

**BEFORE THE WASHINGTON
UTILITIES & 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

RESPONSE TESTIMONY OF COREY J. DAHL

**ON BEHALF OF THE
WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL
PUBLIC COUNSEL UNIT**

EXHIBIT CJD-1Tr

November 18, 2022

(Revised February 16, 2023)

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EXHIBIT LIST

Exhibit CJD-2 List of Prior Proceedings and Testimony for Witness Dahl

I. INTRODUCTION

1 **Q. Please state your names, employer, and business address.**

2 A. My name is Corey Dahl. I serve as Regulatory Analysts for the Public Counsel Unit of
3 the Washington State Office of the Attorney General (Public Counsel). My business
4 address is 800 5th Ave., Suite 2000, Seattle, Washington 98104.

5 **Q. On whose behalf are you testifying?**

6 A. I am testifying on behalf of the Public Counsel Unit of the Washington State Office of the
7 Attorney General.

8 **Q. How would you like to be referred to during this proceeding?**

9 A. I would like to be referred to as Corey or Witness Dahl. My pronouns are he/him/his.

10 **Q. Please describe your professional qualifications.**

11 A. I earned a B.A. in Economics and a B.A. in English from the University of St. Thomas in
12 St. Paul, Minnesota in 2011. In 2016, I earned a Master of Public Administration degree
13 from the Daniel J. Evans School of Public Policy and Governance at the University of
14 Washington in Seattle. While completing my graduate studies, I worked on low-income
15 and housing policy for a non-profit advocacy organization and worked as a legislative
16 assistant for the Seattle City Council. Additionally, I completed Michigan State
17 University and the National Association of Regulatory Utility Commissioners' Utility
18 Rate School in May 2017.

19 My current employment with Public Counsel began in October 2016. Since
20 joining the Attorney General's Office, I have worked on a variety of energy, water,
21 transportation, and telecommunications matters. My experience includes commenting at

1 Open Meetings before the Washington Utilities and Transportation Commission (UTC or
2 Commission), testifying at settlement and adjudicated hearings, serving as an expert on
3 litigated and non-litigated matters, and working on rulemakings and policy dockets
4 before the Commission. Please see Exhibit CJD-2 for a list of matters I have participated
5 in before the Commission.

6 **Q. Are you sponsoring any exhibits to your Response Testimony?**

7 A. Yes, I am sponsoring one exhibit, Exhibit CJD-2, which is a list of my prior Commission
8 proceedings and testimony.

9 **Q. What is the purpose of Public Counsel's testimony in this proceeding?**

10 A. My testimony addresses the appropriate penalty for CenturyLink Communications LLC's
11 (CenturyLink or Company)¹ willful disconnection of 923 customers while Governor
12 Inslee's Emergency Proclamation 20-23.2 (Proclamation) was effective. The
13 Proclamation expressly forbade public utilities, including telecommunications providers,
14 from disconnecting customers for non-payment to maintain connection to essential
15 services during the worst of the COVID-19 pandemic. The Commission determined that
16 CenturyLink is at fault for violating the Proclamation, so the appropriate penalty is the
17 only remaining issue for resolution.²

¹ The Complaint alleges violations related to CenturyLink Communications LLC 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. When referring to CenturyLink or Company, Public Counsel is referring to all of these companies.

² *Wash. Utils. & Transp. Comm'n v. CenturyLink*, Docket UT-210902, Order 03: Initial Order (July 29, 2022) (hereinafter Order 03).

1 **Q. Who are the other parties to this proceeding?**

2 A. The Company, Commission Staff (Staff), and Public Counsel are Parties to this
3 proceeding.

4 **Q. Please summarize Public Counsel's recommendations.**

5 A. Public Counsel recommends that the Commission issue the maximum penalty of \$1,000
6 per violation. This would result in a total penalty of \$923,000 for wrongfully
7 discontinuing service for 923 customers.

8 **Q. Please outline your Response Testimony.**

9 A. My testimony is organized as follows:

- 10 • Summary of the Proceeding: I will provide a detailed narrative of the Company's,
11 Commission's, Staff's, and Public Counsel's actions to date.
- 12 • Evidence for Maximum Penalty: I will evaluate the evidence and factors that
13 support the Commission imposing the maximum penalty in this proceeding.
- 14 • Conclusion and Final Recommendations.

II. SUMMARY OF THE PROCEEDING

15 **Q. What events led to Staff's complaint in this proceeding?**

16 A. In response to the surging COVID-19 public health and economic crisis, Governor Inslee
17 issued a Proclamation on April 17, 2020, forbidding telecommunications companies from

1 disconnecting customers from service for non-payment or inability to pay.³
2 Disconnections were suspended according to the emergency powers granted by the
3 Legislature to the Governor.⁴ The Governor’s Proclamation was retroactively effective to
4 March 23, 2020,⁵ which meant any customers disconnected from service between March
5 23 and April 17 would need to be reconnected without any action taken on their behalf.
6 The Proclamation remained in effect until September 30, 2021.⁶ During the
7 Proclamation’s effective dates, the Company discontinued service for numerous
8 customers through two processes as identified in the Commission’s April 6, 2022,
9 Complaint (Complaint): “disconnection and suspension.”⁷

10 **Q. What actions did Commission Staff take after CenturyLink’s alleged violations of**
11 **Governor Inslee’s Proclamation?**

12 A. Staff conducted an investigation into the Company’s practices and alleged violations of
13 the Proclamation and issued a complaint based on its findings. Staff filed the Complaint
14 and Investigation Report on April 6, 2022. Staff’s Complaint alleged 923 violations of

³ Am. Proclamation No. 20-23.2, Governor Jay Inslee, *Ratepayer Assistance & Preservation of Essential Services* (2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-23.2%20-%20COVID-19%20Ratepayer%20Assistance.pdf>.

