

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Complainant

v.

CENTURYLINK COMMUNICATIONS,
LLC,

Respondent.

DOCKET UT-181051

**CENTURYLINK COMMUNICATIONS, LLC'S
PETITION FOR RECONSIDERATION**

June 16, 2023

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I. INTRODUCTION

- 1 In accordance with RCW 34.05.470 and WAC 480-07-850, CenturyLink Communications, LLC (“CLC”) submits this Petition requesting that the Washington Utilities and Transportation Commission (the “Commission”) reconsider aspects of Final Order 08 entered on June 9, 2023 (“Order 08”). Specifically, CLC respectfully requests that the Commission reconsider and reverse its finding that CLC violated RCW 80.36.080 and the \$1.3 Million in fines associated with that finding.
- 2 Order 08 concluded that CLC violated Section 11(2)(a) of Amendment J of its contract with the Washington Military Department (“WMD”), which obligated CLC to provide “all services, information and data reasonably necessary to effectuate an orderly and seamless transition to successor provider and to ensure that there is no interruption of 9-1-1 [sic] service in the State of Washington.”¹
- 3 In reaching this conclusion, the Commission determined that the issue before them is “whether CenturyLink took reasonable steps to ensure that the E911 network developed during the transition would function properly.”² In analyzing this issue, the Commission determined that CLC breached paragraph 11(2)(a)³ of Amendment J because: (1) “CenturyLink deliberately made no attempt to tell Comtech how to build its network, even though it believed Comtech did not have a good plan and despite CenturyLink’s long experience with building its own network”; and (2) the “personnel involved in the transition coordination between the companies should have known, or at least inquired about, how Comtech was setting up its network, including the extent to which Comtech was using

¹ Order 08, ¶ 63 (“CenturyLink failed to meet this obligation”).

² Order 08, ¶ 67. *See also* Order 08, ¶ 91.

³ Throughout Order 08, the Commission cites to Webber, Exh. JDW-38C at 18, ¶ 11(1)(a), (*see, e.g.*, Order 08 at fn. 81); however, this is a typographical error, as the quoted language clearly comes from paragraph 11(2)(a).

sufficiently diverse circuits.”⁴

4 The factual record before the Commission does not support either conclusion, and in fact clearly establishes that (1) CenturyLink worked cooperatively and met all expectations related to the transition and (2) helped to design and test a transition network that was appropriately diverse. To the contrary, Order 08 fails to consider a plethora of facts that altogether undermine the conclusions set forth in paragraphs 67 and 68 (among others). First, a Scope of Work was created among the Washington Military Department (“WMD”), Comtech and CenturyLink that identified the tasks that CenturyLink was expected to perform as part of the transition to Comtech becoming the 911 Covered Service Provider.⁵ There was no testimony that CenturyLink failed or refused to comply with any of these expectations. To the contrary, the Statement of Work demonstrates that CenturyLink, Comtech and WMD worked cooperatively to design, provision and test the network that would route 911 calls to Comtech served PSAPs during the transition from CenturyLink to Comtech. The parties created a plan to test, and then actually tested, among other things, the SS7 signaling network designed for the transition.⁶

5 Second, at the time the transition network was tested, Comtech’s SS7 links were comprised of two signaling links from CenturyLink, and two signaling links from Sprint. In other words, the Comtech signaling network deployed and tested had geographic, supplier and network diversity. Had the packet storm taken place while this network was in place, all 911 calls in Washington would have completed. The problem is that, after deploying the transition network, Comtech unilaterally replaced the Sprint circuits with two circuits on CenturyLink’s Green Network, thereby placing all four signaling links on the same transport network. Comtech admits it never disclosed this fact to CenturyLink, and there was no ready

⁴ Order 08, ¶ 68.

⁵ Webber, Exh. JDW-38C, page 25 of 61 through 61 of 61.

