

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

Griggs County Telephone Company v.
CenturyLink Communications, LLC
Complaint

Case No. PU-26-157

REPLY TO RESPONSE TO COMPLAINT

Griggs County Telephone Company (“Griggs”) submits this Reply to the Response to Complaint filed by Qwest Corporation d/b/a CenturyLink QC (“CenturyLink QC”) on June 22, 2026. CenturyLink QC and its affiliate CenturyLink Communications, LLC (“CCLLC”) are referred to collectively as “CenturyLink.” CenturyLink asks the Commission to dismiss the Complaint on a naming technicality and otherwise to defer to the Federal Communications Commission. Neither position withstands scrutiny. The operative facts are largely admitted, and the Commission has twice ordered the same relief on materially identical facts. To the extent the Commission deems any correction to the caption necessary, Griggs includes herewith a motion for leave to amend. Griggs replies as follows.

I. The Naming Objection Does Not Warrant Dismissal.

CenturyLink’s threshold argument is that the Complaint names CenturyLink Communications, LLC, a competitive carrier, rather than Qwest Corporation d/b/a CenturyLink QC, the entity CenturyLink identifies as the incumbent holder of the Leonard and Kindred certificates. Response at 2–3. The objection provides no basis to dismiss the Complaint. And should the Commission nonetheless deem it necessary to add Qwest Corporation d/b/a CenturyLink QC as a named Respondent, Griggs has concurrently filed a Motion for Leave to Amend Complaint to do so.

First, dismissal is not the remedy the Commission's rules prescribe. Where a complaint does not conform to the requirements of Article 69-02, including the requirement to name each respondent, N.D. Admin. Code § 69-02-02-02(2), the Commission "will notify the complainant and provide the complainant an opportunity to amend," and the complaint "will be dismissed" only "[i]f the complaint is not amended." N.D. Admin. Code § 69-02-02-02(4). The Commission may "allow any pleading to be amended" upon notice to the parties. *Id.* § 69-02-02-07(1). Dismissal on the pleadings for a naming defect is therefore both premature and contrary to the Commission's own procedure. *See also* N.D.R.Civ.P. 21 ("Misjoinder of parties is not a ground for dismissing an action.").

Second, the objection identifies no prejudice. Qwest Corporation d/b/a CenturyLink QC has already appeared and answered the Complaint on the merits. Its Response is captioned in its own name, responds paragraph-by-paragraph through Exhibit A, and comes from the same counsel who appear for CCLLC. CenturyLink QC itself acknowledges that "it is clear Griggs is seeking relief against Qwest Corporation dba CenturyLink QC." Response at 2–3. The entity CenturyLink says should have been named is already before the Commission and has already met the allegations. Nothing about the caption has impaired its ability to defend.

Third, the naming issue is an immaterial misnomer among affiliated entities. The Commission's own orders in the prior overbuild proceedings, in Griggs (Case Nos. PU-24-386/387), Red River (Case Nos. PU-25-185/190), and BEK (Case Nos. PU-25-285/286), each identify the incumbent and order relief as to "CenturyLink Communications, LLC," and Griggs' underlying application referred to the incumbent as "Lumen Technologies, Inc." CenturyLink raised no entity objection when its certificates were relinquished or transferred in those proceedings. The Response itself reflects the same imprecision: though captioned, argued, and

signed in the name of CenturyLink QC, its prayer for relief is submitted in the name of CCLLC. Response at 7. The Complaint's allegations and prayer are directed unmistakably at the incumbent holder of the Leonard and Kindred certificates, which the record confirms is Qwest Corporation d/b/a CenturyLink QC. The dispute is one of caption, not substance. Should the Commission deem an amendment necessary to resolve it, Griggs has filed one. *See* Motion for Leave to Amend Complaint (filed herewith).

