

**BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

**QWEST CORPORATION
d/b/a CENTURYLINK QC,**

Respondent.

DOCKET UT-190209

PREFILED REBUTTAL TESTIMONY OF

PHILIP E. GRATE

CENTURYLINK

February 13, 2020

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I. INTRODUCTION

2 **Q. Please state your name, business address and for whom you are testifying.**

3 A. My name is Philip E. Grate. My business address is 1600 - 7th Ave., room 1513,
4 Seattle, WA 98191. I am testifying on behalf of Qwest Corporation dba CenturyLink
5 QC (hereinafter "CenturyLink").

6 **Q. Are you the same Philip E. Grate that caused to be filed response testimony in
7 this docket?**

8 A. Yes.

9 **Q. What is the purpose of your rebuttal testimony?**

10 A. The purpose of my testimony is to respond to the testimony of Susan M. Baldwin
11 filed in this docket on January 9, 2020 on behalf of the Public Counsel Unit of the
12 Attorney General's Office of Washington (Public Counsel).

13 **Q. In general, what is CenturyLink's response to Ms. Baldwin's testimony?**

14 A. Ms. Baldwin's testimony does not provide an analysis of facts that establishes that
15 CenturyLink violated WAC 480-120-450(1) and RCW 80.36.080. Consequently,
16 my testimony is limited to responding to 1) Ms. Baldwin's claims regarding
17 CenturyLink's post-2014 management of the state's 911 system, 2) Ms. Baldwin's
18 analysis of the Commission's enforcement factors and 3) her assertion that
19 CenturyLink should provide the Commission NORS reports, which it already does.

20

1 **II. POST-2014 MANAGEMENT OF THE STATE’S 911 SYSTEM**

2 **Q. What does Ms. Baldwin say about CenturyLink’s management of the state’s**
3 **911 system?**

4 A. Quoting the Commission’s 2016 Final Order Approving Settlement Agreement in
5 the Commission’s complaint regarding a six-hour 911 outage in 2014 (discussed in
6 more detail at page 12, line 9 of this testimony), Ms. Baldwin concludes that the July
7 2017 incident was

8 an unacceptable situation where problems with 911 surface and then are
9 corrected rather than comprehensive steps being taken to prevent problems
10 from occurring in the first place.”

11 **Q. How do you respond?**

12 A. Ms. Baldwin’s argument is a continuation of the argument Public Counsel made in
13 the February 2015 complaint regarding the over six-hour outage to 911 on April 9-
14 10, 2014 where it urged the Commission to impose a penalty of \$11.5 million on
15 CenturyLink instead of the \$2.9 million penalty specified in the settlement
16 agreement between Staff and CenturyLink that the Commission approved in 2016.¹
17 In that case Public Counsel argued the remedial action CenturyLink took to avoid a
18 repeat of the failure that caused the six-hour outage was insufficient.

¹ *Wash. Utils. and Transp. Comm’n v. Qwest Corp.*, Docket UT-140597.

1 **Q. Did the Commission agree?**

2 A. No. In the 2016 Final Order Approving Settlement Agreement², the Commission
3 said:

4 25. *** No system is foolproof, whether it depends on computers, people, or a
5 combination of both. Errors will inevitably occur in software coding, for
6 example, both in its development and in its deployment in actual 911 operating
7 systems. What is important for our review is to ensure that CenturyLink has
8 adequate management and oversight systems in place to both reduce the risks
9 of such errors occurring and also to have systems in place to provide
10 awareness of outages and to restore 911 service as rapidly as possible. This
11 applies both to the Company itself and to any contractor or vendor such as
12 Intrado. *In other words, we require regulated companies to implement measures*
13 *that are reasonable under the circumstances to minimize service disruptions and*
14 *other violations of Commission requirements.*

