

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

**DOCKET UT-240078**

v.

CENTURYLINK COMMUNICATIONS LCC  
d/b/a LUMEN TECHNOLOGIES GROUP;  
QWEST CORPORATION; CENTURYTEL OF  
WASHINGTON, INC.; CENTURYTEL OF  
INTER ISLAND, INC.; CENTURYTEL OF  
COWICHE, INC.; UNITED TELEPHONE  
COMPANY OF THE NORTHWEST

**CENTURYLINK’S POST-HEARING BRIEF**

October 14, 2024

## TABLE OF CONTENTS

	PAGE
<b>I.</b> INTRODUCTION .....	2
<b>II.</b> FACTS AND BACKGROUND.....	2
A. Underlying Facts .....	2
B. Commission’s Enforcement Policy Statement .....	6
<b>III.</b> PENALTY ASSESSMENT.....	8
A. The Commission Has Discretion in Assessing and Suspending Penalties.....	8
B. The Commission’s Factors Favor Minimal or No Penalties .....	8
1. Factor One: How serious or harmful the violation is to the public .....	8
2. Factor Two: Whether the violation is intentional.....	11
3. Factor Three: Whether the company self-reported.....	12
4. Factor Four: Whether the company was cooperative and responsive .....	13
5. Factor Five: Whether the company promptly corrected the violations and remedied the impacts. ....	13
6. Factor Six and Seven: The number of violations and the number of customers .....	14
7. Factor Eight: Likelihood of recurrence .....	16
8. Factor Nine: The company’s past performance regarding compliance, violations, and penalties .....	18
9. Factor Ten: The company’s existing compliance program .....	19
10. Factor Eleven: The size of the company .....	20
<b>IV.</b> CONCLUSION .....	21

## TABLE OF AUTHORITIES

	<b>PAGE(S)</b>
<b><u>CASES</u></b>	
<i>Wash. Utils. &amp; Transp. Comm’n v. CenturyTel of Inter Island, Inc. d/b/a CenturyLink</i> , Docket UT-132234, Order 03 at ¶ 51 (Oct. 20, 2015) .....	8
<i>Wash. Utils. &amp; Transp. Comm’n v. CenturyLink Communications, LLC</i> , Docket UT-181051, Order 09 .....	9
<i>Wash. Utils. &amp; Transp. Comm’n v. CenturyLink Communications, LLC</i> , Docket UT-210902, Order 05 .....	9
<b><u>STATUTES AND REGULATIONS</u></b>	
RCW 80.04.380 .....	8
WAC 480-120-133 .....	Passim
WAC 480-120-175 .....	Passim
<b><u>OTHER AUTHORITIES</u></b>	
<i>In re Enforcement Policy of the Wash. Utils. &amp; Transp. Comm’n</i> , Docket A-20061, Enforcement Policy (January 7, 2013) .....	Passim

## **I. INTRODUCTION**

- 1.** Commission Staff seeks maximum penalties against CenturyLink Communications, LLC;<sup>1</sup> CenturyTel of Washington, Inc.; CenturyTel of Inter Island, Inc.; CenturyTel of Cowiche, Inc.; United Telephone Company of the Northwest; and Qwest Corporation (collectively “CenturyLink”) for violation of WAC 480-120-133 and WAC 480-07-175.
- 2.** WAC 480-120-133 imposes several requirements on telecommunications companies regarding the company’s response time to customer calls to the business office or repair center during regular business hours. Specifically, customer calls to a company’s business or repair center must be answered either by a live representative or an automated call answering system. A company’s automated system must clearly describe how a caller can reach a live representative and transfer the caller within the first sixty seconds after the caller chooses this option. Each month, the average time until a live representative answers a call must not exceed sixty seconds from the time the caller selects the option to speak to a live representative.
- 3.** WAC 480-07-175 requires public service companies to provide documents requested by the Commission within 10 business days unless another deadline is specified by the Commission.
- 4.** Staff issued multiple rounds of seemingly-overlapping informal data requests to explore whether CenturyLink was in compliance with WAC 480-120-133; in the end, Staff found a total of just nine violations of the rule. CenturyLink acknowledges that it did not meet the average hold time metric from January 2022 through November 2022. CenturyLink likewise acknowledges that there were inadvertent delays in its responses to Staff data

---

<sup>1</sup> Staff filed the Complaint only against CenturyLink Communications, LLC (“CLC”), which is not an incumbent local exchange carrier (“ILEC”) in Washington and does not operate business offices or repair centers for purposes of WAC 480-120-133. Staff moved to amend the Complaint on July 11, 2024 to add the five CenturyLink ILECs. The Commission granted Staff’s motion in Order 03.

requests due to strains on company resources, including the unexpected departure of one employee tasked with responding, as well as a communications gap between CenturyLink and Staff.