II. The Commission Has Authority to Order the Requested Transfer and Is Not Preempted.

CenturyLink QC suggests that the FCC displaces this Commission's jurisdiction, specifically its jurisdiction to determine incumbent local exchange carrier status. Response at 2–3. The argument rests on the North Dakota Code's reference to section 251(h)(2) and that section's grant of classification authority to the FCC. See N.D. Cent. Code § 49-21-01(6). It is the same jurisdictional argument CenturyLink raised in the BEK proceeding, where the Commission rejected it. CenturyLink accurately quotes section 251(h)'s carrier-classification provisions, but it offers no preemption analysis, and it identifies no direct conflict between this Commission's exercise of jurisdiction and that of the FCC.

Preemption of the States' historic police powers is not lightly inferred. As the Supreme Court held in *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947), the “police powers” of the States, as exercised here by this Commission, are not to be superseded “unless that was the clear and manifest purpose of Congress.”

Moreover, as the Supreme Court held in *Louisiana Public Service Commission v. FCC*, 476 U.S. 355 (1986), section 152(b) of the Communications Act fences off from FCC jurisdiction,

providing that “nothing in [the Act] shall be construed . . . to give the [FCC] jurisdiction with respect to . . . charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service.” 47 U.S.C. § 152(b). At issue in Louisiana was whether the FCC could preempt state depreciation-rate prescriptions. Significantly, even though the FCC and the States exercise joint depreciation jurisdiction over common plant used for both interstate and intrastate service, the Court sided with the state interest and against the FCC on the question of preemption. Notably, CenturyLink’s papers do not address Louisiana at all.¹

Indeed, in the wake of Louisiana, the FCC itself confirmed the limits of a section 251(h)(2) classification. When a rural cooperative overbuilt a rural Qwest exchange in Terry, Montana, the FCC concluded that the cooperative had satisfied section 251(h)(2)’s three-part test to be treated as the incumbent LEC. See *Petition of Mid-Rivers Telephone Cooperative, Inc.*, Report and Order, FCC 06-132, WC Docket No. 02-78 (rel. Oct. 11, 2006). Addressing Qwest’s resulting status, the FCC was explicit that “[t]his classification of Qwest in the Terry exchange only applies to the regulation of interstate services, and the Montana Commission retains the authority to regulate Qwest’s intrastate services in the Terry exchange consistent with state requirements.” *Id.* ¶ 34. Federal classification under section 251(h) thus displaces neither the States’ authority over intrastate service nor a state commission’s authority over its own certificates.

The Commission’s authority here rests on independent and well-established grounds. As discussed in BEK, the Commission’s jurisdiction is grounded in its police power under the Tenth Amendment to the U.S. Constitution and in its own statutory authority over the safety and

¹ Griggs notes that *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999) is inapposite to this argument. That holding concerns the FCC’s power to implement a federal statutory regime by rule; it does not address, much less divest, a state commission’s authority over its own certificates of public convenience and necessity, and it says nothing about a § 251(h) classification.

adequacy of telecommunications and other public utility services. The Commission's orders reflect no intention to set interstate rates or otherwise intrude upon the FCC's jurisdiction; they use section 251(h) only as an analytical framework for the exercise of the Commission's own certificate authority. See Reply Comments of BEK Communications Cooperative at 4–5.

In sum, this Commission's jurisdiction is not seriously called into question by CenturyLink's statutory argument. The FCC does not occupy exclusive jurisdiction under section 251(h), which neither states nor suggests any preemption of state authority over carrier classifications. And Congress knows how to confer exclusive federal jurisdiction when it intends to, as in section 251(e)(1) (numbering administration), section 255(f) (accessibility for persons with disabilities), and section 613(j) (video-programming accessibility). It did not do so in section 251(h).

III. Griggs' Pending FCC Petition Does Not Divest the Commission or Warrant Deferral.

CenturyLink argues in the alternative that the Complaint should be dismissed because it “duplicates an application [Griggs] already filed with the FCC,” and that Griggs’ “pending application before the FCC should resolve its request for relief.” Response at 1, 7; see also *id.* at 3. Deferral is neither required nor appropriate, because the two proceedings seek different relief from different sovereigns and can proceed in parallel without conflict.

