

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,
Complainant,

v.

CENTURYLINK COMMUNICATIONS,
LLC,
Respondent.

DOCKET UT-181051

WASHINGTON UTILITIES AND
TRANSPORTATION STAFF'S
RESPONSE TO CENTURYLINK
COMMUNICATIONS, LLC'S AND
PUBLIC COUNSEL'S PETITIONS
FOR RECONSIDERATION

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I. INTRODUCTION AND RELIEF REQUESTED

CenturyLink Communications LLC (CenturyLink) attempts to re-litigate the heart of this case in the guise of a narrow petition for reconsideration. It argues again that Comtech bears primary responsibility for the December 2018 outage, ignoring that this hearing is not about Comtech; it is about CenturyLink. In light of this Commission’s finding that CenturyLink *and* Comtech were both responsible for the entirety of Washington’s 911 system while the transition from CenturyLink to Comtech was ongoing (a finding that CenturyLink does not contest in its petition), CenturyLink’s arguments miss the mark. CenturyLink may have acted appropriately in the first half of 2017,¹ but the outage did not happen then. The outage occurred in December of 2018. And whatever culpability Comtech may have for that event, CenturyLink cannot avoid responsibility for its own failure to ensure that the 911 system it *jointly* provided with Comtech was “rendered and performed in a prompt, expeditious and efficient manner” and that the system’s “facilities, instrumentalities, and equipment” was “safe, kept in good condition and repair, and its appliances and service shall be modern, adequate, sufficient and efficient.” RCW 80.36.080.

There is more than adequate evidence in the record to find that CenturyLink should have, but did not, discover that the Signaling System Seven (SS7) links the 911 system depended on were non-diverse. And, therefore, CenturyLink should have, but did not, provision the diverse SS7 links CenturyLink witnesses testified it easily could have done. The Commission’s holding that CenturyLink violated RCW 80.36.080 was correct and the Commission should deny CenturyLink’s petition for reconsideration.

¹ Cf. CenturyLink Petition for Reconsideration at 11-12.
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Public Counsel also petitions for reconsideration, arguing that the Commission incorrectly determined CenturyLink’s annual revenue for penalty assessment purposes, and treats CenturyLink inconsistently when compared to previous penalties for similar failures.² Staff agrees with Public Counsel on these points. However, Staff also stands by its previous recommendation of \$100/violation and does not contest the Commission’s ruling that each failed call is a violation of RCW 80.36.080 and no other rule or statute. Accordingly, Staff takes no position on Public Counsel’s petition for reconsideration.

II. STATEMENT OF FACTS AND EVIDENCE

Staff relies on the statement of the evidence presented in its post-hearing brief.³ In addition, Staff offers the following in response to CenturyLink’s petition for reconsideration.

Brian Rosen’s opinions offered by Public Counsel are particularly relevant to the Commission’s ruling. Among other opinions, Mr. Rosen testified that “[t]he way CenturyLink designed the interconnection between the CenturyLink/Intrado system and the Comtech system was unnecessarily complex and contributed to the December 2018 system failure.”⁴ He further opined that CenturyLink’s insistence on the SS7 interconnection protocol “required Comtech to utilize a third party, TNS” and that “[a]dding another entity to the path increases the probability of failure.”⁵

Mr. Rosen also opined regarding the responsibility that CenturyLink retained over the entirety of Washington’s 911 system pending the complete transition to Comtech. “Both CenturyLink and Comtech should have been checking each other, verifying that the entire

² See generally Public Counsel’s Petition for Reconsideration.

³ See Washington Utilities and Transportation Commission Staff’s Post-Hearing Brief at 1-21.

⁴ Rosen, BR-1CTr at 21:18-22:2.

⁵ *Id.* 22:6-22:8.

network was designed and built to meet both companies' 99.999 percent availability requirement.”⁶ He further testified that “CenturyLink was responsible for ‘network’ and ‘transport,’ and they were responsible for the entire network, and all of the circuits, including the part that failed in December 2018.”⁷ [REDACTED]

[REDACTED]

III. LEGAL ISSUES AND ARGUMENT

A. CenturyLink Failed To Make Even Minimal Efforts to Ensure SS7 Link Diversity And Violated RCW 80.36.080

CenturyLink agrees that the issue on the petition for reconsideration is “whether CenturyLink took reasonable steps to ensure that the E911 network developed during the transition would function properly.”¹¹ But it ignores the crucial holding made by the Commission that “Both CenturyLink and Comtech were responsible for providing E911

⁶ Rosen, BR-30CT at 24:5-24:8.
⁷ *Id.* at 9-11.
⁸ Rosen, TR 292:24-293:13.
⁹ *Id.*
¹⁰ *Id.*
¹¹ CenturyLink Petition for Reconsideration at 8-9.
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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.”¹²

