

**BEFORE THE WASHINGTON
UTILITIES & TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,

Complainant,

v.

QWEST CORPORATION D/B/A
CENTURY LINK QC

Respondent.

DOCKET UT-171082

RESPONSE TESTIMONY OF SUSAN M. BALDWIN

ON BEHALF OF PUBLIC COUNSEL

EXHIBIT SMB-1T

June 1, 2018

RESPONSE TESTIMONY OF SUSAN M. BALDWIN (SMB-1T)

DOCKET UT-171082

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EXHIBITS LIST

Exhibit SMB-2	Susan M. Baldwin Statement of Qualifications
Exhibit SMB-3	Sherry Lichtenberg, Ph.D., <i>Carrier of Last Resort: Anachronism or Necessity?</i> , NRRI Report No. 16-06 (Jul. 2016)
Exhibit SMB-4	CenturyLink's Response to Public Counsel Data Request 6
Exhibit SMB-5	CenturyLink's Response to Public Counsel Data Request 2, and pages 20-23 of Attachment (PAHD Tariff)
Exhibit SMB-6	CenturyLink's Response to Public Counsel Data Request 12
Exhibit SMB-7C	CenturyLink's CONFIDENTIAL Response to Public Counsel Data Request 13
Exhibit SMB-8	CenturyLink's Supplemental Response to Public Counsel Data Request 3, and Attachment PC-3
Exhibit SMB-9	CenturyLink's Response to Public Counsel Data Request 11
Exhibit SMB-10	CenturyLink's Response to Public Counsel Data Request 8

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I. INTRODUCTION / SUMMARY

Q: Please state your name and business address.

A: My name is Susan M. Baldwin. I am an independent consultant, and my business is located at 13 Church Hill Street, Watertown, Massachusetts 02472.

Q: On whose behalf are you testifying?

A: I am testifying on behalf of the Public Counsel Unit of the Attorney General's Office of Washington (Public Counsel).

Q: Please summarize your educational background and professional experience.

A: Since 1984, I have specialized in the economics, regulation, and public policy of utilities, with a long-standing focus on telecommunications markets and, more recently, consumer issues in electric and gas markets. I have testified before 23 state public utility commissions nationwide, including Arkansas, California, Colorado, Connecticut, District of Columbia, Idaho, Illinois, Indiana, Iowa, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Washington State, West Virginia, and Wyoming. I have also participated in dozens of Federal Communications Commission (FCC) proceedings.

As an independent consultant, I have worked on many diverse issues, including analyzing carrier of last resort obligations in state public utility commission proceedings and FCC proceedings. I have also analyzed various state legislative proposals that would modify or eliminate regulatory oversight of the withdrawal of basic telecommunications service and carrier of last resort obligations. Earlier in my career, I served as Director of Publications and Tariff

1 Research for a consulting firm that specialized in telecommunications regulation.
2 I also served as Director of the Telecommunications Division for the
3 Massachusetts Department of Public Utilities where I advised and drafted
4 decisions for the Massachusetts commissioners in numerous proceedings. Under
5 my supervision, staff analyzed all telecommunications matters relating to
6 regulating the then \$1.7-billion telecommunications industry in Massachusetts,
7 including the review of all telecommunications tariff filings; petitions; cost,
8 revenue, and quality of service data; and certification applications. I have
9 prepared a detailed Statement of Qualifications, which is filed with this testimony
10 as Exhibit SMB-2.

11 **Q: What exhibits are you sponsoring in this proceeding?**

12 A: In addition to this testimony, I am sponsoring Exhibits SMB-2 through SMB-10,
13 which are listed below.

14	Exhibit SMB-2	Susan M. Baldwin Statement of Qualifications
15	Exhibit SMB-3	Sherry Lichtenberg, Ph.D., <i>Carrier of Last Resort: Anachronism or</i>
16		<i>Necessity?</i> , NRRI Report No. 16-06 (Jul. 2016)
17	Exhibit SMB-4	CenturyLink's Response to Public Counsel Data Request 6
18	Exhibit SMB-5	CenturyLink's Response to Public Counsel Data Request 2, and
19		pages 20-23 of Attachment (PAHD Tariff)
20	Exhibit SMB-6	CenturyLink's Response to Public Counsel Data Request 12
21	Exhibit SMB-7C	CenturyLink's CONFIDENTIAL Response to Public Counsel Data
22		Request 13

1 Exhibit SMB-8 CenturyLink’s Supplemental Response to Public Counsel Data
2 Request 3, and Attachment PC-3

3 Exhibit SMB-9 CenturyLink’s Response to Public Counsel Data Request 11

4 Exhibit SMB-10 CenturyLink’s Response to Public Counsel Data Request 8

5 **Q: What is the subject matter of your testimony in this case?**

6 A: Public Counsel asked that I evaluate and respond to the Washington Utilities and
7 Transportation Commission’s (WUTC or Commission) complaint against Qwest
8 Corporation d/b/a CenturyLink QC (CenturyLink or Company) regarding the
9 Company’s business practices related to extension of residential basic local
10 exchange service. I discuss both the merits of the complaint against CenturyLink
11 and the broader policy issues that the complaint raises.

12 **Q: Briefly, please summarize your testimony.**

13 A: First, CenturyLink violated its statutory and regulatory obligations when it
14 refused to provide a line extension and service to an individual requesting
15 residential service within the Company’s service territory. CenturyLink also
16 violated Commission rules when it failed to maintain certain records. Therefore,
17 consistent with Staff’s recommendations, I recommend that the Commission
18 impose penalties up to \$351,000 on CenturyLink.

19 Second, the Commission should make clear that the obligation to serve is
20 absolute, and as a result, CenturyLink does not have the discretion to decide when
21 and where to serve customers. If CenturyLink believes there are instances where
22 it should not be obligated to serve, CenturyLink’s recourse is to seek the

1 appropriate waivers from the Commission rather than acting unilaterally to deny
2 service to individuals who are reasonably entitled to service.

3 Third, the Commission should direct CenturyLink to improve its record-
4 keeping to track all requests for service, whether the requests are granted or
5 denied, and the reasons for denial of service. The obligation to serve has financial
6 implications for the Company that the Commission should be able to evaluate as
7 part of its continuing oversight of CenturyLink. Therefore, this information
8 should be tracked and records retained pursuant to Commission regulations.
9 Further, I also recommend that the Commission reinforce the importance of
10 retaining comprehensive information about Commission-referred complaints.
11 Consumer complaints provide an invaluable window into how well markets are or
12 are not functioning, which, in turn, can inform future policy making.

13 Finally, I recommend that if the Commission wishes to address broader
14 policy issues relating to CenturyLink's common carrier obligations going
15 forward, it do so in a separate proceeding. The specific circumstances of a single
16 complaint case provide too narrow a lens for considering modifications to long-
17 standing policies that would broadly affect Washington telecommunications
18 customers.

19 II. OVERVIEW OF CASE

20 A. Brief description of complaint

21 **Q: Please describe the facts that gave rise to the complaint in this proceeding.**

1 A: On January 5, 2017, when a technician from CenturyLink¹ arrived to install
2 telephone service for Robert Saum, a consumer residing in CenturyLink's service
3 territory, the technician informed Mr. Saum that there were no facilities within the
4 subdivision where he resides. Upon repeated requests by Mr. Saum for service,
5 CenturyLink refused to provide service on grounds that a line extension would be
6 required, which, in its view, it was not obligated to provide. Mr. Saum filed an
7 informal complaint with the Commission, resulting in a compliance investigation
8 by the Commission's Consumer Protection Division.²

9 Investigator Susie Paul conducted the investigation, which resulted in
10 Commission Staff noting one violation of WAC 480-120-071(3) for failing to
11 provide the consumer an application for extension of service within seven days
12 and one violation of WAC 480-120-017(4) for failing to allow an extension of
13 service up to 1,000 feet at no charge to the consumer.³ As a result of the Staff's
14 investigation, the Commission initiated a formal complaint proceeding in this
15 docket.⁴ Staff and CenturyLink have communicated multiple times during the

¹ CenturyLink is one of five Washington incumbent local exchange carriers (ILECs) under common ownership of CenturyTel, Inc., which include CenturyTel of Washington, CenturyTel of Inter Island, CenturyTel of Cowiche, and United Telephone Company of the Northwest. Testimony of Susie Paul, Exh. SP-1T at 3:18-20.