15 26. The record before us demonstrates that the Company has done so here.
16 CenturyLink agreed with the FCC to undertake a multi-sector risk assessment
17 methodology, developed by the National Institute of Standards and Technology,
18 which Mr. Bergmann himself proposes. Based on our staff investigation and
19 detailed review, we conclude that CenturyLink has developed and implemented
20 revised processes consistent with that obligation. Public Counsel offered no
21 evidence to demonstrate that CenturyLink could or should do anything more to
22 ensure, to the best of its ability, that no future 911 outages will occur.
23 Accordingly we find that the Company's actions mitigate the amount of the
24 penalty the Commission should assess.
25

26 Notably, Ms. Baldwin's testimony quotes only part of the Commission's Order, and
27 specifically omits the italicized portion of paragraph 25 above and all of paragraph
28 26.

² Docket UT-140597, Order 03: Final Order Approving Settlement Agreement, ¶¶ 25-26 (Feb. 22, 2016).

1 **Q. Prior to the July 2017 incident, did CenturyLink undo any of the revised**
2 **processes it had adopted to implement measures to minimize service**
3 **disruptions?**

4 A. No. The revised processes were in place when the July 2017 incident occurred.

5 **Q. In July of 2017, did CenturyLink have adequate management and oversight**
6 **systems in place to both reduce the risk of error and to provide awareness of**
7 **outages?**

8 A. Yes. Mr. Mills' testimony discusses the processes and procedures Intrado used to
9 minimize the risk of a disruption and the processes and procedures that Intrado had
10 implemented and actually followed to detect the disruption and quickly correct it.

11 **III. ENFORCEMENT POLICY**

12 **Q. What is the Commission's Enforcement Policy?**

13 A. In 2013 the Commission issued an Enforcement Policy of the Washington Utilities
14 and Transportation Commission (Enforcement Policy) "[i]n order to articulate to
15 the public the Commission's policies relating to its enforcement authority."³ In
16 pertinent part the Enforcement Policy provides:

17 Upon finding, at the conclusion of an inspection or investigation, that a
18 company has violated an applicable statute, rule, order, or tariff, the
19 Commission will consider whether an enforcement action, beyond
20 technical assistance, is appropriate and, if so, which action to take.
21

³ *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 The Enforcement Policy lists and describes eleven factors that the Commission will
2 consider.

3 **Q. Should the Enforcement Policy apply in this case?**

4 A. No. The Enforcement Policy should not apply because the facts do not support a
5 finding that CenturyLink violated WAC 480-120-450(1) and/or RCW 80.36.080.
6 However, because Ms. Baldwin argues the Commission should impose a \$222,000
7 penalty on CenturyLink based on her analysis of the eleven factors, I will respond to
8 that analysis.

9 **Factor (1)** *How serious or harmful the violation is to the public?*

10 **Q. Ms. Baldwin concludes the alleged violations are both serious and harmful to**
11 **the public. How do you respond?**

12 A. I wholeheartedly agree that NG911 is a very important service. My family has
13 utilized 911 service for medical emergencies on several occasions. However, Ms.
14 Baldwin does not offer any facts to support her conclusion that the alleged
15 violations in fact harmed the public. Instead, she admits, “The specific harms
16 resulting from the July 2017 outage are unknown...” Her conclusion regarding harm
17 is speculation. Based on the known facts, there is no evidence of harm.

18 **Factor (2):** *Whether the violation is intentional.*

19 **Q. Ms. Baldwin concludes “This factor weighs towards imposing the maximum**
20 **penalty.” How do you respond?**

21 A. Ms. Baldwin states, “The 911 outage was not intentional...” I agree. That should
22 have been the end of it. But Ms. Baldwin argues that what she describes as a

1 “software update” (it was actually a switch migration) *was* intentional and that lack
2 of adequate testing is an “aggravating factor” that “weighs towards imposing the
3 maximum penalty.” Factor 2 supports leniency because the failed calls were not
4 intentional, so Ms. Baldwin invents a different test, whether the switch upgrade was
5 intentional, in a transparent effort to subvert the Commission’s factor and
6 CenturyLink’s performance under it.

