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EXPEDITE
 No hearing is set
 Hearing is set:
Date: _____
Time: _____
Judge/Calendar _____

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

CENTURYLINK COMMUNICATIONS,
LLC,

Petitioner,

v.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Respondent.

No.

PETITION FOR JUDICIAL REVIEW

CenturyLink Communications, LLC (“CLC”) petitions this Court pursuant to RCW 34.05.514 for judicial review of Final Order 08 (hereinafter “Final Order 08”), which was issued by the Washington Utilities and Transportation Commission (“WUTC” or “Commission”) in Docket UT-181051 on June 9, 2023, and Order 10 Denying Petitions for Reconsideration of Order 08 (hereinafter “Recon. Order”), which was issued by the Commission on November 13, 2023.

In support of this Petition, CLC respectfully alleges as follows:

1 **I. NAME AND MAILING ADDRESS OF PETITIONER**

2 CenturyLink Communications, LLC
3 100 CenturyLink Drive
4 Monroe, Louisiana 71023
5

6 **II. NAME AND MAILING ADDRESS OF PETITIONER’S ATTORNEY**

- 7
8 1. Adam L. Sherr (WSBA # 25291)
9 Assistant General Counsel
10 120 Lenora Street, 5th Floor
11 Seattle, WA 98121
12 206 806 7071
13 adam.sherr@lumen.com
14
15 2. Charles W. Steese
16 Papetti Samuels Weiss and McKirgan LLP
17 16430 N. Scottsdale Road, Suite 290
18 Scottsdale, Arizona 85254
19 480 800 3537
20 csteese@pswmlaw.com
21
22 3. Donna L. Barnett
23 Perkins Coie, LLP
24 10885 NE Fourth Street, Suite 700
25 Bellevue, WA 98004-5579
26 425 635 1419
27 dbarnett@perkinscoie.com

27 **III. NAME AND MAILING ADDRESS OF THE AGENCY WHOSE ACTION IS AT**
28 **ISSUE**

29 Respondent WUTC is an agency of the State of Washington. WUTC’s mailing address is:

30
31 Washington Utilities and Transportation Commission
32 621 Woodland Square Loop SE
33 Lacey, WA 98503
34

35 **IV. AGENCY ACTION AT ISSUE**

36 The agency action at issue in this Petition is the WUTC Final Order 08, issued in Docket
37 UT-181051 on June 9, 2023. CLC timely filed a Petition for Reconsideration of Final Order 08,
38 which the Commission denied in the Recon. Order. Service of Final Order 08 occurred on July 9,
39 2023, and service of Recon. Order occurred on November 13, 2023. Copies of the Final Order and
40 Recon. Order are attached as Exhibits A and B to this Petition (collectively the “Final Orders”),
41 respectively.
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1 CLC challenges portions of the Final Orders which conclude that CLC violated RCW
2 80.36.080 and, as a result, ordered CLC to pay \$1,315,000 in penalties. The WUTC’s conclusion
3 is not supported by substantial evidence, requires that CLC perform tasks not required by statute,
4 rule, contract or prior WUTC precedent, and as a result, violates the due process clause and is
5 arbitrary and capricious. CLC requests judicial review of all portions of the Final Order 08 that
6 bear on this issue, including but not limited to paragraphs 54, 63, 65-69, 72, 84, 91, and 99, and
7 all portions of the Recon. Order that bear on this issue, including but not limited to paragraphs 9
8 and 11-16.
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14

15 **V. PERSONS WHO WERE PARTIES IN THE ADJUDICATIVE PROCEEDINGS**

16 The following entities participated in the proceedings that led to the Final Orders:

17 CenturyLink Communications, LLC, Respondent/Petitioner

18 Staff of the Washington Utilities and Transportation Commission (“WUTC
19 Staff”)

20 Washington Attorney General’s Office, Public Counsel Division (“Public
21 Counsel”)

22 The Washington Military Department

23 Telecommunications Systems, Inc., d/b/a Comtech Telecommunications Corp.
24
25
26
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28

29 **VI. JURISDICTION AND VENUE**

30 A. Jurisdiction: This is an action seeking judicial review of the Commission’s Final
31 Orders in Docket UT-181051. This Court has jurisdiction pursuant to RCW 34.05.510 *et seq.*
32

33 B. Venue: Venue is proper in this Court pursuant to RCW 34.05.514(1)(a).
34

35 C. Exhaustion of Administrative Remedies: The WUTC designated Final Order 08 as
36 a Commission final order. Final Order 08, page 23. The Recon. Order is also a final order pursuant
37 to WAC 480-07-850(5) because (a) CLC filed a timely petition for reconsideration of the Final
38 Order 08 on June 15, 2023, (b) the WUTC provided written notice of the date on by which it would
39 act on the petition for reconsideration,¹ and, as a result, (c) “the time for filing a petition for judicial
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46 ¹ See Notice of Substitution of Presiding Officer and Notice Establishing New Date by Which the Commission will
47 Enter an Order (Sept. 15, 2023).

1 review does not commence until the commission serves an order disposing of the petition for
2 reconsideration.”
3

4 D. Standing: CLC has standing to bring this Petition as it has been aggrieved and
5 adversely affected by the WUTC decisions in this case. *See* RCW 34.05.530. CLC was the
6 respondent in the docket. The Final Orders prejudice CLC by finding that it violated RCW
7 80.36.080 and by ordering it to pay \$1,315,000 in penalties. The WUTC actions are not supported
8 by substantial evidence, require that CLC perform tasks not supported by statute, rule, contract,
9 industry custom and practice, or prior Commission precedent, and thus violate the due process
10 clause and are arbitrary and capricious. CLC’s interests are among those that the WUTC was
11 required to consider when it issued the Final Orders in this case, which orders CLC challenges
12 here. A judgment in favor of CLC would redress the prejudice to CLC caused by the WUTC’s
13 Final Orders.
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22 **VII. FACTS DEMONSTRATING ENTITLEMENT TO JUDICIAL REVIEW AND**
23 **REASONS RELIEF SHOULD BE GRANTED**

24 1. CLC is a telecommunications company (as defined in RCW 80.04.010(28)) doing
25 business in Washington. CLC provides telecommunications services in Washington, principally
26 by providing transport facilities to other telecommunications companies that provide services to
27 end user customers in Washington.
28
29

30 2. On December 27-28, 2018, an outage occurred on CLC’s “Green Network.” During
31 this outage, the State of Washington was in the midst of transitioning its covered 911 service
32 provider from CenturyLink (CLC and its affiliates) to Comtech. As the WUTC found, during the
33 network outage, 911 calls to Public Service Answering Points (or PSAPs) supported by
34 CenturyLink completed, but thousands of calls to the PSAPs serviced by Comtech did not.² The
35 reason for the difference is that CenturyLink developed its network with both circuit and network
36 diversity, meaning if an outage was experienced on one network, 911 calls would continue to
37 complete. In contrast, months before the outage took place, Comtech had made a conscious
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47 ² Final Order 08 ¶ 50.

1 decision, unknown by anyone else, to use CLC’s Green network for all of the transport facilities
2 used for the signaling necessary to complete 911 calls; in other words, Comtech’s network lacked
3 network diversity as required by contract, common sense and industry standard. Thus, when the
4 Green Network experienced an outage, thousands of 911 calls destined for Comtech served PSAPs
5 failed.
6
7

8
9 3. Comtech’s network did not always lack diversity. During the transition from
10 CenturyLink to Comtech as the covered 911 service provider, CenturyLink, Comtech and the
11 Washington Military Department (“WMD”) jointly developed and tested a network that contained
12 complete circuit and network diversity. The record evidence uniformly showed that if this network
13 had been left intact, all 911 calls in Washington would have completed during the December 2018
14 outage on the Green Network.
15
16

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19
20 **A. The WUTC Erred by Finding that CLC did not Make Reasonable Steps**
21 **to Provide Acceptable E911 Service in Washington.**
22

23 4. CLC is entitled to relief through this Petition because the Final Orders’ conclusion
24 that CLC did not take “reasonable steps to ensure that the E911 network *developed during the*
25 *transition*” from CenturyLink to Comtech as the covered 911 service provider “would function
26 properly”,³ is not supported by substantial evidence, not supported by prior Commission decisions,
27 rules, contracts, or industry custom and practice, violates the due process clause and is arbitrary
28 and capricious. After the transition network was developed and jointly tested by CenturyLink,
29 Comtech and WMD, Comtech unilaterally modified the network to eliminate diversity of circuits
30 and informed no one of its decision. There is no legal basis to hold CLC responsible for failing to
31 periodically check to ensure Comtech had not modified the network the parties had jointly
32 designed and tested, particularly when Comtech knew the network modifications left the network
33 vulnerable.
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47 ³ Final Order ¶ 67 (emphasis added).

