

**BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

In the Matter of Petition of CenturyLink and                    )  
Dex Media, Inc. for a Waiver of or Exemption            ) Docket No. 16-UTDT-568-MIS  
from the Commission's Directive Regarding                )  
Distribution of Telephone Directories                        )

**STAFF'S RESPONSE TO CENTURYLINK**

The Staff of the Kansas Corporation Commission (Staff and Commission, respectively) states the following in response to the *Response of CenturyLink to the Report and Recommendation of Staff* (Response), filed with the Commission on October 10, 2016:

**Background**

1. On June 10, 2016, Dex Media and the United Telephone Company of Kansas d/b/a CenturyLink, United Telephone Company of Eastern Kansas d/b/a CenturyLink, United Telephone Company of Southcentral Kansas d/b/a CenturyLink, and Embarq Missouri, Inc. d/b/a CenturyLink (collectively "CenturyLink") filed a Joint Petition requesting a permanent waiver of, or exemption from, the requirements of the Commission's May 1, 1967 Directive concerning the Issuance of Telephone Directories ("the Directive").

2. On August 22, 2016, Staff filed a *Motion to Dismiss Dex Media, Inc. from Proceeding* (Motion to Dismiss), moving the Commission to dismiss Dex Media from the proceeding due to lack of standing and jurisdiction. The latest order addressing the Motion to Dismiss was issued September 29, 2016, and provided Dex Media and CenturyLink until November 1, 2016, to respond.<sup>1</sup>

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<sup>1</sup>Order Granting Additional Extension, p. 3 (Sept. 29, 2016).

3. On September 30, 2016, Staff filed a *Notice of Filing of Staff's Report and Recommendation* (Staff's R&R) recommending a "trial basis" waiver of the Directive in four (of seven) regions of Kansas, with conditions, and the ability to seek waiver in the remaining three regions after a one year trial period in the original four regions.

4. On October 10, 2016, CenturyLink filed its Response to Staff's R&R. Also on October 10, 2016, Dex Media filed in support of CenturyLink's Response.

### **Staff's Response**

#### **Issue: Trial Basis**

5. CenturyLink begins its response by challenging Staff's recommendation for a "trial basis" waiver of the Directive in the four regions: 1) because the need for a "trial basis" is not explained; and 2) because "CenturyLink's commitment to allowing customers the opportunity to obtain a printed directory, free of charge, will mitigate any concerns with broadband availability."<sup>2</sup> CenturyLink further asserts that "Staff's R&R misapprehends the Petition as a statement of intent to discontinue all delivery of printed directories, when what the Petition really seeks is the flexibility to deliver printed directories based on marketplace factors rather than on outdated regulations."<sup>3</sup>

6. In response to the first point, Staff admits that the necessity for a "trial basis" is not explained. Staff did not intend for its use of the phrase "trial basis" to have any substance. Staff intends for the conditional waiver to be permanent – at least until the Commission decides otherwise. The intent of Staff's recommendation is to allow for a conditional waiver for one year in the four regions, gather data, and allow CenturyLink to file again requesting the

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<sup>2</sup>Response of CenturyLink to the Report and Recommendation of Staff, p. 3 (Oct. 10, 2016).

<sup>3</sup>Id.

additional three regions if it deems such a decision to be prudent. Staff will then examine the data to discern whether it will recommend granting a waiver in the additional three territories.

7. In response to the second point, Staff does not believe it misapprehends the Application. Staff would point out that CenturyLink requested a permanent waiver of the Directive or, in the alternative, an interpretation of the Directive that would be satisfied by digital publication, including online.<sup>4</sup> Neither outcome would result in a legal requirement that CenturyLink continue to distribute printed directories on an “as-requested” basis. CenturyLink may hold some sort of informal “commitment” to continue printing directories upon request, but Staff would prefer a legal requirement. Furthermore, the Application states “Dex Media will continue to provide paper copies to customers on request as a transition, until the number of requests becomes so miniscule as to make the costs per book prohibitive.”<sup>5</sup> This statement indicates to Staff that at some point, CenturyLink will cease to provide printed directories in certain regions of Kansas. Therefore, Staff does not believe a permanent waiver of the Directive would ensure the continued availability of printed directories.

#### **Issue: Public Interest**

8. CenturyLink also states there are multiple public interest concerns raised including environmental costs of distributing directories that are “not wanted by a large and growing percentage of customers and that ultimately end up unopened and unused in Kansas landfills,” and “many customers are annoyed with printed directories” and CenturyLink’s agreement to provide printed a directory [sic] upon request balances the various public interests.”<sup>6</sup> While Staff does speculate that some customers prefer not to have a printed directory, CenturyLink provided no statistical support or citations for these claims. Although

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<sup>4</sup>Id. at 15.

<sup>5</sup>Id. at 4.

<sup>6</sup>Id. at 4-5.



these claims may be true for some customers in urban areas, Staff is not convinced that this is the case for all consumers in all areas, especially rural areas with low Internet adoption levels.

**Issue: Annual Reminders**

9. CenturyLink takes issue with Staff's recommendation that customers who do not receive a printed directory receive an annual bill message reminding them that a printed directory is available at no charge by calling a toll-free number.

10. CenturyLink submits that annual bill message reminders are not needed because existing customers will receive notice for two consecutive bills, and new customers will receive a "welcome package" that contains a printed directory and a notice that future printed directories are available upon request.<sup>7</sup>

11. Staff would first point out that the "welcome package" was not referenced in the Application for a waiver from the Directive. Additionally, Staff does not believe a one-time notice will be sufficient to remind customers that they have the option to request a print directory free of charge. This issue appears to be a matter of opinion, and Staff does not believe it will be overly burdensome for CenturyLink to provide annual reminders.

**Issue: Dex Media's Profitability**

12. Finally, CenturyLink takes issue with the fact that Staff does not consider Dex Media's profitability in its directory publishing business to be a relevant factor in this proceeding.<sup>8</sup> CenturyLink indicates that if the economic consequences of a regulatory mandate are not considered, a thorough public interest analysis has not been performed.<sup>9</sup> CenturyLink goes on to state that the Directive to provide "a printed directory no longer makes economic

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<sup>7</sup>Id. at 7.

<sup>8</sup>Id. at 5.

<sup>9</sup>See Id.

sense (as it may have when ILECs held a monopoly and generally owned their own directory business), and is no longer required to protect the public interest...”<sup>10</sup>

13. Staff believes CenturyLink is inappropriately framing the issue. Dex Media’s profitability is a red herring. Dex Media is not a regulated public utility and has no legal requirement to publish and distribute a printed directory. CenturyLink is required to provide printed directories under the Directive - not Dex Media. Staff recognizes that there will be a cost associated with printing directories, but Staff has not been presented any evidence of what that cost may be if CenturyLink did not use Dex Media as its directory printer.

WHEREFORE, for the reasons set forth above, Staff respectfully requests that the Commission approve Staff’s Report and Recommendation filed September 30, 2016.

Respectfully Submitted,



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<sup>10</sup>Id.

STATE OF KANSAS       )  
                                      ) ss.  
COUNTY OF SHAWNEE   )

**VERIFICATION**

Michael Neeley, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Staff's Response to CenturyLink* and that the statements contained therein are true and correct to the best of his knowledge, information and belief.



Michael Neeley # 25027  
Kansas Corporation Commission of the  
State of Kansas

Subscribed and sworn to before me this 17th day of October, 2016.

  
Notary Public

My Appointment Expires: June 30, 2018

## CERTIFICATE OF SERVICE

16-UTDT-568-MIS

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Response to CenturyLink was served via electronic service this 17th day of October, 2016, to the following:

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