5. The only remaining issue is the appropriate penalty (if any) that should be assessed considering the unique circumstances of this case and the application of the Commission's Enforcement Factors and Guidelines.
6. Staff reflexively seeks the *maximum* penalties for CenturyLink's answer-time violations and delayed data request responses. While CenturyLink regrets that there were any violations, it has been consistently compliant with WAC 480-120-133 since December 2022, and it has taken effective remedial actions to prevent delinquency in responding to Staff data requests. In light of the Commission's Enforcement Factors and Guidelines, maximum penalties are not warranted. Instead the Commission should issue no or minimum penalties.

## **II. FACTS AND BACKGROUND**

### **A. Underlying Facts**

7. In January 2022, the Commission Staff began an investigation to determine if CenturyLink's automatic call answering system followed the requirements of WAC 480-120-133.<sup>2</sup>
8. On December 29, 2022, the Commission Staff sent a data request to CenturyLink Communications, LLC ("CLC") via mail requesting: (1) the monthly call data for the average time until the automated system answered calls, (2) the monthly call data for the average time until the automated system provided a caller with an option to speak to a live representative or transferred the caller to a live representative, and (3) the monthly

---

<sup>2</sup> Complaint ¶ 4

call data for the average time until a live representative answered a call from the time the caller selected the appropriate option to speak to a live representative. Staff requested CenturyLink to provide this information for the Company's business office and repair center from September 01, 2021, through November 30, 2022.<sup>3</sup>

- 9.** On February 22, 2023, Staff sent a follow up email. CenturyLink responded to the Commission Staff that it had not received the initial data request, which had been sent only by regular mail and had been sitting unopened in an empty office building.<sup>4</sup> CenturyLink appreciates that Staff is not counting this initial period in its calculation of penalties. CenturyLink indicated it would work on compiling the requested information.<sup>5</sup>
- 10.** On March 16, 2023, the Staff sent another follow up email.<sup>6</sup> On March 30, 2023, CenturyLink responded to the Commission Staff and provided the monthly call data for the average time from when the caller selects the appropriate option to speak to a live representative until a representative answers the call, for its business office from January 2022 through November 2022.<sup>7</sup> The data for the business office during that period showed that the monthly average time until a live representative answered a call from the time the caller selects the appropriate option to speak to one exceeded 60 seconds. CenturyLink explained that this was all the information it had readily available" due to a migration to a new customer care provisioning system.<sup>8</sup> CenturyLink could not produce information it did not possess, nor is it required to do so. CenturyLink also explained that it does not track the average time from the beginning of a call until the moment at which

---

<sup>3</sup> Complaint ¶ 6

<sup>4</sup> Prabakaran, Exh. SP-1T at 5:17-20.

<sup>5</sup> Id.

<sup>6</sup> Id. at 6:3-6.

<sup>7</sup> Id.

<sup>8</sup> Prabakaran, Exh. SP-7.

the automated system answers the call.<sup>9</sup> The Company explained that the call is answered by the automated system as soon as the network completes the connection.<sup>10</sup> Before connection completion there is essentially nothing to track.

**11.** Although CenturyLink provided all the information that was available due to the change of software, on May 8, 2023, Staff sent a follow up email requesting the “missing data” and an explanation of measures CenturyLink had implemented to ensure its live representatives answer calls within 60 seconds.<sup>11</sup>

**12.** With the intention to clarify the apparent misunderstanding between Staff and the Company, on June 8, 2023, M. Peter Gose, Director of State and Local Government Affairs for CenturyLink, called Sharmila Prabakaran, Investigator in the Consumer Protection Division of the Commission, to discuss the Staff’s overlapping request issued despite CenturyLink’s response of March 16, 2023.<sup>12</sup>

**13.** The conversation between M. Gose and M. Prabakaran was lengthy and detailed. However, M. Prabakaran did not ask M. Gose to follow up the conversation in writing, and M. Gose believed the conversation itself satisfied Staff’s needs.<sup>13</sup> There are varying accounts on this point. M. Gose explained his understanding in his pre-filed testimony.<sup>14</sup> M. Prabakaran initially testified only that the conversation occurred,<sup>15</sup> but on rebuttal M. Feeser indicated M. Prabakaran had an expectation that CenturyLink would provide

---

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Prabakaran, Exh. SP-8.