1 5. There are only a few paragraphs in Final Order 08 that describe the basis for the
2 Commission's conclusion that CLC violated RCW 80.36.080.⁴ Those paragraphs are as follows:
3

4
5 63. CenturyLink was under contract with WMD to be the state's E911
6 service provider for many years, but in 2016 WMD selected Comtech to
7 fulfill that role. The parties arranged for a transition plan from CenturyLink
8 to Comtech through contractual amendments, and the outages at issue in
9 this proceeding occurred during that transition phase. Throughout the
10 transition, CenturyLink retained an obligation to provide "all services,
11 information and data reasonably necessary to effectuate an orderly and
12 seamless transition to such successor provider and to ensure that there is no
13 interruption of 9-1-1 [sic] service in the State of Washington." CenturyLink
14 failed to meet this obligation.

15
16 64. Staff and Public Counsel contend that the packet storm on
17 CenturyLink's national [Green] network was a cause of the outage.
18 CenturyLink counters that this event was not foreseeable, and that
19 CenturyLink took reasonable efforts to prevent the network disruption that
20 resulted. We agree with CenturyLink that the packet storm itself was not the
21 proximate cause of the E911 outages in Washington. CenturyLink's
22 obligation in this state was not to ensure that no such event ever happened.
23 Rather, CenturyLink was required to make reasonable efforts to prevent or
24 minimize the disruption of service if such an event occurs. CenturyLink had
25 a responsibility to create a seamless transition with no interruption of E911
26 service. The packet storm in CenturyLink's Green Network resulted in more
27 than 13,000 failed calls in Washington *because the Company did not take*
28 *appropriate action to prevent or minimize the disruption of service that*
29 *followed the packet storm event.*

30
31 65. To protect against network issues like the packet storm in this case,
32 E911 telecommunications networks incorporate diversity of routes,
33 facilities, and providers. CenturyLink deployed such diversity in its own
34 network, and, as a result, few if any E911 calls to the PSAPs CenturyLink
35 continued to serve directly failed as a result of the packet storm. Comtech,
36 on the other hand, used circuits it obtained solely from CenturyLink, all of
37 which experienced significant failures. *CenturyLink lays the entirety of this*
38 *deficiency at Comtech's door. We disagree with this characterization.*
39

40
41 ⁴ RCW 80.36.080 provides: "All rates, tolls, contracts and charges, rules and regulations of
42 telecommunications companies, for messages, conversations, services rendered and equipment and
43 facilities supplied, whether such message, conversation or service to be performed be over one company or
44 line or over or by two or more companies or lines, shall be fair, just, reasonable and sufficient, and the
45 service so to be rendered any person, firm or corporation by any telecommunications company shall be
46 rendered and performed in a prompt, expeditious and efficient manner and the facilities, instrumentalities
47 instrumentalities and service shall be modern, adequate, sufficient and efficient."

1
2 66. CenturyLink maintains that a demarcation point existed between its
3 network and Comtech's network, and that the failure resulting in the failed
4 calls occurred on Comtech's side of that point. Staff and Public Counsel
5 contend that because Amendment M to the agreement with WMD does not
6 specify the location of the demarcation point, CenturyLink bore
7 responsibility for the failure. The specifics of the amendment, namely the
8 location and existence of any demarcation point, are irrelevant for our
9 purposes. We are not interpreting or enforcing that agreement. We are
10 enforcing the applicable statute and Commission rule. Both CenturyLink
11 and Comtech were responsible for providing E911 service during the
12 transition period. *How they divided that responsibility between themselves*
13 *did not relieve either of them of their obligation to provide the entirety of*
14 *the service.*

15
16 67. The issue, then, is whether CenturyLink took reasonable steps to
17 ensure that the E911 network developed during the transition would
18 function properly. *We find that CenturyLink did not.* CenturyLink insisted
19 on using an SS7-based interconnection of its network with Comtech's rather
20 than the IP interconnection Comtech preferred. It was thus all the more
21 incumbent on CenturyLink to make sure that the interconnection was
22 constructed and configured properly. *CenturyLink failed to do so.*

23
24 68. Indeed, *CenturyLink witness Klein testified during the hearing that*
25 *CenturyLink deliberately made no attempt to tell Comtech how to build its*
26 *network, even though it believed Comtech did not have a good plan and*
27 *despite CenturyLink's long experience with building its own network.*
28 *CenturyLink's claims that its service order tech could not be expected to*
29 *know that Comtech's circuit order would be used for nondiverse facilities*
30 *rings hollow. The personnel involved in the transition coordination between*
31 *the companies should have known, or at least inquired about, how Comtech*
32 *was setting up its network, including the extent to which Comtech was using*
33 *sufficiently diverse circuits. CenturyLink's refusal or failure to do so was*
34 *not reasonable and resulted in violations of the Company's legal*
35 *obligations.*

36
37 69. *The Commission finds, by a preponderance of the evidence, that*
38 *CenturyLink violated RCW 80.36.080 by failing to make reasonable efforts*
39 *to provide acceptable E911 service in Washington, resulting in failed 911*
40 *calls to Washington customers. . . . (italics added).*

41
42
43 6. Final Order 08 stated that "the issue" the Commission needed to decide was
44 "whether CenturyLink took reasonable steps to ensure that the E911 network developed during the
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1 transition would function properly.”⁵ The detailed facts presented at the hearing show CenturyLink
2 took reasonable steps. Specifically:
3

4 7. The WMD, the state agency responsible for overseeing 911 services in the state of
5 Washington, recognized that the parties negotiated and collaborated to choose the interconnection
6 design: “Over the course of several months, Comtech, CenturyLink, and CenturyLink’s
7 subcontractor Intrado, worked together to further develop and refine the interconnection solution,
8 which culminated in a formal presentation by all parties to WMD. At the conclusion of the
9 presentation, WMD accepted the solution for implementation. The level of collaboration described
10 above continued throughout the transition.”⁶
11
12

13 8. Final Order 08 references Exhibit JDW-38C; specifically, Section 11(2)(a) of
14 Amendment J of CenturyLink’s contract with the Washington Military Department, which
15 obligated CLC to provide “all services, information and data reasonably necessary to effectuate an
16 orderly and seamless transition to successor provider and to ensure that there is no interruption of
17 9-1-1 [sic] service in the State of Washington.”⁷ However, Final Order 08 did not consider the
18 Statement of Work attached to Exhibit JDW-38C which defined the tasks CenturyLink and
19 Comtech were expected to perform to develop and test the transition 911 network.
20
21

22 9. Page 26 of Exhibit JDW-38C shows this Statement of Work is dated March 22,
23 2017—21 months before the December 2018 outage—and entitled “Next Generation 9-1-1
24 Emergency Services Internet Protocol Network Transition from ESInet I to ESInet II Scope of
25 Work.” The document defined its “purpose” in great detail, which detail is omitted because there
26 is no protective order in place yet and the information is confidential.
27
28

29 10. The Statement of Work contained within Exhibit JDW-38C defined in detail the
30 tasks that Comtech and CenturyLink were each individually expected to perform. Once again,
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44 _____
45 ⁵ Order 08, ¶ 67.

46 ⁶ Hartman, Exh. SJH-4 at 3-4.

