

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,  Complainant,  v.  CENTURYLINK COMMUNICATIONS, LLC,  Respondent.	DOCKET UT-181051  ORDER 10  DENYING PETITIONS FOR RECONSIDERATION OF ORDER 08
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**BACKGROUND**

- 1 On December 22, 2020, the Washington Utilities and Transportation Commission (Commission), on its own motion, and through its regulatory staff (Staff)<sup>1</sup> issued a complaint against CenturyLink Communications, LLC (CenturyLink or Company) in Docket UT-181051. The complaint alleged violations of RCW 80.30.080, RCW 80.36.220, WAC 480-120-450(2), and WAC 480-120-412 arising from an outage of 911 service over two days beginning on December 27, 2018.
- 2 On June 9, 2023, the Commission entered Order 08, its final order resolving the issues in the complaint (Order 08). The Commission concluded 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. Order 08 further concluded that CenturyLink also violated WAC 480-120-412 when the Company failed to notify all Public Safety Answering Points (PSAPs) and the Commission of the outage. Order 08 imposed penalties of \$100 for each of the 13,000 violations of RCW 80.36.080 and \$1,000 for each of the 15 violations of WAC 480-120-412, resulting in a total penalty of \$1,315,000.

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<sup>1</sup> In formal proceedings such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

- 3 On June 16, 2023, CenturyLink filed a petition for reconsideration of Order 08. CenturyLink contends that the record evidence does not support the Commission's conclusions. Rather, according to CenturyLink, the evidence demonstrates that CenturyLink made all reasonable efforts to comply with its obligations to provide 911 service and that the outage was solely due to Comtech's unilateral failure to maintain network diversity.
- 4 On June 20, 2023, the Public Counsel Unit of the Washington Attorney General's Office (Public Counsel) filed a petition for reconsideration of Order 08. Public Counsel claims that the Commission understated the revenues attributable to the Company in considering the factors for determining the penalty amount and imposed a penalty that is inadequate to penalize CenturyLink for the magnitude of its transgressions.
- 5 On August 14, 2023, Staff filed its response to both petitions for reconsideration. Staff opposes CenturyLink's petition, citing evidence from the record supporting the findings and conclusions in Order 08. Staff agrees with Public Counsel that the revenues attributable to the Company are understated in Order 08 but adheres to Staff's recommendations on the per penalty amounts that the Commission adopted. Staff thus takes no position on Public Counsel's petition.
- 6 On August 14, 2023, Public Counsel filed its opposition to CenturyLink's petition, maintaining that the record evidence supports Order 08.
- 7 On August 14, 2023, CenturyLink filed its opposition to Public Counsel's petition. The Company argues that the petition is moot if the Commission grants CenturyLink's petition. Even if the Commission denies that petition, the Company contends that the Commission used the appropriate revenue figure when weighing the penalty factors and that Public Counsel has provided no basis on which the Commission should increase the penalty amount.
- 8 Charles Steese, Papetti, Samuels, Weiss, McKirgan, Scottsdale, Arizona, and Adam Sherr, Lumen Technology Inc., Seattle, Washington, represent CenturyLink. Lisa W. Gafken, Nina Suetake, and John Nelson, Assistant Attorneys General, Seattle, Washington, represent Public Counsel. Dawn Cortez, Assistant Attorney General, Olympia, Washington, represents the Washington State Military Department, E911 Coordination Office (WMD). Susan C. Goldhar Ornstein, Senior Director, Legal & Regulatory Affairs, Seattle, Washington, represents TeleCommunication Systems, Inc. William McGinty, Assistant Attorney General, Olympia, Washington, represents Staff.

## DISCUSSION

9 Neither petition for reconsideration convinces us that any of the findings and conclusions in Order 08 were erroneous. 911 is the most critically important service a telecommunications company can provide. Lives literally depend on the ubiquitous ability of callers to access first responders, police, and medical personnel in the event of an emergency. Accordingly, we are particularly demanding when reviewing the reasonableness of the actions CenturyLink took or did not take to comply with the statutes and rules that govern the provision of that service. We considered all the record evidence presented by the parties and continue to conclude that a preponderance of that evidence demonstrates CenturyLink violated RCW 80.36.080 and WAC 480-120-412. We also properly weighed all the factors we consider when determining a penalty amount and adhere to the penalty we assessed in Order 08. We therefore deny both petitions for reconsideration of Order 08 as further discussed below.