⁶ *See supra* ¶¶ 20-25.

means available for CenturyLink to be aware that these two circuits would be used, in conjunction with the other two circuits (those ordered by TNS, not Comtech) as SS7 links in support of 911 calling in Washington.⁷

- 6 Thus, contrary to Order 08’s conclusion, CenturyLink personnel involved in the transition coordination worked closely with Comtech on developing the transition network and testing all circuits—a network where “Comtech was using sufficiently diverse circuits.” Order 08 fails to recognize the temporal gap between the network Comtech, CenturyLink and the WMD jointly designed, and the unilateral changes Comtech made to the network in the spring of 2018—a year after the testing was complete. The changes Comtech unilaterally made to the jointly designed network stripped the network of geographic, supplier and network diversity. It was this new, unilaterally created network—not the one created as part of the transition—that was in place during the outage on the Green Network outage, and that led to dropped 911 calls to Comtech served PSAPs.
- 7 These facts show that CenturyLink took reasonable steps to ensure that the E911 network *developed during the transition* would function properly, thus undermining the unsupported conclusions found in paragraphs 67 and 68 (among others).
- 8 For these reasons, as well as additional reasons spelled out throughout this Petition, CLC respectfully requests that Commission reconsider and reverse its finding that CLC violated RCW 80.36.080 and the \$1.3 Million in fines associated along with its finding.

⁷ See *supra* ¶¶ 25-35.

II. CLC's PETITION FOR RECONSIDERATION CHALLENGES ASPECTS OF ORDER 08's BACKGROUND AND PROCEDURAL HISTORY SECTIONS

- 9 Most of the background and procedural history is set forth in Order 08; however, a few items relevant to this Petition bear mention.
- 10 First, Order 08 states that “During the first phase of the transition [from CenturyLink to Comtech], Comtech continued to rely on CenturyLink for transport and automatic location identification services related to all 911 calls. To provide this service, CenturyLink utilized its ‘Green Network.’”⁸ CLC presumes that Order 08 is referencing the SS7 signaling transport network when making this assertion because it is the signaling network that was impacted by the packet storm in December 2018. Based on this assumption, the statement in Order 08 is inaccurate. At the time the transition network was designed and tested, Comtech used two signaling links from CenturyLink and two signaling links from Sprint creating a signaling network with geographic, supplier and network diversity.⁹ Thus, it was Comtech, not CenturyLink, that later decided to use CLC's Green Network for all four signaling links. Comtech made this decision without informing CenturyLink, even though Comtech understood the decision to place all circuits on the same network was “[REDACTED].”¹⁰ Comtech also brushed off its signaling vendor, TNS, when TNS highlighted the danger of having all four circuits on one transport network, and likewise ignored TNS's offer to replace two Green Network circuits with [REDACTED] from another provider. Comtech rejected TNS's recommendation in order to save money.¹¹ This penny-wise, pound-foolish behavior led

⁸ Order 08, ¶ 5.

⁹ Webber, Tr. at 148:5-149:11; 159:4-8; 160:2-18; Rosen, Tr. at 289:6-21.

¹⁰ Webber, Exh. JDW-41C at 2; Stockman, Exh. SJH-12C at 8-12.

¹¹ *Id.*

directly to 13,000 failed 911 calls in December 2018.

- 11 For these reasons, Order 08’s statement that “CenturyLink’s service outage also disrupted services provided to the 47 PSAPs served by Comtech because Comtech depended on CenturyLink’s network to provide service to PSAPs”¹² is erroneous. During the entire time the transition network was being set up and tested, Comtech did not “depend” on CenturyLink’s network—instead, it depended on geographically diverse, supplier diverse, and network diverse circuits to transport SS7 messages supporting 911 calling to the PSAPs Comtech served.
- 12 Finally, Order 08 fails to identify three CLC’s witnesses, and thus it is unclear whether their testimony was considered.¹³ One of the missing witnesses, Martin Valence, CenturyLink’s Vice President, Network Operations, submitted testimony that described all of the tools Comtech had available to it to order and obtain diverse circuits from the CenturyLink family of companies.¹⁴ Instead of testifying live, the Complainants and Commissioners all waived the opportunity to examine Mr. Valence. As a result, his testimony was submitted and received without live testimony.¹⁵

¹² Order 08, ¶ 7.

¹³ Order 08, ¶ 23. In addition to Mr. Valence, Order 08 also failed to mention the testimony of either Jeanne Stockman (except for one reference to Amendment M in footnote 47) or Valerie Lobdell. Exh. JWS-1TC; Exhs. SJH-2 through SJH-15C, Exh. JWS 16-C; Exh. VL-1TC; Exhs. VL-2 through VL-3C.