47 ⁷ Order 08, ¶ 63 (“CenturyLink failed to meet this obligation”).

1 those tasks are not detailed because there is no protective order in place yet and the information is
2
3 confidential. However, it is undisputed that all of the SS7 signaling links that the parties planned
4
5 to use for the transition 911 network were in place in the first half of 2017.
6

7 11. After the circuits were in place, the Statement of Work then required CenturyLink
8
9 to work with Comtech to test those circuits.⁸ The Statement of Work contains additional
10
11 requirements for Comtech and CenturyLink to jointly test the signaling network supporting the
12
13 transition 911 network.⁹
14

15 12. During this testing,¹⁰ Comtech had deployed two SS7 links on Sprint's network and
16
17 two on CenturyLink's Green Network.¹¹ In other words, Comtech, CenturyLink and WMD jointly
18
19 designed a signaling network that had geographic, supplier, and network diversity. The original
20
21 network that CenturyLink tested was diverse in all respects.¹²
22

23 13. Several months later, in September 2017, Sprint informed Comtech that it was
24
25 exiting the market, which would impact two of Comtech's SS7 links. Instead of acting
26
27 immediately, Comtech waited many months for Comtech to decide on a new provider for the two
28
29 Sprint circuits. For months, Comtech intended to replace the Sprint links with another provider,
30
31 but in January 2018 Comtech changed course.¹³ TNS—Comtech's SS7 provider—responded with
32
33 its advice on the subject.¹⁴ Comtech ignored TNS's advice and in April/May 2018 provisioned all
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36

37
38 ⁸ Webber, Exh. JDW-38C at Section 2.1.3.1, page 13 of 38, Section 2.1.3.2, pages 14-15 of 38, and Section
39 2.2.1, pages 17-18 of 38.

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

41 ¹⁰ Webber, Exh. JDW-38C at page 27-29 of 38.

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

43 ¹² Rosen, Tr. 289:18-21

44 ¹³ Hartman, Exh. SJH-12C at 12-13.

45 ¹⁴ Hartman, Exh. SJH-12C at 8-12.
46
47

1 four SS7 links to ESINet 1 on CenturyLink’s Green Network.
2

3 14. Comtech never made CenturyLink aware of this decision. Comtech admits that it
4
5 did not disclose the newly created lack of supplier diversity to CenturyLink or WMD.¹⁵ In other
6
7 words, Comtech unilaterally decided to modify the SS7 network design—a design that included
8
9 geographic, supplier and network diversity—with a new network that lacked diversity, and it told
10
11 no one about its unilateral decision.
12

13 15. Comtech then compounded its mistake by refusing to create supplier and network
14
15 diversity in its SS7 signaling links when it was presented with another opportunity to do so by its
16
17 signaling vendor. In August 2018—just a few months before the outage—Comtech’s SS7 vendor
18
19 approached Comtech a second time expressing concern to Comtech that it lacked diversity. TNS
20
21 came prepared with a solution, offering to replace two of the CLC (Green Network) circuits with
22
23 IPX (a form of Session Initiation Protocol, or “SIP”) connectivity. Once again, despite recognizing
24
25 the peril of its current design, Comtech rejected the opportunity in order to save money, and
26
27 decided it utilize the non-diverse circuits *for another three years*.¹⁶ Once again, Comtech left
28
29 CenturyLink and WMD in the dark about its decision. Just four months later, the Green Network
30
31 outage occurred and thousands of Comtech 911 calls failed in Washington.
32

33 16. Comtech’s unilateral decision to use the same network for all four SS7 links
34
35 violated Comtech’s promise to deliver a 911 network with network and supplier diversity. In
36
37 responding to the RFP, Comtech promised to deliver a 911 solution that “eliminates all single
38
39 points of failure,” was “highly redundant” and utilized “network” and “carrier diversity.”¹⁷ When
40
41

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43 ¹⁵ Valence, Exh. MDV-1TC at 7:8-8:11, citing Hartman, Exh. SJH-12C (Comtech Response to DR-CTL-
44 4(c)).

45 ¹⁶ Hartman, Exh. SJH-12C at 8-10.

46 ¹⁷ Webber, Exh. JDW-75X at 161-163.
47

1 WMD awarded the RFP to Comtech in 2016, it entered into a contract with Comtech that obligated
2
3 Comtech to build a network with no single point of failure:

4
5 [Comtech] shall design and provide the ESInet Services in a manner that ensures
6 that there will be no single point of failure (*i.e.*, if any single part of the ESInet
7 Services or supporting platform is unavailable, including as a result of a Force
8 Majeure Event, the ESInet Services will continue to operate as set forth in this
9 Contract)¹⁸

10 Comtech failed to maintain its network such that if a “if any single part of the ESInet Services or
11 supporting platform is unavailable” 911 calls would complete anyway; instead, to save money,
12 they placed all of their eggs in one basket—the Green Network—which created the “single point
13 of failure” that the contract prohibited.¹⁹ Comtech, not CLC, laid the groundwork for 911 calls not
14
15 completing during the Green Network outage. Yet the WUTC’s Final Orders levy a \$1.3 million
16
17 fine on CLC. Comtech was not fined, and was not even pursued as a Respondent in the WUTC
18
19 enforcement proceeding.
20

21
22 17. In addition, the Comtech/WMD contract contains a service level agreement
23 (“SLA”) requiring Comtech to ensure redundancy and to avoid single points of failure.²⁰ The
24 accompanying SOW explicitly reinforced the critical importance of redundancy: “In summary,
25 TCS [Comtech] implements local redundancy with separate entrance facilities, redundant local
26 area network (LAN) links between functional elements, and redundant hardware and software
27 components. TCS implements geographic redundancy by deploying geographically diverse data
28 centers and by employing carrier diversity, where available, between the MPLS network that
29 provides call and data delivery to PSAPs and the MPLS network that provides the network and
30 system monitoring.”²¹
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37 18. Not only did CenturyLink inquire about the *transition network design*, CenturyLink
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39
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42 ¹⁸ Webber, Exh. JDW-74X at 38 (§ 11.5).

43 ¹⁹ Public Counsel’s witness Mr. Rosen admitted that placing all signaling links on the same network
44 created a single point of failure (Rosen, Tr. 277:2-278:2); see also Rosen, Tr. 294:9-13 .

45 ²⁰ Webber, Exh. JDW-74X at 58-59 (SLA 6.4).

46 ²¹ Webber, Exh. JDW-75X at 163.
47

1 personnel were deeply involved in implementing and testing the transition 911 network—a
2 network that was designed not only with appropriate diversity, but the supplier and network
3 diversity that Comtech promised the WMD it would deliver. It was only later that Comtech
4 unilaterally (and without CLC’s or WMD’s awareness) stripped the signaling network of diversity.
5
6

7
8 19. CLC presented these facts to the Commission in its motion for reconsideration. The
9 Commission rejected the motion summarily stating: “CenturyLink was the incumbent 911 service
10 provider and was transitioning that service to Comtech as the new provider selected by WMD
11 when the outage occurred. Both companies were providing the service at that time, and both were
12 responsible for the 911 network and call completion during the transition. Both companies were
13 required to work together and take reasonable steps to ensure that no outages would occur. They
14 failed.” Recon. Order ¶ 11. Nowhere does the Commission cite a basis to explain why CLC was,
15 after the transition network was designed, tested and implemented, required to periodically inquire
16 into whether Comtech had modified its network to ensure it remained compliant with the contract
17 Comtech had executed with WMD. Instead, the Commission simply states: “[b]oth CenturyLink
18 and Comtech should have been checking each other, verifying that the entire network was designed
19 and built to meet both companies’ 99.999 percent availability requirement.” It was not reasonable
20 for CenturyLink not to have done so. . . .” *Id.* at ¶ 12. There is no basis in law, and the WUTC
21 cites none, for imposing on CLC a continuing obligation to micromanage the network of an
22 unaffiliated telecommunications provider following the successful completion of the specific
23 coordination (design and testing of the transition network) required by state contract.
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36 **B. The WUTC’s Actions in the Final Orders are Unlawful**