<sup>12</sup> Gose, Exh. SP-1T, at 11:15-19.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Prabakaran, Exh. SP-1T at 7:14-16.

written responses.<sup>16</sup> Hindsight being 20/20, given this confusion, a written response would have been preferable. But CenturyLink’s failure in this regard was not intentional, nor aimed to flout Commission authority.

- 14.** M. Gose stated that he “assumed (wrongly, it turns out) that Staff had the information that it needed” and that it was not until July 31, 2023, when Staff circled back to ask for written responses; that he realized that the Commission expected for the Company to confirm the details of the June 8, 2023 conversation in writing.<sup>17</sup>
- 15.** On September 19, 2023, the Staff extended the timeframe for the requested data to include the months of December 2022 through August 2023. On September 21, 2023, Staff granted CenturyLink’s request for an extension until October 4, 2023 to provide the information requested for the extended timeframe. On October 4, 2023, CenturyLink provided the requested information.<sup>18</sup>
- 16.** On October 26, 2023, the Commission Staff sent another request asking the Company to explain why it does not track call data regarding the average time its automated system takes to answer calls.<sup>19</sup> Staff asked why the Company still had not provided the requested data from September 2021 through March 2022 and from December 2022 through August 2023 for the repair center and the business office.<sup>20</sup>
- 17.** On February 15, 2024, CenturyLink explained to Staff how the automatic answering system works and reiterated that the requested data from September 2021 through March

---

<sup>16</sup> Feeser, Exh. BF-1T at 10:12-15.

<sup>17</sup> Gose Exh. PJG-1T at 11:17-19.

<sup>18</sup> Id.

<sup>19</sup> Prabakaran, Exh. SP-11 at 1.

<sup>20</sup> Id. at 2.

2022 no longer existed due to the migration to a new customer care software.<sup>21</sup>

CenturyLink provided the data for both the repair center and business office for December 2022 through August 2023, which showed the Company updated the process to ensure a live representative answers calls to the repair center and calls to the business office within 60 seconds. CenturyLink's response demonstrated that CenturyLink was in compliance with WAC 480-120-133.<sup>22</sup>

- 18.** Staff determined that CenturyLink committed 15 violations of WAC 480-120-133(2)(c) from September 2021 through November 2022 (only 9 of which are within the statute of limitations).<sup>23</sup>
- 19.** Staff also determined that CenturyLink failed to comply with its duty to provide documents requested by the Commission Staff pursuant to WAC 480-07-175, allegedly committing 234 violations when it failed to provide all the information requested by Staff in its letter dated December 29, 2022, from March 9, 2023, until February 15, 2024.<sup>24</sup>
- 20.** Staff requests the Commission to impose the maximum penalty of \$1,000 for each of the 9 violations of WAC 480-120-133(2)(c) against CenturyLink. Staff also requests the Commission to impose the maximum penalty of \$1,000 for each of the 234 violations of WAC 480-07-175.<sup>25</sup>

## **B. Commission's Enforcement Policy Statement**

- 21.** The Commission's Enforcement Policy Statement issued in January 2013 in Docket A-120061 ("Policy Statement") articulates the Commission's position and policies

---

<sup>21</sup> Prabakaran, Exh. SP-13.

<sup>22</sup> Id.

<sup>23</sup> Prabakaran, Exh. SP-1T at 16:1-3.

<sup>24</sup> Id.

<sup>25</sup> Id. at 19:15-20:3.

regarding enforcement actions and penalties. In the Policy Statement, the Commission sets forth the following eleven factors (“Factors”) for consideration in actions to enforce applicable statutes, rules, orders, or tariffs:

- (1) how serious or harmful the violation is to the public;
- (2) whether the violation is intentional;
- (3) whether the company self-reported the violation;
- (4) whether the company was cooperative and responsive;
- (5) whether the company promptly corrected the violations and remedied the impacts;
- (6) the number of violations;
- (7) the number of customers affected;
- (8) the likelihood of recurrence;
- (9) the company’s past performance regarding compliance, violations, and penalties;
- (10) the company’s existing compliance program; and
- (11) the size of the company.

- 22.** Applying the Factors set out in the Policy Statement to the circumstances of this particular case, the Commission should not impose penalties in this case. If the Commission disagrees, a penalty in the amount of \$100 per violation would be more than adequate to appropriately further the Commission’s objectives. Additionally, if the Commission does assess a penalty against CenturyLink, the Commission may suspend all or a portion of the penalty contingent on the company abiding by these rules for a reasonable, specified period of time. Such suspension would be appropriate in this case where, as described below, CenturyLink has been in compliance with WAC 480-120-133 since December 2022 and took significant and assertive remedial actions to ensure future compliance and responsiveness.