² In her documentation of the complaint, Staff Witness Susie Paul states:

The customer requested new phone service from CenturyLink and the service installation was scheduled for 1/5/2017. The technician came to install phone service but said there was no facilities within subdivision. It is a new subdivision, called Anna Marie with approximately 12 homes. The customer stated there is a pedestal across the street from their property. The customer contacted the CenturyLink engineer three times, and engineer said that the customer was responsible to provide a way for the company to run line to their house. 2/10/2017 2:55 p.m. Passed complaint to CenturyLink via email. Response due by 2/14/2017 by 5 p.m.

Paul, Exh. SP-2 at 2.

³ Paul, Exh. SP-3 at 4.

⁴ Paul, Exh. SP-1T at 6:16-17.

1 more than seventeen months that have passed since the consumer originally
2 requested service from CenturyLink on December 22, 2016.⁵

3 **Q: Which documents have you reviewed to prepare your testimony?**

4 A: The key documents that I reviewed are: Staff's Investigation Report, dated
5 November 2017 (Exhibit to Testimony of Susie Paul, Exh. SP-3); the Complaint,
6 dated December 8, 2017; CenturyLink's Answer, dated January 9, 2018; and Staff
7 Testimony and exhibits, dated April 6, 2018 (Testimony of Susie Paul Exh. SP-1T
8 and Exhibits to Testimony of Susie Paul, Exhs. SP-2 through SP-23). I reviewed
9 the Company's responses to Public Counsel's discovery (which include
10 CenturyLink's responses to the data requests or requests for information from
11 Staff). I also reviewed Staff's responses to CenturyLink's discovery.

12 **B. Issues in case**

13 **Q: What is the key issue for the Commission to address in this proceeding?**

14 A: In my view, the key issue in this proceeding is whether CenturyLink has fulfilled
15 its obligations under state law and the Commission's rules, and, if it has not, what
16 sanctions or remedies the Commission should impose.

17 **Q: Has CenturyLink indicated that the Commission should consider broader
18 policy issues in this proceeding?**

19 A: Yes. In CenturyLink's various communications with Staff and in its Answer,
20 CenturyLink raises arguments that go well beyond the specific scope of this
21 proceeding.⁶ The broader issues raised by CenturyLink include the scope of

⁵ See, e.g., Paul, Exhs. SP-7 through SP-10, Exh. SP-12, Exh. SP-13, Exh. SP-16, Exhs. SP-18 through SP-23.

⁶ See, e.g., Paul, Exh. SP-3 at 8, 17, 21; Exh. SP-8.

1 telecommunications company obligations as common carriers, incumbent local
2 exchange carrier (ILECs), carriers of last resort (COLR), and eligible
3 telecommunications carriers (ETCs). If the broader issues merit discussion, they
4 are more appropriately addressed in a separate policy proceeding. The issues here
5 revolve specifically around CenturyLink's compliance with existing law and
6 regulations, not what CenturyLink believes the legal framework should be.

7 **Q: Please elaborate on the issues that you consider to be germane to this**
8 **proceeding.**

9 A: The following issues, in my view, are directly germane to the Commission's
10 deliberations in this case:

- 11 • Did the request by Mr. Saum trigger CenturyLink's obligation to provide
12 service, and was CenturyLink obligated to provide a line extension?
- 13 • What, if any, relevance does the developer's decision not to enter into a
14 Provisioning Agreement for Housing Development (PAHD) have on Mr.
15 Saum's rights to obtain service from CenturyLink?
- 16 • Do CenturyLink's lapses in record keeping make it more difficult for the
17 Commission to exercise its legitimate oversight functions, and do those
18 lapses violate record-keeping requirements? Has CenturyLink's lack of
19 adequate record keeping negatively affected the Commission's ability to
20 assess potential broader consumer harm resulting from CenturyLink's
21 business practices?
- 22 • Has CenturyLink identified any grounds that excuse or mitigate its failure
23 to maintain records relating to requests for service, consistent with

1 Commission rules?

2 **III. ANALYSIS OF COMPLAINT**

3 **A. CenturyLink’s obligation to serve customers within its service territory upon**
4 **reasonable request**

5 **Q: Please describe CenturyLink’s obligation to provide service within its**
6 **service territory.**

7 **A:** Under RCW 80.36.090, telecommunications companies, such as CenturyLink, are
8 subject to the following requirement:

9 Every telecommunications company operating in this state shall
10 provide and maintain suitable and adequate buildings and facilities
11 therein, or connected therewith, for the accommodation, comfort
12 and convenience of its patrons and employees.

13 Every telecommunications company shall, upon reasonable notice,
14 furnish to all persons and corporations who may apply therefor and
15 be reasonably entitled thereto suitable and proper facilities and
16 connections for telephonic communication and furnish telephone
17 service as demanded.

18 Washington State’s statute encompasses several key obligations of a
19 telecommunications “common carrier,” including the obligation to provide
20 service upon request. Another key obligation associated with telecommunications
21 common carriers, arising from common law and also codified in federal law,⁷ is
22 the requirement to obtain regulatory approval to withdraw service and exit the
23 market. In Washington State, the requirement to obtain regulatory approval to

⁷ 47 U.S.C., § 214. (“No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction, or impairment of service, or partial discontinuance, reduction, or impairment of service, without regard to the provisions of this section.”)

1 exit the market is set forth in Commission rules⁸ and in Commission directives.
2 Specifically, although CenturyLink's obligations have been partially modified by
3 the terms of the Alternative Form of Regulation (AFOR) the Commission adopted
4 in Docket UT-130477, the modifications do not relax CenturyLink's service
5 obligation, particularly in the case of residential voice service customers.⁹

6 Common carrier obligations are generally applicable to all providers, but
7 regulators often apply them more flexibly to new entrants¹⁰ than to the ILEC.
8 The ILEC is usually designated formally or informally as a COLR. In a recent
9 comprehensive survey regarding state-level COLR obligations, the National
10 Regulatory Research Institute (NRRI) identified RCW 80.36.090 as an ongoing
11 ILEC COLR obligation in Washington State.¹¹ When the NRRI surveyed state

⁸ WAC 480-120-083.

⁹ In its order approving an AFOR for CenturyLink, the Commission stated:

WAC 480-120-083 (Cessation of telecommunications services) sets forth the regulations a carrier must follow when ceasing to provide a specific telecommunications service, including local exchange service. To a large extent, the rule requires notice and a reasonable opportunity to customers to migrate to an alternative service or provider before the contemplated service may be terminated. The Stipulated AFOR specifies that these requirements will continue to apply to all services that are treated as competitively classified except that, in the event CenturyLink wishes to cease offering stand-alone residential or business service in any way, the Company will file a petition with the Commission for approval of the discontinuance.

In re: the Petition of The CenturyLink Companies – Qwest Corporation; CenturyTel of Washington; CenturyTel of InterIsland; CenturyTel of Cowiche; and United Telephone Company of the Northwest To Be Regulated Under an Alternative Form of Regulation Pursuant to RCW 80.36.135, Docket UT-130477, Order 4: Final Order Approving Settlement Agreements and Establishing an Alternative Form of Regulation ¶ 27 (Jan. 9, 2014). See also, id., Appendix A (Staff/Public Counsel Settlement); id., Attachment A (Amended Stipulated Plan for Alternative Form of Regulation) to Appendix A (Staff/Public Counsel Settlement) at 4, Provision No. 11.

¹⁰ In the past, new entrants were often referred to as competitive local exchange carriers (CLECs). As local markets evolved, the carriers other than ILECs serving residential customers have narrowed to include typically only the cable company with the franchise to serve any particular local market as the landline alternative to the ILEC, and wireless carriers.