37 In addition to the reasons that relief should be granted set forth above, the Commission’s
38 actions are unlawful under RCW 34.05.570(3) for the following further reasons:
39

- 40 A. In the Final Orders, the Commission erroneously interpreted or applied the law;
41
42 B. The Final Orders are not supported by evidence that is substantial when viewed in
43 the light of the whole record before the Court;
44
45 C. The Final Orders are inconsistent with a rule or procedure of the Commission;
46
47

1 D. The Commission failed to give Qwest notice of the actions it was expected to take
2 and thus the Final Orders violate due process; and,
3

4 E. The Final Orders are arbitrary and capricious.
5

6 **VIII. REQUEST FOR RELIEF**
7

8 Pursuant to RCW 34.05.570 and 34.05.574, CLC respectfully requests the following relief:
9

10 A. An immediate stay and order superseding and restraining, in part, the effect of the
11 Final Orders; and
12

13 B. An order reversing the Commission's decision finding CLC violated RCW
14 80.36.080 and, as a result, ordering CLC to pay \$1,315,000 in penalties; and,
15

16 C. For such other relief as the Court deems appropriate.
17

18 DATED this 12th day of December, 2023.
19

20 CENTURYLINK
21

22 
23

24 _____
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43 dbarnett@perkinscoie.com
44

EXHIBIT A

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. CENTURYLINK COMMUNICATIONS, LLC, Respondent.	DOCKET UT-181051 FINAL ORDER 08 GRANTING MOTION TO STRIKE; IMPOSING PENALTIES
--	--

BACKGROUND

¹ **COMPLAINT.** On December 22, 2020, the Washington Utilities and Transportation Commission (Commission), on its own motion and through its regulatory staff (Staff),¹ issued a complaint against CenturyLink Communications, LLC, (CenturyLink or Company) in the above-referenced Docket for alleged violations of state law and Commission rules (Complaint).

² On December 27, 2018, Washington residents experienced interruptions in telecommunications service, including enhanced 911 service (E911 or 911 service). Residents attempting to call 911 encountered a fast busy signal and experienced dropped calls. The service interruption affected all Washington residents and all 62 public safety answering points (PSAPs) intermittently for 49 hours and 32 minutes over a three-day period, with a complete outage from 12:40 a.m. PST on December 27 until 8:36 p.m. PST on December 28, 2018. Sporadic outages throughout the state continued until all services were restored at 9:01 p.m. PST on December 29, 2018.² The outage was a “major outage” as defined in Washington Administrative Code (WAC) 480-120-021.³

¹ 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.

² Commission Staff Investigation Report, p. 3.

³ WAC 480-120-021 defines “major outage” as “a service failure lasting for thirty or more minutes that causes the disruption of local exchange or toll services to more than one thousand

3 The Washington State Military Department Enhanced 911 Coordination Office (WMD), contracts for all Washington state 911 services.⁴ WMD originally contracted with CenturyLink in 2009 for the provision and maintenance of a statewide Emergency Services Internet Protocol 911 Network (ESInet I) (Contract).⁵ The ESInet I was a telecommunications network over which 911 calls were received and routed from originating service providers to PSAPs.⁶

4 In 2016, WMD solicited proposals and awarded a contract to a new provider, TeleCommunications Systems, Inc., d/b/a Comtech TeleCommunications Corp. (Comtech), for a next generation statewide Emergency Services Internet Protocol 911 Network (ESInet II).⁷ At the time of the outage, CenturyLink was engaged in the first phase of a three-phase process to transition 911 service to Comtech, and it still provided service to 15 of the 62 Washington PSAPs. The first phase of the transition project involved migrating Washington PSAPs from CenturyLink's ESInet I network to Comtech's ESInet II network.⁸ CenturyLink and Comtech were both contracted to provide 911 services during the transition period.⁹

5 During the first phase of the transition, Comtech continued to rely on CenturyLink for transport and automatic location identification services related to all 911 calls.¹⁰ To provide this service, CenturyLink utilized its "Green Network."¹¹ The Green Network has

customers; total loss of service to a public safety answering point or emergency response agency; intercompany trunks or toll trunks not meeting service requirements for four hours or more and affecting service; or an intermodal link blockage (no dial tone) in excess of five percent for more than one hour in any switch or remote switch."

⁴ Pursuant to RCW 38.52.520, WMD is authorized to coordinate and facilitate the implementation and operation of enhanced 911 emergency communications systems throughout the state on the behalf of the counties and their Public Safety Answering Points. It also procures and administers the contract for the State's Emergency Services IP network (ESInet).

⁵ Webber, Exh. JDW-38C, WMD Contract E09-196 and Amendments J, K, L, and M.

⁶ Amended Washington State Military Department's Post-Hearing Brief, at ¶ 2.

⁷ *Id.* at ¶ 3.

⁸ Complaint, at ¶ 8.

⁹ Amendments to the contract between CenturyLink and WMD were required to effectuate this transition. *See* Webber, Exh. JDW-38C (WMD Contract E09-196 and Amendments J, K, L, and M).

¹⁰ *Id.* at ¶ 9.

¹¹ Exh. RA-1CT, at pg. 9.

interstate connections, which resulted in the December 2018 outage affecting multiple states.¹²

6 The December 2018 outage was caused by four malformed packets of data that were created in a node supplied by Infinera Intelligent Transport Networks (Infinera), CenturyLink’s vendor.¹³ Additionally, CenturyLink did not configure Infinera’s nodes to disable a proprietary internodal management channel, which allowed the malformed packets to be sent repeatedly to all other connected CenturyLink nodes, causing a steady, continual drain on CenturyLink’s network processing resources. This event, described as a “packet storm,” resulted in a prolonged service interruption.¹⁴ As noted above, the E911 system failed for 49 hours and 32 minutes over a three-day period.¹⁵

7 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. CenturyLink failed to notify the Commission and the 15 PSAPs still receiving CenturyLink service of the outage.¹⁶ Based on Washington 911 call data during the December 2018 outage, more than 13,000 calls (approximately one half of all calls) sent to Comtech PSAPs failed.¹⁷

8 Staff’s investigation concluded that the statewide E911 network outage was caused by CenturyLink’s failure to configure the channel module to prevent inaccurate traffic routing or packet flooding.¹⁸ Staff states that the statewide outage would have been shorter in duration had CenturyLink put those safeguards in place.¹⁹

9 In the Complaint, Staff alleges that CenturyLink’s conduct related to the outage violated Revised Code of Washington (RCW) 80.30.080, RCW 80.36.220, WAC 480-120-450(2), and WAC 480-120-412.

10 **PROCEDURAL HISTORY.** On January 29, 2021, WMD filed a petition to intervene and on February 2, 2021, filed an amended petition stating its interest, as the

¹² *Id.*

¹³ Staff Investigation Report, p. 3

¹⁴ *Id.* at ¶ 10-11.

¹⁵ Staff Investigation Report, p. 3

¹⁶ *Id.* at ¶ 13-14.

¹⁷ Webber, JDW-1CT at 44, Table 1.

¹⁸ Staff Investigation Report, p. 16.

¹⁹ *Id.*

administrator of the contracts for 911 services, in the information relating to 911 services and the facts surrounding the December 2018 outage.²⁰

- 11 The Commission convened a prehearing conference on February 9, 2021, and on February 24, 2021, entered Orders 01 and 02, Prehearing Conference Order; Notice of Hearing (Order 01) and Protective Order (order 02).²¹ Order 01, among other things, granted WMD's petition to intervene. On August 27, 2021, the Commission issued a notice revising the procedural schedule.²²
- 12 On July 20, 2021, Comtech filed a petition to intervene. Comtech argued that as one of the 911 service providers during the December 2018 outage, it had a significant interest in, and information relating to, the outage.²³
- 13 On August 9, 2021, the Commission entered Order 03, Granting Petition to Intervene.
- 14 Pursuant to the procedural schedule, the Public Counsel Unit of the Washington Attorney General's Office (Public Counsel) and other parties filed initial testimony on December 15, 2021.
- 15 On March 31, 2022, CenturyLink filed Response Testimony, the day after response testimony and exhibits were due.
- 16 On August 31, 2022, Public Counsel and Staff submitted cross-answering testimony.
- 17 On October 14, 2022, CenturyLink filed a Motion to Compel, requesting that the Commission order Staff to provide responses to data requests related to the testimony of Staff expert witnesses James Webber and Dr. Robert Akl. On October 21, 2022, Staff filed its Response to Motion to Compel arguing that CenturyLink's data requests had been responded to, or they required the creation of new data or documents without showing a compelling need for the information.
- 18 On October 28, 2022, Public Counsel filed a Motion for Partial Summary Determination arguing that the cause of the outage is undisputed.²⁴ Public Counsel further argued that the contractual obligation during the transition from CenturyLink to Comtech

²⁰ WMD Petition to Intervene, p. 2.