10 **CENTURYLINK PETITION.** CenturyLink challenges Order 08 on several grounds. The Company's primary contention is that the record evidence proves that CenturyLink took all reasonable steps to comply with its legal obligations during the transition of 911 service to Comtech and thus Order 08 erroneously concluded that the Company violated RCW 80.36.080 and WAC 480-120-412. CenturyLink cites testimony that supports its contentions and argues that contrary evidence either fails to prove that CenturyLink's conduct was unreasonable or is taken out of context.

11 We agree with Staff and Public Counsel that CenturyLink's arguments do no more than rehash the position it took in its post-hearing briefing. CenturyLink is not solely to blame for the 911 outages in December 2018, but neither is Comtech. CenturyLink was the incumbent 911 service provider and was transitioning that service to Comtech as the new provider selected by WMD when the outage occurred. Both companies were providing the service at that time, and both were responsible for the 911 network and call completion during the transition. Both companies were required to work together and take reasonable steps to ensure that no outages would occur. They failed.

12 Further, CenturyLink cannot escape its share of liability for that failure by claiming that it did not know Comtech had altered its network to totally rely on circuits from CenturyLink. CenturyLink insisted on the type of network the companies would use yet refused to take a sufficiently active role in designing the resulting network or implementing that design.<sup>2</sup> We agree with the testimony of Brian Rosen that as part of

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<sup>2</sup> *E.g.*, Klein, Tr. at 339:22 – 444:2.

their ongoing meetings, “[b]oth CenturyLink and Comtech should have been checking each other, verifying that the entire network was designed and built to meet both companies’ 99.999 percent availability requirement.”<sup>3</sup> It was not reasonable for CenturyLink not to have done so, and thus CenturyLink violated RCW 80.36.080 and WAC 480-120-412.

13 CenturyLink also claims that Order 08 incorrectly concluded that the Company “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.’”<sup>4</sup> The Commission reached no such conclusion. In Order 08 we observed that CenturyLink did not take all the actions required under that contract, but we did not conclude as a matter of law that the Company breached that agreement. The Commission lacks jurisdiction to render that legal determination. CenturyLink’s justifications for its contract performance are thus irrelevant to the liability assessment in Order 08.

Regardless of whether CenturyLink fulfilled its contractual obligations to WMD, Order 08 concluded that the Company violated RCW 80.36.080 and WAC 480-120-412, which the Commission has the authority to enforce.

14 Finally, CenturyLink maintains that “Order 08 fails to identify three CLC’s witnesses, and thus it is unclear whether their testimony was considered.”<sup>5</sup> Those three witnesses are Martin Valence,<sup>6</sup> Jeanne Stockman,<sup>7</sup> and Valerie Lobdell.<sup>8</sup> Valence is CenturyLink’s Vice President, Network Operations. He testified that CenturyLink’s ordering process gives carriers the ability to ask that circuits be provisioned with network diversity and that had Comtech told the Company of the lack of network diversity, CenturyLink could have ensured the signaling links were provisioned on diverse networks. Stockman is Associate General Counsel at Lumen, CenturyLink’s parent company. She provided an overarching review of Staff’s and Public Counsel’s direct testimony, briefly summarized the 911 transition from CenturyLink to Comtech in Washington, and addressed each of Staff’s four causes of action and application of the Commission’s enforcement

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<sup>3</sup> Rosen, Exh. BR-30CT at 24:5-24:8; *accord* Rosen, Tr. at 292:24 – 293:13.

<sup>4</sup> CenturyLink Petition ¶ 2.

<sup>5</sup> *Id.* ¶ 12.

<sup>6</sup> Exhs. MDV-1TC through MDV-8.

<sup>7</sup> Exhs. JWS-1TC; SJH-2 through SJH-15C; and JWS 16-C.