⁴ *Id.*; see also RCW 43.06.020.

⁵ Am. Proclamation No. 20-23.2, Governor Jay Inslee, *Ratepayer Assistance & Preservation of Essential Services* (2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-23.2%20-%20COVID-19%20Ratepayer%20Assistance.pdf>.

⁶ Investigation Report Attachs. of Comm’n Staff (filed Apr. 6, 2022) (Attach. A). Commission Staff’s Attachment A consists of Proclamation 20-23.2 and Proclamation 20-23.16 signed and sealed on April 17, 2020, and July 2, 2021. To review the Governor’s Proclamations please visit: <https://www.governor.wa.gov/office-governor/official-actions/proclamations> (enter the proclamation number into the ‘Search Terms’ field, and click on ‘Apply’ to display specific hyperlinks to the proclamations).

⁷ Complaint and Notice of Prehearing Conference, ¶ 10 (filed Apr. 6, 2022).

1 WAC 480-120-172.⁸ The rule in question states that utilities can disconnect customers
2 after “providing proper notice” and the “customer has violated a rule, statute, service
3 agreement, filed tariff, or rates, terms and conditions of competitively classified
4 services.”⁹ Telecommunications providers are permitted to disconnect customers for
5 nonpayment “when allowed for by the terms and conditions terms and conditions of
6 competitively classified services.”¹⁰ Governor Inslee’s Proclamation forbid disconnecting
7 residential customers for nonpayment and, thus, the Company could be subject to
8 penalties or other enforcement actions if Commission determined the alleged violations
9 to be true.

10 **Q. What were Staff’s findings detailed in the Investigation Report?**

11 A. Staff requested information from CenturyLink regarding compliance with the
12 Proclamation, customer arrearages, customer disconnections, and fees assessed for late
13 payment, disconnection, or reconnection.¹¹ The Investigation Report indicates that the
14 Company disconnected 423 customers and suspended service for 743 customers¹²
15 between March 23, 2020, and September 30, 2021, the Proclamation’s effective dates.¹³

⁸ *Id.* ¶ 36.

⁹ WAC 480-120-173(3)(a).

¹⁰ Investigation Report of Comm’n Staff at 7.

¹¹ Investigation Report Attachs. of Comm’n Staff, at 39 (Attach. C, Questions 1, 2, 5 and 6). The Investigation Report Attachments are not consecutively paginated, thus the page number cited references the PDF page numbering.

¹² 423 + 743 = 1,166 customers with discontinued service.

¹³ Investigation Report of Comm’n Staff at 8.

1 Suspension of service for nonpayment does not indicate that a customer was
2 completely removed from the Company’s system, but still indicates that a customer is
3 subject to discontinuance of service. Staff’s Investigation Report indicates that the
4 Proclamation did not specifically define “disconnection,” so the term is understood to
5 mean any discontinuation of service “within the meaning of WAC 480-120-172(3)(a).”¹⁴
6 Of the 423 customers disconnected during the proclamations effective dates, 243 were
7 suspended from service prior to March 23, 2021. For this reason, Staff only included 180
8 disconnected and 743 suspended customers in its Complaint.

9 Beyond disconnections, Staff’s investigation looked into fees charged during the
10 Proclamation’s effective period. The Company charged late fees to 39,799 customers
11 while the practice was expressly forbidden.¹⁵ In response to Staff’s inquiry, the Company
12 indicates that it removed fees for those who had not yet paid them and offered credits or
13 refunds to those who had paid the late fees.¹⁶ In addition to inappropriately charging late
14 fees during the moratorium, the Company issued reconnection fees to voice customers a
15 “total of 1,634 times.”¹⁷ The Company did not indicate, however, if it cleared, refunded,
16 or credited any reconnection charges.

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¹⁴ *Id.*

¹⁵ Investigation Report Attachs. of Comm’n Staff, at 44 (Attach. D, Response to Question 5).

¹⁶ *Id.*

¹⁷ *Id.*, at 43–44 (Attach. D, Response to Question 4).

1 **Q. Did Staff's Complaint include recommended fines for any violations beyond**
2 **disconnecting or suspending 923 customers during the moratorium?**

3 A. No. Staff only recommends penalties for the 923 customers who experienced
4 discontinuation of service during the Proclamation's effective dates. This
5 recommendation does not include fines for the 243 customers suspended before March
6 23, 2020 and disconnected in July 2020; 39,799 customers charged late fees; or 1,634
7 customers charged reconnection fees.

8 **Q. How did CenturyLink respond to the Complaint?**

9 A. The Company admitted to disconnecting 423 customers¹⁸ and suspending service for 743
10 customers¹⁹ during the moratorium, and admitted that 243 customers suspended before
11 the Proclamation's effective date were disconnected during the moratorium.²⁰ Despite
12 these admissions, the Company denied the Commission's authority over the Complaint's
13 subject.²¹ Furthermore, CenturyLink denied the allegation of the violations and the
14 appropriateness of Staff's requested penalties.²²

15 **Q. Please describe Staff's Motion for Summary Determination.**

16 A. Staff filed a Motion for Summary Determination (Motion) on June 16, 2022. Because
17 CenturyLink admitted to disconnecting or suspending 923 customers during the
18 moratorium, Staff argued that the Company violated WAC 480-120-172(3)(a) and should

¹⁸ Resp. to the Comm'n Staff Compl. of CenturyLink, ¶ 12 (filed Apr. 26, 2022).

