

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

In the Matter of Petition of CenturyLink     )  
for Waiver to Provide an Annual             )  
Interrogatory in Lieu of an Annual Report.   )

Docket No. 20-UTDT-212-MIS

**NOTICE OF FILING OF STAFF'S REPORT AND RECOMMENDATION**

The Staff of the Kansas Corporation Commission ("Staff" and "Commission"), having investigated the issues presented in this docket, hereby files its Report and Recommendation (R&R). 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 Embarras Missouri, Inc., d/b/a CenturyLink (collectively "CenturyLink") filed a Petition for Waiver to Provide an Annual Interrogatory in Lieu of an Annual Report, requesting the Commission allow CenturyLink to file an Annual Interrogatory instead of the Annual Report filed on or before May 1 of each year. CenturyLink asserts that because the company operates under price cap regulation, an Annual Report serves minimal purpose. Staff recommends the Commission deny the Petition and require CenturyLink to continue to file an Annual Report.

WHEREFORE, Staff submits its R&R, attached hereto, for Commission consideration

Respectfully Submitted,



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**REPORT AND RECOMMENDATION  
UTILITIES DIVISION**

**TO:** Chair Dwight D. Keen  
Commissioner Shari Feist Albrecht  
Commissioner Susan K. Duffy

**FROM:** Kelly Mabon, Senior Telecommunications Analyst  
Sandy Reams, Assistant Chief of Telecommunications  
Christine Aarnes, Chief of Telecommunications  
Jeff McClanahan, Director of Utilities

**DATE:** December 19, 2019

**RE:** Docket No. 20-UTDT-212-MIS  
In the Matter of Petition of CenturyLink for Waiver to Provide an Annual Interrogatory in Lieu of an Annual Report.

**EXECUTIVE SUMMARY:**

On November 1, 2019, 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 *Petition For Waiver To Provide An Annual Interrogatory In Lieu Of An Annual Report* (Petition). CenturyLink's Petition lacks documentation or support for granting the Petition for Waiver. Staff recommends denial of the Petition.

**BACKGROUND:**

The Commission derives its authority to supervise Local Exchange Carriers (LECs) from K.S.A. 66-1,188. CenturyLink is a LEC and telecommunications public utility, pursuant to K.S.A. 66-1,187(h) and (n), respectively.

Annual Reports are required to be filed by all LECs, pursuant to K.S.A. 66-123, which states, in part,

Every public utility and common carrier governed by the provisions of this act when, and as required by the corporation commission, shall file with the corporation commission an annual report and such monthly or other regular reports,

or special reports, and such other information as the corporation commission may require. When required by the corporation commission such reports and information shall be certified under oath by a duly authorized officer having knowledge of the matters therein contained. The corporation commission may at any time require from any public utility or common carrier specific answers to any questions upon which it may desire information in connection with matters pending before them.

The corporation commission may, in its discretion, grant extensions of the time within which reports and information are required to be filed. Annual reports shall be filed on or before May 1 for the preceding calendar year unless otherwise specified by commission order or rule and regulation.

### **ANALYSIS:**

CenturyLink stipulates it is a LEC, pursuant to K.S.A. 66-1,187(h), and regulated by the Kansas Corporation Commission as a public utility.<sup>1</sup> CenturyLink opines that the Annual Report, which seeks comprehensive information, is required by LECs and serves minimal purpose or benefit to the Commission or the public since CenturyLink is a price cap regulated carrier. CenturyLink also claims the information provided in the Annual Report is used to determine a rate of return carrier's regulated rates and Kansas Universal Service Fund (KUSF) support, but does not serve a similar purpose for a price-cap regulated carrier.<sup>2</sup> CenturyLink claims it should be authorized to instead file an Annual Interrogatory, which is filed by electing carriers and telecommunications carriers (competitive carriers), in lieu of the Annual Report.<sup>3</sup> Staff does not agree.

CenturyLink elected to have its rates regulated pursuant to price caps under K.S.A. 66-2005(b). Although the Company operates under price cap regulation and has been granted some pricing flexibility, it continues to be a regulated LEC. The information reported by all LECs, including CenturyLink, is not used solely to determine regulated rates and provides information necessary to the Commission's duties regardless of whether a LEC operates under price cap or rate of return regulation.

