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December 31, 2025

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

**Re: Qwest dba CenturyLink Communications, LLC Comments –  
PU25-285 and PU25-286**

Dear Mr. Kahl:

Enclosed please find CenturyLink comments on BEK Communications Cooperative Application.

Please reach out if you require further information or have questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jason D. Topp".

Jason D. Topp

JDT//db

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Comments

CenturyLink Communications, LLC  
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Comments

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Jason D. Topp

**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**

**CENTURYLINK COMMUNICATIONS, LLC COMMENTS**

On November 4, 2025, BEK Communications Cooperative (BEK) filed an application requesting authorization to provide local exchange telecommunications services as the incumbent local exchange carrier in the area currently known as the Valley City exchange in North Dakota. The Valley City exchange is currently served by Qwest Corporation dba CenturyLink QC (CenturyLink). The issues to be considered in Case No. PU-25-285 are:

1. Fitness and ability of BEK to provide local exchange telecommunications services.
2. Adequacy of BEK's proposed telecommunications services.
3. Technical, financial and managerial ability of BEK to provide telecommunications services.
4. Whether, upon granting a certificate of public convenience and necessity to BEK to provide local exchange telecommunication services in the area currently known as the Valley City exchange, CenturyLink's certificate of public convenience and necessity should be relinquished or transferred to competitive local exchange service.

Also on November 4, 2025, BEK filed an application requesting that BEK be designated as an eligible telecommunications carrier (ETC) in the Valley City exchange area, Case No. PU-25-286. The issues to be considered in Case No. PU-25-286 are:

1. Qualification of the applicant under the Telecommunications Act of 1996, Section 214(e) for designation as an ETC eligible to receive federal universal service funding.

2. The ETC universal service support area to the designated.
3. Whether it is in the public interest to designate BEK as an ETC in the Valley City local exchange area for the purposes of receiving universal service support.
4. Whether, upon designation of BEK as an ETC for the Valley City exchange, CenturyLink's designation as an ETC for the Valley City exchange should be relinquished or transferred to competitive local exchange service

CenturyLink is the current incumbent local exchange carrier serving the Valley City Exchange. While CenturyLink does not offer broadband services to the entire Valley City Exchange, it does offer telephone service across the exchange and has clearly not abandoned the exchange, as alleged by BEK. Currently, CenturyLink serves 276 voice lines and 85 broadband lines in the exchange.

CenturyLink does not oppose BEK's request for ETC designation. CenturyLink has no basis to question the fitness and ability of BEK to provide local exchange services. CenturyLink, does, however, oppose BEK's request that CenturyLink's certificate of authority be relinquished and asserts the FCC determines whether a provider is an incumbent local service provider and that the North Dakota Commission does not have such authority pursuant to North Dakota statutes and 47 USC 251(h).

**I. Under North Dakota and Federal Law, the FCC, and not the North Dakota Commission, determines whether a provider is a local exchange carrier.**

The Applications fail to identify legal authority for the North Dakota Commission to designate BEK as an incumbent local exchange carrier. None exists. North Dakota statutes provide that "Incumbent local exchange carrier means a telecommunications company that meets the definition of section 251(h) of the federal act." NDCC 49-21-01(6). Under 47 USC 251(h)(1), an incumbent local exchange carrier is defined as:

**(h) "Incumbent local exchange carrier" defined**

- (1) Definition** For purposes of this section, the term "incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that—

- (A) on February 8, 1996, provided telephone exchange service in such area; and
- (B) (i) on February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or
  - (ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in clause (i).

If a company desires to change the incumbent local exchange carrier, 47 USC 251(h)(2) describes the method for doing so:

**(2) Treatment of comparable carriers as incumbents:** The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if—

- (A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);
- (B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and
- (C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.

The term “Commission” refers to the FCC and not to a state Commission. 47 U.S.C. § 154 (a).

Thus, BEK’s petition before North Dakota is not authorized by state or federal law. Its request for designation as an incumbent local exchange carrier should be rejected and BEK should be directed to pursue such designation with the FCC. The FCC is reviewing such an application filed by Griggs County Telephone Company and has asked for comments in a rulemaking procedure based upon that request.<sup>1</sup>

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<sup>1</sup> See Public Notice, *Petition of Griggs County Telephone Company for an Order and Rule Pursuant to Section 251(h)(2) of the Communications Act to be Declared an Incumbent Local Exchange Carrier in Leonard and Kindred, North Dakota*, RM-12011 (December 5, 2025) available at [DOC-415776A1.pdf](#) .