7 Regarding factor 2, intentionality, the Commission’s Enforcement Policy provides:

8 (1) A company that willingly and intentionally violates a Commission
9 requirement may be dealt with more severely than a company that
10 unknowingly committed a violation. In determining whether a company
11 willingly and intentionally committed a violation, the Commission will
12 consider factors that include, but are not limited to, whether:

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

19 Ms. Baldwin’s testimony addresses none of these factors, all of which support a
20 conclusion that the incident was not intentional. Neither CenturyLink nor West
21 set out willfully or intentionally to violate any law or rule; the intent was to

1 migrate service to modern equipment. Regarding the four factors the
2 Commission considers:

3 a. Staff provided no technical assistance for the switch migration. West spent
4 a year planning the migrations and had a lengthy and unblemished record
5 of successful migrations to the new switch in other jurisdictions.

6 b. The Company did not previously violate the rule or statute.

7 c. CenturyLink and West were fully forthcoming about the facts surrounding
8 this incident and provided Staff highly detailed explanations of it.

9 d. West quickly identified the problem and responded rapidly.

10 All these factors support the conclusion the incident (which was not a violation of
11 rule or statute) was not intentional.

12 **Factor (3):** *Whether the company self-reported the violation.*

13 **Q. Regarding factor 3, Ms. Baldwin concludes “The Company’s failure to notify
14 Staff of the outage is an aggravating factor.” How do you respond?**

15 A. Ms. Baldwin conclusion is simply wrong because:

16 1. There was *no violation* to report to the Commission;

17 2. The *event* was not reportable to the Commission; and

18 3. CenturyLink *self-reported* the event.

19 First, it needs to be said that the Commission’s factor 3 is not, as Ms. Baldwin
20 appears to believe, whether the company self-reported an outage. Nor is it about

1 how quickly CenturyLink reported an outage. The factor is whether the company
2 self-reported a *violation*. There was no violation to report.

3 Nor was there an *outage* that was reportable to the Commission. Staff explains:

4 Staff's investigation found that no single PSAP suffered a total loss of
5 service, and there was no disruption of local exchange or toll services to more
6 than one thousand customers. Accordingly, this incident does not rise to the
7 level of a "major outage" as defined in WAC 480-120-021. Therefore, the
8 notification requirements of WAC 480-120-412(2) and (3), and the
9 Washington State and San Juan County Outage Communication Plans
10 adopted by Order 05 in Docket UT-132234, did not apply.⁴

11 Further, Ms. Baldwin conflates reporting the outage to PSAPs with reporting a
12 violation to the Commission. The issue for factor (3) is whether CenturyLink self-
13 reported a violation, not how long it took CenturyLink to report an outage.
14 CenturyLink self-reported the event—which Staff admits was not a reportable
15 outage—when it provided Staff a courtesy notification.

16 **Factor (4):** *Whether the company was cooperative and responsive.*

17 **Q. What does Ms. Baldwin's testimony say about factor 4?**

18 A. Ms. Baldwin's testimony reads: "Staff found CenturyLink to be cooperative and
19 responsive throughout the investigation."

⁴ October 25, 2019 Commission Staff Investigation Report, page 5.

1 **Factor (5):** *Whether the company promptly corrected the violations and remedied the*
2 *impacts.*

3 **Q. What does Ms. Baldwin’s testimony say about factor 5?**

4 A. Ms. Baldwin observes, “The outage was remedied within three hours. * * *
5 CenturyLink implemented several corrective measures, which is a mitigating
6 factor...” Her testimony that follows, about a lack of redundancy, is utterly
7 irrelevant to factor 5, which is whether there was prompt correction. That testimony
8 should be seen for what it is, another attempt to subvert the Commission’s
9 Enforcement Policy and draw attention away from the fact that West quickly
10 corrected the problem. Additionally, Ms. Baldwin ignores that West’s network is
11 fully redundant. As explained by Mr. Mills, the affected calls were returned to the
12 appropriate OSPs with a cause code. Over a thousand calls successfully completed
13 at West’s redundant switch in Miami, Florida during the interruption.