The relief Griggs seeks here is a matter of state law: transfer of the Leonard and Kindred certificates of public convenience and necessity from incumbent to competitive local exchange carrier status under N.D. Cent. Code ch. 49-21 and the Commission's implementing rules. Griggs' pending petition before the FCC seeks something different in kind: a federal determination under 47 U.S.C. § 251(h)(2) that CenturyLink be treated as an incumbent local exchange carrier for

purposes of the federal interconnection regime. The state certificate and the federal § 251(h)(2) designation are distinct legal statuses conferred by distinct authorities; a ruling on one neither compels nor forecloses a ruling on the other. The two filings are complementary rather than “duplicat[ive].”

It follows that the pendency of the federal petition does not divest this Commission of jurisdiction over its own certificates. A state commission’s authority over the certificates it has issued is not suspended whenever a related question is raised before a federal agency, and CenturyLink identifies no statute or doctrine that would produce that result. Nor does the doctrine of primary jurisdiction counsel deferral: that doctrine applies where resolution of the state claim turns on a question committed in the first instance to the federal agency, and here the disposition of the state certificates does not depend on how the FCC resolves the § 251(h)(2) petition. The Commission has already transferred CenturyLink’s certificates to competitive status twice on materially identical facts, confirming that the state-law question is one for this Commission to decide. See Red River Order, Case Nos. PU-25-185/190 (Oct. 9, 2025); BEK Order, Case Nos. PU-25-285/286 (Mar. 5, 2026). The proceedings can go forward in parallel, and the Commission may decide the matter before it now.

IV. CenturyLink’s Section 251 Obligations Argument Is Misdirected.

CenturyLink contends that the Complaint “fails to discuss how [Griggs] will meet its obligations under 47 U.S.C. [§] 251” if it obtains incumbent status. Response at 4. The argument is misdirected, and the Commission’s own orders show why.

First, this Complaint raises the certificate question in the very forum the Commission reserved for it. When CenturyLink sought to relinquish its ETC designation for the Leonard

Exchange, Griggs asked the Commission to examine CenturyLink's continued fitness to hold its certificate. The Commission declined to reach that question in the relinquishment docket, holding that "Qwest's CPCN is not within the issues of this proceeding" and that litigating it there "would both unduly broaden the issues and delay this proceeding." ETC Relinquishment Order, Case No. PU-25-233, at 2 (Feb. 18, 2026). Far from relitigating anything, this Complaint presents the certificate question in a proceeding dedicated to it, exactly as the Commission's disposition of PU-25-233 contemplated.

Second, Griggs' own status was settled by the Commission's order of March 26, 2025, which recognized Griggs as the incumbent local exchange carrier in the Leonard and Kindred exchanges, issued Griggs CPCN Nos. 6007 and 6008, and relinquished both exchanges from CenturyLink's study area, findings CenturyLink expressly admits. See Griggs Order, Case Nos. PU-24-386/387, at 3, 5 (Mar. 26, 2025); Response, Ex. A (admitting the March 26, 2025 order and its findings). No party appealed that order, and CenturyLink did not contest Griggs' ILEC status when it was entered. Griggs' status is not at issue here, and CenturyLink's § 251 argument cannot be used to reopen it.

Third, the argument has the equities backwards. Section 251's incumbent obligations are precisely what CenturyLink has shed by way of the copper retirement, the § 214 discontinuance, and the ETC relinquishment the Commission permitted in PU-25-233. CenturyLink admits it "has taken affirmative steps to discontinue copper based services in the Leonard exchange," Response, Ex. A, and it has told the Commission that it "is not seeking to modify its Certificate of Public Convenience and Necessity" because "customer needs may arise that require CenturyLink service moving forward," and that it therefore "prefers to maintain its ability to serve the area in the future." Petition, Case No. PU-25-233, at 1–2 (Aug. 1, 2025). It is CenturyLink, not Griggs, that

has walked away from the incumbent's obligations while holding the certificate in reserve. The requested transfer does no more than conform the certificates to that reality.

V. Commission Precedent and the Admitted Facts Compel Transfer; No Hearing Is Required.

The relief Griggs seeks follows from Commission precedent applied to facts that are admitted or established of record, and no evidentiary hearing is necessary to grant it.

