

**Exh. BF-4T
Docket UT-210902
Witness: Bridgit Feeser**

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

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,**

Respondents.

DOCKET UT-210902

**REBUTTAL TESTIMONY OF
BRIDGIT FEESER
STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

Penalties

February 17, 2023

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I. INTRODUCTION

1

2 **Q. Please state your name and provide your business address.**

3 A. My name is Bridgit Feeser, and my business address is 621 Woodland Square Loop
4 SE, Lacey, Washington, 98503.

5

6 **Q. Are you the same Bridgit Feeser who filed testimony in this docket on August
7 25, 2022, on behalf of Commission Staff?**

8 A. Yes.

9

10 II. SCOPE AND SUMMARY OF TESTIMONY

11

12 **Q. Please describe the scope of your rebuttal testimony**

13 A. I am responding to testimony by Peter Gose, Lumen Technologies, regarding Lumen's
14 rational as to why the Commission should decline to penalize the Company or, if the
15 Commission chooses to issue penalties, impose penalties of \$100 per violation. I also
16 reiterate Staff's penalty recommendation for the Lumen companies' disconnection or
17 suspension of service to 923 customers while Governor Inslee's Proclamation 20-23.2
18 was in effect.

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20 **Q. Have you prepared any exhibits in support of your testimony?**

21 A. No, I have no new exhibits.

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1 **III. DISCUSSION**

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Q. Please briefly describe the events giving rise to this complaint proceeding.

A. On April 17, 2020, Governor Jay Inslee issued Proclamation 20-23.2, which prohibited all energy, telecommunications, and water providers in Washington State from disconnecting residential customers service due to nonpayment between March 23, 2020, and September 30, 2021. While researching the effects of the COVID pandemic, Staff discovered through data requests that the Lumen companies had discontinued service to 180 customers through a process it refers to as disconnection and to 743 customers through a process it refers to as suspension, meaning it discontinued service to 923 customers in total while Proclamation 20-23.2 was in effect.

Q. Has the Commission made any determination as to whether the connections you just referenced violated any statute or rule?

A. Yes. In Order 03 of this docket, the Commission determined that Lumen violated WAC 480-120-173(3)(a). I am not testifying as to legal matters, but just noting as a matter of fact that the Commission issued an order concluding that Lumen’s suspension or disconnection of 923 residential customers between March 23, 2020, and September 20, 2021, violated WAC 480-120-173(3)(a).

Q. What matters remain at issue in this proceeding?

A. The only remaining issue is the appropriate penalty.

1 **Q. Did you provide a recommendation as to the appropriate penalty in your**
2 **previous testimony**

3 A. Yes.

4

5 **Q. What penalty did Staff recommend the Commission impose for Lumen's**
6 **violations of WAC 480-120-173(3)(a)?**

7 A. \$1,000 per violation.

8

9 **Q. Does Lumen agree with Staff as to the appropriate penalty?**

10 A. No. Mr. Gose recommends that the Commission impose either no penalty or a
11 penalty of \$100 per violation.

12

13 **Q. Why does Mr. Gose state the Commission should impose that penalty?**

14 A. While the Commission focuses on ensuring penalty amounts are proportionate to the
15 size of a company's revenues, Lumen believes it is important to consider the size of
16 the company in terms of jurisdictions, which was 36 in 2020. Lumen asserts that
17 many states had varying requirements and implementing them all within the
18 intricacies of different billing systems was challenging. Lumen also believes the
19 number of customers affected should be a consideration, and it states that a relatively
20 small portion of its entire population of retail access lines experienced
21 disconnection. Lumen states this was an unintentional error during a tumultuous and
22 unprecedented period of time and the company was working under a resource strain.

23

1 **Q. Does Staff find Lumen’s arguments for a reduced penalty persuasive?**

2 A. No. The Commission focuses on ensuring penalty amounts are proportionate to the
3 size of a company’s revenues, not the number of states in which a company operates.
4 In addition, while Lumen does not find 923 customers losing telephone service
5 during a state of emergency as significant, Staff disagrees. Nearly 1,000 customers
6 lost access to telecommunications service during a state of emergency, a time when
7 having that service was vital to accessing health care providers, work, school, and
8 loved ones. Staff continues to recommend a penalty of \$1,000 per violation.

9
10 **Q. What does Mr. Gose say about whether Lumen acted intentionally?**

11 A. Mr. Gose states Staff’s testimony contradicts itself by acknowledging that “Staff
12 finds credible in the absence of evidence demonstrating otherwise” that CenturyLink
13 did not intentionally disconnect customers, but nevertheless finds that there is
14 evidence that CenturyLink acted intentionally with regard to customers disconnected
15 through suspension of service. Mr. Gose states that Staff is ignoring that
16 CenturyLink suppressed the vast majority of suspensions, and it is unclear how Staff
17 can contend that CenturyLink intentionally suspended customers for non-payment.
18 Mr. Gose contends that the company earnestly attempted to navigate varying
19 requirements of many states.