¹¹ Sherry Lichtenberg, Ph.D., *Carrier of Last Resort: Anachronism or Necessity?*, National Regulatory Research Institute, Report No. 16-06 at 61 (July 2016) (provided as Exhibit SMB-3).

1 commissions regarding the ILEC COLR obligation, the Washington Commission
2 responded that the COLR obligation in this state was “explicit” in state law as
3 opposed to “implicit” or “limited.”¹²

4 **Q: How does an explicit COLR obligation inform the issue of CenturyLink’s**
5 **obligation to serve a new customer located within its service territory?**

6 A: In view of the longstanding and well-established common carrier obligations of
7 the ILEC and its role as COLR, the presumption is that the customer is entitled to
8 receive service. Indeed, the Commission specifically sets out the circumstances
9 under which a company may refuse service in WAC 480-120-061. Unless the
10 conditions are met in WAC 480-120-061, the Company must provide service as
11 contemplated under RCW 80.36.090.

12 Further, unless a company may deny service under WAC 480-120-061,
13 telecommunications companies receiving federal funds must allow for an
14 extension of service up to 1,000 feet at no charge to the customer under WAC
15 480-120-071. The Commission has explicitly declined to limit the line extension
16 rule to situations where no other ETC serves the location at which the consumer
17 applies for service.¹³ Also, as I will discuss further, the Commission has an
18 existing procedure that allows a company to request a waiver to the line extension
19 rule.

20 **B. CenturyLink failed to comply with the Commission’s line extension rule.**

¹² Baldwin, Exh. SMB-3 at 25.

¹³ *In re: Amending WAC 480-120-071 and WAC 480-120-103 Relating to Extension of Service and Application for Service*, Docket UT-073014, General Order R-551: Order Amending and Adopting Rules Permanently ¶ 28 (Sept. 3, 2008).

1 **Q: Please describe the Commission’s line extension rule.**

2 A: Under the Commission’s line extension rule, set forth in WAC 480-120-071, local
3 exchange companies receiving federal high cost support must allow for an
4 extension of service up to 1,000 feet at no charge to customers who apply for
5 service.¹⁴ CenturyLink has been designated and certified in the state of
6 Washington as a wireline ETC and receives federal high-cost universal service
7 support.¹⁵ As Staff witness Ms. Paul explains, the Commission’s AFOR decision
8 includes a list of all statutes and rules that the Commission waived for
9 CenturyLink, and WAC 480-120-071 is not on that list.¹⁶ Therefore, WAC 480-
10 120-071 continues to fully apply to CenturyLink.

11 **Q: In its Answer, CenturyLink states that it does not receive federal high cost**
12 **universal service support for the census block in which the customer resides,**
13 **therefore, the line extension rules do not apply.¹⁷ Is the Company correct?**

14 A: No. I am unaware of any Commission ruling or decision that would limit the line
15 extension rule’s applicability to the receipt of federal high cost support in the

¹⁴ WAC 480-120-071(4)(a). Customers must pay for the cost of the portion of the service that exceeds 1,000 feet. WAC 480-120-071(4)(b).

¹⁵ Paul, Exh. SP-1T at 4:1-3; *Id.* at 4:13-16 n.2 (citing *Qwest Corp. 2017 ETC Certification Filing and Request for Certification*, Docket UT-170765, Exhibit A (Jul. 13, 2017)) (“[Qwest Corporation’s 2017 ETC certification filing] includes the Company’s certification regarding its use of federal high-cost support.”); *Id.* at 4:13-16 (“The Company was designated as an ETC for its Vancouver, Washington exchange in Docket UT-970354 on December 23, 1997.”); *Id.* at 6:8-10 (the customer lives outside of Vancouver in the Company’s service territory.).

¹⁶ Paul, Exh. SP-1T at 12:4-12 (citing *In re: the Petition of The CenturyLink Companies – Qwest Corporation; CenturyTel of Washington; CenturyTel of InterIsland; CenturyTel of Cowiche; and United Telephone Company of the Northwest To Be Regulated Under an Alternative Form of Regulation Pursuant to RCW 80.36.135*, Docket UT-130477, Order 4, Appendix A (Statute, Rule, or Other Provision to be Waived) to Attachment A (Stipulated Plan for Alternative Form of Regulation) to Appendix A (Staff/Public Counsel Settlement) (Jan. 9, 2014)).

¹⁷ CenturyLink Answer at 2:2.

1 specific census block associated with the residence of the customer seeking
2 service.

3 Further, I recommend that the Commission reject any future attempts by
4 CenturyLink to so narrowly prescribe its obligation to serve. It is well understood
5 that some places cost less to serve while other places cost more to serve. Creating
6 an obligation to serve as constrained as CenturyLink implies would
7 inappropriately erode CenturyLink’s line extension obligations. The fact that
8 CenturyLink does not require public subsidies to serve a particular neighborhood
9 does not then mean that other suppliers, which lack the unique incumbency
10 advantages that CenturyLink possesses, would be able to enter the local market
11 profitably.

12 **Q: How does WAC 480-120-071 define applicants for line extension?**

13 A: The Commission modified WAC 480-120-071 in 2008 to, among other things,
14 include a definition of “applicant.”¹⁸ An applicant is “any person applying to a
15 telecommunications company for new residential basic local exchange service.”¹⁹
16 The rule also states that the term applicant does not include developers requesting
17 service for developments.²⁰ Mr. Saum is not a developer and, according to the
18 rule’s definition, is an applicant.

19 **Q: How does the line extension rule define developments?**

¹⁸ *In re: Amending WAC 480-120-071 and WAC 480-120-103 Relating to Extension of Service and Application for Service*, Docket UT-073014, General Order R-551: Order Amending and Adopting Rules Permanently (Sept. 3, 2008) (Amending Order R-474, Docket No. UT-991737, filed 12/5/00, effective 1/15/01). *See id.* Line Extension Rule Text – Final at 6.

¹⁹ WAC 480-120-071(2).

²⁰ *In re: Amending WAC 480-120-071 and WAC 480-120-103 Relating to Extension of Service and Application for Service*, Docket UT-073014, General Order R-551, Line Extension Rule Text – Final at 6 (Sept. 3, 2008).

1 A: A development is “land which is divided or is proposed to be divided for the
2 purpose of disposition into *four or more* lots, parcels, or units.” (Emphasis
3 added.) This definition replaced the earlier definition that development “has the
4 same meaning as ‘development’ and ‘developed lands’ in RCW 58.19.020.”²¹
5 The superseded definition of development (in the context of the line extension
6 rule) was as follows:

7 "Development" or "developed lands" means land which is divided
8 or is proposed to be divided for the purpose of disposition into
9 *twenty-six or more* lots, parcels, or units (excluding interests in
10 camping resorts regulated under chapter 19.105 RCW and interests
11 in condominiums regulated under chapter 64.34 RCW) or any other
12 land whether contiguous or not, if twenty-six or more lots, parcels,
13 units, or interests are offered as a part of a common promotional plan
14 of advertising and sale.²²

15 I am unaware of the Commission’s intentions in changing the definition of
16 development to encompass smaller subdivisions (from 26 or more lots to four or
17 more lots). In any event, the place to which the line would be extended in this
18 case is not land “which is divided or is proposed to be divided for the purpose of
19 disposition into four or more lots, parcels, or units.” Instead, the line extension
20 was requested to an individual lot to an individual residence, which, at the time of
21 Mr. Saum’s application for service, was occupied by the customer. As Staff
22 points out:

23 In the line extension rule, WAC 480-120-071, “development” is
24 defined as “**land** which is divided...for the purpose of disposition
25 into four or more lots, parcels, or units” (emphasis added). Per the
26 plain language of the rule, a development is land, which, arguably,
27 is not the same as an occupied home. Because the customer is asking

²¹ *Id.* at 1, 6.

²² RCW 58.19.020(5) (emphasis added).

