

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

CENTURYLINK COMMUNICATIONS,
LLC

Respondent.

DOCKET UT-181051

PUBLIC COUNSEL’S RESPONSE
TO CENTURYLINK PETITION
FOR RECONSIDERATION

**I. PUBLIC COUNSEL OPPOSES CENTURYLINK’S PETITION FOR
RECONSIDERATION**

I. The Public Counsel Unit of the Washington Attorney General’s Office (Public Counsel) opposes CenturyLink Communications, LLC’s (CenturyLink) Petition for Reconsideration. The Washington Utilities and Transportation Commission (Commission) issued its final order on June 9, 2023, finding CenturyLink liable for violations related to the 9-1-1 outage spanning 49 hours and 32 minutes between December 27, 2018, and December 29, 2018.¹ The Commission based its liability findings on the evidence.² The Commission used its judgement and discretion in evaluating the weight and credibility of the evidence, and although CenturyLink disagrees with the result, the Commission did not err with respect to liability.³ As a result, the Commission

¹ *Wash. Utils. & Transp. Comm’n v. CenturyLink Commc’ns, LLC*, Docket UT-181051, Order 08, Final Order Granting Mot. to Strike; Imposing Penalties, ¶¶ 69 and 86 (June 9, 2023) (hereinafter ‘Order 08’).

² The parties include CenturyLink, Public Counsel, Commission Staff, the Washington Military Department, and Telecommunication Systems, Inc. d/b/a Comtech Telecommunications Corp. (Comtech).

³ Public Counsel seeks reconsideration of the penalty imposed in Order 08, but not the Commission’s findings and rulings regarding liability. For reasons set forth in Public Counsel’s Petition for Reconsideration, the Commission

should deny CenturyLink’s Petition for Reconsideration and make no changes to its determination of liability. With respect to CenturyLink’s challenge to the penalties levied in Order 08, CenturyLink seeks to have those penalties reversed. Public Counsel urges the Commission to deny CenturyLink’s request.

II. THE COMMISSION’S FACTUAL DETERMINATIONS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE AND ARE NOT ARBITRARY OR CAPRICIOUS.

2. A petition for reconsideration “is not a second opportunity to litigate issues.”⁴ Instead, the party seeking reconsideration must demonstrate error by showing errors of law or facts not reasonably available to the petitioner at the time of entry of an order.⁵ “A petition that cites no evidence that the Commission has not considered, and merely restates arguments the Commission thoroughly considered in its final order, states no basis for relief.”⁶
3. Agency action in adjudicative proceedings must be based exclusively on the agency record.⁷ On appeal, findings of fact are reviewed under a substantial evidence standard. Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth or correctness of the order.⁸ A decision is arbitrary and capricious only if it is willful, unreasoning,

should increase the penalty assessed in Order 08. *See* Public Counsel Pet. for Recons. & Req. for Leave (filed June 20, 2023).

⁴ *Id.*

⁵ *Wash. Utils. Transp. Comm’n v. Avista Corp.*, Dockets UE-991255, UE-991262, and UE-991409 Fourth Suppl. Order, ¶ 40 (Apr. 21, 2000).

⁶ *Id.*

⁷ RCW 34.05.476(3).

⁸ *Brighton v. Dep’t of Transp.*, 109 Wn. App. 855, 862 (2001); *Callecod v. Wash. State Patrol*, 84 Wn. App. 663, 673 (1997).

and in disregard of the facts and circumstances.⁹ A decision supported by substantial evidence is not arbitrary and capricious even when the agency record contains conflicting evidence.¹⁰

4. CenturyLink challenges the Commission’s findings that CenturyLink deliberately made no attempt to tell Comtech how to build its network and that personnel involved in the transition coordination between the companies should have known, or at least inquired about, how Comtech was setting up its network.¹¹ The Commission’s factual findings are supported by substantial evidence and should not be disturbed.

5. “The mere fact that a party disagrees with a final order does not state a basis for reconsideration.”¹² Here, CenturyLink contends that it should not be held liable once the evidence is “accurately evaluated.”¹³ However, CenturyLink does not establish that the Commission failed to accurately evaluate the record. Instead, CenturyLink just reargues and reiterates the same facts and arguments previously presented to the Commission.

6. The Commission already considered the facts presented by CenturyLink in making its decision. Indeed, the Commission cites to evidence throughout its order, summarizes the major arguments and positions, and recites the breadth of testimony and exhibits offered by the parties at hearing.¹⁴ The Commission walked through the alleged violations and made findings based on the record as to each count alleged.¹⁵ In doing so, the Commission did not adopt any one party’s position completely, but accepted some arguments and rejected others from all parties.

⁹ *Callecod*, 84 Wn. App. at 676.

¹⁰ *Id.*

¹¹ CenturyLink Pet. for Recons., ¶ 3.

¹² *Avista*, Fourth Suppl. Order, ¶ 40.

¹³ CenturyLink Pet. for Recons., ¶ 17.

¹⁴ Order 08, ¶¶ 23, 36–53.

¹⁵ *Id.*, ¶¶ 62–70.

7. The Commission’s liability decision is based on substantial evidence, and CenturyLink has not established that the Commission was arbitrary or capricious in determining liability.

III. CONCLUSION

8. While Public Counsel requests that the Commission reconsider the level of penalty ordered in Order 08 and instead impose a higher, more appropriate penalty, the Commission did not err in its findings that CenturyLink is liable and should be penalized. Public Counsel requests that the Commission deny CenturyLink’s Petition for Reconsideration.

9. DATED this 14th day of August, 2023.

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