

**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  
OPPOSITION TO PUBLIC COUNSEL'S  
PETITION FOR RECONSIDERATION AND  
NOTICE OF CORRECTION**

August 14, 2023

CENTURYLINK COMMUNICATIONS, LLC'S OPPOSITION TO PUBLIC COUNSEL'S  
PETITION FOR RECONSIDERATION AND NOTICE OF CORRECTION

**REDACTED**

**Shaded Information is CONFIDENTIAL Per Protective Order in Docket No. UT-181051**

## I. INTRODUCTION

- 1 On June 9, 2023, the Commission issued Final Order 08 (“Order 08”) after a full evidentiary hearing. Order 08 found that during a December 2018 network outage, CenturyLink Communications, LLC (“CLC”) committed 13,000 violations of RCW 80.36.080, and imposed a fine of \$100 per violation for a total fine of \$1.3 million. Order 08 also found that CLC committed 15 violations of WAC 480-120-412(2), and imposed a fine of \$1,000 per violation for a total fine of \$15,000. In Order 08, the Commission also found that CLC did not violate RCW 80.36.220 or WAC 480-120-450(1), and as a result found for CLC on those causes of action.
- 2 On June 16, 2023, CLC—the only Respondent in the case—filed a Petition for Reconsideration of Order 08 asking the Commission to reconsider and reverse its finding that CLC violated RCW 80.36.080 and the \$1.3 million fine associated with that finding. On June 20, 2023, Public Counsel filed a Petition for Reconsideration and a Petition for Leave to Address Materials Subject to Official Notice in Final Order 08. Public Counsel’s Petitions ask the Commission to increase the fines for the purported RCW 80.36.080 violations.
- 3 On June 22, 2023, in Order 09 the Commission authorized responses to these Petitions. This constitutes CLC’s response to Public Counsel’s submission.
- 4 As an initial matter, granting CLC’s Petition would render Public Counsel’s Petition moot. The entire basis of Public Counsel’s Petition is that the Commission should increase the per occurrence fine for the purported RCW 80.36.080 violations. CLC’s Petition explained that Order 08 failed to consider facts which clearly established that CenturyLink took reasonable steps to ensure that the E911 network *developed during the transition* from CenturyLink to Comtech would function properly (and that said network was appropriately diverse until Comtech later unilaterally and surreptitiously stripped it of such redundancy), thus

undermining the basis of the Order 08’s conclusion that CLC violated RCW 80.36.080.

Without a finding that CLC violated RCW 80.36.080, there is no basis to impose fines at all.

CLC very strongly believes that this is the proper resolution of the Petitions before the Commission.

5 However, if the Commission denies CLC’s Petition and considers Public Counsel’s Petitions on the merits, there is no basis to impose larger fines.

6 Public Counsel makes three arguments in its Petition. First, it claims that the Commission took official notice of CLC’s annual intrastate revenue from CLC’s 2022 Annual Report, and as a result, the parties have “an opportunity to contest facts and material of which the commission takes official notice.”<sup>1</sup> Second, Public Counsel argues that the Commission should have considered the annual revenues of not only CLC—the Respondent—but other CenturyLink companies that have operations in the state of Washington even though they are not parties to the case. Third, Public Counsel argues that the decision to apply a \$100 per occurrence penalty is inconsistent with prior Commission decisions. All three arguments lack merit.

7 Public Counsel’s Petitions ignore the record evidence. First, Staff and Public Counsel both had witnesses who testified to CLC’s intrastate revenues albeit from earlier years. At hearing, no party presented cross-examination or redirect about those subjects. The Commission’s decision to update the numbers in the record with publicly available data from 2022 is a logical and appropriate process. Second, in mid-2022 Staff attempted to add Qwest Corporation and other CenturyLink ILECs as additional respondents to this proceeding, but the Commission refused that request because it came after the statute of limitations had expired.<sup>2</sup> Public Counsel’s attempts to use financial data from entities the Commission refused to admit as

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<sup>1</sup> Public Counsel Petition (“PC Petition”) ¶ 5, citing WAC 480-07-495(2)(c).