²¹ Errors in Order 01 were corrected by a Notice of Erratum issued on February 25, 2021.

²² Errors in the Notice were corrected by a Notice of Erratum issued on September 3, 2021.

²³ Comtech Petition to Intervene, p. 2.

²⁴ This Order effectively resolves all issues in the Motion for Summary Partial Summary Determination.

demonstrated the Company's responsibility when CenturyLink's national optical network failure disrupted the routing of 911 calls from CenturyLink to Comtech.²⁵

19 On November 17, 2022, WMD and Staff filed responses supporting the Motion for Partial Summary Determination.

20 On November 17, 2022, CenturyLink filed an Opposition to Motion for Partial Summary Determination arguing that there were disputes of material fact related to the reasonable diligence of both CenturyLink's and Comtech's actions leading up to the outage.

21 Charles Steese, Armstrong Teasdale LLP, Denver, Colorado and Adam Sherr, Lumen Technology Inc., Seattle, Washington, represent CenturyLink. Lisa Gafken, Nina Suetake, and John Nelson, Assistant Attorneys General, Seattle, Washington, represent Public Counsel. Dawn Cortez, Assistant Attorney General, Olympia, Washington, represents WMD. Susan Goldhar Ornstein, Senior Director, Legal & Regulatory Affairs, Seattle, Washington, represents Comtech. William McGinty, Assistant Attorney General, Tumwater, Washington, represents Staff.

22 **HEARING.** An evidentiary hearing was convened virtually December 5-6, 2022, before Chair David Danner, Commissioner Ann Rendahl, Commissioner Milt Doumit, Administrative Law Judge Gregory Kopta, and Administrative Law Judge Samantha Doyle.

23 Staff presented testimony and evidence from Deputy Assistant Director Jacque Hawkins-Jones and expert witnesses James Webber and Dr. Robert Akl. Public Counsel presented testimony and evidence from expert witnesses Stephanie Chase and Brian Rosen. CenturyLink presented testimony and evidence from expert witnesses Jeanne Stockman, Steven Turner, Carl Klein, and Thomas McNealy. All pre-filed testimony and exhibits were admitted into the record except for several proposed cross-examination exhibits.²⁶ Most witness testimony was given in confidential session.

24 *Commission Staff.* Staff witness Jacque Hawkins-Jones explained Staff's investigation process, her role in the investigation, and CenturyLink's involvement in, and responsibility for, the December 2018 outage.²⁷

²⁵ Public Counsel's Motion for Summary Partial Summary Determination at ¶ 8-12.

²⁶ The following proposed cross-examination exhibits for witness Brian Rosen were not admitted into the record: BR-34X, BR-35X, BR-36X, BR-67X, BR-79X, BR-80X, BR-82X, BR-83X, and BR-86X.

²⁷ Hawkins-Jones, TR 87:1-19

- 25 Staff's expert witness James Webber explained the importance of physical, geographic, and route diversity.²⁸ During cross examination, Webber confirmed that a year after the outage in this case, the Federal Communications Commission (FCC) recommended provider diversity to avoid outages caused by a single point of failure.²⁹ Webber clarified that a network and a single point were not the same. Webber explained that in the instance of the Green Network failure, multiple nodes failed simultaneously, traversing thousands of miles to take down the entire network, contributing to the outage at issue in this proceeding.³⁰
- 26 Webber additionally stated that it was uncertain whether provider diversity to Comtech's signaling links would have resulted in completed calls during the December 2018 outage, because Transaction Network Services (TNS) was also providing connection services and was impacted by the outage.³¹
- 27 Finally, Staff's expert witness Dr. Robert Akl spoke to the importance of link diversity to prevent a single point of failure for enhanced 911 service networks.³² Dr. Akl clarified that his testimony focused on the causes of CenturyLink's December 2018 Green Network outage and compared it with a previous outage on another of CenturyLink's networks.³³
- 28 *Public Counsel.* Public Counsel's witness, Regulatory Analyst Stephanie Chase, testified that Commission enforcement action criteria includes foreseeability and confirmed that her pre-filed testimony includes CenturyLink's 911 outage history in Washington.³⁴ Chase stated that Public Counsel's position was that CenturyLink's obligations related to the Company's role as an interexchange carrier (911 service provider).³⁵
- 29 Public Counsel's expert witness Brian Rosen's testimony was provided confidentially.
- 30 *CenturyLink.* CenturyLink expert witness Steven Turner confirmed that because suppliers often utilize the same networks, buying links from two providers is not enough to ensure

²⁸ Webber, TR 125:2-9.

²⁹ *Id.* at 126:8-19.

³⁰ *Id.*

³¹ *Id.* at 145:11-23.

³² Akl, TR 213:5-23.

³³ *Id.* at 218:22-25.

³⁴ Chase, TR 259:3-21.

³⁵ *Id.* at 268:16-21.

route diversity.³⁶ According to Turner, contracting companies must request a design layout record to ensure that proper diverse arrangements will be made.³⁷

31 Company witness Carl Klein made a ministerial correction to his initial testimony and primarily testified in confidential session.³⁸ CenturyLink's witness Thomas McNealy also testified in confidential session.³⁹

32 **POST-HEARING BRIEFS AND MOTION.** On January 17, 2023, post-hearing briefs were filed by CenturyLink, Public Counsel, Staff, and WMD. WMD filed an amended post-hearing brief on January 18, 2023.

33 On January 30, 2023, Public Counsel filed a Motion to Strike Attachment 1 and Portions of the Opening Brief of CenturyLink (Motion to Strike). On February 2, 2023, Public Counsel filed an amended Motion to Strike. Public Counsel argues that CenturyLink's inclusion and reference to an article in an online publication written by Public Counsel's expert witness Brian Rosen was improperly added after the close of the record, in violation of WAC 480-07-830(1).

34 On February 6, 2023, CenturyLink filed an Opposition to Public Counsel's Motion to Strike. CenturyLink argues that use of the article is not the introduction of new evidence, but a reference to persuasive authority consistent with WAC 480-07-390, WAC 480-07-395, and Commission precedent.

35 On February 10, 2023, CenturyLink and Staff filed reply briefs. On February 13, 2023, Public Counsel submitted a reply brief.

36 **PARTIES' POSITIONS.** It is undisputed that the originating events of the December 2018 outage occurred on CenturyLink's Green Network when a packet storm disrupted service.⁴⁰ The Company was still under contract with WMD to provide 911 services for the remaining 15 PSAPs not yet transitioned to the new service provider, Comtech, and had long been in negotiations to transition and create a network design for Comtech.⁴¹

³⁶ Turner, TR 361-362:1-20.

³⁷ *Id.* 362-363:1-6.

³⁸ Klein, TR 416:20-25; 417:3-5.

³⁹ McNealy, TR 456:20-25.

⁴⁰ Rosen, Exh. BR-1CTr at 6:8-14 (citing FCC Report at 6-8).

⁴¹ Webber, Exh. JDW-74X 1-92, Comtech Contract with WMD.

The parties' positions on the contested issues – jurisdiction, CenturyLink's contract with WMD, the demarcation point, and system design – are summarized below.