### **III. PENALTY ASSESSMENT**

#### **A. The Commission Has Discretion in Assessing and Suspending Penalties**

- 23.** The Commission’s objective when enforcing statutes, rules, orders, and tariffs is to ensure services within the Commission’s jurisdiction are delivered safely, adequately, efficiently, and at rates and charges that are just and reasonable. “The Commission’s ultimate objective in any enforcement action is to obtain compliance with applicable law.”<sup>26</sup> Upon a finding of a violation of WAC 480-120-133 and WAC 480-07-175, the Commission may assess penalties not to exceed \$1,000 per violation per day. The Commission may decline to assess penalties even if a violation occurred and has chosen to forego penalties when future compliance is anticipated.<sup>27</sup> The Commission may also suspend penalties and subsequently waive them upon conditional performance.<sup>28</sup>

#### **B. The Commission’s Factors Favor Minimal or No Penalties.**

##### **1. Factor One: How serious or harmful the violation is to the public**

- 24.** According to the Policy Statement, “[t]he more serious or harmful a violation, the more appropriate penalties or other sanctions may be.”<sup>29</sup> A penalty is not appropriate for every violation and penalties should be commensurate with the offense. This is why RCW 80.04.380 gives the Commission the option to impose penalties ranging from \$100 to significantly higher fines of \$1,000 per incident. The fact that a rule was in fact breached does not mean that the maximum penalty should be automatically imposed or that a penalty should be imposed at all.

---

<sup>26</sup> See Policy Statement at ¶ 15.

<sup>27</sup> See Policy Statement at ¶ 15.

<sup>28</sup> Policy Statement at ¶ 20. See also, e.g., *Wash. Utils. & Transp. Comm’n v. CenturyTel of Inter Island, Inc. d/b/a CenturyLink*, Docket UT-132234, Order 03 at ¶ 51 (Oct. 20, 2015).

<sup>29</sup> See Policy Statement at ¶ 15 (1).

25. The rule requires that “[e]ach month, the average time until a live representative answers a call must not exceed sixty seconds from the time a caller selects the appropriate option to speak to a live representative.”
26. This is a rule about customer convenience, and not one pertaining to access to critical 911 services or anything else that raises health and safety concerns.<sup>30</sup> In Docket UT-181051 (concerning 13,000 failed 911 calls during a December 2018 network outage), Commission Staff sought and the Commission assessed \$100 penalties per identified violation.<sup>31</sup> More recently, in Docket UT-210902 (concerning service disconnection and suspension in violation of the Governor’s COVID-19 emergency proclamations), the Commission assessed \$750 penalties.<sup>32</sup> With all due respect, Staff’s penalty demand is disproportional to the violation, and suggests a view that maximum penalties are *always appropriate*.
27. Staff’s characterization of the violations is somewhat circular. Staff asserts that any violations are, seemingly by definition, serious and harmful. For instance, M. Prabakaran, without explaining how any Washington customer was endangered or harmed by CenturyLink’s delayed responses to Staff’s repeated data requests, asserts simply that “Public service companies’ statutory and regulatory duty to timely and completely respond to Commission requests for information is an important piece of the regulatory framework that is in place to protect the public interest.”<sup>33</sup> CenturyLink does not deny that it has an obligation to timely and completely respond to Staff data requests, and that it did not fully perform to those standards here. But if any violation of a rule is

---

<sup>30</sup> See Policy Statement at ¶ 15 (1).

<sup>31</sup> Docket UT-181051, Order 08.

<sup>32</sup> Docket UT-210902, Order 05 (reducing penalty due in significant part to remedial measures to prevent recurrence).

<sup>33</sup> Prabakaran, Exh. SP-1T at 14:7-10.

*per se* deserving of maximum penalties, the discretion afforded to the Commission – and the specific enforcement guidelines the Commission has set out – are meaningless.