¹⁴ Valence, Exh. MDV-1CT 20:16-24:15 (explains manner in which carriers can obtain diverse circuits from CenturyLink, and Comtech did not follow this process); *id.* at 6:5-10:1 (explains that CenturyLink built its signaling network with diverse circuits and Comtech, eventually, did not which was what led to calls destined for Comtech served PSAPs not completing).

¹⁵ Dec. 6, 2022, Tr. IV at 503:18-505:6.

III. CLC'S PETITION FOR RECONSIDERATION CHALLENGES ASPECTS OF ORDER 08'S DISCUSSION AND ITS FINDINGS AND CONCLUSIONS SECTIONS

13 There are only a few paragraphs in Order 08 that describe the basis for the Commission's conclusion that CLC violated RCW 80.36.080. Those paragraphs are as follows:

63. CenturyLink was under contract with WMD to be the state's E911 service provider for many years, but in 2016 WMD selected Comtech to fulfill that role. The parties arranged for a transition plan from CenturyLink to Comtech through contractual amendments, and the outages at issue in this proceeding occurred during that transition phase. Throughout the transition, CenturyLink retained an obligation to provide "all services, information and data reasonably necessary to effectuate an orderly and seamless transition to such successor provider and to ensure that there is no interruption of 9-1-1 [sic] service in the State of Washington." CenturyLink failed to meet this obligation.

64. Staff and Public Counsel contend that the packet storm on CenturyLink's national network was a cause of the outage. CenturyLink counters that this event was not foreseeable, and that CenturyLink took reasonable efforts to prevent the network disruption that resulted. We agree with CenturyLink that the packet storm itself was not the proximate cause of the E911 outages in Washington. CenturyLink's obligation in this state was not to ensure that no such event ever happened. Rather, CenturyLink was required to make reasonable efforts to prevent or minimize the disruption of service if such an event occurs. CenturyLink had a responsibility to create a seamless transition with no interruption of E911 service. The packet storm in CenturyLink's Green Network resulted in more than 13,000 failed calls in Washington *because the Company did not take appropriate action to prevent or minimize the disruption of service that followed the packet storm event.*

65. To protect against network issues like the packet storm in this case, E911 telecommunications networks incorporate diversity of routes, facilities, and providers. CenturyLink deployed such diversity in its own network, and, as a result, few if any E911 calls to the PSAPs CenturyLink continued to serve directly failed as a result of the packet storm. Comtech, on the other hand, used circuits it obtained solely from CenturyLink, all of which experienced significant failures. *CenturyLink lays the entirety of this deficiency at Comtech's door. We disagree with this characterization.*

66. CenturyLink maintains that a demarcation point existed between its network and Comtech's network, and that the failure resulting in the failed calls occurred on Comtech's side of that point. Staff and Public Counsel contend that because Amendment M to the agreement with WMD does not specify the location of the demarcation point, CenturyLink bore responsibility for the failure. The specifics of the amendment, namely the location and existence of any demarcation point, are irrelevant for our purposes. We are not interpreting or enforcing that agreement. We are enforcing the applicable statute and Commission rule. Both CenturyLink and Comtech were responsible for providing E911 service during the transition period. *How they divided that responsibility between themselves did not relieve either of them of their obligation to provide the entirety of the service.*

67. The issue, then, is whether CenturyLink took reasonable steps to ensure that the E911 network developed during the transition would function properly. *We find that CenturyLink did not.* CenturyLink insisted on using an SS7-based interconnection of its network with Comtech's rather than the IP interconnection Comtech preferred. It was thus all the more incumbent on CenturyLink to make sure that the interconnection was constructed and configured properly. *CenturyLink failed to do so.*

68. Indeed, *CenturyLink witness Klein testified during the hearing that CenturyLink deliberately made no attempt to tell Comtech how to build its network, even though it believed Comtech did not have a good plan and despite CenturyLink's long experience with building its own network. CenturyLink's claims that its service order tech could not be expected to know that Comtech's circuit order would be used for nondiverse facilities rings hollow. The personnel involved in the transition coordination between the companies should have known, or at least inquired about, how Comtech was setting up its network, including the extent to which Comtech was using sufficiently diverse circuits. CenturyLink's refusal or failure to do so was not reasonable and resulted in violations of the Company's legal obligations.*

69. *The Commission finds, by a preponderance of the evidence, that CenturyLink violated RCW 80.36.080 by failing to make reasonable efforts to provide acceptable E911 service in Washington, resulting in failed 911 calls to Washington customers. . . .*

* * *

86. The Commission instead adopts Staff's recommendation to assess \$100 penalties for each of the 13,000 violations of RCW 80.36.080, and \$1,000 penalties for each of the 15 violations of WAC 480-120-412(2), for a total penalty of \$1,315,000. . . .