1 for service to his home and not to a “development,” the line
2 extension rule requires CenturyLink to extend service.²³

3 **Q: Please elaborate on whether the request made in this case was for extension**
4 **of service.**

5 A: The request in this case triggered the line extension rule. As set forth in WAC
6 480-120-071(2), extension of service

7 means an extension of company distribution plant for new tariffed
8 residential basic local exchange service to a location where no
9 distribution plant of the extending company exists at the time an
10 extension of service is requested. An extension is constructed at the
11 request of one or more applicants for service. Extensions of service
12 do not include trenches, conduits, or other support structure for
13 placement of company-provided facilities from the applicant's
14 property line to the premises to be served. Extension of service, as
15 defined in this rule, does not apply to extensions of service to
16 developments or to extensions of service for temporary occupancy
17 or temporary service.²⁴

18 Mr. Saum requested to transfer service to his new residence, and
19 his request was for a residential line to support voice service and internet
20 access service.²⁵ CenturyLink did not have facilities in place to serve the
21 customer, and the customer’s residence was within the 1,000-foot
22 allowance provided for in WAC 480-120-071.

23 **Q: Does WAC 480-120-071 include any time parameters?**

24 A: Yes. Each “wire line ETC must, within seven business days, of an applicant’s
25 initial request, provide the applicant with an application for extension of service,”
26 and must process applications “in a timely manner.”²⁶

²³ Paul, Exh. SP-3 at 8 (citing Appendix B to Staff Investigation Report) (emphasis in original).

²⁴ WAC 480-120-071(2).

²⁵ Paul, Exh. SP-5.

²⁶ WAC 480-120-071(3).

1 **Q: Did CenturyLink provide the customer with an application for service within**
2 **seven days and then process the application in a timely manner?**

3 A: No. Accordingly, CenturyLink violated the line extension rule, and continues
4 violating the rule each day that it does not provide an application and process that
5 application in a timely manner.

6 **C. CenturyLink’s assertion that it purportedly followed policy that has been in**
7 **place for “many years” does not justify its failure to comply with statutory**
8 **requirements and Commission rules.**

9 **Q: CenturyLink points to its tariff relating to service provided to developers.**
10 **What is your understanding of how that tariff relates to the complaint at**
11 **issue in this case?**

12 A: CenturyLink argues that it does not – and need not – serve neighborhoods in
13 which the developer did not enter into a PAHD.²⁷ In essence, CenturyLink takes
14 the position that its tariff allowing for PAHDs creates a condition that must exist
15 before CenturyLink will extend its facilities. CenturyLink uses the designation
16 “no serve housing development” for (1) a housing development where a
17 developer refuses to execute a PAHD; (2) a development where the developer
18 never requested service from CenturyLink and therefore would not have been
19 offered a PAHD; and (3) situations where the developer may have had
20 preliminary discussions with CenturyLink but decided against proceeding.²⁸ In
21 this case, the developer did not enter into a PAHD. CenturyLink stated that it

²⁷ Paul, Exh. SP-7. PAHDs presumably facilitate installing facilities development-wide during the construction phase.

²⁸ CenturyLink’s Response to Public Counsel Data Request 6 provided as Exhibit SMB-4.

1 failed to serve Mr. Saum because he had “moved into what [it] call[ed] a no serve
2 housing development.”²⁹

3 Section 4.4.C of the PAHD tariff states: “If a Developer/Builder does not
4 enter into a PAHD, the Company, at its option, may accept requests for service
5 from individual customers in the subdivision/development area as provided for in
6 Section 4.2.2 [the line extension tariff].”³⁰ CenturyLink, in refusing to serve the
7 customer, interprets its self-appointed option to accept service requests as an
8 option to deny service. However, the tariff does not say that CenturyLink will
9 deny service to individual customers, and such a provision would be contrary to
10 RCW 80.36.090 and WAC 480-120-071.

11 **Q: How does CenturyLink rely on the PAHD tariff to justify its refusal to serve**
12 **this customer?**

13 A: CenturyLink states (emphasis added):

14 This has been CenturyLink’s policy and approach for many years
15 (this PAHD provision has been in place since 2008), and
16 CenturyLink does not serve in developments where the developer
17 has not signed a PAHD for the provision of service to the housing
18 development. *CenturyLink had further reviewed this approach with*
19 *telecom Staff, and they were in concurrence with this approach,*
20 *especially when the customers had alternative service providers*
21 *available.*

22 At this time, if the homeowner will provide a conduit under the street
23 between the pedestal and his home, CenturyLink can provide
24 service. Because the line extension rule does not apply, there is no
25 allowance for the extension and the homeowner is responsible to
26 provide the path. Otherwise, there is an alternative service provider
27 in the development for landline service. Similarly, other

²⁹ Paul, Exh. SP-3 at 6 (quoting February 14, 2017, CenturyLink communication).

³⁰ CenturyLink’s Response to Public Counsel Data Request 2, and pages 20-23 of Attachment provided as Exhibit SMB-5.

1 homeowners in this development would be required to provide a
2 path to their homes if they wanted service from CenturyLink.³¹

3 CenturyLink contends that, pursuant to its policy of requiring a PAHD to
4 extend its line, it has never previously opted to serve a customer in a no serve
5 area.^{32/33}

6 **Q: Do you find CenturyLink’s argument persuasive?**

7 A: No. Whether or not a PAHD exists between CenturyLink and the developer does
8 not bar a person from seeking service from CenturyLink. CenturyLink has a clear
9 obligation to serve customers within its service territory under its statutory
10 obligation to serve (RCW 80.36.090) and the line extension provisions (WAC
11 480-120-071). While there may be a legitimate policy basis for encouraging pre-
12 construction collaboration between developers and CenturyLink, that policy goal
13 is separate from, and in addition to, the obligation to serve and the line extension
14 policies. The rights of a person seeking service should not depend on whether
15 their residence is in or out of a development and whether the developer signed a
16 PAHD.

17 At most, CenturyLink’s PAHD tariff conflicts with statute and rule. In
18 any instance of potential ambiguity, higher priority should be given to the statute
19 and its rules than to the tariff.³⁴

³¹ Paul, Exh. SP-2 at 14 (Communication from Jerolyn Ochs, Regulatory Analyst, Customer Advocacy, CenturyLink) (emphasis added). *See also* Paul, Exh. SP-13 at 3.

³² In discovery, CenturyLink responded: “It is CenturyLink’s current policy to enter into PAHD agreements with developer/builders for all housing developments. To the best of our knowledge, CenturyLink has not served an individual in a no-build development under Section 4.2.2.” CenturyLink’s Response to Public Counsel Data Request 12 provided as Exhibit SMB-6.

³³ *See, e.g.*, Paul, Exh. SP-21.

³⁴ *See* WAC 480-120-011(2).

1 I am also not persuaded that the Company's refusal to provide service is
2 supported, as CenturyLink claims, by long-standing precedent or the alleged
3 acquiescence of the regulator. CenturyLink has failed to provide evidence to
4 support its assertion that it "had further reviewed this approach with telecom
5 Staff, and they were in concurrence with this approach, especially when the
6 customers had alternative service providers available."³⁵ Regardless, while
7 Commission Staff may provide technical assistance to regulated companies, that
8 assistance does not constitute a formal Commission finding.

9 **Q: What does CenturyLink argue about the impact of requiring service**
10 **connections to consumers within a development where no PAHD was signed?**

11 A: CenturyLink states that, "If the Commission interprets the WAC to require 1000'
12 of free line extension to lots in developments where the developer could have
13 entered into a provisioning agreement for housing development (PAHD) and
14 didn't, that will de-incentivize future developers from entering into PAHDs
15 because they will know that they can shift the cost of creating a path for our
16 facilities onto CenturyLink through free line extensions into their developments.
17 In that case, we might as well not have the PAHD requirements."³⁶

18 **Q: How do you respond to that position?**

19 A: I strongly disagree that the line extension rule negates developers' incentives to
20 enter into PAHD agreements. The PAHD enables developers to provide "turn-
21 key" residences – new homes in which all utilities, including telecommunications,

³⁵ Paul, Exh. SP-2 at 14 (Communication from Jerolyn Ochs, Regulatory Analyst, Customer Advocacy, CenturyLink). *See also* Paul, Exh. SP-13 at 3.