- 28.** The Policy Statement cites examples of “more serious or harmful violations” that will justify penalties or require the Commission’s immediate action. These include requirements for a drug or alcohol testing program, driver medical cards, and commercial drivers’ licenses; and requirements to maintain or repair corrosion protection on pipelines.<sup>34</sup> The Policy Statement does not limit the application of penalties to those violations, but these examples show which types of violations should be considered appropriate to justify higher penalties or other sanctions.
- 29.** By no means is CenturyLink disclaiming responsibility for its shortcomings discussed in this case, but maximum penalties are not, consistent with the Policy Statement, appropriate or necessary due to lapses concerning customer convenience. CenturyLink customers were not harmed or endangered. This is especially true in the context of the hyper-competitive communications market,<sup>35</sup> and the fact that an annoyed or inconvenienced customer is not captive and can transition to other providers if sufficiently frustrated by CenturyLink’s customer service. Other industries regulated by the Commission are monopolies, and strict customer service regulation is more appropriate. Here, it is unnecessary and outdated; and while this monopoly-era rule remains in effect, the Commission has the discretion under the Policy Statement to forego penalties or impose minimal penalties given this context.

---

<sup>34</sup> See Policy Statement at ¶ 15 (1).

<sup>35</sup> Gose, Exh. PJG-1T at 6:1-8:7. M. Gose provides significant detail regarding the competitive nature of telecommunications services in Washington. This is critical context for the Commission’s assessment of the reasonableness and importance of punitively enforcing a rule of customer convenience that only applies to a tiny minority of the telecommunications services provided to Washington customers. This rule does not apply to well over 90% of customers in the state.

## **2. Factor Two: Whether the violation is intentional**

**30.** The evidence in this proceeding demonstrates unquestionably that CenturyLink's violation was unintentional. The Factor states:

Whether the violation is intentional. A company that willingly and intentionally violates a Commission requirement may be dealt with more severely than a company that unknowingly committed a violation.<sup>36</sup>

In determining whether a company willingly and intentionally committed a violation, the Commission will consider factors that include, but are not limited to, whether:

- a. The company ignored Staff's previous technical assistance.
- b. The company committed previous violations of the same statute or regulation.
- c. The company appears to be hiding or obscuring the facts.
- d. There is clear evidence through documentation or other means that shows the company knew of and failed to correct the violation.

**31.** None of these factors are present in this case, and Staff does not allege that they apply. Yet, Staff asks the Commission, with no evidence in support, to find intentionality.

**32.** First, there is no evidence that CenturyLink intentionally violated WAC 480-120-133. In 2022, CenturyLink migrated to a modern customer care provisioning system in order to increase efficiency and provide a better customer service experience in general. Since December 2022, CenturyLink's business office and repair center have been in compliance with WAC 480-120-133.

**33.** It is likewise evident that CenturyLink had no intention of violating WAC 480-07-175. On March 30, 2023, CenturyLink responded to Staff's inquiries and provided the data

---

<sup>36</sup> Policy Statement at ¶ 8.

available to the Company, even when such data showed that the Company, at the time, was not complying with the requirements of WAC 480-120-133(2)(c). The Company did not hide or obscure facts.

- 34.** CenturyLink explained that the migration to a new customer care provisioning system, to provide a better customer experience, made the requested data from September 2021 through March 2022 unavailable. WAC 480-07-175 does not require a company to provide information it does not possess.
- 35.** As previously stated, although there were delays in providing the information requested by Staff, CenturyLink responded to Staff's inquiries on March 30, 2023, again on October 4, 2023, and on February 15, 2024. On June 8, 2023, M. Gose contacted Staff directly to try to understand why Staff was sending overlapping requests even when CenturyLink sent the information it had available. In hindsight, CenturyLink acknowledges that it should have been more timely when handling Staff's data requests. However, there is no indication that CenturyLink deliberately retained information or hid or obscured the facts. Its delays were inadvertent, caused in part due to resource constraints, including a sudden staffing change affecting the employee assigned to responding to these requests,<sup>37</sup> and in part due to miscommunication between Staff and CenturyLink.

### **3. Factor Three: Whether the company self-reported**

Whether the company self-reported the violation. The Commission may be more lenient with a company that self-reports to the Commission a violation that occurred.<sup>38</sup>

- 36.** Staff is correct that CenturyLink did not self-report the violations of WAC 480-120-133 until responding to Staff's data requests. CenturyLink was unaware of the small number of violations until that time, and CenturyLink certainly did not obscure the facts when

---

<sup>37</sup> Gose, Exh. PJG-1T at 11, fn 4.

<sup>38</sup> Policy Statement at p. 8.

responding. The question of self-reporting does not logically apply to the violations of WAC 480-07-175, as the failure to timely respond was the violation and thus was fully apparent (and not in need of separate disclosure).