* * *

91. *During the December 2018 outage, CenturyLink committed at least 13,000 violations of RCW 80.36.080 by failing to render prompt, expeditious, and efficient service; to keep its facilities, instrumentalities, and equipment in good condition and repair; and to ensure that its appliances, instrumentalities, and services are modern, adequate, sufficient, and efficient, resulting in at least 13,000 dropped or incomplete 911 calls.*

* * *

99. *The Commission should impose a \$100 penalty for each of the 13,000 violations of RCW 80.36.080 for a total of \$1,300,000.*

14 CLC asks the Commission to reconsider the italicized aspects of these paragraphs.

15 As an initial matter, it is important to identify what this Petition does not concern. Order 08 correctly recognizes that “the Staff’s case was premised on the notion that the E911 network outage was caused by CenturyLink’s failure to configure the channel module to prevent inaccurate traffic routing or packet flooding.”¹⁶ CLC agrees with Order 08 “that the packet storm itself was not the proximate cause of the E911 outages in Washington.”¹⁷

16 Likewise, while CLC put forward substantial evidence that the outage occurred on Comtech’s side of the demarcation point,¹⁸ this Petition does not attempt to challenge Order 08 insofar as it concludes that “the location and existence of any demarcation point” did not factor into the Commission’s decision.¹⁹ Comtech was solely responsible for its unilateral design decisions – decisions that eliminated critical diversity – but that fact is not dependent on the existence or precise location of the demarcation point.

17 Instead, CLC focuses on what the Commission identified as “the issue” it needed to decide; namely, “whether CenturyLink took reasonable steps to ensure that the E911

¹⁶ Order 08, ¶ 8.

¹⁷ Order 08, ¶ 64.

¹⁸ See CLC’s Post-Hearing Brief, ¶¶ 33-40 and Responsive Post-Hearing Brief, ¶¶ 59-70.

¹⁹ Order 08, ¶ 66.

network developed during the transition would function properly.”²⁰ Once the record evidence is accurately evaluated, it becomes obvious that:

- a. CenturyLink took appropriate action to prevent or minimize the disruption of service that may occur due to an event occurring on the Green Network;
- b. Comtech was solely responsible for the lack of diversity in the signaling links supporting the transition 911 network.
- c. Because the transition 911 network was designed and tested with diversity in the signaling links, and because Comtech later unilaterally and secretly made the decision to use the Green Network for all signaling links (and in fact rejected an opportunity to reintroduce network and carrier diversity just months prior to the outage), CenturyLink should not be held responsible for the failed calls.
- d. The CenturyLink personnel involved in the transition coordination with Comtech and WMD helped to design and test a signaling network supporting 911 calling that contained diverse circuits. CenturyLink never refused to participate in or work on development of the transition network.
- e. The Commission should find, by a preponderance of the evidence, that CenturyLink did not violate RCW 80.36.080 because it made reasonable efforts to provide acceptable E911 service in Washington.

IV. VOLUMINOUS FACTS SHOW THE EFFORTS CENTURYLINK MADE TO WORK WITH COMTECH AND WMD TO DESIGN AND TEST WASHINGTON’S TRANSITION 911 NETWORK

18 Order 08 appears premised on the inaccurate conclusion that CenturyLink did not assist with developing the transition 911 network based on the testimony of Carl Klein. Not only does Order 08 take Mr. Klein’s testimony out of context, it ignores all of the

²⁰ Order 08, ¶ 67.

evidence of the steps CenturyLink actually took to help design and test the transition network. Indeed, Mr. Klein himself testified that “[REDACTED]

[REDACTED]
21

- 19 As an initial matter, WMD itself recognizes that the parties negotiated and collaborated to choose the interconnection design: “Over the course of several months, Comtech, CenturyLink, and CenturyLink’s subcontractor Intrado, worked together to further develop and refine the interconnection solution, which culminated in a formal presentation by all parties to WMD. At the conclusion of the presentation, WMD accepted the solution for implementation. The level of collaboration described above, continued for the most part, throughout the transition.”²²
- 20 Beyond WMD’s acknowledgement, at numerous locations in Order 08 the Commission references Exhibit JDW-38C; specifically, Section 11(2)(a) of Amendment J of its contract with the Washington Military Department, which obligated CLC to provide “all services, information and data reasonably necessary to effectuate an orderly and seamless transition to successor provider and to ensure that there is no interruption of 9-1-1 [sic]

²¹ Klein, Tr. 454:8-12.