14 **Factor (6):** *Number of violations.*

15 **Q. What does Ms. Baldwin’s testimony say about factor 6?**

16 A. Ms. Baldwin mentions the number of *failed calls* but says nothing about the number
17 of *violations*. In fact, nowhere in her testimony does she independently conclude
18 there were any violations. Instead, she quotes Staff’s conclusions about violations or
19 makes general statements about violations.

20 **Q. How many violations of WAC 480-120-450(1) and RCW 80.36.080 were there?**

21 A. As I explain in my response testimony, there were no violations of either. My
22 response testimony also explains that even had there been a violation of the rule or

1 statute, there could have been no more than one for the switch migration. Counting
2 violations based on the number of calls is Staff's invention and is not supported by
3 the language of the rule or applicable statutes.

4 **Factor (7):** *The number of customers affected.*

5 **Q. What does Ms. Baldwin's testimony say about factor 7?**

6 A. Ms. Baldwin assert that at a minimum 148 customers were affected and argues that
7 every Washington resident west of the Cascades who needed emergency service was
8 *potentially* affected.

9 **Q. How many customers were actually affected?**

10 A. The customer for NG 911 service is the Washington Military Department. So it
11 would be correct to say one customer was affected. Assuming the Commission's
12 factors are intended to get at how many citizens, businesses and other institutions are
13 affected, the number is 148. To be sure, others *could have* been affected, but only if
14 they had made a call to 911 and been in the fraction of calls that did not go through.
15 But the Commission's factor measures "the number of customers affected" not the
16 number of *potentially* affected customers.

17 **Factor (8):** *The likelihood of recurrence*

18 **Q. What does Ms. Baldwin's testimony say about factor 8?**

19 A. Ms. Baldwin concludes: "there is now *no likelihood of recurrence* of the 911 failure
20 under CenturyLink's watch." Emphasis in italics added.

1 **Q. Do you agree with that conclusion?**

2 A. Yes. The event cannot recur because CenturyLink and West do not provide NG911
3 service in Washington.

4 **Q. Ms. Baldwin goes on to claim an aggravating factor is that “Washington
5 experienced an outage affecting 911 service in December 2018.” How do you
6 respond?**

7 A. The argument makes no sense. The investigation of the 911 outage has exactly
8 nothing to do with the likelihood of a recurrence, which is zero, and remains zero
9 regardless of the results of the investigation. Further, Ms. Baldwin seems to have
10 prejudged the investigation’s results when she claims the investigation “is an
11 aggravating factor, which underscores the inadequacy of CenturyLink’s 911
12 management and weighs in favor of imposing maximum penalties.” The truth is
13 exactly the opposite; *all* 911 calls to PSAPs still served by CenturyLink were
14 successful during the December 2018 event. This investigation is still ongoing –
15 there has been no complaint issued, no allegations that CenturyLink violated any
16 statutes or rules, and certainly no findings. The 2018 incident is irrelevant to the
17 considerations in this case.

18 **Factor (9):** *The company’s past performance regarding compliance, violations, and*
19 *penalties.*

20 **Q. What does Ms. Baldwin’s testimony say about factor 9?**

21 A. Ms. Baldwin concludes: “The Commission assessed penalties against CenturyLink
22 for violations related to 911 outages that occurred in 2013, 2014, and 2016.”⁵

⁵ Turcott, Exh. MLT-2 at 12.