37 *Jurisdiction.* CenturyLink argues that because its Green Network is an interstate network, the Commission lacks jurisdiction over failures arising from that incident.⁴²

38 Staff contends that CenturyLink's argument ignores the Company's agreement with WMD to provide intrastate services to Washington's 911 system.⁴³ Staff argues that the FCC's end-to-end analysis, which disregards the signaling network used to connect voice trunks and determines jurisdiction after the call signaling process occurs, applies here.⁴⁴

39 Public Counsel argues that the Commission has jurisdiction over CenturyLink as Washington's 911 service provider, and therefore must ensure CenturyLink meets its responsibility to maintain the 911 network. Public Counsel argues that the Company's alleged failure to meet its obligations for the 911 network is properly before the Commission.

40 *WMD Contract.* CenturyLink argues that Public Counsel's argument focuses on a breach of contract between CenturyLink and WMD, and that the Commission does not have authority to hear breach of contract claims.⁴⁵ Even assuming the Commission had jurisdiction over contract claims, CenturyLink argues that the other parties misinterpret the application of the contract between the Company and WMD, and ignore the impacts of Comtech's contractual obligations to WMD.⁴⁶

41 Specifically, the contract contains an Amendment M, which was added to the contract during the transition to Comtech. The amendment provides:

11. AMENDMENT TERMS AND CONDITIONS:

1. The existing contract is modified to add the following language to the Transition Services:

⁴² CenturyLink Opening Brief at ¶¶ 87–90.

⁴³ Rosen, Exh. BR-4C at 15 (“This solution must include, but is not limited to, network, transport, PSAP interfaces, 911 trunk support, selective routing and ALI interfaces.”).

⁴⁴ Staff Reply Brief at ¶ 10, citing *In re Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404, 22412, ¶ 16 (2004), and *In the Matter of Connect America Fund et al.*, 26 FCC Rcd. 17663, 17893 n. 1206 (November 18, 2011).

⁴⁵ CenturyLink Reply Brief at ¶ 48.

⁴⁶ *Id.* at ¶ 49-58.

a) Covered 911 Service Provider during PSAP Migration. The Department is transitioning the ESInet services to a successor provider via a phased cutover of PSAPs from Contractor's ESInet I to New Contractor's ESInet II ("PSAP Migration"). Prior to this cutover, Contractor shall route calls over ESInet I to the appropriate PSAPs and, as such, during this time, Contractor is a Covered 911 Service Provider as defined in 47 C.F.R. § 12.4(a)(i)(A) ("Covered 911 Service Provider") for all PSAPs in the State. Upon the Department's cut over of one or more PSAPs to ESInet II ("Migrated PSAPs"), the Department's successor provider shall be a Covered 911 Service Provider for such Migrated PSAPs and shall be solely responsible for routing calls from the Demarcation Point between ESInet I and ESInet II to such Migrated PSAPs. During the PSAP Migration, Contractor remains responsible for routing calls to PSAPs that have not migrated to ESInet II ("Unmigrated PSAPs"), and for routing calls intended for Migrated PSAPs to the Demarcation Point at ESInet II, at which point the successor provider assumes responsibility for delivering such calls to Migrated PSAPs and is therefore the Covered 911 Service Provider.⁴⁷

42 CenturyLink argues that the amendment makes Comtech the Covered Service Provider for the PSAPs that have transitioned and makes Comtech responsible for the transport of all calls from the demarcation point.⁴⁸

43 Public Counsel argues that the original 2009 contract between CenturyLink and WMD is relevant because it created the Company's 911 service obligations. Public Counsel further contends that Amendment M only defines CenturyLink's role during the transition.⁴⁹ Public Counsel argues that Amendment M did not relieve CenturyLink of its obligation to provide 911 service to the remaining PSAPs in the Company's control during the transition period.⁵⁰

44 WMD also argues that the original 2009 contract and Amendment M language is relevant here.⁵¹ Like Public Counsel, WMD argues that the 2009 contract is the basis for CenturyLink's obligations as a covered 911 service provider.⁵² WMD additionally points

⁴⁷Stockman, Exh. SJH-9C, E09-196 and E09-196M, Amendment M.

⁴⁸ CenturyLink Reply Brief at ¶ 54.

⁴⁹ Public Counsel Post-Hearing Brief, at ¶ 14-20. "Services included, 'network, transport, PSAP interfaces, 911 trunk support, selective routing and ALI interfaces.'"

⁵⁰ *Id.* at ¶ 19.

⁵¹ Amended WMD Post-Hearing Brief at ¶ 1-7.

⁵² *Id.* at ¶ 2.

to Amendment J, which outlines the transition plan between CenturyLink and Comtech. Amendment J provides:

11. AMENDMENT TERMS AND CONDITIONS:

2. A new Section is hereby added to the contract titled Transition Services to the Statement of the Work as Section 6 of the “Contractor Agrees to” Section, as follows:

a) Upon written notification from the Department to Contractor (in accordance with the terms of the contract) that the Department will be transitioning the ESINet services to a successor provider, Contractor shall provide to the Department 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 service in the State of Washington, including:

i. Providing assistance in transferring all ESINet data files in an industry standard format designated by the Department: and

ii. Meeting with any successor provider, either in person or by telephone, as requested by the Department to discuss transitioning the ESINet services, cutover planning, data transfers, and the like; and

iii. Providing all data formats, data definition file layouts and schematics, functional and technical specifications, including requirement specification, platform specification, functions specification, interface control document, data dictionary, test plan, and user manuals and interface source codes for the ESINet as may be necessary in the Department’s reasonable determination to transfer the ESINet services to the successor provider; and

iv. Providing such other materials and information as may be needed or required to reasonably effectuate a successor provider.⁵³

45 WMD emphasizes that CenturyLink agreed 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.”⁵⁴ WMD argues that neither Amendment J nor Amendment M relieved CenturyLink of its obligation as a 911 service provider.⁵⁵

⁵³ Amended WMD Post-Hearing Brief at ¶ 4. Citing Exh. JDW-38C at 18, ¶ 11(1)(a).

⁵⁴ *Id.*

⁵⁵ *Id.* at ¶ 7.

- 46 *Demarcation Point.* CenturyLink argues that there was not only a clear demarcation point, but that 911 call failures during the December 2018 outage were on Comtech’s side of the demarcation point.⁵⁶ While the Company concedes that Amendment M does not specify the physical location of the demarcation point, it does state: “(u)pon the Department’s cut over of one or more PSAPs to ESInet II (‘Migrated PSAPs’), the Department’s successor provider [Comtech] shall be a Covered 911 Service Provider for such Migrated PSAPs and shall be solely responsible for routing calls from the Demarcation Point between ESInet I and ESInet II to such Migrated PSAPs.”⁵⁷ CenturyLink claims that the signaling network demarcation point was located at the point where the Intrado/TNS signaling transfer point (STP) sent an initial address message (IAM) to Comtech.⁵⁸ CenturyLink argues that this point is determined as a matter of industry parlance made obvious “as a matter of party expectations, as well as simple logic.”⁵⁹
- 47 Public Counsel argues that with no clear location of the demarcation point in Amendment M, CenturyLink cannot unilaterally decide its location.⁶⁰ Public Counsel claims that without an agreement within the contract, there was no transition of responsibility, but a shared responsibility to fully deliver 911 calls.⁶¹
- 48 Staff argues that because the system had transition points between more than just CenturyLink and Comtech, there would be two more demarcation points where the Intrado STP and TNS networks connect.⁶² Applying CenturyLink’s explanation, this would mean there are three demarcation points, which, Staff argues, would be inconsistent with the contract language that provides for a singular demarcation point.⁶³ Staff agrees with Comtech and WMD’s description of the demarcation point location, arguing that it is both consistent with the contract language requiring a singular location and within an area for which CenturyLink is responsible.⁶⁴

⁵⁶ CenturyLink Post-Hearing Brief at ¶ 33-34.

⁵⁷ *Id.* at ¶ 32. *See*, Ex. SJH-9C, at 1.