³⁶ Paul, Exh. SP-8 at 9.

1 have already been established. Thus, PAHDs add value to developments. Also,
2 depending on the size of the development and customer interest, not every home
3 will be located within 1,000 feet of existing CenturyLink facilities, so some
4 homeowners may be outside of the line extension allowance. By entering into a
5 PAHD with CenturyLink, developers can enhance the marketability of their
6 homes. Therefore, it remains in the developer's interest to ensure broad
7 availability of telephone service while the area is under development.

8 Finally, I would note that all homes, at one point in time, were newly
9 constructed. It would be inequitable to treat a home that is not part of a
10 development differently from a home that is included in a development based on
11 whether the underlying developer entered into a PAHD.

12 **Q: Is it reasonable to presume that a Company-initiated tariff addressing its**
13 **dealings with developers would be allowed to interfere with the statutory**
14 **rights of a customer to obtain service or the rule that sets the terms for**
15 **customer entitlement to a line extension?**

16 A: No. Tariffs should be read in harmony with statutes and rules. Indeed, the tariff
17 addresses the relationship between a developer and CenturyLink, and as such
18 should not impose limitations on an individual customer's right to obtain service.
19 Any ambiguity regarding CenturyLink's obligations should be resolved in favor
20 of the customer.

21 Importantly, the Company should not be allowed to unilaterally exempt
22 itself from its obligation to service simply because it believes that market
23 conditions have changed. If there are compelling policy reasons to modify

1 CenturyLink’s obligations, they should be fully vetted by the Commission and not
2 adjudicated in a single-issue complaint proceeding.

3 **Q: RCW 80.36.090 requires a telecommunications company to “furnish to all**
4 **persons and corporations who may apply therefor and be *reasonably entitled***
5 **thereto suitable and proper facilities and connections for telephonic**
6 **communication and furnish telephone service as demanded.” (Emphasis**
7 **added.) Was Mr. Saum reasonably entitled to service from CenturyLink?**

8 **A:** Yes. The Commission has defined when a telecommunications company may
9 refuse service. If none of the conditions in WAC 480-120-061 exists, the
10 company must provide service. In my view, Mr. Saum was reasonably entitled to
11 obtain CenturyLink’s phone service. The customer was located within
12 CenturyLink’s service territory. There is no evidence that Mr. Saum had an
13 overdue unpaid prior obligation, that service to his residence would adversely
14 affect service to existing customers, or that installation would be hazardous. In
15 fact, CenturyLink confirmed installation of the requested service before it became
16 clear that facilities did not exist.³⁷

17 Since no facilities existed, a line extension was necessary to provide
18 service. The home in question is located easily within 1,000 feet from
19 CenturyLink’s facilities. Staff Exhibit SP-6 clearly shows the proximity of the
20 Mr. Saum’s residence to CenturyLink’s network – the Company’s pedestal is 45
21 feet from his property line.³⁸ Although there is a potential question about whether

³⁷ Paul, Exh. SP-5.

³⁸ Paul, Exh. SP-1T at 8:12-14.

1 the residence is 45 feet or 152 feet from the pedestal, it remains well within the
2 1,000-foot allowance provided for under WAC 480-120-071.³⁹

3 As a result, Robert Saum was reasonably entitled to service from
4 CenturyLink.

5 **Q: CenturyLink has a different interpretation regarding the meaning of**
6 **“reasonably entitled.” Please explain your understanding of CenturyLink’s**
7 **interpretation and your response.**

8 A: CenturyLink states:

9 The word “reasonably” is important here. Our point is that if another
10 telecommunications company is ready and willing to serve a lot in a
11 development where the ILEC has no facilities, the entitlement to
12 service is being met, and there is no reasonable entitlement to
13 service from a second provider. This interpretation of “reasonably
14 entitled” is more economically sound than an interpretation that
15 assumes ILECs (which are now a very small part of the voice
16 ecosystem) must serve any customer anywhere in their serving
17 territory even when another telecommunications provider is already
18 serving there.⁴⁰

19 Neither the statutory language nor the Commission’s line extension rule suggest
20 that the presence of another provider is relevant to the telecommunications
21 company’s obligation. As noted by Staff witness Paul, “[t]he potential
22 availability of another service provider is not listed as an exception to the line
23 extension requirements in WAC 480-120-071 and does not mean that
24 CenturyLink can unilaterally decide that it has no obligation to serve a particular
25 customer.”⁴¹

³⁹ CenturyLink’s Confidential Response to Public Counsel Data Request 13 provided as Exh. SMB-7C. CenturyLink explains the issue with Mr. Saum’s address. Regardless, the distance is well under 1,000 feet.

⁴⁰ Paul, Exh. SP-8 at 10.

⁴¹ Paul, Exh. SP-1T at 11:4-7.

1 In fact, in its Order adopting the line extension rules, the Commission
2 specifically rejected an industry proposal that would have allowed for an
3 automatic waiver if there were another ETC in the location where the extension
4 was requested. Rather, the Commission confirmed its preference for having
5 companies file location-specific waivers so that the Commission could consider
6 whether an exception to the rule was warranted. The Commission's order stated:

7 The Commission rejects the Industry Coalition's proposed new
8 subsection (3)(d). The rule as drafted achieves a bright line standard
9 for companies concerning the obligation to construct a line
10 extension. Adding a waiver option would detract from this standard.
11 A company may seek a waiver under WAC 480-120-015 whenever
12 it thinks it appropriate and the Commission may consider any
13 pertinent information, including the existence of an ETC alternative,
14 without adding the suggested language.⁴²

15 In the current case, when confronted with Mr. Saum's line extension
16 request, the Company did not seek a waiver but rather took it upon itself to
17 declare the customer ineligible for a line extension. The reasons now advanced
18 by CenturyLink for its decision include the very argument that the Commission
19 rejected in adopting the current rule.

20 **Q: Is it possible to verify CenturyLink's claim that no one has previously**
21 **contested its policy of denying service to persons who reside in developments**
22 **the Company has unilaterally designated as "no-serve housing**

⁴² *In re: Amending WAC 480-120-071 and WAC 480-120-103 Relating to Extension of Service and Application for Service*, Docket UT-073014, General Order R-551: Order Amending and Adopting Rules Permanently ¶ 28 (Sept. 3, 2008) (The Industry Coalition proposed this language: "(3)(d) A company may seek a waiver of the requirement to extend service under this rule pursuant to WAC 480-120-015. In making its determination whether to grant such a waiver, the Commission may take into consideration the existence of an alternative service provider that is an Eligible Telecommunications Carrier ("ETC") for the location where an extension of service is requested.").

1 **developments”?**

2 A: No, but even if it was possible, it is important to note that this defense is not
3 particularly compelling. The Company’s poor record-keeping (discussed below)
4 means that it is impossible to know whether other customers in new developments
5 complained to the Company as a result of having been denied service.
6 Apparently, in CenturyLink’s practice, potential customers are not actual
7 customers and so fall through the loopholes of CenturyLink’s complaint
8 tracking.⁴³

9 Moreover, individuals cannot be expected to negotiate with CenturyLink
10 or to delve into the complexities of tariff language, statutory requirements, and
11 Commission rules to obtain service. That customers may have been “going along
12 with” Company practices does not legitimize those practices.

13 **Q: Ms. Paul’s Exhibit SP-14 shows that CenturyLink opted out of serving a**
14 **different subdivision despite the developer’s potential interest in**
15 **CenturyLink’s service.⁴⁴ What bearing does this have on the current case?**

16 A: According to Exh. SP-14, CenturyLink opted out of serving the Applewood
17 subdivision located in Vancouver, even though the developer contacted
18 CenturyLink regarding the possibility of installing lines to serve the new homes.⁴⁵

⁴³ Paul, Exh. SP-1T at 23:19-24:4.

⁴⁴ Paul, Exh. SP-14. *See also* Exh. SP-1T at 15:6-14, 27:8-13; Exh. SP-15. Staff witness Paul explains: One developer, Mr. Byron Brocker, owner of Brocker Company, stated that he contacted CenturyLink on July 6, 2017, to drop lines in the Applewood subdivision in Vancouver. Mr. Brocker stated that CenturyLink contacted Mr. Brocker and stated that the cost of coming in versus the opportunity for revenue is not worth it to CenturyLink financially and that the Company was opting out.