²² Stockman, Exh. SJH-4 at 3-4. At ¶ 67, Order 08 makes a vague reference to the selection of SS7 interconnection as problematic; the record does not support any such conclusion. As to the specific type of interconnection (IP vs. SS7), WMD confirms that no specific technology was required by the contract. *Id.* at 3 (“In fact, RFP-16-GS-NG911, in part, says, ‘. . . it is not the intent of this RFP to provide implementation details that would limit the BIDDER’s solution to one particular technology.’”). The record also confirms that while Comtech initially requested a basic IP form of interconnection, it eventually *recommended* SS7 interconnection. Ex. SJH-5C at 3-5. Public Counsel argues that SS7 was Comtech’s second choice; that it really wanted SIP signaling. Rosen, Exh. BR-1CT at 21:11-22:7; Rosen, Tr. 320:13-323:10. The record disproves this. On February 7, 2017, Comtech sent CenturyLink an email stating: “[REDACTED]” Stockman, Exh. SJH-5C at 3-5. Thus, Comtech made SIP signaling—the very type of signaling that Public Counsel says should have been used (Rosen, Tr. 317:21-318:3)—its second choice.

service in the State of Washington.”²³ However, Order 08 did not appear to consider the Statement of Work attached to Exhibit JDW-38C that defined the specific tasks CenturyLink and Comtech were expected to perform to develop and test the transition 911 network.

21 Indeed, Page 26 of Exhibit JDW-38C shows this Statement of Work is dated March 22, 2017—21 months before the December 2018 outage—and entitled “Next Generation 9-1-1 Emergency Services Internet Protocol Network Transition from ESInet I to ESInet II Scope of Work.” The document’s defined “purpose” was to

[REDACTED]

22 The Statement of Work contained within Exhibit JDW-38C makes plain that

[REDACTED]

24

25

²⁶ Thus, all of the SS7 links that

the parties planned to use for the transition 911 network were in place in the first half of

²³ Order 08, ¶ 63 (“CenturyLink failed to meet this obligation”).

²⁴ Webber, Exh. JDW-38C at page 16 of 38 of Statement of Work. Specifically,

²⁵ Webber, Exh. JDW-38C at page 16 of 38 of Statement of Work. Specifically,

²⁶ Webber, Exh. JDW-38C at page 27 of 38 of Statement of Work at ID Nos. 39 and 40.

2017.

- 23 After the circuits were in place, the Statement of Work then required CenturyLink to work with Comtech to test those circuits.²⁷ With regard to SS7 signaling, the Transition Plan states:

[REDACTED]

- 24 The Statement of Work contains additional requirements for Comtech and CenturyLink to jointly test the signaling network supporting the transition 911 network:

[REDACTED]

²⁷ Webber, Exh. JDW-38C at [REDACTED]

²⁸ Webber, Exh. JDW-38C at page 12 of 38.

The italicized language makes plain that all signaling connections would be tested.

25 During this testing, which was [REDACTED],³⁰ Comtech had deployed two SS7 links on Sprint's network and two on CenturyLink's Green Network.³¹ In other words, Comtech, CenturyLink and WMD jointly designed a signaling network that had geographic, supplier with network diversity. Indeed, as even Public Counsel admits, the original network that CenturyLink tested was diverse in all respects.³²

26 Several months later, in September 2017, Sprint informed Comtech that it was exiting the T1 market, which would impact two of Comtech's SS7 links to ESINet 1. Instead of acting immediately, Comtech waited until [REDACTED] to decide on a new provider for the two Sprint circuits. For months, Comtech intended to replace the Sprint links with [REDACTED] links, but in January 2018 Comtech changed course [REDACTED]. On January 3, 2018, Comtech informed TNS: [REDACTED]
[REDACTED]³³ TNS—Comtech's SS7 provider—immediately responded that it is [REDACTED].³⁴ Comtech ignored TNS's advice and in April/May 2018 provisioned all four SS7 links to ESINet 1 on CenturyLink's Green Network.