⁵⁸ Klein, Exh. CDK-3, Figure 1: Simplified Phase 1 Call Flow.

⁵⁹ CenturyLink Post-Hearing Brief, at ¶ 34. *See*, Exh. SET-1TC at 40:1-2.

⁶⁰ Public Counsel Reply Brief at ¶ 12.

⁶¹ *Id.* at ¶ 11. *See*, Exh. BR-30CT at 22:5–8.

⁶² Staff Reply Brief at ¶ 13.

⁶³ *Id.*

⁶⁴ *Id.* at ¶ 14. *See*, Exh. BR-4C at 19 and 29.

- 49 WMD agrees that the transition plan outlined in Amendment M did not describe or define the demarcation point.⁶⁵ WMD agrees with Comtech that the demarcation point is where Comtech's equipment received the calls.⁶⁶ They contend that calls were failing before the demarcation point and within CenturyLink's responsibility.
- 50 *System Design.* CenturyLink argues that it was Comtech's responsibility to design and properly diversify its network.⁶⁷ CenturyLink points to Comtech's contract with WMD, which contains a service level agreement requiring Comtech to avoid single points of failure and provide redundancy.⁶⁸ CenturyLink further argues that Comtech failed to properly diversify its circuits, unlike CenturyLink, which provisioned its SS7 circuits with network and supplier diversity.⁶⁹ As evidence of Comtech's failure, CenturyLink argues that even though both CenturyLink and Comtech used the Green Network, calls to CenturyLink's PSAPs were completed while thousands of 911 calls to Comtech's PSAPs failed.⁷⁰
- 51 Public Counsel alternatively argues that CenturyLink retains responsibility for Comtech's ESInet II design. Public Counsel asserts that by refusing to use an IP-based interconnect and proposing the use of outdated SS7 technology, CenturyLink subjected the connection to the failures of the older technology and increased the complexity of the system.⁷¹ Additionally, Public Counsel argues that CenturyLink refused to directly connect to Comtech, instead requiring a third-party interconnection, which increased the complexity (and decreased the reliability) of the system.⁷²
- 52 Staff focuses on CenturyLink's design of the Green Network and argues that while the specific packet storm may not have been foreseeable, CenturyLink failed to plan for unexpected traffic.⁷³ Staff argues that CenturyLink's decision to leave certain channels

⁶⁵ WMD Brief at ¶ 10.

⁶⁶ *Id. See*, Exh. BR-30CT 21:17-18; Exh. BR-1CT 29:8-14 – 30:1-3; Exh. BR-28 at 2, WMD Supplemental Response to Public Counsel Data Request No. 6.

⁶⁷ CenturyLink Reply Brief at ¶ 56-57.

⁶⁸ *Id. See*, Exh. JDW-74X at 58-59 (SLA 6.4)

⁶⁹ CenturyLink Post-Hearing Brief at ¶ 2.

⁷⁰ *Id.*

⁷¹ Public Counsel Post-Hearing Brief at ¶ 29.

⁷² *Id. See*, Exh. BR-17 at 1 and Exh. BR-30CT at 3:1-11.

⁷³ Staff Reply Brief at ¶ 16-17. *See*, Akl TR 254:2-254:13.

enabled on the Green Network left it vulnerable to the type of component failure that occurred during the December 2018 outage.⁷⁴

53 WMD argues that CenturyLink’s responsibility in Comtech’s ESInet II design arose from the Amendment J language requiring CenturyLink 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.”⁷⁵ WMD also observes that CenturyLink was responsible for provisioning some of the circuits used in the transition.⁷⁶

DISCUSSION

54 The Commission continues to recognize that “[t]he citizens of this state reasonably rely on their ability to access emergency services by dialing 911. Their inability to do so for even a brief period of time poses a serious threat to public health, safety, and welfare not just a violation of statute and Commission rules.”⁷⁷ Accordingly, the service disruption lasting 49 hours and 32 minutes in December 2018 was a serious health and safety threat to Washington state residents. We find that CenturyLink failed both in its obligations under statutory provisions and Commission rules to adequately manage and provide 911 service. We address the Motion to Strike and each violation in turn, below.

55 **MOTION TO STRIKE.** We grant Public Counsel’s Motion to Strike for the following reasons.

56 Pursuant to WAC 480-07-830(1), the record closed in this case on December 6, 2022, the last day of the Commission’s evidentiary hearing. On January 17, 2023, CenturyLink filed its Opening Post-Hearing Brief, in which it quoted from and to which it attached as Appendix 1 an article purportedly written by Public Counsel witness Brian Rosen, dated September 2, 2019, and entitled, “Analysis of CenturyLink Dec 2018 outage: Transport Operator/Supplier Diversity is Critical.” The Company did not offer this article as an exhibit during the hearing, did not question Mr. Rosen about it, and did not file a motion pursuant to WAC 480-07-830(2) to reopen the record. CenturyLink’s brief also provided a link to a December 28, 2018, article on Geekwire.com entitled “Washington 911 outage hits Washington as emergency alerts sent to smartphones.” Again, the Company did not

⁷⁴ Webber, Exh. JDW-4 at 15.

⁷⁵ Webber, Exh. JDW-38C at 18, ¶ 11(1)(a).

⁷⁶ Webber, Exh. JDW-1CT 38:15-17; *see also*, Exh. BR-30CT 21:19-20.

⁷⁷ *WUTC v. CenturyLink*, Docket UT-140597, Order 03, Final Order Approving Settlement Agreement ¶ 9 (Feb. 22, 2016) (UT-140597 Order 03).

offer this article as an exhibit during the hearing, did not provide opportunity for cross-examination, and did not file a motion to reopen the record.

57 Public Counsel’s Motion to Strike argues that CenturyLink’s inclusion and reference to the articles in its post-hearing brief was “untimely and unduly prejudicial to parties.” It noted that CenturyLink “could have timely included both documents in the record as cross-examination exhibits at the evidentiary hearing but declined to do so. As a result, CenturyLink failed to lay the proper foundation for either article and parties have not had an opportunity to respond to the evidence. CenturyLink’s untimely introduction of this evidence also deprives parties the ability to cross-examine the Company’s witnesses on the material.”⁷⁸

58 On February 6, 2023, CenturyLink filed an Opposition to Public Counsel’s Motion to Strike. CenturyLink argues that use of the article is not the introduction of new evidence, but merely a reference to persuasive authority consistent with WAC 480-07-390, WAC 480-07-395, and Commission precedent. The Company says:

CLC never claimed that either article should be considered part of the evidentiary record in this proceeding; it did not request their admission, and CLC did not request that either article be treated as admissible factual evidence. Rather, the articles were referenced and attached as persuasive authority and were identified in CLC’s Table of Authorities in its Opening Post Hearing Brief. Like any technical journal, the Rosen article was attached as persuasive authority to show how experts in the industry evaluate the true cause of 911 outages. It also undermines Public Counsel’s advocacy in this litigation which strongly diverts from Mr. Rosen’s conclusions as articulated in the appended article. The Geekwire article was referenced, just like any newspaper article can be. The Commission’s rules, Commission precedent, and longstanding practice recognize the difference between support for arguments in a brief and the evidentiary record in a proceeding. These differences require the Commission to deny Public Counsel’s Motion.⁷⁹

59 Pursuant to WAC 480-07-390, the Commission may require parties to present their arguments and authority in support of their positions after the conclusion of any evidentiary hearing. Additionally, WAC 480-07-395(1)(c)(vi) requires a table of cited authorities and states that a presiding officer may require parties to file copies of the text

⁷⁸ Public Counsel’s Amended Motion to Strike, p. 5.

⁷⁹ CenturyLink’s Opposition to Public Counsel’s Amended Motion to Strike, p. 2.

of authorities that are cited in a parties' brief upon which a parties placed substantial reliance.