Paul, Exh. SP-1T at 15:10-14.

⁴⁵ Paul, Exh. SP-14.

1 While, in the current case, CenturyLink relies on the developer’s alleged lack of
2 interest in pursuing a PAHD, the Applewood development presents an example
3 where CenturyLink foreclosed possible service expansion by its own
4 disinclination to provide service. This suggests that the PAHD process places a
5 great deal of discretion in the provider’s hands, which the provider (under
6 CenturyLink’s theory) could later rely on to decline to extend service to any
7 household within the development.

8 Moreover, this example undermines the Company’s assertions that
9 customers can rely on competition to meet their needs.⁴⁶ In fact, if the presence
10 of another provider causes CenturyLink to opt out of serving the same area, it is
11 not facing competition, but rather is tacitly agreeing to segment the market. Thus,
12 it appears that the developer’s decision is not necessarily the determining factor in
13 whether a PAHD is executed.⁴⁷

14 **Q: What do we know about the impact of CenturyLink’s PAHD policy?**

15 A: CenturyLink has identified almost 30,000 housing units that are located within
16 “no serve housing developments.”⁴⁸ The housing units identified do not represent
17 all housing units affected. CenturyLink states that it may not be aware of all
18 potential “no serve housing developments,” particularly in the case where a
19 developer does not contact CenturyLink.⁴⁹

⁴⁶ See, e.g., Paul, Exh. SP-8 at 9-10.

⁴⁷ See Paul, Exh. SP-1T at 15:6-16:5.

⁴⁸ CenturyLink’s Response to Public Counsel Data Request No. 3, Attachment PC-3 provided as Exhibit SMB-8 identifies the units in each “no serve housing development.” The sum of the units identified is 29,910.

⁴⁹ Baldwin, Exh. SMB-8.

1 The housing units identified are located throughout the state, including
2 Eastern Washington, the Seattle metro area, Tacoma, Vancouver, Olympia, and
3 Lacey.

4 **D. CenturyLink’s inadequate record-keeping prevents the Commission from**
5 **assessing the broader harm that the Company’s policy caused.**

6 **Q: Have there been other instances similar to this case where customers in**
7 **subdivisions were denied service?**

8 A: It is impossible to know. The Company has acknowledged that it does not keep
9 track of instances where it has denied service to a potential customer (including
10 those residing within what CenturyLink has designated as a “no serve housing
11 development.”)⁵⁰

12 **Q: What are the Commission’s record-keeping requirements?**

13 A: Part VIII of the Commission’s rules for telephone companies (Chapter 480-120)
14 encompasses various rules for “financial records and reporting,” one of which
15 concerns retaining and preserving records and reports (WAC 480-120-349).
16 CenturyLink’s actions regarding denial of service has financial implications for
17 the Company, including avoided cost and foregone revenues. Therefore, records
18 of such requests and denials should be included in CenturyLink’s record-keeping
19 system. Pursuant to WAC 480-120-349, companies must retain “all records and
20 reports required by these rules or commission order for three years” (unless a
21 different retention interval is required by the FCC, pursuant to federal rules).

⁵⁰ Paul, Exh. SP-10.

1 CenturyLink failed to retain its records.

2 **Q: What is the effect of CenturyLink’s recordkeeping practice?**

3 A: As Staff explains: “CenturyLink has created a kind of loophole for records
4 retention. It appears that, since the Company does not consider consumers who
5 are denied service to be customers, it does not maintain any record of the service
6 denial.”⁵¹ CenturyLink’s practice of not retaining appropriate records creates a
7 significant and unjustifiable gap in the Company’s record keeping and interferes
8 with the Commission’s ability to assess the larger consumer harm that may have
9 occurred from the Company denying service to customers.

10 **Q: What are the Commission’s rules regarding the retention of records about**
11 **complaints referred by the Commission to the Company?**

12 A: WAC 480-120-166 (which concerns “Commission-referred complaints”)
13 provides, among other things:

14 Each company must keep a record of all complaints concerning
15 service or rates for at least two years and, on request, make them
16 readily available for commission review. The records must contain
17 complainant's name and address, date and the nature of the
18 complaint, action taken, and final result.⁵²

19 **Q: Did CenturyLink comply with this rule?**

20 A: No. The Company failed to provide records for a full two years of complaints in
21 response to Staff’s requests made during its investigation. Staff requested records

⁵¹ Paul, Exh. SP-1T at 24:1-4; Exh. SP-10. *See also* Exh. SP-23, which reproduces an email dated October 12, 2017, and in which the Company indicates it had complaints only back to the beginning of January 2016. Furthermore, even within this time frame of record-keeping, it is not clear that the Company’s complaint recordkeeping captures all complaints such as the one at issue in this proceeding because its record-keeping system may encompass only those associated with *existing* customers and not *potential customers*.

⁵² WAC 480-120-166.

1 in the summer and fall of 2017. CenturyLink responded that it only had
2 complaints as far back as the beginning of 2016, whereas a full two years would
3 have extended to summer and fall of 2015, respectively.⁵³

4 **Q: In sum, what do you conclude about the Company's record-keeping?**

5 A: CenturyLink's record-keeping was inadequate, both in regard to customers'
6 requests for service as well as customers' complaints referred by the Commission
7 to the Company. As a consequence the Commission should impose penalties.

8 **E. CenturyLink should be penalized for its statutory and rule violations.**

9 **Q: Staff recommends that the Commission impose a penalty of "up to \$351,000"**
10 **for its failure to comply with applicable laws and rules.⁵⁴ Do you agree with**
11 **this recommendation?**

12 A: Yes. It is important that the Commission hold CenturyLink accountable to
13 consumers and to the Commission. CenturyLink possesses significantly greater
14 negotiating strength than do individual customers, and therefore, it is especially
15 important that the Commission send a clear signal that the Company must abide
16 by the laws and rules as they now exist, and not as the Company might want them

⁵³ Paul, Exh. SP-1T at 24:17-25:3.

⁵⁴ Paul, Exh. SP-1T at 25:7-9. Staff computes the total penalty as follows:

- Up to \$1,000 per day for each of the 174 days the Company violated RCW 80.36.090 by refusing to provide service on demand.
- Up to \$1,000 for one violation of WAC 480-120-071(3) for failing to provide a customer an application for extension of service within seven days.
- Up to \$1,000 per day for each of the 174 days the Company violated WAC 480-120-071(4) by failing to allow an extension of service up to 1,000 feet at no charge to the customer.
- Up to \$1,000 for one violation of WAC 480-120-166, for failing to keep Commission-referred complaints for at least two years.
- Up to \$1,000 for one violation of WAC 480-120-349, for failing to keep all records and reports for three years.

Paul, Exh. SP-1T at 25:10-20.

1 to be.

2 **Q: What is your understanding of the Commission’s authority to impose**
3 **penalties?**

4 A: The Commission has the authority to assess penalties of up to \$1,000 per
5 violation, per day, following a formal complaint and hearing.⁵⁵ In considering
6 whether to take enforcement action, the Commission considers eleven factors.⁵⁶
7 The Commission has discretion to take other factors into consideration as well.
8 Ms. Paul comprehensively addressed each of these factors and fully supported her
9 total recommended penalty of up to \$351,000.⁵⁷

10 Additionally, my testimony further supports penalizing CenturyLink for
11 its failure to provide service, to provide a line extension, and to keep proper
12 records. I evaluated the Commission’s factors and conclude that the Commission
13 should penalize CenturyLink.

⁵⁵ RCW 80.04.380 states:

Every public service company, and all officers, agents and employees of any public service company, shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of this title, so long as the same shall be and remain in force. Any public service company which shall violate or fail to comply with any provision of this title, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction or requirement of this title shall be a separate and distinct offense, and in case of a continuing violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense.