¹⁹ *Id.* ¶ 14.

²⁰ *Id.* ¶ 15.

²¹ *Id.* ¶ 16.

²² *Id.* ¶¶ 37 & 38.

1 be subject to penalty. This Motion requested the Commission to determine whether the
2 Company should be held liable for violating the Proclamation.

3 **Q. How did CenturyLink respond to Staff’s Motion for Summary Determination?**

4 A. The Company responded that the material facts were not in dispute, but disputed that
5 disconnecting customers during the moratorium should result in liability or penalties.²³
6 As a result, CenturyLink requested the Commission to dismiss the complaint.²⁴

7 **Q. How did Public Counsel respond to Staff’s Motion for Summary Determination?**

8 A. Public Counsel supported Staff’s Motion and the legal conclusions and that the only
9 remaining issue is to determine the appropriate penalty.²⁵ Furthermore, Public Counsel
10 requested the Commission define the issues for hearing to include penalties for the 923
11 customers disconnected or suspended during the moratorium, liability and penalties for
12 the additional 243 customers disconnected in July 2020, and liability and penalties for
13 customers charged late and reconnection fees during the moratorium.²⁶

14 **Q. How did the Commission rule on the Motion for Summary Determination and other**
15 **parties’ responses?**

16 Q. The Commission granted Staff’s Motion for Summary Determination, denying the
17 arguments CenturyLink advanced to remove liability for disconnecting or suspending 923

²³ Resp. to Comm’n Staff’s Mot. for Partial Summ. Determination of CenturyLink, ¶ 14 (filed Jul. 6, 2022).

²⁴ *Id.* ¶ 26.

²⁵ Resp. to Comm’n Staff’s Mot. for Partial Summ. Determination of Public Counsel, ¶ 26 (filed Jul. 6, 2022).

²⁶ *Id.* ¶ 11.

1 customers.²⁷ According to the Commission’s Order, the only issue remaining in the
2 proceeding is to determine the appropriate penalty for violations related to CenturyLink
3 disconnecting 923 customers.²⁸ Additionally, the Commission declined to determine
4 liability and penalties for the additional issues identified in Public Counsel’s response.²⁹
5 The Commission would make a determination on liability and penalties for additional
6 customer disconnections, late fees, and reconnection fees in the “appropriate setting.”³⁰

7 **Q. Has Commission Staff filed testimony in this proceeding? If so, please summarize**
8 **the testimony.**

9 A. Yes. Staff witness Bridgit Feeser (Witness Feeser) filed Testimony on August 25, 2022.
10 Witness Feeser’s testimony assessed the appropriate penalty for CenturyLink’s
11 violations, based on 11 factors outlined in the Commission’s policy statement on
12 enforcement of public service laws.³¹ Staff continues to recommend the maximum
13 penalty of \$1,000 for each of the 923 admitted violations.³² Public Counsel agrees with
14 Staff’s recommendation.

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²⁷ Order 03, ¶ 34 (issued July 29, 2022).

²⁸ *Id.* ¶ 38.

²⁹ *Id.* ¶ 37.

³⁰ *Id.* ¶ 20.

³¹ Direct Test. of Bridgit Feeser, Exh. BF-1T at 4:15.

³² *Id.* at 2:20–21.

III. EVIDENCE FOR MAXIMUM PENALTY

1 **Q. What considerations did Public Counsel make in reaching its recommendation in**
2 **this proceeding?**

3 A. Public Counsel reviewed Staff’s Complaint and Investigation Report. In doing so, Public
4 Counsel reached the same conclusions that Staff and the Commission did with respect to
5 the 923 disconnection violations. The Company is at fault for disconnecting 923
6 customers from critical utility services during the Governor’s moratorium. That question
7 is no longer in dispute and setting an appropriate penalty is the sole issue remaining.

8 In recommending an appropriate penalty, Public Counsel considered the evidence
9 on record and 11 non-exclusive factors established in Docket A-120061, the Enforcement
10 Policy of the Washington Utilities and Transportation Commission (Policy Statement).
11 Staff also considered these factors to arrive at its recommendation.

12 **Q. What are the 11 factors outlined in the Commission’s Policy Statement?**

13 A. If the Commission finds that a “company has violated an applicable statute, rule, order, or
14 tariff, the Commission will consider whether an enforcement action, beyond technical
15 assistance, is appropriate and, if so, which action to take.”³³ This applies to the type of
16 enforcement action or the adequate penalty to issue. In determining an enforcement
17 action or penalty, the Commission considers the following nonexclusive factors:

18 1. How serious or harmful the violation is to the public;

³³ Enforcement Policy of WUTC, ¶ 15, *In re Enforcement Policy of the Wash. Utils. & Transp. Comm’n*, Docket A-120061 (2013).

- 1 2. Whether the violation is intentional;
- 2 3. Whether the company self-reported the violation;
- 3 4. Whether the company was cooperative and responsive;
- 4 5. Whether the company promptly corrected the violations and remedied the
- 5 impacts;
- 6 6. The number of violations;
- 7 7. The number of customers affected;
- 8 8. The likelihood of recurrence;
- 9 9. The company's past performance regarding compliance, violations, and penalties;
- 10 10. The company's existing compliance program; and
- 11 11. The size of the company.³⁴

12 I will assess each of these factors in relation to the Company's violations and potential
13 penalty in my testimony below.