<sup>2</sup> See Order 05.

parties is improper *per se*. Third, the earlier decision where there was a \$250/occurrence fine emanated from a settlement agreement and was based on an entirely different fact pattern when CenturyLink was still the state's exclusive 911 provider, not after a hearing on the merits where the Commission found that (a) "CenturyLink is no longer the 911 service provider for Washington state;"<sup>3</sup> (b) "Comtech shared responsibility for providing E911 service during the transition and for the call failures;"<sup>4</sup> and (c) "Staff recommends the Commission assess penalties of \$100 per violation."<sup>5</sup>

8 CLC will discuss and refute each of Public Counsel's arguments in more detail below.

## II. THE COMMISSION HAD SUBSTANTIAL EVIDENCE OF CLC'S REVENUES BEFORE IT IN THE PROCEEDING

9 Public Counsel's first argument is that the Commission took official notice of financial data from CLC's 2022 Annual Report.<sup>6</sup> While true, Public Counsel fails to recognize that virtually identical data was already a part of the record.

10 Staff's witness, Ms. Hawkins-Jones, testified that CLC's 2020 intrastate Washington revenue was \$22,864,061.<sup>7</sup> Likewise, Public Counsel's witness, Ms. Chase, testified that CLC's overall annual revenue from 2019 was \$245 million.<sup>8</sup> It is critical to note that both Staff and Public Counsel referenced financial data for CLC. No party presented, referenced or even argued that that financial data from CLC affiliates should be considered.

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<sup>3</sup> Order 08 ¶ 79.

<sup>4</sup> Order 08 ¶ 73.

<sup>5</sup> Order 08 ¶ 84.

<sup>6</sup> PC Petition ¶3.

<sup>7</sup> Hawkins-Jones, Exhibit JHJ-1CT at 17:21.

<sup>8</sup> Chase, Exhibit SKC-1T at 16:4-5. The large difference between the figures cited by Staff (\$22.9 million) and Public Counsel (\$245 million) stems from the fact that Public Counsel is referencing all Washington revenue, including revenue from interstate and entirely non-regulated services, while Staff references only intrastate revenue.

11 CLC’s witness, Jeanne W. Stockman (who adopted the testimony of Stacy J. Hartman), responded to Public Counsel’s witness who sought a \$27 million fine in the following manner:

**Q. THE FINAL FACTOR THE COMMISSION CONSIDERS IS THE SIZE OF THE COMPANY. PLEASE COMMENT.**

A. Ms. Hawkins-Jones and Ms. Chase, respectively, indicate the company’s 2020 intrastate revenue and 2019 total Washington operating revenue. I’ll note that Public Counsel is recommending a penalty that far exceeds CLC’s intrastate revenue for the entirety of 2019.<sup>9</sup>

12 Even with these numbers in the record, during the evidentiary hearing Public Counsel never inquired about them, or attempted to add financial data from Qwest Corporation or other CenturyLink ILECs, as it attempts to do in its Petition for Reconsideration.

13 Thus, the financial data that the Commission used in Order 08 created no prejudice to anyone. To round out the record, data from CLC’s 2019, 2020, 2021 and 2022 Annual Reports show the following:

CenturyLink Communications LLC	Washington Intrastate Revenue	Overall Washington Revenue
2019 <sup>10</sup>	\$26,452,863	
2020 <sup>11</sup>	\$22,864,061	
2021 <sup>12</sup>	\$21,427,128	
2022 <sup>13</sup>	\$17,619,947.63	

<sup>9</sup> Stockman, Exhibit JWS-1T(C) at 63: 5-10 (footnotes omitted).

<sup>10</sup> See Confidential Exhibit A.

<sup>11</sup> See Confidential Exhibit B.

<sup>12</sup> See Confidential Exhibit C.