⁵⁶ See *In re: the Enforcement Policy of the Wash. Utils. and Transp. Comm’n*, Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶ 15 (Jan. 7, 2013) (the Policy lists and describes the eleven factors that the Commission considers in determining whether to take enforcement action). Staff discusses the applicability of these factors at pages 23 through 26 of its Investigation Report. Paul, Exh. SP-3 at 23-26 (Staff enumerates ten factors, but its sixth factor combines two of the eleven factors set forth by the Commission – the number of violations and the number of customers affected).

⁵⁷ *In re: the Enforcement Policy of the Wash. Utils. and Transp. Comm’n*, Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶ 15 (Jan. 7, 2013).

1 **Q: Please share your evaluation of the Commission’s enforcement factors.**

2 A: Below is my evaluation of the Commission’s enforcement factors.

- 3 1. *How serious or harmful the violation is to the public.* The violations in this
4 case are serious although the full extent of harm is unknowable. CenturyLink
5 exercised undue discretion in deciding to not provide basic voice service to
6 Mr. Saum because the decision is contrary to its statutory and rule obligations.
7 As an individual seeking service, Mr. Saum had negligible negotiating
8 strength relative to CenturyLink. Others have likely found themselves in the
9 same situation given that CenturyLink has never chosen to serve an individual
10 residing in a “no serve housing development.” A company’s obligation to
11 serve is a paramount obligation, and violations based on failure to provide
12 service are serious and harmful. Additionally, failure to keep proper records
13 dampens the Commission’s ability to accurately assess the harm in this case.
- 14 2. *Whether the violation is intentional.* It is not clear whether the Company’s
15 violations are intentional; however, CenturyLink’s policy of not fulfilling its
16 line extension obligation is purposeful and deliberate. Additionally, the
17 Company clearly ignored Staff’s findings and, despite these findings,
18 continued to refuse to provide service to Mr. Saum.
- 19 3. *Whether the Company self-reported the violation.* The Company did not self-
20 report its violations and, despite the Commission’s earlier directive that “[a]
21 company may seek a waiver under WAC 480-120-015 whenever it thinks it
22 appropriate and the Commission may consider any pertinent information,
23 including the existence of an ETC alternative, without adding the suggested

1 language,”⁵⁸ the Company failed to seek a waiver.

2 4. *Whether the company was cooperative and responsive.* Despite repeated
3 efforts by Staff, the Company refused to cooperate with Staff’s request for the
4 Company to serve Mr. Saum. Additionally, CenturyLink was unable to
5 provide the documentation necessary to fully assess the scope of its statute
6 and rule violations.

7 5. *Whether the company promptly corrected the violations and remedied the*
8 *impacts.* CenturyLink failed to promptly address the situation despite Staff’s
9 complaint and investigation and has not remedied its violations or the impacts.

10 6. *Number of violations.* It is impossible to discern how many violations of the
11 type at issue in this proceeding have occurred because the Company failed to
12 maintain records of individuals who sought and were denied service, and
13 because the Company failed to maintain records of complaints for the required
14 two-year period. The number of violations related to this particular instance is
15 relatively low; however, as the Commission noted in Docket A-120061, the
16 number of violations alone does not determine whether an enforcement action
17 is appropriate.⁵⁹

18 7. *The number of customers affected.* Similarly, it is impossible to know how
19 many customers have been affected by the Company’s practice because the
20 Company has failed to maintain records of individuals who sought and were

⁵⁸ *In re: Amending WAC 480-120-071 and WAC 480-120-103 Relating to Extension of Service and Application for Service*, Docket UT-073014, General Order R-551: Order Amending and Adopting Rules Permanently ¶ 28 (Sept. 3, 2008).

⁵⁹ *In re: the Enforcement Policy of the Wash. Utils. and Transp. Comm’n*, Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (Jan. 7, 2013).

1 denied service and because the Company failed to maintain records of
2 complaints for the required two-year period. At minimum, almost 30,000
3 housing units have been affected directly or indirectly.

4 8. *Likelihood of recurrence.* Without a clear finding by the Commission, the
5 Company may well persist in denying service to customers seeking service.
6 CenturyLink has been very firm in its belief that WAC 480-120-071 does not
7 apply in situations where a developer has not executed a PAHD.

8 9. *The company's past performance regarding compliance, violations, and*
9 *penalties.* CenturyLink has had prior enforcement actions, although to the
10 best of my knowledge, those actions did not involve violations of its COLR or
11 line extension obligations.

12 10. *The company's existing compliance program.* Because of its failure to
13 maintain records properly, it is clear that the Company lacks an adequate
14 compliance program in place.

15 11. *The size of the company.* CenturyLink has approximately 720,000 access
16 lines in Washington and generated approximately \$308,000,000 in intrastate
17 revenues in 2016.⁶⁰

18 The factors applied to the facts of this case support imposition of penalties.

19 Holding CenturyLink accountable for violations is important to achieve compliance, to
20 deter future non-compliance, and to preserve customer protection.

21

⁶⁰ Paul, Exh. SP-8 at 7, 9.

1 **IV. ISSUES THAT GO BEYOND THE CURRENT DOCKET**

2 **Q: CenturyLink raises concerns about “uneconomic investment.”⁶¹ What are**
3 **those concerns?**

4 A: CenturyLink states:

5 Requiring 1000’ of free line extension to developments where
6 wireline and wireless services are already available from other
7 providers will waste the ILEC’s very limited (and ever shrinking)
8 resources that could be used for economically viable investments,
9 including further deployment of broadband. CenturyLink and other
10 ILECs must be free to decline unnecessary uneconomic
11 investment. This is especially important because the revenues
12 available to operate a wireline voice network for people who have
13 no other option continue their rapid decline.⁶²

14 **Q: In your view, is this proceeding the appropriate forum for addressing**
15 **CenturyLink’s investments and revenues?**

16 A: No. CenturyLink’s assertion that it “must be free to decline unnecessary
17 uneconomic investment” is not only irrelevant to this proceeding, but also
18 troubling. As a common carrier, CenturyLink does not have the option to choose
19 when and where to serve customers with voice service. If CenturyLink seeks
20 authority to have such discretion, this request should be considered in a fully
21 vetted regulatory proceeding in which all stakeholders participate. Moreover, in
22 the excerpt above, although CenturyLink implies that it might deploy more
23 broadband than it otherwise would if it were to be relieved of its obligation to
24 serve, CenturyLink refused to respond to Public Counsel discovery that sought
25 additional information related to this assertion.⁶³

⁶¹ Paul, Exh. SP-8 at 10.

⁶² *Id.*

⁶³ CenturyLink’s Response to Public Counsel Data Request 11 provided as Exhibit SMB-9.

1 **Q: Why is CenturyLink’s COLR obligation to serve relevant to this case?**

2 A: The COLR obligation is fundamental to being a common carrier, and it ensures
3 that service is available at reasonable rates, terms, and conditions to every person
4 or business within the telecommunications carrier’s service territory.

5 **Q: CenturyLink raises concerns about the impact on its financial health of**
6 **requiring it to serve the customer whose complaint originated this**
7 **proceeding.⁶⁴ Is that a legitimate concern?**

8 A: This case involves a single customer and a residence fewer than 200 feet from
9 CenturyLink’s pedestal. In any event, this particular customer request is not, on
10 its face, financially onerous.

11 Company documents estimate a cost of \$1,670 to serve the customer if it
12 were not necessary to bore through cobble and a cost of \$3,000.00 should boring
13 through cobble be necessary.⁶⁵ The customer ordered service on December 22,
14 2016.⁶⁶ Had CenturyLink been providing the service that the customer ordered
15 (with recurring charges of, among others, \$45.99 per month for high speed
16 internet, \$35.00 per month for “Home Phone,” and an apparent discount of \$25.50
17 per month), the Company would have generated more than \$665 annually as well
18 as a one-time charge of \$31 for the Home Phone service (and may well have been
19 successful in marketing to other residents of the sub-division).⁶⁷

20 I am unaware of any reason for the service to cause CenturyLink to incur

⁶⁴ Paul, Exh. SP-8 at 10.