14 **Q. Factor 1: How serious or harmful were the Company's violations to the public?**

15 A. The Company's violations were both very serious and very harmful to the public, as Staff
16 correctly notes.³⁵ The Governor's Proclamation states that "maintaining provision of
17 utility services during this crisis is an essential tool in sustaining and protecting the health
18 and welfare of our people and businesses as a critical part of the overall response to the

³⁴ *Id.*

³⁵ Feeser, Exh. BF-1T at 5:12.

1 COVID-19 pandemic.”³⁶ As a result, the Governor identified telecommunication services
2 as a critical tool for public health and safety. The Commission also recognized the
3 importance of maintaining telecommunication service during the COVID-19 crisis at the
4 June 16, 2020, Special Open Meeting. CenturyLink’s customers relied on
5 telecommunications services during the depths of the pandemic to maintain connections
6 to loved ones, school, work, and health care providers.³⁷ It was important to maintain
7 connection for customers served by landline phone service, particularly in rural parts of
8 Washington or areas poorly covered by wireless telecommunications networks, during
9 the crisis in the event that emergency medical services or other critical public services
10 were necessary.

11 The Company discontinued critical services to customers, despite the very clear
12 prohibition against doing so. The Company acknowledges the Proclamation and
13 discontinuance of service, but does not believe that the Commission should take any
14 enforcement actions. The Commission disagreed in Order 03 and is set to determine the
15 appropriate level of penalties. The Policy Statement provides that the “more serious or
16 harmful violations, the more appropriate penalties or other sanctions may be.” Given the

³⁶ Am. Proclamation No. 20-23.2, Governor Jay Inslee, *Ratepayer Assistance & Preservation of Essential Services* (2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-23.2%20-%20COVID-19%20Ratepayer%20Assistance.pdf>.

³⁷ Wash. Utils. & Transp. Comm’n, *Special Open Meeting*, at 1:35:34 (June 16, 2020), <https://wutc.app.box.com/v/OpenMeetings/file/745577687782> (Comments of Lisa Gafken representing Public Counsel).

1 severity of the violations and the harm they caused during a global public health crisis,
2 maximum penalties are appropriate.

3 **Q. Factor 2: Were CenturyLink’s violations intentional?**

4 A. Yes, the available evidence suggests the violations were intentional. The Company
5 claims that the violations of the Governor’s Proclamation “were unintentional.”³⁸ Despite
6 the Company’s claims, Public Counsel agrees with Staff’s assessment that evidence
7 “supports a finding that CenturyLink acted intentionally when it discontinued service.”³⁹
8 CenturyLink repeatedly indicated to Staff that, though disconnections were prohibited as
9 a result of the Proclamation, utilities were not restricted “from suspending customers for
10 non-payment.”⁴⁰ This statement indicates that the Company was aware of the moratorium
11 on customer shutoffs, but proceeded anyway due to the unsupported belief that
12 disconnections and suspensions are fundamentally different.

13 The Proclamation prohibited disconnections on active accounts.⁴¹ Suspended
14 accounts were still connected to the Company’s network and remained active, but
15 suspended customers could not access services unless the customer’s account was

³⁸ Feeser, Exh. BF-1T at 5:20.

³⁹ *Id.* at 6:1–2.

⁴⁰ Investigation Report Attachs. of Comm’n Staff (Attach. F).

⁴¹ Am. Proclamation No. 20-23.2, Governor Jay Inslee, *Ratepayer Assistance & Preservation of Essential Services* (2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-23.2%20-%20COVID-19%20Ratepayer%20Assistance.pdf>.

1 unsuspended. Suspended accounts were active accounts for purposes of the Prohibition,
2 and they fit in the term “disconnected” because customers were denied access to services.

3 Indeed, even if disconnections and suspensions for nonpayment are different from
4 an operational standpoint, the effect to the customer is the same: they are unable to access
5 service. CenturyLink admitted that disconnections remove customers from the network⁴²
6 and suspension results in customers being unable to use services,⁴³ creating the same
7 outcome. Despite these admissions, the Company denies that the Proclamation prohibited
8 discontinuance of service through suspension or disconnection for nonpayment.⁴⁴ Even
9 accepting, only for the sake of argument, the Company’s belief that disconnections and
10 suspensions are somehow different, CenturyLink still discontinued service for 180
11 customers through disconnection⁴⁵ during the moratorium. No party disputes this. This
12 factor weighs in favor of imposing the maximum penalty.

13 **Q. Does Public Counsel offer additional evidence that supports a finding of intentional**
14 **violations?**

15 A. Yes. CenturyLink’s public statements to the Commission indicate that they were aware of
16 the Governor’s Proclamation and intended to comply while it was effective. At the June
17 16, 2020, Special Open Meeting, CenturyLink’s representative indicated that the

⁴² CenturyLink Resp. to the Complaint of Comm’n Staff, ¶ 11.

⁴³ *Id.* ¶ 13.

⁴⁴ *Id.* ¶ 33.

⁴⁵ The number of customers disconnected from the network included in the scope of this complaint is 180 (i.e. it is 423 disconnections less the customers suspended from service prior to March 23, 2020).

1 Company was “continuing to honor the FCC’s Keep Americans Connected pledge”⁴⁶ and
2 was “complying” with the Governor’s moratorium on disconnects and late fees.⁴⁷
3 However, evidence demonstrates that the Company was not in compliance and would not
4 comply for the duration of the Proclamation.

5 At the same Special Open Meeting, Chair David Danner indicated that the
6 moratorium “could be extended” and asked if CenturyLink was preparing for that
7 possibility.⁴⁸ CenturyLink’s representative once again reiterated, “Well...we will
8 obviously comply with any extensions that the Governor makes to his emergency
9 proclamation.”⁴⁹ The Governor extended the proclamation as the crisis persisted, through
10 September 30, 2021. CenturyLink broke its word and defied the moratorium, despite the
11 Governor’s extensions and its commitment to the Commission.