For example, K.S.A. 66-2005(e) requires the Commission to determine the affordable local service rates for exchanges served by the rural local exchange carriers (RLECs) to determine a sufficient level of KUSF support. K.S.A. 66-2005(e)(1) requires the affordable local service rates for the RLECs "shall be the arithmetic mean of residential local service rates charged in this state in all exchanges served by rural telephone companies and in all exchanges in rate groups 1 through 3" served by other local exchange carriers, including CenturyLink. Absent a statutory change, the Commission must set the affordable local rates based on the RLECs and CenturyLink's September 30<sup>th</sup> access lines in service and the October 1<sup>st</sup> local service rates. The companies cannot submit this data prior to October 1 and a short period of time exists between when the LECs file their data and Staff files its testimony supporting the new affordable local rates. Staff, therefore, relies on the access line data, by exchange and rate group, reported in the Annual Report to calculate the

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<sup>1</sup> Petition, ¶ 1.

<sup>2</sup> *Id.*, ¶ 5.

<sup>3</sup> *Ibid.*

preliminary affordable rates. The preliminary affordable rates are listed in the Commission's Order opening the biennial KUSF Docket that addresses the affordable local rates<sup>4</sup> and used by the Rural LECs to report their new March 1 local service rates and the related calculated local service revenues.<sup>5</sup> The Annual Report information provided by the LECs, including CenturyLink, in their Annual Reports, is critical to the statutory requirement for the Commission to determine the affordable local service rates for the RLECs.

In addition, CenturyLink qualifies for approximately \$9.9 million in annual KUSF support,<sup>6</sup> which is intertwined with its Connect America Fund, Phase II (CAF II) support. Specifically, K.S.A. 66-2008(c)(3) requires that the Company's annual KUSF support "shall be reduced by any funding received by such carrier from the Federal Communication Commission's Connect America Fund II for the same household, if feasible, or for the same census block." KUSF and CAF II support are provided to the Company to invest in and maintain its network, with all support to be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."<sup>7</sup> CenturyLink is required to report its asset investment and retirements, the related accumulated depreciation, and depreciation expense, by asset category, in its Annual Report. The Company also reports any construction work in progress. This allows Staff to review the Company's investments, the type of investment (e.g. aerial or buried fiber, switch equipment, etc.) and verify the Company invested in its network during the year. It also allows Staff to determine not only the annual change in investments, but also compare the Company's investment from year to year. Total plant in service, Accumulated Depreciation, Depreciation Expense, and net plant in service provide Staff with valuable information regarding the Company's investment activity. If CenturyLink reports only minimal investment or a reduction in net plant, Staff or the Commission can follow-up with the Company to determine if it is appropriately spending its KUSF and/or CAF II support. Although CenturyLink provides some of the same investment information in its annual eligible telecommunications carrier (ETC) certification filing, it does not contain the same level of detail as the Annual Report.

An Annual Report includes other valuable information, such as any corporate guarantee by the parent on behalf of the LEC, or by the LEC, as well as debt, operating revenue, and expenses. Comparative information for the current year and the two prior calendar years is also reported. For example, the Annual Report data may show the Company is generating less regulated revenue than it did in the past two years but that the Company has also incurred less expense. The Annual Report may also show that the Company (or its parent) has substantially increased its debt. This information can be used to review the Company's current financial health and changes between calendar years. For example, the information provided can be used to determine a preliminary overall rate-of-return for the Company to gauge the Company's overall financial health, as part of the Commission's fiduciary duty to ensure consumers are provided sufficient services, especially when those services are subsidized by public funds.

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<sup>4</sup> Order Opening Docket; Protective Order Applicable to CURB; Requiring Entries of Appearance to Actively Participate and Establishing Procedural Schedule, Docket No. 19-GIMT-056-GIT (19-056), Aug. 14, 2018.

<sup>5</sup> See Staff Report and Recommendation, pp. 2-3, Docket 19-056, Aug. 2, 2018.