Accordingly, CenturyLink’s attempt to show that Comtech was solely responsible for the lack of network diversity with respect to the SS7 links misses the point.¹³ By CenturyLink’s own admission, it was not aware of that lack of diversity, and had it been aware, the company had solutions that it could have employed to fix it.¹⁴ But, as Mr. Rosen testified, CenturyLink should have asked and not passively relied on Comtech to inform it of all significant developments.¹⁵ And, as noted by the Commission, since the decision to design the interconnect between CenturyLink and Comtech via SS7 was done at CenturyLink’s insistence, “it was thus all the more incumbent on CenturyLink to make sure that the interconnection was constructed and configured properly.”¹⁶

While CenturyLink may have an argument that in the *second half of 2017* CenturyLink acted reasonably,¹⁷ after the initial SS7 links were provisioned, tested, and operational, CenturyLink took a hands-off approach.¹⁸ CenturyLink argues that this hands-off approach was justified by the contractual language making it an obligation of Comtech’s to maintain network diversity, and arguing that it should not be held responsible for Comtech’s failure to keep its promise.¹⁹ This is a repeat of CenturyLink’s arguments based on its proffered demarcation point rejected by the Commission (and not the basis of CenturyLink’s petition).

¹² Final Order 08 at 16-17.

¹³ See CenturyLink Petition for Reconsideration at 9-16.

¹⁴ CenturyLink Petition for Reconsideration at 18 (“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.”).

¹⁵ Rosen, BR-30CT at 24:5-24:8; Rosen, TR 292:24-293:13.

¹⁶ See Final Order 08 at 17.

¹⁷ See, e.g., CenturyLink Petition for Reconsideration at 13.

¹⁸ Rosen, BR-30CT at 24:5-24:8; Rosen, TR 292:24-293:13.

¹⁹ CenturyLink Petition for Reconsideration at 15-16.

It does not matter how CenturyLink and Comtech “divided [the] responsibility [to provide E911 services] between themselves” because any such division does “not relieve either of them of their obligation to provide the entirety of the service.”²⁰ Instead of simply relying on Comtech, CenturyLink should have made the effort and taken responsibility to ensure that Comtech’s SS7 links retained diversity.²¹ They made no such effort, even minimally,²² and that caused them to violate RCW 80.36.080.

CenturyLink misapprehends the nature of its obligation under RCW 80.36.080. It had a duty to ensure that the entirety of Washington E911 network was provided according to reasonable telecommunications standards. *See* RCW 80.36.080. It limited itself to only its “side” of the network, making no effort to protect the integrity of the entire system. Washington residents deserve better from their 911 providers, and CenturyLink failed to meet its obligations here.

B. Public Counsel Is Correct That CenturyLink’s Revenue Exceeds \$200 Million and That Previous Penalties for Less Severe Outages Exceed The Penalty Imposed in This Case

Final Order 08 relied on a report of CenturyLink’s revenues that excluded the revenue of related entities and subsidiaries to put the revenue figure at about \$17.6 million.²³ Staff originally recommended a penalty of \$100/violation based on a revenue figure that included the revenue of related entities and subsidiaries in 2019 of over \$245 million.²⁴ Public Counsel’s revenue figure in 2022 of \$215,371,371.97 is more appropriate to factor into

²⁰ *See* Final Order 08 at 16-17.

²¹ Rosen, BR-30CT at 24:5-24:11.

²² *Id.*

²³ Final Order 08 at 20.

²⁴ Webber, Exh. JDW-3 at 25.

the penalty calculation, and was calculated using the same methodology as Staff originally used to find the 2019 revenue figure.²⁵

Second, Public Counsel is also correct that that the \$1.3 million penalty assessment in this case is less than the penalty imposed related to the 2014 outage, which did not last as long and affected fewer people.²⁶

However, Staff have consistently recommended to the Commission a penalty of \$100 for each violation of law caused by each failed call. Originally, prior to discovery in this matter and when the number of violations was believed to have been considerably more, Staff recommended penalties of more than \$7 million.²⁷ Staff revised that figure downward once Staff learned that the number of failed calls was considerably fewer.²⁸ Staff does not contest the Commission's finding that each failed call caused a violation of RCW 80.36.080 and no other rule or statute. Accordingly, Staff takes no position on Public Counsel's petition for reconsideration.

IV. CONCLUSION

For the reasons stated above, the Commission should deny CenturyLink's petition for reconsideration.

²⁵ See Public Counsel's Petition for Reconsideration at 5.

²⁶ See *id.* at 7-8.

²⁷ Webber, Exh. JDW-3 at 25.

²⁸ Hawkins-Jones, JHJ-1CT at 13.

DATED this 14th day of August 2023, at Olympia, Washington.

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