The Commission has ordered materially the same relief twice before, and CenturyLink admits it. In Red River (Case Nos. PU-25-185/190, Oct. 9, 2025) and BEK (Case Nos. PU-25-285/286, Mar. 5, 2026), the Commission transferred CenturyLink's certificates to competitive status on findings that the overbuilding carrier "occupies a market position comparable to a legacy ILEC" and "has substantially replaced the legacy ILEC." CenturyLink admits both orders. Response, Ex. A. In BEK, moreover, the Commission considered and rejected the very authority challenge CenturyLink presses again here, finding its authority in N.D. Cent. Code §§ 49-21 and 49-03.1 and N.D. Admin. Code § 69-09-05-11, a ruling CenturyLink likewise admits. *Id.* CenturyLink offers no principled ground to distinguish those decisions from this one.

Nor are the operative facts genuinely in dispute. CenturyLink admits that it "has taken affirmative steps to discontinue copper based services in the Leonard exchange"; that it filed a § 214 application to discontinue its legacy voice service; and that the Commission permitted it to relinquish its ETC designation for Leonard effective February 18, 2026. Response, Ex. A; ETC Relinquishment Order, Case No. PU-25-233 (Feb. 18, 2026). What CenturyLink disputes is not these facts but their legal characterization. It "[d]en[ies] CenturyLink has abandoned the Leonard exchange," insisting that migrating customers off copper to a wireless VoIP product "does not

mean we have abandoned the exchange.” Response, Ex. A. Whether the admitted conduct amounts to abandonment of the certificated exchanges is a question of law for the Commission rather than a triable issue of fact.

That distinction answers CenturyLink’s contention that the Complaint “raises disputed facts that will require a hearing if the Commission decides to proceed.” Response at 7. CenturyLink identifies no disputed fact material to the requested relief; its quarrel is with the legal significance of facts it admits. Its formal prayer, moreover, seeks only dismissal and denial rather than a hearing. *Id.* As in BEK, such a contingent suggestion does not amount to a request for a hearing, and where the material facts are admitted or of record and only their legal characterization is contested, the Commission may grant the requested relief on the pleadings.

CONCLUSION

For the foregoing reasons, Griggs respectfully requests that the Commission deny CenturyLink’s request to dismiss the Complaint, decline to defer to Griggs’ pending petition before the FCC, and transfer the Leonard and Kindred certificates of public convenience and necessity from incumbent to competitive local exchange carrier status. Because the material facts are admitted or established of record and only their legal characterization is contested, and because the Commission has twice ordered the same relief on materially identical facts, the Commission may grant that relief on the pleadings without an evidentiary hearing. To the extent the Commission deems any correction to the caption necessary, Griggs respectfully requests that it grant the concurrently filed Motion for Leave to Amend Complaint to add Qwest Corporation d/b/a CenturyLink QC as a named Respondent.

Dated: July 7, 2026.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "BHD", written in a cursive, stylized manner.

Benjamin H. Dickens, Jr.
Salvatore Taillefer, Jr.
BLOOSTON, MORDKOFKY, DICKENS &
PRENDERGAST, LLP
2120 L Street, NW, Suite 825
Washington, DC 20037
(202) 828-5562
bhd@bloostonlaw.com / sta@bloostonlaw.com
Counsel for Griggs County Telephone Company

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of July, 2026, a true and correct copy of the foregoing Reply to Response to Complaint was filed with the North Dakota Public Service Commission via electronic mail, and was served via electronic mail and Federal Express upon the following:

Erik J. Edison
Crowley Fleck PLLP
100 West Broadway, Suite 250
P.O. Box 2798
Bismarck, ND 58502-2798
ejedison@crowleyfleck.com

Jason D. Topp
Assistant General Counsel
Qwest Corporation d/b/a CenturyLink QC
200 S. 5th St, Room 2200
Minneapolis, MN 55402
Jason.topp@lumen.com

Dated this 7th day of July, 2026.

A handwritten signature in black ink, appearing to read 'Salvatore Taillefer, Jr.', with a stylized, cursive script.

Salvatore Taillefer, Jr.