**4. Factor Four: Whether the company was cooperative and responsive**

Whether the company was cooperative and responsive. The Commission may consider the company's cooperation and responsiveness during an investigation when it considers enforcement action after the investigation is completed.<sup>39</sup>

- 37.** As previously stated, CenturyLink was cooperative and responsive, albeit delayed in some of its responses to Staff's informal data requests. Staff generically claims that CenturyLink was not responsive or cooperative in the investigation,<sup>40</sup> but no details are provided. Further, the vast majority of the violations at issue here directly relate to CenturyLink's timeliness, and Staff did not "investigate" the issue of timeliness. It was self evident.
- 38.** Staff appears to be claiming that delayed responses are *de facto* signs of lack of cooperation and non-responsiveness in its investigation, but this is not the case. Staff's theory appears to characterize the underlying violation (untimely responses to overlapping data requests) as, itself, an aggravating factor requiring maximum penalties. The Policy Statement does not support that view.

**5. Factor Five: Whether the company promptly corrected the violations and remedied the impacts.**

Whether the company promptly corrected the violations and remedied the impacts. The Commission may be more lenient when a company promptly corrects a violation, and any underlying system problems, when these are pointed out by Staff. For example, if the violation had an impact on customers, such as an overcharge, the Commission may be more lenient if

---

<sup>39</sup> Policy Statement at p. 8.

<sup>40</sup> Prabakaran, Exh. SP-1T at 15:12-13.

the company immediately took steps to refund the money and to remedy any other harm.<sup>41</sup>

- 39.** This Factor weighs in favor of CenturyLink because, as Staff acknowledges, CenturyLink is in compliance with both rules.
- 40.** As M. Gose explained, CenturyLink has been complying with the 60 second average metric. Staff filed this complaint March 13, 2024, and admits that CenturyLink was compliant with the answer time rule by December 2022.<sup>42</sup>
- 41.** As for WAC 480-07-175(2)(b), CenturyLink instituted additional safeguards to ensure that it timely responds to Staff data requests. To improve compliance with WAC 480-07-175, CenturyLink instituted a new calendaring system that sends multiple automatic reminders. The Company has been complying with Staff's lengthy data requests and have not been delinquent once since the new calendaring system's implementation.<sup>43</sup> Given that the purpose of Commission penalties, per the Commission's Policy Statement, is to ensure compliance, this factor weighs heavily in favor of no or minimum penalties.

**6. Factors Six and Seven: The number of violations and the number of customers**

The number of violations and number of customers affected. While numbers alone do not determine appropriate enforcement actions, the more violations the Commission finds, the more likely it is to take an enforcement action. The more customers affected by a violation, the more likely the Commission will take enforcement action.<sup>44</sup>

---

<sup>41</sup> Policy Statement at p. 8.

<sup>42</sup> Prabakaran, Exh. SP-1T, at 16:11-15.

<sup>43</sup> Gose, Exh. PJG-1T at 13:19-14:2.

<sup>44</sup> Policy Statement at p. 9.

- 42.** As M. Gose explained, Staff overstated the number of delinquent days underlying its claim under WAC 480-07-175 by 65 days.<sup>45</sup> Staff interpreted CenturyLink’s March 30, 2023 responses as “incomplete” when in reality CenturyLink provided all of the information it had available. Staff does not allege that CenturyLink possessed, but refused to turn over, any information. M. Prabakaran acknowledged that CenturyLink indicated in its response that it was providing all the information readily available to the Company.<sup>46</sup> If Staff had any confusion as to what “readily available” meant, it could have contacted CenturyLink to discuss the matter. Instead, Staff insists that CenturyLink should be penalized for not providing information it did not have. Properly crediting CenturyLink with having responded to Staff data request eliminates 28 of the 234 delinquency days Staff asserts.
- 43.** M. Gose also had a lengthy telephone conversation with M. Prabakaran on June 8, 2023, and earnestly believed that Staff had all it needed based on that discussion. It wasn’t until July 31, 2023 that Staff renewed its request for written responses. Properly crediting that telephone discussion as responding to Staff’s May 8 data requests eliminate another 37 delinquency days (June 8 through July 31).
- 44.** When it comes to the number of customers affected, Staff does not even speculate a number but baldly asserts that “the majority of customers who called the Company’s business office and repair center and selected the option to speak to a live representative between March and November 2022, had to wait longer than the monthly 60 seconds average response time.”<sup>47</sup>

---

<sup>45</sup> Gose Exh. PJG-1T at 14:7-9.

<sup>46</sup> Prabakaran, Exh. SP-1T, at 6:15-18.