12 CenturyLink boldly reiterated its commitment to comply with the Governor’s
13 Proclamation at the Special Open Meeting, stating, “Nobody's racing toward the finish
14 line of wanting to disconnect customers.”⁵⁰ Indeed, the evidence shows that the Company
15 was “racing” to discontinue service for nonpayment. Even though CenturyLink continued
16 to reassure the Commission and the public that it would keep customers connected to
17 critical telecommunications services, CenturyLink unlawfully disconnected customers

⁴⁶ Wash. Utils. & Transp. Comm’n, *Special Open Meeting*, at 1:27:14 (June 16, 2020),
<https://wutc.app.box.com/v/OpenMeetings/file/745577687782> (Comments of Lisa Anderl representing
CenturyLink).

⁴⁷ *Id.* at 1:27:20 (Comments of Lisa Anderl representing CenturyLink).

⁴⁸ *Id.* at 1:30:00 (Comments of Chair David Danner).

⁴⁹ *Id.* at 1:30:18 (Comments of Lisa Anderl representing CenturyLink).

⁵⁰ *Id.* at 1:34:29 (Comments of Lisa Anderl representing CenturyLink).

1 while the Proclamation was in effect. CenturyLink’s clear, yet untruthful, statements to
2 the Commission indicate intentionality that the Commission should consider in
3 determining an appropriate penalty.

4 **Q. What does the Commission’s Policy Statement offer in regard to intentional**
5 **violations?**

6 A. The Policy Statement indicates, “A company that willingly and intentionally violates a
7 Commission requirement may be dealt with more severely than a company that
8 unknowingly committed a violation.”⁵¹ Based on the Company’s public statements to the
9 Commission, admission to disconnections and suspensions, and continued claims that
10 suspensions are not violations of the Proclamation, it is difficult to argue the violations
11 were “unknowingly committed.” The Company was aware of the Proclamation and
12 repeatedly violated it. Additionally, the Commission may consider whether companies
13 are “obscuring the facts.”⁵² CenturyLink’s repeated commitments made directly to the
14 Commission to comply with the Proclamation while violating it amounts to concealing
15 the truth about the Company’s actions. For intentionally committing the 923 violations in
16 question in this proceeding, the Commission should issue the recommended penalty.

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⁵¹ Enforcement Policy, ¶ 15, *In re Enforcement Policy of the Wash. Utils. & Transp. Comm’n*, Docket A-120061 (2013).

⁵² *Id.*

1 **Q. Factor 3: Did CenturyLink self-report the violations?**

2 A. No, it did not. The violations were discovered through Staff’s compliance work in Docket
3 U-200281. Staff submitted a variety of data requests to CenturyLink to gather
4 information on Compliance with the Governor’s Proclamation, disconnections for
5 nonpayment, and past due balances on July 21, 2021.⁵³ CenturyLink did not provide
6 responses until nearly three months later on October 12, 2021.⁵⁴ The Company not only
7 failed to report supposedly inadvertent violations of the Proclamation, but also took
8 almost three months to respond to a handful of straightforward data requests.

9 According to the Policy Statement, the “Commission may consider being more
10 lenient with a company that self-reports...a violation that occurred.”⁵⁵ Considering this
11 factor, the Commission should impose a stern penalty because it was Staff’s work that
12 uncovered these serious violations.

13 **Q. Factor 4: Was the Company cooperative and responsive?**

14 A. To the extent that the Company answered data requests during Staff’s investigation, it
15 was minimally cooperative. However, Public Counsel finds the Company’s
16 responsiveness concerning. As indicated above, the Company provided responses to
17 initial data requests nearly three months after Staff made the requests. Staff requested that

⁵³ Investigation Report of Comm’n Staff, at 5.

⁵⁴ *Id.*

⁵⁵ Enforcement Policy, ¶ 15, *In re Enforcement Policy of the Wash. Utils. & Transp. Comm’n*, Docket A-120061 (2013).

1 the Company provide responses to its initial requests by August 4, 2021.⁵⁶ The Company
2 did not respond until October 12, 2021.⁵⁷ Similarly, CenturyLink was “five days late in
3 providing its supplemental response” to data requests later in the proceeding.⁵⁸ The
4 Company’s repeated lack of responsiveness to Staff’s requests for timely responses to
5 data requests weighs in favor of a strong penalty.

6 **Q. Factor 5: Did the Company promptly correct the violations or remedy the impacts?**

7 A. No. Witness Feeser testifies, “Staff is not aware of the Lumen companies [CenturyLink]
8 correcting the disconnections and suspensions.”⁵⁹ Again, the Company still does not
9 admit that suspending customers for nonpayment amounts to a violation, so it follows
10 that corrections or remedies were not promptly made for those customers. The impact of
11 being without a critical service during the height of the pandemic is serious, and the
12 Company does not offer evidence that any corrections or remedies were made. The
13 Policy Statement states that the “Commission may be more lenient when a company
14 promptly corrects a violation.”⁶⁰ In considering this factor, the Commission should not
15 extend leniency, but rather weigh this factor toward imposing the maximum penalty.

16 **Q. Factor 6: How many violations were committed?**

17 A. The Company committed 923 violations of WAC 480-180-172(3)(a). According to the
18 Policy Statement, “the more violations the Commission finds, the more likely it is to take

⁵⁶ Investigation Report Attachs. of Comm’n Staff (Attach. C).

⁵⁷ Investigation Report of Comm’n Staff, at 5.

⁵⁸ Feeser, Exh. BF-1T, at 6:12–13.