27 Unfortunately, Comtech never made CenturyLink aware of this decision. Comtech

²⁹ Webber, Exh. JDW-38C at page 9 of 38 (italics added).

³⁰ Webber, Exh. JDW-38C at page 27-29 of 38.

³¹ Webber, Tr. at 148:5-149:11; 159:4-8; 160:2-18; Rosen, Tr. at 289:6-21.

³² Rosen, Tr. 289:18-21 (Rosen: [REDACTED])

³³ Stockman, Exh. SJH-12C at 12-13.

³⁴ Stockman, Exh. SJH-12C at 8-12.

admits that it did not disclose the newly created lack of supplier diversity to CenturyLink or WMD.³⁵ Even Public Counsel admits that Comtech left CenturyLink in the dark.³⁶ In other words, Comtech unilaterally decided to modify the SS7 network design—a design that included geographic, supplier and network diversity—with a new network that lacked diversity, and it told no one about its unilateral decision.

28 Comtech then compounded its mistake by refusing an opportunity to create supplier and network diversity in its SS7 signaling links a few months later. In

[REDACTED]

³⁷ Even Public Counsel admits that 911 calling in Washington would not have been interrupted had Comtech availed itself of the opportunity presented to it in August 2018 by TNS.³⁸ Once again, Comtech left CenturyLink and WMD in the dark about its decision.

³⁵ Valence, Exh. MDV-1TC at 7:8-8:11, citing Stockman, Exh. SJH-12C (Comtech Response to DR-CTL-4(c)).

³⁶ Valence, Exh. MDV-1TC at 23:1-24:1 and Exh. MDV-8C, Rosen, Exh. BR-73X; Rosen, Tr. 294:2-8 (Rosen [REDACTED]).

³⁷ Stockman, Exh. SJH-12C at 8-10.

³⁸ Rosen, Exh. BR-68CX; Rosen, Tr. 290:24-291:6 (“Q. And if -- if Comtech had simply followed TNS’s advice and provisioned circuits from a different supplier, then the outage on the Green Network would not have prevented 911 calls from completing to the PSAPs being served by ComTech; isn’t that true? A. Sure. But if -- if CenturyLink had used their own STPs instead of TNS, we probably wouldn’t have had this event happen.”).

29 Comtech’s unilateral decision to use the same network for all four SS7 links violated Comtech’s promise to deliver a 911 network with network and supplier diversity. In responding to the RFP, Comtech promised to deliver a 911 solution that “eliminates all single points of failure,” was “highly redundant” and utilized “network” and “carrier diversity.”³⁹ When WMD awarded the RFP to Comtech in 2016, it entered into a contract with Comtech that obligated Comtech to build a network with no single point of failure:

[Comtech] shall design and provide the ESInet Services in a manner that ensures that there will be no single point of failure (*i.e.*, if any single part of the ESInet Services or supporting platform is unavailable, including as a result of a Force Majeure Event, the ESInet Services will continue to operate as set forth in this Contract)⁴⁰

Comtech failed to design its network such that “if any single part of the ESInet Services or supporting platform is unavailable” 911 calls would complete anyway; instead, they placed all of their eggs in one basket—the Green Network—which created the “single point of failure” that the contract prohibited.⁴¹ Comtech, not CLC, laid the groundwork for 911 calls not completing during the Green Network outage.

30 In addition, the Comtech/WMD contract contains a service level agreement (“SLA”) requiring Comtech to ensure redundancy and to avoid single points of failure.⁴² The accompanying SOW explicitly reinforced the critical importance of redundancy: “In summary, TCS [Comtech] implements local redundancy with separate entrance facilities, redundant local area network (LAN) links between functional elements, and redundant hardware and software components. TCS implements geographic redundancy by

³⁹ Webber, Exh. JDW-75X at 161-163.

⁴⁰ Webber, Exh. JDW-74X at 38 (§ 11.5).

⁴¹ Public Counsel’s witness Mr. Rosen admitted that placing all signaling links on the same network created a single point of failure (Rosen, Tr. 277:2-278:2), and that [REDACTED] (Rosen, Tr. 294:9-13) (“[REDACTED]”).