1 CenturyLink's prior performance is another aggravating factor and weighs in favor
2 of imposing maximum penalties."

3 **Q. Were the 2013 penalties for violations of WAC 480-120-450(1) and RCW**
4 **80.36.080?**

5 A. No. The 2013 event involved a severed submarine cable in the San Juan Islands. It
6 took 10 days to assemble the necessary equipment and experts to operate it, raise the
7 cable from the seabed in strong, constantly changing current and splice the cable.
8 Staff filed a complaint against CenturyLink alleging 15,935 violations of WAC 480-
9 120-412, the Commission rule related to *reporting* major outages. The Commission
10 entered an Order approving and adopting with conditions a settlement agreement
11 between the Company, Staff, and Public Counsel. The Order assessed a penalty of
12 \$173,210 against CenturyLink but suspended \$123,210 of it for one year following
13 the Commission's approval of the Emergency Communications Plans required under
14 the settlement agreement. Under the settlement agreement the Commission would
15 waive the \$123,210 suspended penalty after this one-year period if CenturyLink did
16 not violate WAC 480-120-412 or the provisions of its Emergency Communications
17 Plans during that time. As part of the settlement CenturyLink admitted to violations
18 of the Commission's major outage rule, WAC 480-120-412, in connection with the
19 notification obligations under that rule.

20 **Q. What were 2014 penalties for?**

21 A. The 2014 event involved a six-hour and 12-minute statewide 911 outage caused by a
22 pre-set call limit in software operating West's Englewood ECMC. For purposes of
23 settlement only, CenturyLink admitted to violations of RCW 80.36.080, WAC 480-
24 120-450(1) and WAC 480-120-412(2) as it pertains to outage reporting. For the

1 same reasons the event that is the subject of the current complaint did not violate
2 RCW 80.36.080 or WAC 480-120-450(1), the software problem in West's ECMC
3 did not violate RCW 80.36.080 or WAC 480-120-450(1) which is why the admission
4 was for settlement purposes only. CenturyLink paid the Commission a fine of
5 \$2,854,750.

6 **Q. What were 2016 penalties for?**

7 A. The 2016 penalty was reinstatement of the \$123,210 of penalty that had been
8 suspended in the 2014 San Juan Islands submarine cable case. CenturyLink suffered
9 a transport shelf failure in The Dalles, OR on November 6, 2016. resulting in an outage of
10 911 services to 100,000 customers in Klickitat and Skamania counties in Washington
11 for various lengths of time over a two-day period. The Company did not notify and
12 provide information about the outage to Staff and the Washington Military
13 Department (WMD) until 28 hours after the outage occurred. CenturyLink conceded
14 that it had violated WAC 480-120-412 and the Emergency Communications Plans
15 less than one year after the Commission approved those plans and thus did not
16 satisfy the conditions under which the Commission suspended the penalty.

17 Importantly, the transport shelf failure was *not* a NG911 system failure and Staff did
18 *not* allege that the transport shelf failure was a violation of RCW 80.36.080 or WAC
19 480-120-450(1).

20 **Q. Of the three penalties Ms. Baldwin cites, how many were for violations of RCW**
21 **80.36.080 or WAC 480-120-450(1)?**

22 A. One, the 2016 outage where CenturyLink did not violate RCW 80.36.080 or WAC
23 480-120-450(1) but admitted to violations for settlement purposes only. The other

1 two had nothing to do with violations of RCW 80.36.080 or WAC 480-120-450(1)
2 and are irrelevant.

3 **Factor (10):** *The company's existing compliance program.*

4 **Q. Do you agree with Ms. Baldwin's conclusion regarding factor 10?**

5 A. Yes. Ms. Baldwin agrees with Staff's conclusion that there are two compliance
6 plans in effect, a Washington State Communications Plan and a San Juan County
7 Communications Plan, both of which arose out of the stipulation in the complaint
8 regarding outage notifications of the submarine cable break in the San Juan Islands.