<sup>47</sup> Prabakaran, Exh. SP-1T, at 16:5-11.

- 45.** As M. Gose explained, that is not how average metrics or averages themselves work.<sup>48</sup> WAC 480-120-133 requires that the average time until a live representative answers a call must not exceed sixty seconds from the time the caller selects the option to speak to a live representative and not individual call performance information. CenturyLink recorded the aggregate of all the seconds of hold time and divided by the total number of calls. There is no way to know from this data how those hold time durations were apportioned by call.
- 46.** WAC 480-120-133 is not a rule that imposes an obligation to meet a prescribed performance metric for each call. Therefore, it is only unsubstantiated speculation to state that the majority of customers who called the Company during a specific time period had to wait longer than 60 seconds. Some callers may have waited longer than 60 seconds and others waited less. If a small number of customers experienced very long wait times, that would affect the overall average and might mean that fewer than half of customers experienced hold times exceeding 60 seconds. There is absolutely no basis to assume a majority of customers who called the business office, or repair center waited more than 60 seconds. It could've have been the other way around. Staff retreated from this position in its rebuttal testimony, admitting it does not know how many customers were affected.<sup>49</sup>
- 47.** Staff also ignores that no customers were affected by CenturyLink's delays in responding to Staff's data requests, the violation for which Staff seeks the overwhelming majority of the penalties in this case. This factor does not support Staff's call for maximum penalties.

---

<sup>48</sup> Gose, Exh. PJG-1T at 15:17-16:16.

<sup>49</sup> Feeser, Exh. BF-1T at 11:13-16.

**7. Factor Eight: Likelihood of recurrence**

The likelihood of recurrence. If the company has not changed its practices, or if the violations are repeat violations made known to the company in the course of an earlier inspection or investigation, the Commission will be more likely to take an enforcement action.<sup>50</sup>

- 48.** The likelihood of recurrence is extremely low, and the Commission should weigh this factor heavily in favor of no penalty or a suspended penalty. In rebuttal, M. Feeser recognized that CenturyLink has taken steps to respond timely to Commission data requests. However, she stated that it is “premature for Staff to know if steps the Company has put into place will lead to consistent improvement in the future.” If it is too early for Staff to determine if the Company’s implemented solutions will in fact conduct to timely responses to Commission data requests, then it would also be premature for Staff to determine that the Company will fail to timely comply after the implemented changes. But it is not too early.
- 49.** M. Feeser testified that, in regard to WAC 480-07-175, the Company has put into place corrective actions, is taking reasonable steps to prevent a recurrence, and Staff did not indicate the Company has been delinquent on any other data requests. Considering the Complaint was issued on March 13, 2024, it’s been the better part of a year since CenturyLink implemented measures to prevent delinquency and it has consistently complied with WAC 480-07-175.
- 50.** Staff incorrectly broadens the standard of this Factor beyond the Commission’s express language and thereby changes the analysis from what the Commission intended and has applied in the past. Specifically, Staff bases its recommendation of higher penalties because, again, Staff thinks is premature to determine the likelihood of a future failure to comply with Commission’s requests, rather than what the factor expressly states –

---

<sup>50</sup> Policy Statement at p. 9.

“recurrence” of the specific violation. This is not a repeat violation because there is no indication that the Company has been delinquent on any other data requests. M. Feeser even stated that Staff appreciates steps the Company has taken to respond timely to Commission data requests.<sup>51</sup>

- 51.** Furthermore, M. Feeser states that she does not agree with M. Gose’s assessment that CenturyLink has been following WAC 480-120-133 since December 2022, “because CenturyLink have not provided a reasonable explanation for the dramatic drop-in wait times that occurred at the Company’s business office between November 2022 (116 seconds) and December 5, 2022 (8 seconds).<sup>52</sup>” However, CenturyLink explained that it implemented a new customer care provisioning system and has been consistently complying with WAC 480-120-133 by “dramatically” decreasing wait times. Staff relies on mere conjecture to sow doubt as to whether CenturyLink is, in fact, compliant. This Factor heavily weighs in favor of no or minimal penalties.
- 52.** If the Commission feels sympathy for Staff’s concern that it lacks confidence whether CenturyLink’s remedial actions will hold, a suspended penalty would be appropriate. It would, in fact, provide CenturyLink tangible incentive to remain in compliance with both rules. Staff’s approach, however, is that maximum penalties are appropriate (irrespective of CenturyLink’s remedial actions) because it is possible that CenturyLink will fall out of compliance in the future. That perspective defies this Factor. By Staff’s reasoning, it is always premature to ensure perfection in the future, and thus maximum penalties are always in order. The Commission should not adopt such a punitive view.

