopted September 3, 2025.

¹⁶ CenturyLink Comments at 4-6.