⁵⁹ *Id.* at 6:22–23.

⁶⁰ Enforcement Policy, ¶ 15, *In re Enforcement Policy of the Wash. Utils. & Transp. Comm’n*, Docket A-120061 (2013).

1 an enforcement action.” Each violation represents a customer who was deprived of
2 essential services during the COVID-19 pandemic, in direct violation of the Governor’s
3 Proclamation. The Company did not inadvertently disconnect one or two customers, but
4 nearly 1,000 customers were impacted by the violations subject to this complaint. A
5 significant number of people were harmed, and these violations were not an isolated issue
6 or rare occurrence. As such, the Commission should consider the number of violations as
7 additional evidence to issue the recommended penalty of \$1,000 per violation.

8 **Q. Factor 7: How many customers did CenturyLink’s violations impact?**

9 A. As indicated above, CenturyLink improperly discontinued essential service for 923
10 customers during a State of Emergency. The Policy Statement says, “The more customers
11 affected by a violation, the more likely the Commission will take enforcement action.”⁶¹
12 Once again, 923 customers is a significant number of impacted customers, indicating
13 more than an isolated issue. The Commission should weigh this factor in favor of
14 imposing maximum penalties.

15 **Q. Factor 8: What is the likelihood of recurrence?**

16 A. At this time, it is unknown if a public health and economic crisis on the same scale as
17 COVID-19 will emerge in the future, so it is equally unknown if the Company will face a
18 similar Proclamation or requirement to cease disconnections and fee collection. However,
19 as Witness Feeser points out, “Staff is not aware of any steps that CenturyLink has taken

⁶¹ *Id.*

1 to prevent future similar violations.”⁶² These violations occurred even though the
2 Company vowed to follow the Governor’s Proclamation and stated to the Commission
3 that it had adequate staffing levels to manage the Company’s response to the pandemic.⁶³

4 The Policy Statement indicates that the Commission may be more likely to take
5 enforcement action if “the company has not changed its practices.”⁶⁴ CenturyLink has
6 provided no evidence that business practices have changed to prevent this type of
7 violation from occurring again. The Commission should take this into consideration and
8 issue the maximum penalty.

9 **Q. Factor 9: What is CenturyLink’s past performance regarding compliance,**
10 **violations, and penalties?**

11 A. This case is not the first, or even the second, complaint against CenturyLink for
12 violations. CenturyLink has significant past and current compliance issues. Currently, the
13 Commission has three separate complaints pending against CenturyLink for violations of
14 Commission rule. In addition to this proceeding, the following complaints are pending
15 before the Commission:

⁶² Feeser, Exh. BF-1T, at 7:8–9.

⁶³ Wash. Utils. & Transp. Comm’n, *Special Open Meeting*, at 1:30:25 (June 16, 2020),
<https://wutc.app.box.com/v/OpenMeetings/file/745577687782> (Comments of Lisa Anderl representing
CenturyLink).

⁶⁴ Enforcement Policy, ¶ 15, *In re Enforcement Policy of the Wash. Utils. & Transp. Comm’n*, Docket A-120061
(2013).

- 1 • 2018 9-1-1 Service Outage Complaint (Docket UT-181051): Parties are engaged
2 in active litigation resulting from Staff’s investigation into the December 27,
3 2018, 9-1-1 service outage.⁶⁵ The outage lasted a total of 49 hours and 32
4 minutes.⁶⁶ Staff and Public Counsel are recommending penalties for
5 CenturyLink’s role in the outage, and CenturyLink argues it has no liability for
6 the critical public safety outage. Public Counsel recommends a statutory
7 maximum penalty of \$26,865,000.⁶⁷
- 8 • 2022 Failure to Notice Rate Increase Complaint (UT-220397): The Commission
9 issued a penalty against CenturyLink on June 1, 2022, for failing to provide notice
10 of residential rate changes. CenturyLink sought penalty mitigation arguing that
11 COVID-19 “personnel reductions” contributed to the Company’s failure to
12 provide required notice.⁶⁸ The Commission issued an Order denying mitigation
13 and enforcing the full \$226,600 penalty.⁶⁹ CenturyLink subsequently petitioned
14 for Commission review.⁷⁰ On November 17, 2022, the Commission denied

⁶⁵ Staff Complaint, ¶ 6, *Wash. Utils. & Transp. Comm’n v. CenturyLink*, Docket UT-181051 (filed Dec 22, 2020).

⁶⁶ Direct Test. of Stephanie K. Chase, Exh. SKC-1Tr at 4:5, *Wash. Utils. & Transp. Comm’n v. CenturyLink*, Docket UT-181051 (filed Dec. 17, 2021).

⁶⁷ *Id.* at 18:6–8.

⁶⁸ CenturyLink Application for Mitigation, ¶ 3, *In re Penalty Assessment against CenturyLink Companies*, Docket UT-220397 (2022).

⁶⁹ *In re Penalty Assessment against CenturyLink*, Docket UT-220397, Order 01: Denying Mitigation (Sept. 30, 2022).

⁷⁰ CenturyLink Petition for Comm’n Review of Delegate Decision, *In re Penalty Assessment against CenturyLink*, Docket UT-220397 (2022).