<sup>13</sup> See Confidential Exhibit D.

14 In Order 09, instead of relying upon the intrastate revenue from 2022, the Commission appears to have relied upon Ms. Chase, who testified that CLC’s overall intrastate revenue in 2019 was \$245 million.<sup>14</sup>

15 While the Commission did not modify Paragraph 85 of Order 08, given that this case concerned intrastate calling, CLC presumes the Commission intended the following modification as well based on the testimony of Ms. Hawkins Jones (who testified to CLC intrastate revenue) and Ms. Stockman:

We conclude that Public Counsel’s recommendation is unduly punitive for two reasons. First, the Commission’s Enforcement Policy states that the Commission does not intend to take enforcement actions disproportionate to a company’s revenues. Public Counsel recommends the Commission assess a penalty equivalent to 74 percent of the Company’s ~~gross operating intrastate~~ revenue in 2022, which is inconsistent with Commission policy and practice. Second, because CenturyLink no longer provides 911 service, the penalty cannot serve to deter the Company from incurring repeat violations.

16 If the Commission makes any modifications to Order 08 based on Public Counsel’s submission, CLC recommends this modest change to recognize the data presented through testimony already in the record.

### **III. PUBLIC COUNSEL’S REQUEST FOR THE COMMISSION TO USE FINANCIAL DATA FROM QWEST CORPORATION AND OTHER CENTURYLINK ILECS IS IMPROPER**

17 Instead of relying upon the revenue of CLC, the only respondent in this case, Public Counsel now for the first time asks the Commission to consider the revenue of at least Qwest Corporation, if not all of the CenturyLink ILECs’ operations in Washington. As Public Counsel explained: “It appears that the Commission relied on the revenues reported for only CenturyLink Communications instead of the total company revenues or revenues reported for

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<sup>14</sup> Order 09 ¶ 11.

Qwest Corporation.”<sup>15</sup> Public Counsel argued that the Commission should consider Qwest because it was the party to the 2009 contract with WMD to provide 911 services in Washington.<sup>16</sup>

18 Public Counsel’s position is fatally flawed for many reasons. First, Public Counsel had the ability to raise this argument as part of the record, but did not. As described above, Public Counsel and Staff uniformly argued that revenues *from CLC* should form the basis of the Commission’s decision. It is too late to take a different position for the first time in a petition for reconsideration of the Commission’s final order.<sup>17</sup>

19 Second, and most importantly, Qwest Corporation is not a party to this case. On April 6, 2022, Commission Staff filed a motion to amend the Complaint to add, among others, Qwest Corporation as a respondent to this case.<sup>18</sup> In Order 05, the Commission denied the Motion to Amend because the statute of limitations acted as a bar to adding new parties.<sup>19</sup>

20 In denying Staff’s Motion to Amend, the Commission made plain that its Order did not “preclude Staff or any other party from contending that CenturyLink is legally responsible for any failure by its affiliates to comply with the statutes and rules at issue in this proceeding.”<sup>20</sup> As such, “Staff or any other party [had] the opportunity to demonstrate that the relationship between CenturyLink and its Affiliates is such that the Company acted as a single entity when

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<sup>15</sup> PC Petition ¶ 9.

<sup>16</sup> PC Petition ¶ 10.

<sup>17</sup> *City of Kent, v. Puget Sound Energy, Inc., City of Auburn, City of Bremerton, City of Des Moines, City of Fed. Way, City of Lakewood, City of Redmond, City of Renton, City of Seatac, & City of Tukwila, v. Puget Sound Energy, Inc.* Dockets UE-010778 and UE-010911 (consolidated) Fourth Supp. Order at note 1 (Apr. 1, 2002) (“Because Kent raises this argument for the first time on its Petition for Reconsideration the argument should be, and is, rejected on that basis, as well for the substantive reasons stated in the body of this Order.”).

<sup>18</sup> Order 05 ¶ 8.