<sup>6</sup> Order Adopting Staff's Report and Recommendation: CenturyLink KUSF Year 22 True-up, Docket No. 16-GIMT-511-GIT, Sept. 17, 2019; Direct Testimony of Sandy Reams, p. 11, Docket No. 20-GIMT-086-GIT, Dec. 13, 2019.

<sup>7</sup> 47 C.F.R. § 54.314(a).

In contrast, Annual Interrogatories are filed by deregulated Electing Carriers, Competitive LECs and Interexchange Carriers which are not subsidized by state public funds and do not have the same responsibilities as the LECs. If CenturyLink wants treatment consistent with a deregulated entity, one option for the Company is to choose to become an Electing Carrier.

Furthermore, contrary to CenturyLink's assertion, the Commission determines rate of return carriers' revenue requirement and KUSF support in audit proceedings, not from the Annual Report.

In its Petition, CenturyLink asserts that it provides information to the Commission annually in other dockets, including the annual ETC and KUSF assessment dockets. CenturyLink claims that because substantive information is provided in these dockets, filing an Annual Interrogatory in lieu of an Annual Report is sufficient information for any Commission requirement.<sup>8</sup> CenturyLink also claims that pursuant to K.S.A. 66-123, "[t]he corporation commission may at any time require for any public utility or common carrier specific answers to any questions upon which it may desire information in connection with matters pending before them."<sup>9</sup>

Staff, however, uses the readily-available information from the Annual Report for various other reasons, including legislative inquiries. Having the more comprehensive information reported in the Annual Report means it is available for quick responses to legislative or other inquiries. It also allows Staff to review and analyze the data, perform calculations, or support recommendations to the Commission without having to review different dockets or send discovery requests to ascertain the information. In addition, the information provided in the Annual Report is more comprehensive than the information provided in the other dockets. It also eliminates the need for Staff to issue Data Requests to gather the same information and wait 7 business days for the Company's response.<sup>10</sup> In some circumstances, a 7-business-day time delay may suffice, but such a delay could be detrimental in responding to legislative requests, questions from a Commissioner or the public, and for Staff analysis to support a recommendation to the Commission.

In its Petition, the Company cites to K.S.A. 66-123, which states, in part, "[t]he corporation commission may, in its discretion, grant extensions of the time within which reports and information are required to be filed."<sup>11</sup> CenturyLink further states that it has complied with the requirement to file an Annual Report every year by the due date or as otherwise mutually agreed upon by CenturyLink and Staff without complaint. Staff agrees, but does not believe it is a reason to grant this Petition.

Staff believes it is more advantageous to the Company to continue to have a set deadline (May 1) for filing its information as it has every year than to supply this same data on an irregular and, often, time-sensitive basis. All regulated companies are aware that this information is due by May 1 every year and can plan accordingly. As stated by CenturyLink, the statute provides the Commission discretion to grant a request for an extension of time if a company needs additional time.

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<sup>8</sup> Petition, ¶ 9.

<sup>9</sup> *Id.*, ¶ 11.

<sup>10</sup> K.A. R. 82-1-234a.

<sup>11</sup> *Id.*, ¶ 2, 3.

Staff reviewed the Annual Reports filed by CenturyLink for the last 10 years. The Company complied with the requirement and filed its Annual Report by the due date or the mutually agreed upon date for each of those years. During the ten-year period, CenturyLink requested an extension of time for at least six of those years, including in 2018 and 2019. Staff has accommodated CenturyLink and granted the extension requests. If CenturyLink's concerns stem from the May 1 due date, the companies are aware of the annual May 1 deadline and can plan accordingly, but Staff understands the occasional need for additional time and has accommodated companies', including CenturyLink's, requests for additional time.

**RECOMMENDATION:**

CenturyLink provided no compelling reasons to grant its Petition. Staff recommends CenturyLink be required, as a regulated LEC, to continue to file an Annual Report to provide its corporate, operational, and financial information. Staff recommends Commission denial of the Petition.

## CERTIFICATE OF SERVICE

20-UTDT-212-MIS

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Staff's Report and Recommendation was electronically served this 23rd day of December, 2019, to the following:

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