1 CenturyLink's Petition for Review, rejecting the Company's arguments for
2 mitigation and affirming the \$226,000 penalty.⁷¹

3 In addition to the other pending complaints against CenturyLink, the Commission
4 filed complaints against the Company in several other dockets in the last 10 years. These
5 complaints, many of which resulted in penalties, include:

- 6 • 2013 San Juan Islands Service Outage (Docket UT-132234): Customers of
7 CenturyTel of InterIsland, Inc., experienced an outage of telecommunications and
8 broadband service from November 5 to 13, 2013. The Commission's Complaint
9 found 15,935 violations.⁷² The Commission issued \$173,320 penalty with all but
10 \$50,000 suspended, if the Company did not have additional violations within a
11 year.⁷³ Within a year of the Order, 100,000 Washington customers lost 9-1-1
12 service on November 6, 2016.⁷⁴ The Commission ultimately assessed the
13 suspended portion of the penalty.⁷⁵
- 14 • 2014 Statewide 9-1-1 Service Outage (Docket UT-140597): In February 2015, the
15 Commission issued a Complaint for an April 2014 9-1-1 service outage impacting

⁷¹ *In re Penalty Assessment against CenturyLink*, Docket UT-220397, Order 02: Denying Petition for Review (Nov. 17, 2022).

⁷² *Wash. Utils. & Transp. Comm'n v. CenturyTel of Inter Island*, Docket UT-132234, Order 06: Imposing Suspended Penalties, ¶ 1 (June 1, 2017).

⁷³ *Id.* ¶ 2.

⁷⁴ *Id.* ¶ 3.

⁷⁵ *Id.* ¶ 10.

1 all Washington residents for six hours.⁷⁶ The Commission approved a Settlement
2 in which the Company admitted violations (for the purposes of Settlement) and
3 agreed to pay a \$2,854,750 penalty.⁷⁷

- 4 • 2017 Refusal to Extend Service Complaint (Docket UT-171082): On December 8,
5 2017, the Commission issued a complaint against CenturyLink for refusing to
6 extend service to a customer whose residence was within 1,000 feet of the nearest
7 Company facilities.⁷⁸ The Commission ultimately dismissed the complaint.⁷⁹
- 8 • 2019 Failure to Report 9-1-1 Outage (Docket UT-190209): The Commission
9 issued a complaint against CenturyLink for failure to timely notify Commission
10 Staff of a 9-1-1 service outage affecting 222 failed emergency calls.⁸⁰ The outage
11 occurred on July 12, 2017, and the Company notified Staff as a “courtesy” two
12 days later.⁸¹ The Commission expressed concern about the outage and the
13 Company’s failure to report,⁸² but was bound by law to dismiss the complaint.⁸³
- 14 • 2020 Investigation into CenturyLink Billing Practices (Docket UT-200982):
15 Commission Staff investigated customer complaints regarding CenturyLink

⁷⁶ *Wash. Utils. & Transp. Comm’n v. Quest Corp.* Docket UT-140597, Order 03: Approving Settlement Agreement, ¶ 1 (Feb. 22, 2016).

⁷⁷ *Id.* ¶ 2.

⁷⁸ *Wash. Utils. & Transp. Comm’n v. Quest Corp.*, Docket UT-171082, Order 03: Final Order, ¶ 1 (Aug. 23, 2018).

⁷⁹ *Id.* ¶ 52.

⁸⁰ *Wash. Utils. & Transp. Comm’n v. Quest Corp.*, Docket UT-190209, Order 03: Initial Order Dismissing Complaint, ¶ 5 (June 25, 2020).

⁸¹ *Id.*

⁸² *Id.* ¶ 22.

⁸³ *Id.* ¶ 49–51.

1 repeatedly, improperly billing customers a city tax.⁸⁴ Three of four customer
2 complaints were resolved in favor of the customer, including one customer who
3 had been improperly charged a city tax since 1996 resulting in a refund of more
4 than \$700.⁸⁵ The investigation concluded that there were issues with the billing
5 system, but they were not widespread.⁸⁶

- 6 • 2021 Failure to Line Locate for Excavator (D-210811): The Commission
7 investigated CenturyLink’s failure to complete line locate services for an
8 excavation company within two days of a received request.⁸⁷ Staff recommended
9 a \$5,000 penalty due to repeat violations within a three-year period.⁸⁸ The
10 Company applied for full mitigation of the penalty, which the Commission
11 denied.⁸⁹

12 CenturyLink’s prior and current complaint cases reveal a concerning pattern.
13 CenturyLink has been the subject of Commission complaints or investigations nine times
14 since 2013 – which averages to an annual basis. The Commission has taken enforcement
15 action in multiple instances, including requiring CenturyLink to pay the suspended
16 portion of a penalty because it incurred additional violations during the suspension
17 period. Finally, in many instances, CenturyLink refused to accept liability when the

⁸⁴ Staff Letter to Amanda Maxwell, *In re CenturyLink City Tax Investigation*, Docket UT-200982 (2021).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Staff Notice of Penalties, *In re Penalty Assessment against CenturyLink*, Docket D-210811 (2021).

⁸⁸ *Id.*

⁸⁹ *In re Penalty Assessment against CenturyLink*, Docket D-210811, Order 01: Denying Mitigation, ¶¶ 2 & 7 (Dec. 30, 2021).

1 Commission ultimately found the Company at fault. This factor weighs heavily in
2 support of maximum penalties.

3 **Q. What does the Commission’s Policy statement recommend in terms of compliance,**
4 **violations, and penalties?**

5 A. The Policy Statement states, “The Commission will deal more harshly with companies
6 that have a history of non-compliance, repeated violations of the same or other
7 regulations, and previous penalties.”⁹⁰ From the evidence presented in my testimony, it is
8 clear that CenturyLink has a lengthy history of repeated violations and previous penalties.
9 Unlike other factors considered in the Policy Statement, the statement says the
10 Commission *will* deal more harshly with Companies with repeat violations and previous
11 penalties, rather than indicating that the Commission *may* offer more lenient or harsh
12 penalties. For this reason, the Commission should accept Staff and Public Counsel’s
13 recommended penalty.