<sup>19</sup> Order 05 ¶¶ 14-17.

<sup>20</sup> Order 05 ¶ 14.

undertaking the actions alleged in the Complaint.”<sup>21</sup>

21 Thus, the Commission gave Staff and Public Counsel an opportunity to show the interrelationship between CLC and Qwest Corporation. Neither party made any attempt to present evidence to that “CenturyLink and its Affiliates . . . acted as a single entity when undertaking the actions alleged in the Complaint.” It is too late to try to do so here. Public Counsel’s last minute, backdoor attempt to insert Qwest Corporation into the case violates the plain language of Order 05, and should be rejected out of hand.

22 Once Qwest Corporation is removed from consideration, there is one important concession made by Public Counsel’s in its Petition that vitiates its argument altogether. Public Counsel recognizes that the Commission should use “intrastate revenues” as the basis for evaluating its potential fine against CLC.<sup>22</sup> Thus, the proper number to use when assessing fines against CLC is the \$17.6 million number the Commission referenced in Order 08. This validates the Commission’s decision in Paragraph 85 of Order 08 that “a penalty equivalent to 74 percent of the Company’s [intrastate] revenue . . . is inconsistent with Commission policy and practice.” There is no justifiable basis to increase the fines imposed on CLC.

#### **IV. PUBLIC COUNSEL’S ATTEMPT TO USE PENALTY NUMBERS FROM AN EARLIER CASE IS BASELESS.**

23 Public Counsel’s final argument is that the Commission did not explain why it was appropriate to levy a \$250 per occurrence fine in a 2014 case against Qwest Corporation, but a \$100 per occurrence fine here.<sup>23</sup> Public Counsel’s conflation of the two disputes is specious.

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<sup>21</sup> Order 05 ¶ 14.

<sup>22</sup> PC Petition ¶¶ 8-9 & 11.

<sup>23</sup> PC Petition ¶¶ 13-16.



24 The differences between the two disputes are dramatic and significant. In the 2014 dispute, CenturyLink was the undisputed 911 provider in the state of Washington. In contrast, here, the state was going through a transition from CenturyLink to Comtech. In the 2014 dispute, calls failed to be delivered to CenturyLink served PSAPs; in this case, calls to CenturyLink served PSAPs completed, but calls to Comtech served PSAPs dropped. In the 2014 case, Qwest Corporation was named as a respondent, and here the only named respondent is CLC. In the 2014 dispute, the fine was imposed as part of an agreed upon settlement. Here, the fine was imposed after a full evidentiary hearing where the Commission specifically found that “Comtech shared responsibility for providing E911 service during the transition and for the call failures.”<sup>24</sup> Finally, in the 2014 dispute, Commission Staff sought a \$250 per occurrence fine, but here Staff sought a \$100 per occurrence fine. It is not only the Commission, but the Staff who obviously believed that the two disputes warranted different fine levels. There is no comparison between the two cases, and Public Counsel’s does not provide any rational basis to use the 2014 case as a point of comparison.

25 Moreover, it is important to note that the Commission considers eleven separate factors when determining the amount of a fine. Size of the company is the only factor where revenues matter. Not only is the respondent different in this case, and the named respondent has significantly less intrastate revenues justifying a lower fine level, but the Commission evaluated each and every factor and agreed with Staff that a \$100 per occurrence fine was warranted given the unique particulars of this case. While CLC believes that the \$1.3M fine should be withdrawn for the reasons spelled out in its own Petition for Reconsideration, there is absolutely no basis for granting Public Counsel’s Petition and increasing the fine.

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<sup>24</sup> Order 08 ¶ 73.

## V. CONCLUSION

26 For the reasons discussed above as well as in CLC's Petition, CLC respectfully requests that the Commission grant its Petition and reject Public Counsel's Petition to Reconsider and for Leave to Address Materials Subject to Official Notice in the Order.

Respectfully submitted this 14<sup>th</sup> day of August 2023.

CENTURYLINK



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