⁴² Webber, Exh. JDW-74X at 58-59 (SLA 6.4).

deploying geographically diverse data centers and by employing carrier diversity, where available, between the MPLS network that provides call and data delivery to PSAPs and the MPLS network that provides the network and system monitoring.”⁴³

31 That leads to the fact that all four SS7 circuits were on the Green Network. Obviously, Comtech ordered the last two circuits from CenturyLink, and Public Counsel argued that CLC “should have known” that the circuits would be used for SS7 signaling. Order 08 appears to agree with point because it says “CenturyLink’s claims that its service order tech could not be expected to know that Comtech’s circuit order would be used for nondiverse facilities rings hollow.”⁴⁴ However, Order 08’s rationale for reaching this conclusion is because the “personnel involved in the transition coordination between the companies should have known, or at least inquired about, how Comtech was setting up its network, including the extent to which Comtech was using sufficiently diverse circuits.”⁴⁵ This explanation ignores the temporal gap between the deployment of the diverse transition network and Comtech’s creation of a non-diverse network a year later.

32 As the facts above show, not only did CenturyLink inquire about the *transition network design*, CenturyLink personnel were deeply involved in implementing and testing the transition 911 network—a network that was designed not only with appropriate diversity, but the supplier and network diversity that Comtech promised the WMD it would deliver.

33 Instead of keeping its promise to deliver a truly diverse network for 911 calling, Comtech turned down two Sprint circuits and ordered two replacement circuits from CenturyLink without telling CenturyLink what the circuits would be used for. [REDACTED]

⁴³ Webber, Exh. JDW-75X at 163.

⁴⁴ Order 08, ¶ 68.

⁴⁵ *Id.*

[REDACTED]

.⁴⁶ Any argument that CenturyLink should have known the purpose of the links because [REDACTED] would be baseless. While TNS is the SS7 provider for Comtech,⁴⁷ Comtech provides 911 service in many states, not just Washington, and TNS provides a myriad of services in many states, not just Washington.

34 As Steve Turner (CLC’s witness who for years ran an SS7 signaling center for AT&T) testified, there is no way that a technician reviewing these bare bones order forms would have known what the circuits would be used for:

Q. And it’s your opinion that, in reviewing this order, CenturyLink had no reason to believe that these circuits would have any role in 911 in Washington? That’s the effect of your testimony, right?

A. That -- the way that these were ordered through a retail portal and the information that was on the circuit, for a technician that would be processing this order, they would not have been able to tell that.

Q. And that’s true even though CenturyLink knew that Comtech was the 911 provider in Washington?

A. It -- it’s -- again, it’s -- when you say CenturyLink, CenturyLink knew that Comtech was the provider, but this is an order that ends up with a technician that’s in the service center that’s responsible for provisioning the circuit as instructed on the order form. And so there are ways to indicate, and I’ve provided that in my testimony on the preceding page, which was page 31, there ... are ways to do wholesale orders, which is what this would typically have been thought of, where you can actually specify the requirement for diversity and make sure that it gets handled. But coming in as a retail order and not having it be specified, a technician that’s actually doing this work, they’re not going to be necessarily at a level to know that Comtech was the 911 service provider in Washington.⁴⁸

⁴⁶ Webber, Exh. JDW-40C.

⁴⁷ Webber, Tr. 305:16-306:8; Rosen, BR-15C (“Two of the four SS7 links from TNS to TSYs were DS-0s on DS-1s provided by CenturyLink. These links were several years old.”).

⁴⁸ Turner, Tr. at 367:24-369:19.

No one even attempted to rebut this testimony.

35 Indeed, the parties all recognize that Comtech turned down two Sprint circuits and ordered two replacement circuits from CenturyLink without telling CenturyLink or WMD what the circuits would be used for. It is particularly inappropriate to foist Comtech’s unilateral decision to modify the agreed upon diverse network design on CenturyLink, because CenturyLink had a process to order and provision diverse circuits.⁴⁹ Had Comtech simply informed CenturyLink that it lacked diversity, CenturyLink could have provided two signaling links on the transport network of a subsidiary thereby creating the network and supplier diversity critical to a NG911 architecture.⁵⁰

V. DISCUSSION

36 A party may petition for reconsideration of a final order to request that the Commission change the outcome with respect to one or determinations in a final order.⁵¹ CLC contends the Commission erred in finding that CLC “violated RCW 80.36.080 by failing to make reasonable efforts to provide acceptable E911 service in Washington, resulting in failed 911 calls to Washington customers” because such finding is simply not supported by the record evidence.