20
21 **Q. Do you agree with Mr. Gose that Lumen did not act intentionally when it**
22 **suspended those customers?**

23

1 A. No. In the company’s February 22, 2022, response to a Staff informal data request
2 (Exh. BF-3), the company describes loss of access to telecommunication services as
3 two separate processes – disconnections and suspensions. The company stated more
4 than once in its response to this data request that “the Governor’s Proclamations did
5 not restrict utilities from “suspending” customers for non-payment.” The company
6 also explains in the same data request response that a “suspended” customer is one
7 “whose service can’t be accessed/utilized.” Even after acknowledging that
8 “suspended” customers could not access and utilize their service, the company held
9 fast that “suspensions” were not prohibited by the Governor’s proclamation and as a
10 result the company “suspended” service for 743 customers, discontinuing their
11 access to service. Staff stands by its previous testimony that the company
12 intentionally discontinued service for 743 customers through the “suspension”
13 process based on the company’s acknowledgment that “suspended” customers
14 cannot access their service, and its continued statements that “suspensions” were not
15 a part of the Governor’s proclamation. In Staff’s previous testimony, Staff stated it
16 did not find evidence that suggested customer “disconnections” were intentional.
17 Staff’s position is the same in regard to “disconnections” because there is no
18 evidence to show that the company purposefully sought out the 180 customers whose
19 service was “disconnected” by way of claiming repeatedly that it could disconnect
20 those customers.

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1 **Q. Ms. Gose testifies that there is no chance that Lumen will commit violations**
2 **again because Proclamation 20-23.2 has lapsed. Does Staff agree that Lumen**
3 **cannot commit repeat violations?**

4 A. No. The legislature has not repealed the Governor’s power to proclaim a state of
5 emergency and forbid certain conduct, such as disconnecting utility services, during
6 that state of emergency. There is indeed a possibility of repeat violations because the
7 Governor may need to issue a similar proclamation in the future because of events as
8 varied as a natural disaster or a new pandemic (such as a new COVID-19 variant or
9 some other disease). In addition, the Company has stated it uses a manual process to
10 extract suspensions and disconnections from the suspension and disconnection
11 queue, and agents either simply missed removing customers from the queue or
12 mistyped commands to remove the customer. That system failed here, meaning that
13 relying on manual processes to stop disconnections and suspensions during potential
14 future states of emergency will likely result in customers again losing this vital
15 service.

16
17 **Q. Lumen references a Commission order to support its claim that no penalty is**
18 **warranted. Do you agree that order is relevant?**

19 A. No. The order Lumen cites involves a service that had been discontinued, meaning
20 that there was essentially no chance of a recurrence. Staff sees that as different from
21 the facts currently before the Commission because Lumen still very much provides
22 residential and commercial service in Washington and thus very much could commit
23 future violations.

1 **Q. Lumen also indicates that it has taken steps that prevent recurrence of similar**
2 **violations. Does Staff find that persuasive?**

3 A. No. Lumen indicates that data querying and manual processes remain available
4 should a future event prohibit disconnections. Lumen also states that lessons learned
5 from the manual process have been noted and would be corrected for the future
6 circumstance. However, Lumen does not explain what steps it has taken to prevent
7 future failures from occurring in its “manual processes,” and Staff is concerned that
8 Lumen does not have an improved plan. Its future plan is basically the same as the
9 one that failed for these 923 customers.

10

11 **Q. Lumen asks the Commission to focus on the number of jurisdictions Lumen**
12 **operates in when calculating penalties. Does that have any basis in the**
13 **Commission’s policy statement?**

14 A. No. The Commission focuses on ensuring penalty amounts are proportionate to the
15 size of a company’s revenues, as stated in its enforcement policy. The enforcement
16 policy does not include that the number of jurisdictions a company operates in is a
17 factor when calculating penalties.

18

19 **Q. Does Lumen offer any argument that the penalty Staff recommends is**
20 **disproportionate to its revenues?**

21 A. No.

22

23

1 **Q. Does Staff have anything else to say about Lumen’s attempt to focus attention**
2 **on the number of jurisdictions Lumen operates in?**

3 A. Yes. Mr. Gose states in his testimony that during the pendency of Proclamation 20-
4 23.2 the company maintained incumbent local exchange carrier operation in 36
5 states, that many states had varying requirements, and implementing them all within
6 the different billing systems was challenging. Lumen chose to operate in multiple
7 jurisdictions and in doing so it shoulder the burden of complying with the laws of
8 each of those jurisdictions. Lumen should not get a pass after deciding to operate in
9 multiples jurisdictions, no matter how difficult managing different billing systems is
10 for the company. When a state of emergency is declared, and the Governor issues a
11 proclamation that says to not disconnect consumers’ utilities, disconnections and
12 suspensions must cease.

13
14 **Q. Lumen also focuses on the number of affected customers, noting that only a**
15 **small percentage of its customers were affected. Does Staff have thoughts on**
16 **that framing?**

17 A. Yes. The Commission’s enforcement policy focuses on the number of customers
18 affected, not the percentage of a public service company’s customer base affected.
19 Focusing on the percentage of affected customers may not tell the full story.
20 Imagine, for example, a hypothetical telecommunications company with a customer
21 base of one million residential lines. If that company commits a regulatory violation
22 for a minimal one percent of its customer base, it has committed 10,000 violations. If
23 the percentage of customers affected were considered, as suggested by Lumen,

1 instead of the number of customers affected, the 10,000 customers in this example
2 would be of no significance because they only make up one percent of the
3 company's customer base. The focus on the absolute number of customers affected is
4 intended to give an accurate picture from the perspective of customers, who the
5 Commission is tasked with protecting.

6 In absolute terms, 923 customers lost service during the pandemic, meaning
7 that Lumen committed nearly 1,000 violations of the law. That is a significant
8 number of violations involving access to a critical service. The Governor forbade
9 shut offs because he determined that utility services, like the telecommunications
10 service offered by Lumen, were critical to protecting public health and safety during
11 a global pandemic and state of emergency. It is unacceptable for 923 customers to
12 lose service under those circumstances.

13
14 **Q. Does this conclude your testimony?**

15 **A. Yes.**