14 **Q. Factor 10: Does the Company have an existing compliance program?**

15 A. No, the Company has offered no evidence of a compliance program. Witness Feeser also
16 testifies, “Staff is not aware of any existing compliance program.” The Company’s
17 commitment to the Commission to comply with the Proclamation while in violation of
18 the Proclamation offers further indication that compliance mechanisms were lacking at

⁹⁰ Enforcement Policy, ¶ 15, *In re Enforcement Policy of the Wash. Utils. & Transp. Comm’n*, Docket A-120061 (2013).

1 the time of the violations, and there is no evidence that the Company made changes to
2 achieve better compliance.

3 The Policy Statement indicates that the “Commission is more likely to take
4 enforcement action if the company does not have an active *and* adequate compliance
5 program in place.”⁹¹ Given that there is no evidence of an existing compliance program
6 and whatever compliance measures were being taken during the effective dates of the
7 Governor’s Proclamation were clearly inadequate, the Commission should issue the
8 recommended maximum penalty.

9 **Q. Factor 11: How does the size of the Company factor into enforcement actions?**

10 A. The Policy Statement says, “The Commission will consider the size of the company in
11 taking enforcement actions. It is not the Commission’s intention to take enforcement
12 actions disproportionate to companies of similar size with similar penalties, or to take
13 enforcement actions disproportionate to a company’s revenues.”⁹² Witness Feeser states
14 that CenturyLink’s Washington revenues totaled \$21,427,128 in 2021.⁹³ And among the
15 subsidiaries that disconnected and suspended customers, Washington revenues totaled
16 \$262,954,027 in 2021.⁹⁴ The recommended penalty of \$923,000 represents 4.3 percent
17 and 0.35 percent of Washington revenues, respectively.⁹⁵ Issuing a \$923,000 penalty

⁹¹ *Id.* (emphasis added).

⁹² *Id.*

⁹³ Feeser, Exh. BF-1T, at 7:22–23.

⁹⁴ *Id.* at 8:6–7.

⁹⁵ $923,000 / 21,427,128 = 0.043$; $923,000 / 262,954,027 = 0.0035$ [rounded for clarity]

1 would not be burdensome or disproportionate to the Company's overall revenue,
2 particularly when looking at the Washington revenues of the subsidiaries in question.

3 **Q. Are there additional factors that the Commission should consider in setting an**
4 **appropriate penalty?**

5 A. Yes. Public Counsel acknowledges that this proceeding is narrowly focused on the 923
6 disconnections and suspensions of service that occurred between March 23, 2020, and
7 September 30, 2021. However, the Staff Investigation Report details additional unlawful
8 actions CenturyLink took while the Governor's Proclamation was effective:

- 9 • Disconnected an additional 243 customers for nonpayment in July 2020, whose
10 service CenturyLink suspended prior to March 23, 2020;
- 11 • Charged customers late payment fees 39,799 times; and
- 12 • Charged customers reconnection fees 1,634 times.

13 The Governor's Proclamation expressly forbade disconnections and fees.

14 Although these particular disconnections and fees are not at issue in this proceeding and
15 thus not subject to penalties at this time, they are an aggravating factor supporting a
16 serious penalty.

17 **Q. Considering all of the factors you have discussed in your testimony, what is Public**
18 **Counsel's recommendation?**

19 A. Public Counsel recommends that the Commission impose the maximum statutory penalty
20 totaling \$923,000 on CenturyLink. No amount should be suspended.

1 These penalties are limited to the 923 violations at issue in this docket. The
2 Commission could impose additional penalties if other violations are proven in
3 subsequent dockets.

4 Public Counsel's recommendation is based on my analysis detailed in this section.
5 While all of the factors weigh in favor of imposing the maximum penalty, certain factors
6 are particularly impactful. Specifically, the following factors strongly support Public
7 Counsel's maximum penalty recommendation:

- 8 • Factor 1: The serious and harmful nature of these violation during a global
9 pandemic and State of Emergency justify a strong enforcement action.
- 10 • Factor 2: The intentionality of CenturyLink's actions and the repeated
11 reassurances to the Commission that the Company would comply with the
12 Proclamation suggest that a strong penalty is necessary.
- 13 • Factor 9: The Company's past compliance issues and penalties are deeply
14 concerning. Furthermore, the Company has a pattern of denying liability in
15 instances when the Commission finds liability and issues penalties. This case is
16 no different. The Policy Statement indicates that the Commission *will* enforce
17 strong penalties when these conditions exist.
- 18 • Factor 10: The Company's past and present lack of compliance programs are
19 concerning. This is further justification for the Commission to enforce Public
20 Counsel's and Staff's recommended penalty.

IV. CONCLUSION

1 **Q. Please summarize your testimony.**

2 A. Governor Inslee issued an Emergency Proclamation in April 2020 forbidding utilities,
3 including telecommunications providers, from disconnecting customers and charging
4 fees. This was a critical tool to maintain public health and public safety. CenturyLink
5 disconnected or suspended 923 customers while the Proclamation was effective in direct
6 defiance of the Governor's order and state law. The serious and harmful nature of these
7 actions during a crisis, in addition to the Company's long history of violations subject to
8 Commission enforcement action, necessitate that the Commission issues a strong penalty.

9 **Q. What is your final recommendation?**

10 A. In consideration all of the evidence presented in this testimony and in the record, the
11 Commission should issue the maximum \$923,000 penalty with no amount suspended.

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

13 A. Yes, it does.