**II. CenturyLink has not abandoned the Valley City Exchange and BEK's allegations related to broadband service have nothing to do with state obligations to offer telecommunications service.**

Paragraph 7 of the application provides statistics from the national broadband map in support of its allegation that CenturyLink has relinquished its certificate of authority in the Valley City Exchange.

According to the National Broadband Map Fabric, 3,661 locations exist within the Requested Exchange, as shown in Exhibit 3. Lumen has represented that it can serve only 2,456 of these locations, representing approximately 67% of the total fabric, as shown in Exhibit 7. 5 This failure to make service available to 1,205 locations constitutes a violation of Lumen's obligations to “furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public,”<sup>6</sup> “make available to all people of this state modern and efficient telecommunications services at the most economic and reasonable cost,”<sup>7</sup> and “provide service throughout its proposed designated service area.

Rural ILECs within North Dakota and other states receive ongoing federal high-cost support, which has assisted in helping them build Fiber-to-the Premises (FTTP) within their ILEC territories. Such ILECs have been put into a position where building into neighboring territories can make financial sense. By contrast, CenturyLink QC does not qualify for ongoing federal high-cost support in North Dakota and any of its other ILEC territories in other states. The company has placed FTTP to over 10,000 customer locations within North Dakota without subsidies. It has the capability and operational expertise to build FTTP networks, where a business case can be made. Nonetheless, investment in such technology in remote areas is not likely to be feasible soon absent unique circumstances.

CenturyLink's limited fiber investment does not mean that it has abandoned its obligations to the Valley City exchange as the application suggests. The application confuses broadband service with telecommunications service. The Eighth Circuit has made it crystal clear that such services are distinct. *Charter Advanced Services (MN), LLC v Lange*, 903 F3d 715 (8<sup>th</sup> Cir.

2018) held that broadband services, even voice over internet protocol services, are not telecommunications services.

North Dakota policy is “[t]o make available to all people of this state modern and efficient *telecommunications services* at the most economic and reasonable cost.” NDCC 49-21-02.<sup>2</sup>” (emphasis added). BEK has not alleged that CenturyLink has abandoned telephone service to the Valley City exchange. Broadband service is not relevant to the question of whether CenturyLink has abandoned its obligations under state law.

**III. CenturyLink recommends the Commission and stakeholders consider the best policy for addressing rural areas that have been overbuilt and to suggest legislative changes that would best serve North Dakota customers.**

CenturyLink also recognizes that the landscape is shifting in North Dakota. Due to significant governmental funding and different business models, other carriers are overbuilding rural areas. As a result, a different regulatory landscape may best serve North Dakota.

In many respects, CenturyLink interests align with those of the rural providers who have overbuilt them. Provider of last resort obligations impose significant expense to maintain telephone service to remote customers who often have alternative services available to them. Current statutes impose the obligation to provide essential telecommunications service throughout one’s service territory.

The company acknowledges that copper TDM/voice technology and the traditional ILEC concept is nearing end-of-life. Its recent application in Leonard is a test case for the company to learn the best ways to exit copper TDM/voice technologies, and to provide other options to existing

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<sup>2</sup> The other statute cited by BEK applies to public utilities generally but provides no basis for imposing obligations on services beyond telephone service:

49-04-01. Public utility to provide adequate service. Every public utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public, and as shall be in all respects adequate, convenient, just, and reasonable, and without any unjust discrimination or preference

customers. Based upon what the company learns, this will help the company move forward in other areas within North Dakota, and other states, in an orderly manner to minimize disruption to customers and increase competitive opportunities. In Leonard, the company is working to transition its copper TDM voice technology – it has sought to discontinue its legacy copper service and is instead offering customers its Connected Voice with Air-Line service, a VoIP service that uses 4G LTE for the last mile backhaul. By making this transition, CenturyLink will provide customers with a cost-effective, reliable, and future proof technology. . The company currently has no plans to for a similar transition within the Valley City exchange.

Despite these policy considerations, the relief requested related to incumbent local exchange provider status is not authorized under North Dakota law and BEK needs to turn to the FCC.

### **CONCLUSION**

CenturyLink does not oppose BEK’s request for designation as an ETC in the Valley City Exchange. However, under state and federal law outlined in these comments, the FCC and not the North Dakota Commission determines whether a provider is an incumbent local exchange carrier. BEK’s request for such a designation should be rejected. Because of the changing nature of the telecommunications and broadband landscape in North Dakota, it is time to update the approach to regulating such areas. Such a change will require legislative modifications.

In the meantime, the Commission should reject BEK’s petition outright or hold a hearing to consider (1) whether the Commission has the authority to grant Incumbent status to BEK and (2) whether such status should be granted.

Respectfully submitted,

/s/ Jason D. Topp  
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