37 In a prior decision, the Assigned ALJ set forth the legal standard to analyze whether a telecommunications carrier has violated RCW 80.36.080:

Staff and Public Counsel essentially argue that the mere existence of the outage is sufficient to prove the alleged violations and supports up to the maximum statutory penalty for each of the uncompleted calls. The Commission, however, has never interpreted the statute to impose strict liability for 911 call incompleteness. Companies must adequately maintain their networks and make all reasonable efforts to provide safe, modern, and

⁴⁹ Valence, Exh. MDV-1TC at 7:2-7.

⁵⁰ Valence, Exh. MDV-1TC at 7:2-7.

⁵¹ WAC 480-07-850(1).

efficient service, minimize the risk of disruptions, and quickly detect and remedy any outages. Failure to comply with those requirements results in liability. Meeting those obligations does not.⁵²


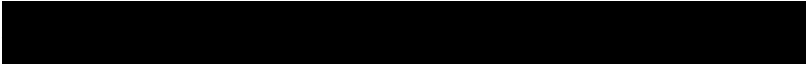

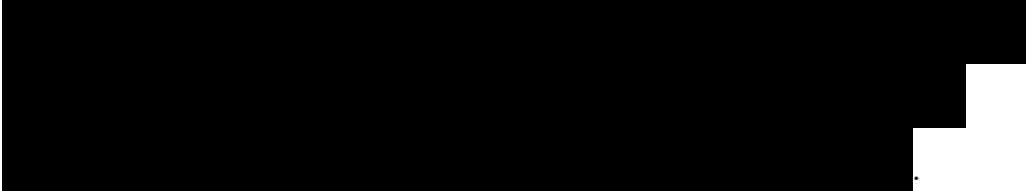
The Commission, however, has never required perfection for a service provider to be in compliance with Commission rules. Rather, a company is responsible for call failures only to the extent that it has not taken all reasonable measures to prevent, limit, and remedy them.⁵³

- 38 Order 08 reframed that standard here as follows: “The issue, then, is whether CenturyLink took reasonable steps to ensure that the E911 network developed during the transition would function properly.”⁵⁴
- 39 Staff must prove by a preponderance of the evidence that CLC did not meet this standard. The record evidence that Order 08 did not appear to consider shows Staff cannot possibly meet its burden.
- a. WMD acknowledged that CenturyLink worked cooperatively during the design and testing of the transition 911 network.
 - b. The transition 911 network was designed (with CenturyLink’s full cooperation and participation) with supplier, network and geographic diversity in the SS7 circuits.
 - c. CenturyLink tested the transition 911 network at a time when the SS7 signaling links had supplier, network and geographic diversity.
 - d. Approximately one year after CenturyLink completed the testing, Comtech unilaterally modified the SS7 network supporting the 911 network in a manner that eliminated critical diversity elements.

⁵² Docket UT-190209, Order 03 ¶ 28 (emphasis added) (Initial Order).

⁵³ *Id.* ¶29 (emphasis added) (Initial Order).

⁵⁴ Order 08, ¶ 67.

- e. Comtech told no one about its decision, even though Comtech knew it was “
.
- f. Comtech made this decision to save money.
- g. Comtech had an opportunity to remedy the problem in August 2018 when 
.
- h. In contrast, CenturyLink continued to have a 911 network that utilized supplier, network and geographic diversity.
- i. When the network event occurred in December 2018, calls to Comtech served PSAPs failed because of its unilateral decision to create a network without diversity, but calls to CenturyLink PSAPs continued to complete because, as Order 08 acknowledges,⁵⁵ CenturyLink designed its 911 network with diverse signaling links and kept that network in place during the transition to Comtech.

40 CenturyLink’s conduct is a model of reasonable behavior. The Commission should not hold CLC responsible for the unilateral acts of a short-sighted 911 provider that made a conscious choice to implement a faulty network design in order to save a few bucks.

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⁵⁵ Order 08, ¶¶ 50 & 70.

VI. CONCLUSION

41 For the reasons discussed above, CLC respectfully requests that the Commission reconsider Order 08, and reverse its finding that CLC violated RCW 80.36.080 and the \$1.3 Million in fines associated along with that finding.

Respectfully submitted this 16th day of June 2023.

CENTURYLINK



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