⁶⁵ Paul, Exh. SP-2 at 22.

⁶⁶ Paul, Exh. SP-1T at 8:3.

⁶⁷ Paul, Exh. SP-5.

1 any significant additional maintenance cost. Even if it were necessary to bore
2 through the cobble, the single customer would generate revenues that cover the
3 installation cost in under five years, and if it is not necessary to bore, the payback
4 would occur in under three years.

5 I understand that the customer is a retired employee entitled to free phone
6 service, but that is a benefit CenturyLink provides its retirees, and therefore the
7 fact that it would not have actually generated those revenues is immaterial. Any
8 foregone revenues associated with the benefit have been taken into account as part
9 of CenturyLink's employee compensation decisions. That CenturyLink may not
10 recover the cost of this particular line extension should not affect the
11 Commission's decision in this case regarding whether CenturyLink complied with
12 its COLR obligations and the Commission's line extension rule.

13 **Q: Are there other considerations that make this proceeding in inappropriate**
14 **time to consider the potential impact of the request for line extension on the**
15 **Company's finances?**

16 A: Yes. This is not an appropriate venue to consider CenturyLink's overall financial
17 soundness, nor is the record sufficiently comprehensive for the Commission to
18 make such an assessment. If CenturyLink has concerns that the current laws and
19 rules that establish its obligation to serve are putting an unreasonable financial
20 strain on the Company, the Company should petition the Commission for a rule
21 waiver. Such a petition would address the essence of CenturyLink's service
22 obligation, which has broad implications beyond the present case and raises a
23 variety of questions that require both factual and policy analysis not on point for

1 this case.

2 As CenturyLink itself demonstrates, the erosion of its access lines has not
3 occurred overnight, but rather has been occurring steadily over a number of
4 years.⁶⁸ While CenturyLink is quick to rely on this change, it was reluctant to
5 answer specific questions about its assertions.⁶⁹ Still, it is reasonable to believe
6 that the line loss CenturyLink has identified (as well as any other sources of
7 weakness in its current financial condition) does not arise from one single change
8 in the market and may implicate multiple aspects of the Company's practices or
9 business strategies. Such an examination would need to assess, among other
10 things, the costs and revenues associated with CenturyLink's operations in
11 Washington (which, in turn, would entail an examination of the way in which
12 CenturyLink assigns and allocates costs and revenues between its intrastate and
13 interstate operations,⁷⁰ between its regulated and unregulated services,⁷¹ and
14 among its affiliate operations⁷² as well as the impact of recent federal tax reform

⁶⁸ Paul, Exh. SP-8 at 2-8 (tables and figures showing declining lines between 1999 and 2015).

⁶⁹ CenturyLink's Response to Public Counsel Data Request 8 provided as Exhibit SMB-10.

⁷⁰ For example, the Company's network infrastructure enables it to offer business data services (previously referred to as "special access services"), which are a source of growth – wireless carriers require these dedicated circuits between their cell towers and the public switched network, and large business and government users also purchase business data services from CenturyLink. Because the vast majority of these services are considered to be jurisdictionally *interstate*, it is important to assign and allocate a proportional share of the network cost to the interstate jurisdiction if and when the Commission considers the profitability of the Company's intrastate operations.

⁷¹ For example, CenturyLink's broadband internet services (typically digital subscriber line (DSL)) services ride over the same copper loop as is used by CenturyLink to offer voice service. It is important to assign and allocate a fair share of the copper loop cost to these unregulated services in order to assess accurately CenturyLink's financial health relative to its intrastate regulated operations.

⁷² This would encompass an examination, for example, of the payments that CenturyLink's Washington operations make to its parent corporation as well as any assignments and allocations between the operations of its newly acquired subsidiary, Level 3 and its other operations.

1 on its finances).

2 It is also important to recognize that any regulatory response involving
3 any modification of CenturyLink's obligations to serve would have broad
4 implications for consumers in a wide variety of situations that cannot be
5 adequately assessed in the context of a complaint proceeding.

6 **Q: What is your opinion regarding CenturyLink's COLR obligation?**

7 A: I believe very strongly that there is an important continuing role for a COLR, and
8 that, in most cases, the ILEC remains the most appropriate choice for that role.

9 As NRRI states:

10 COLR policies give regulators a tool to ensure that no user is left
11 behind when a carrier seeks to discontinue service. States should
12 review their COLR policy on an on-going basis to ensure that all
13 citizens have access to affordable service that meets their needs.
14 States and carriers can work together to develop a new regulatory
15 compact that maintains the best parts of both carrier of last resort
16 duties and competitive offerings.

17 COLR is not an anachronism, but is a living regulatory compact that
18 must be evaluated and modified on an on-going basis.⁷³

19 **Q: Has the rationale for the ILEC's traditional role as carrier of last resort been**
20 **affected by the introduction of competition?**

21 A: Of course, to some extent, but the important public policy function protected by
22 having a COLR— universal service – endures and must be preserved. The ILEC
23 has the most ubiquitous wireline coverage, having deployed its core network with
24 a guarantee of full cost recovery from ratepayers when it was the monopoly
25 provider. Moreover, as an ILEC, CenturyLink benefits from unique access to

⁷³ Exh. SMB-3 at 51.

1 valuable rights of way throughout its serve territory. The value of these
2 monopoly-era benefits does not simply vanish when competition (especially the
3 limited competition available in more sparsely populated areas) arises.

4 Other providers who have entered as competitors have not necessarily
5 entered with expectations that they will provide “universal” coverage, and their
6 rates, terms, and conditions have often been assumed to be constrained to
7 reasonable levels by some continuing regulatory oversight of the incumbent
8 provider. In other words, while they may also have common carrier obligations,
9 they have not typically been seen as good candidates for the “carrier of last resort”
10 function. Any decision to consider a modification of the present framework, in
11 which the ILEC acts as carrier of last resort, must incorporate an affirmative plan
12 for ensuring the transfer of COLR responsibilities to a provider who is likely to
13 remain viable and offer reliable, affordable service to all affected consumers.
14 Because of its expertise in understanding conditions in local communities, it is
15 important that the Commission continue to be fully engaged in this determination
16 and not defer to a second-hand decision by the FCC (*e.g.*, based on the award of
17 ETC status to a provider other than the ILEC or based on an application for
18 “Section 214” discontinuance).

19 V. CONCLUSION

20 **Q: Please summarize your recommendations.**

21 A: CenturyLink has failed to comply with its statutory and regulatory obligation to
22 provide service to the complaining customer and failed to maintain records in
23 accordance with Commission rules. Therefore, consistent with Staff’s

1 recommendations, I recommend that the Commission impose a penalty on the
2 Company of up to \$351,000.

3 Moreover, the statute and rule are clear with respect to the obligation to
4 serve and line extensions. Unless the statute or rule are modified or permit
5 otherwise, the Commission should instruct CenturyLink that it does not have the
6 discretion to decide when and where to serve customers. Further, in any instances
7 of possible ambiguity concerning its obligations, rather than unilaterally refusing
8 service, the CenturyLink should seek the appropriate waivers from the
9 Commission.

10 To facilitate the Commission's regulatory oversight of CenturyLink, the
11 Commission should direct CenturyLink to improve its record-keeping to include
12 requests from all customers who seek service and, if the Company declines to
13 provide service, the reasons it has relied on for that decision. The obligation to
14 serve has a financial impact on CenturyLink, and information regarding requests
15 for service and the Company's response should be retained. I also recommend
16 that the Commission reinforce to CenturyLink the importance of fulfilling its
17 obligation to retain comprehensive information about Commission-referred
18 complaints. Consumer complaints provide an invaluable window into how well
19 markets are or are not functioning, which, in turn, can inform future policy
20 making.

21 Finally, I recommend that if the Commission wishes to address the
22 broader policy issues relating to CenturyLink's common carrier obligations going
23 forward, it do so in a separate proceeding. The specific circumstances of a single

1 complaint case provide too narrow a lens for considering actions with such a
2 broad range of public policy implications.

3 **Q: Does this conclude your testimony?**

4 **A: Yes.**