---

<sup>51</sup> Feeser, Exh. BF-1T at 12:12-19

<sup>52</sup> Feeser, Exh. BF-1T at 12:1-6

**8. Factor Nine: The company's past performance regarding compliance, violations, and penalties**

The company's past performance regarding compliance, violations, and penalties. The Commission will deal more harshly with companies that have a history of non-compliance, repeated violations of the same or other regulations, and previous penalties.<sup>53</sup>

- 53.** Staff lists and discusses several cases stretching out over the past decade in which CenturyLink was penalized by the Commission. None of those cases, however, concerned violations to either WAC 480-120-133 or WAC 480-07-175 and do not weigh in favor of maximum penalties.
- 54.** The purpose of the Enforcement Factors is to deter the prospect of future violations of the type at issue in the enforcement proceeding. When a company is fined by the Commission it is essential that the Company identifies and corrects deficiencies that caused the specific violation. The two violations at issue in this case have already been corrected, as Staff reluctantly acknowledges while still demanding maximum penalties.
- 55.** It appears to be Staff's position that CenturyLink, due to prior unrelated enforcement proceedings, should *always* be subject to maximum penalties in the event of any rule violation. This is contrary to the Policy Statement. The Factors apply case by case and only a history of non-compliance, repeated violations of the same regulation should be considered to trigger the most severe penalties.
- 56.** Again, CenturyLink does not minimize the significance of any rule violation. It simply does not believe that Staff has demonstrated that past unrelated violations call for maximum penalties. Staff's position is punitive, and frankly ignores the Factors the Commission must consider in its discretion.

---

<sup>53</sup> Policy Statement at p. 9.

**9. Factor Ten: The company's existing compliance program**

The company's existing compliance program. The Commission is more likely to take enforcement action if the company does not have an active and adequate compliance program in place, or if the Commission has previously identified deficiencies with the company's compliance program and the company has not corrected the deficiencies.<sup>54</sup>

**57.** CenturyLink has been in full compliance with WAC 480-120-133 since December 2022. No compliance program is needed or appropriate.

**58.** CenturyLink has implemented a compliance program (including a new calendaring system and several automatic reminders) to ensure timely response to Commission data requests. As Staff appears to acknowledge, the Company has not been delinquent on any other data requests since the Complaint was filed.

**59.** Factor ten's requirement is for a company to identify deficiencies and implement an active and adequate compliance program. CenturyLink has done both things and Staff recognized the Company's compliance has been consistent.

**10. Factor Eleven: The size of the company**

The size of the company. The Commission will consider the size of the company in taking enforcement actions. It is not the Commission's intention to take enforcement actions disproportionate to companies of similar size with similar penalties, or to take enforcement actions disproportionate to a company's revenues.<sup>55</sup>

**60.** This Factor is not significant to the Commission's analysis. It, by the Commission's explanation in the Policy Statement, exists merely to ensure that the Commission does not impose excessive penalties relative to the size of the company. While M. Prabakaran cited the wrong affiliate's revenue in her testimony,<sup>56</sup> company size does not inform the

---

<sup>54</sup> Policy Statement at p. 9.

<sup>55</sup> Policy Statement at p. 9.

<sup>56</sup> Prabakaran, Exh. SP-1T at 19:12-13.

Commission's analysis here. Neither minimum nor maximum penalties in this case will trigger concerns regarding the company's overall resources.

#### **IV. CONCLUSION**

- 61.** For the reasons stated above, the appropriate penalty in this proceeding is either no penalty or a suspended penalty of \$100 per violation.
- 62.** The Commission should exercise its discretion and decline to penalize CenturyLink because no penalty amount will further the Commission's objective of ensuring services within the Commission's jurisdiction are delivered safely, adequately, efficiently, and at rates and charges that are just and reasonable. CenturyLink has been fully in compliance with WAC 480-120-133 for almost two years and earlier this year took effective remedial action to ensure future compliance with WAC 480-07-175, as Staff admits. Maximum penalties, as Staff continues to seek, would be punitive and inconsistent with Commission policy and guidelines.

Respectfully submitted this 14<sup>th</sup> day of October 2024

**CENTURYLINK**



---

Adam L. Sherr, WSBA #25291  
Assistant General Counsel  
120 Lenora Street, Floor 5  
Seattle, Washington 98121  
(206) 398-2507  
[adam.sherr@lumen.com](mailto:adam.sherr@lumen.com)