<sup>8</sup> Exhs. VL-1TC through VL-3C.

guidelines. Lobdell is Senior Lead Program Manager in Lumen's Strategic Enterprise and Public Sector organization. She provided a brief description of the transition of 911 services from CenturyLink to Comtech and responded to Public Counsel's testimony that CenturyLink compelled network design decisions related to the transition.

15 The Commission considered all evidence admitted into the record, including the testimonies of these three witnesses. As discussed above and in Order 08, CenturyLink was obligated to proactively work with Comtech to ensure the diversity of the 911 network, not simply wait for Comtech to provide information and ask for assistance. To the extent they addressed that issue at all, the testimonies of Valence, Stockman, and Lobdell did not provide evidence sufficient to demonstrate that CenturyLink took reasonable steps to satisfy its obligation.

16 We deny CenturyLink's petition for reconsideration of Order 08.

17 **PUBLIC COUNSEL PETITION.** Public Counsel seeks reconsideration of the amount of the penalty the Commission assessed in Order 08, proposing that the Commission assess the maximum penalty of \$13,015,000. Public Counsel offers three bases of support for this proposal, none of which are sufficient to alter our determination of the appropriate penalty.

18 First, Public Counsel takes issue with the official notice the Commission took of the approximately \$17 million in annual intrastate revenues CenturyLink reported for 2022 in its 2023 Annual Report. Public Counsel complains that the Commission failed to give prior notice of its intent to rely on this information in determining the penalty amount and did not provide the parties with an opportunity to comment as required in WAC 480-07-495(2) and RCW 34.05.452(5). Public Counsel, however, identifies no prejudice that it or any other party has suffered because of the Commission's use of this figure, nor does Public Counsel identify any comments it would make beyond those included in its petition.

19 The record evidence includes CenturyLink's reported annual intrastate revenues of roughly \$22 million for 2020.<sup>9</sup> The Commission merely updated that figure by taking official notice of the \$17 million figure in the Company's latest annual report. We made no finding of fact based on the updated figure. It was one data point in our analysis of the factors we consider when determining a penalty amount. Had we relied on the older figure in the record, our penalty assessment would have been the same. Accordingly, any

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<sup>9</sup> Hawkins-Jones, Exh. JHJ-1CT at 17:21.

error the Commission made in using the latest CenturyLink revenue amount was harmless.

20 Public Counsel's second argument is that the Commission improperly relied on the intrastate revenues of CenturyLink alone, rather than total company revenues, Qwest Corporation revenues, or CenturyLink and Qwest Corporation revenues. We disagree. CenturyLink was the only company entity before us in this docket. Indeed, we denied Staff's motion to amend the complaint to add other CenturyLink affiliates as respondents. Calculating a penalty based in large part on revenues from CenturyLink affiliates that are not parties would be unfair at best and could be an infringement of due process. We rejected Public Counsel's proposed penalty calculation in Order 08, and we adhere to that determination.

21 Finally, Public Counsel contends that the penalty amount of \$100 per violation of RCW 80.36.080 in Order 08 is inconsistent with the \$250 per violation penalty the Commission assessed in Docket UT-140597 for a less extensive 911 outage in April 2014. The Commission, however, assesses penalties based on the facts and circumstances presented in each case, not a rote extension of determinations the Commission made in past decisions. One of the most salient differences between the two dockets is that the Company was solely responsible for the outage at issue in Docket UT-140597, while in this docket, CenturyLink shared that responsibility with Comtech. Even just assigning each responsible entity half of the \$250 per violation penalty in the earlier case results in \$125 per violation, slightly more than the \$100 we assessed CenturyLink in this docket. We engaged in no such calculus, but it undercuts Public Counsel's comparison of the two dockets. We explained our consideration of the applicable penalty assessment factors in Order 08, and we continue to believe that the penalty we assessed is fair, just, and reasonable.

22 We deny Public Counsel's petition for reconsideration.

## **ORDER**

### **THE COMMISSION ORDERS:**

23 (1) The Commission denies the petition for reconsideration of Order 08 filed by CenturyLink Communications, LLC.

24 (2) The Commission denies the petition for reconsideration of Order 08 filed by the Public Counsel Unit of the Washington Attorney General's Office.

Dated at Lacey, Washington, and effective November 13, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

MILTON H. DOUMIT, Commissioner