9 **Factor (11):** *The size of the company.*

10 **Q. What does Ms. Baldwin's testify about factor 11?**

11 A. Ms. Baldwin states that CenturyLink is the major incumbent local exchange carrier
12 offering telephony, data, and other services in the state of Washington, with gross
13 intra-state combined annual revenue of \$399,409,239 in 2017.⁶

14 **Q. Do you agree?**

15 A. Yes and no. Staff's complaint is against Qwest Corporation d/b/a CenturyLink QC
16 which is referred to in this docket as "CenturyLink." Qwest Corporation is the
17 largest incumbent local exchange carrier in Washington. Its 2018 intrastate revenue
18 is \$264.9 million. Ms. Baldwin and Staff inflate that figure to \$399.4 million by
19 including revenue from affiliates and using a higher figure from 2017. But the rule
20 does not call for including affiliates' revenue. If the Commission permits affiliate

⁶ *Id.* at 6.

1 revenue to be included, nothing would stop an advocate from including all of
2 CenturyLink, Inc's. revenue.

3 \$264.9 million in revenues does not begin to reveal the enormous decline in Qwest
4 Corporation's intrastate business in Washington. At December 31, 2001 Qwest
5 Corporation's total access lines stood at 2.418 million. As of September 30, 2019,
6 they stood at 417 thousand, which is a decline of 83% from 2001.

7 **All Factors combined**

8 **Q. Do you agree with Ms. Baldwin's conclusion that the maximum fine should be**
9 **assessed against CenturyLink?**

10 A. No and for these three reasons:

11 a. As I explain in my response testimony, the event violated neither RCW
12 80.36.080 or WAC 480-120-450(1). Consequently, no fine is appropriate.

13 b. The event lasted one-eighth of a day. So even if there were a violation of the rule
14 or statute (which there was not), there could be a maximum of one violation of
15 each, not 222. WAC 480-120-450(1) requires all LECs to *provide* enhanced 9-1-
16 1 (E911) services defined as delivering a 911 call to the selective router, not to
17 complete each and every call in the NG911 system without fail. Similarly, RCW
18 80.36.080 requires adequate, not flawless, service. West undertook the switch
19 conversion with careful planning and a history of flawless execution. The statute
20 requires adequacy, not perfection and, in any event, the adequacy of the service
21 is matter of contract between CenturyLink and MIL.

1 c. CenturyLink and West are no longer the provider of NG-911 service in
2 Washington.

3 d. An evaluation of the Commission's eleven enforcement factors supports
4 leniency.

5 1. *How serious or harmful the violation is to the public.* There was no
6 violation. 911 is a serious and important service. The harm from the 222
7 failed calls is unknown.

8 2. *Whether the violation is intentional.* There was no violation. The failure
9 of the calls was completely unintentional. West took great care attempting
10 to avoid such an incident.

11 3. *Whether the company self-reported the violation.* There was no violation.
12 The company notified the Commission of the event despite it being
13 nonreportable.

14 4. *Whether the company was cooperative and responsive.* It was both.

15 5. *Whether the company promptly corrected the violations and remedied the*
16 *impacts.* There was no violation. West quickly discovered and corrected
17 the problem.

18 6. *The number of violations.* There were no violations.

19 7. *The number of customers affected.* 148 callers to 911 were affected.

20 8. *The likelihood of recurrence.* None.

1 analysis of the Commission's Enforcement Policy includes a host of transparently
2 irrelevant issues and nonsensical arguments clearly aimed at prejudicing the
3 Commission.

4 Ms. Baldwin urges the Commission to impose the severest penalty to as serve as
5 deterrent to future 911 outages. The Commission was not a party to the NG911
6 contract between MIL and CenturyLink and is not a party to the contract between
7 MIL and Comtech. The Commission has no rules or published standards governing
8 statewide NG911 service, a service that the FCC regulates. Under these
9 circumstances, the imposition of any penalty for a perceived failure or shortcoming
10 of NG911 service is necessarily arbitrary because there is no notice to the NG911
11 provider of the standard it is expected to meet and, therefore, no proper basis for a
12 Commission complaint or fine.

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

14 **A. Yes.**