60 The Company's argument is unpersuasive. Indeed, in this case, the Company is not citing to legal authorities, but to trade articles that are not in evidence. CenturyLink cites these articles as "authorities" to bolster or oppose factual arguments made in written testimony or during hearing. Generally, for purposes of WAC 480-07-390 and WAC 480-07-395(1)(c)(vi), we view "authorities" to mean legal opinions, official documents, or undisputed documents or facts of which the Commission takes administrative notice. We agree with Public Counsel that the inclusion of these articles after the close of the evidentiary record denies the parties the ability to question their veracity, explore their context, and respond to their use in shaping the Commission's views on disputed issues of fact. To allow the use of such unadmitted "authorities" as these articles for the purposes of addressing disputed issues of fact would create a dangerous precedent that would potentially deny parties their due process rights in Commission adjudications.

61 Accordingly, we grant Public Counsel's Motion to Strike Attachment 1 and Portions of the Opening Brief of CenturyLink.

62 **ALLEGED VIOLATIONS.** The Complaint alleges CenturyLink violated several statutory provisions and Commission rules. Pursuant to RCW 80.36.080, telecommunications companies are required to render prompt, expeditious, and efficient service, to keep their facilities, instrumentalities, and equipment in good condition and repair, and to ensure that their appliances, instrumentalities, and services are modern, adequate, sufficient, and efficient. RCW 80.36.220 provides that telecommunications companies must receive, exchange, and transmit other telecommunications companies' messages without delay or discrimination, and shall receive and transmit messages for any person. Commission telecommunication rules specifically provide requirements for E911 service obligations and communications in the event of any major outage. WAC 480-120-412(2) requires a company to notify the Commission and any affected PSAP "as soon as possible" after receiving notice of or detecting any major outage. Under WAC 480-120-450, local exchange companies (LECs) must provide enhanced 9-1-1 (E911) services. Only some of those legal requirements apply here, as we discuss below.

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.”⁸⁰ 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.⁸¹

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.⁸² 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

⁸⁰ Webber, Exh. JDW-38C at 18, ¶ 11(1)(a).

⁸¹ Webber, JDW-1CT at 52:11; 56:2

⁸² CenturyLink claims that the circuits it provided were jurisdictionally interstate and thus outside of the Commission’s authority to regulate. At issue in this case, however, is not the circuits themselves but the intrastate E911 service that CenturyLink provided, in part, over those facilities. The Commission has jurisdiction over that service.

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.⁸³ 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.⁸⁴ CenturyLink also violated WAC 480-120-412 when the Company failed to notify all PSAPs and the Commission of the outage. Again, CenturyLink bore responsibility for the provisioning of the entire service and thus was obligated to notify the PSAPs, including the PSAPs that the Company continued to serve directly, even though there may not have been any affected calls to those PSAPs.

70 There is no evidence in the record, however, that CenturyLink originated or terminated any of the failed 911 calls and thus the Company did not fail or refuse to receive, exchange, or transmit messages with another carrier within the meaning of RCW 80.36.220. Nor was CenturyLink acting as a local exchange carrier in the provisioning of

⁸³ Klein, TR 339:22-444:2.

⁸⁴ Consistent with Commission precedent we use the preponderance of evidence standard in penalty cases. *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Docket PG-041624, Order 07, ¶ 11 (Oct. 7, 2005) (complaint for penalties against utility arising from a natural gas explosion in Bellevue; Commission cites "preponderance of evidence" standard).

the E911 service at issue here and thus did not violate WAC 480-120-450 when calls failed during the outage.

71 **PENALTIES.** Pursuant to RCW 80.04.380, the Commission may penalize a public service company that violates any provision of Title 80 RCW or any rule of the Commission, up to \$1,000 for each offense. Each day the violation continues is a separate and distinct offense.

72 More than 13,000 calls to 911 were not completed because of CenturyLink's failures, each resulting in a violation of RCW 80.36.080 for a potential penalty of \$13 million. Public Counsel advocates for the maximum penalty, but Staff recommends a penalty of \$100 per violation, albeit for violations of all alleged statutes and Commission rules. Additionally, CenturyLink did not notify any of the 15 PSAPs it still served, and Staff seeks \$1,000 for each violation of WAC 480-120-412(2), totaling \$15,000.

73 In any enforcement proceeding, the Commission's goal is to obtain compliance and ensure that services within the Commission's jurisdiction are delivered safely, adequately, and efficiently,⁸⁵ not simply to punish businesses operating in Washington. CenturyLink no longer provides the E911 service at issue in this Docket. Any penalty we assess thus would have no effect on CenturyLink's compliance with the obligations related to 911 service but would encourage the Company's adequate provisioning of other services. We also agree with Public Counsel that CenturyLink and Comtech shared responsibility for providing E911 service during the transition and for the call failures.

74 The Commission's Enforcement Policy provides 11 factors to consider when assessing a penalty for violations of Commission rules, laws, and orders. Of those factors, the following eight are relevant here:

- 1) The seriousness of the violation and the harm to the public;
- 2) Whether the company self-reported the violation;
- 3) Whether the company was cooperative and responsive;
- 4) The number of violations;
- 5) The number of customers affected;

⁸⁵ Docket A-120061, *Enforcement Policy for the Washington Utilities and Transportation Commission* ¶ 15 (Jan. 7, 2013) (Enforcement Policy).

- 6) The likelihood of recurrence;
- 7) The company's past performance regarding compliance, violations, and penalties; and
- 8) The size of the company.⁸⁶

75 *First Factor.* 911 service is a telecommunications company's highest duty, and there is no more serious violation than the inability of Washington residents to make a 911 call in an emergency. Additionally, the outage threatened the health and safety of everyone in Washington.⁸⁷ Staff's Investigation Report documents several reported events that occurred during the outage for which 911 calls could not be completed, including a bank robbery, several medical emergencies, and a vehicular accident.⁸⁸ The impact and harm to the public was significant.

76 *Second Factor.* CenturyLink did not notify or self-report the outage to the Commission or PSAPs. In fact, CenturyLink's witness testified that the Company intentionally remained silent when it recognized potential issues with Comtech's design.

77 *Third Factor.* Staff's Investigation Report documents that it requested CenturyLink to provide the number of Washington customers affected by the December 2018 outage on four separate occasions. On the first three occasions, CenturyLink refused to provide customer data because it claimed no services under the Commission's jurisdiction, including E911 service, were affected.⁸⁹ Although the Company eventually cooperated, it should have provided responsive information to Staff's first request.

78 *Fourth and Fifth Factors.* Parties estimate that between 10,000 and 14,000 911 calls failed during the outage. We adopt Commission Staff's finding, based on its review of CenturyLink's call data,⁹⁰ that approximately 13,000 calls failed.⁹¹ Not only is this a

⁸⁶ Enforcement Policy at ¶ 9.

⁸⁷ Hawkins-Jones, Exh. JHJ-1CT at 13:1-18:18.

⁸⁸ Staff Investigation Report, pp. 13-14.

⁸⁹ Staff Investigation Report, p. 12.

⁹⁰ Webber, Exh. JDW-28C at 2.

⁹¹ With the exception of Public Counsel, which used a call flow estimate, each party's estimated number of failed calls is confidential. The call data in Exh. JDW-28C identifies the error code associated with each failed call, which is confidential. To avoid disclosing confidential information, the Commission rounds the total number of violations down to 13,000.

significant number of violations, but all 7.4 million residents of Washington were at risk during the 49 hours and 32 minutes that service was compromised.

- 79 *Sixth Factor.* CenturyLink is no longer the 911 service provider for Washington state. However, there was no evidence that it attempted to improve its communications with or assistance to Comtech regarding the failures that occurred during the December 2018 outage. Given its compliance history and experience as a provider, CenturyLink should have been vigilant about imparting its 911 expertise during the transition of 911 business to Comtech.
- 80 CenturyLink may not be the current 911 service provider but, given its continued telecommunication activities in Washington, the likelihood that it may contract for services again still exists.⁹² Additionally, given CenturyLink's compliance history described above, the Commission finds it reasonably likely that the Company would repeat these violations.
- 81 *Seventh Factor.* CenturyLink had been a 911 Service provider in Washington state since 2009. In that time, the Commission has had at least four proceedings against CenturyLink for violations of WAC 480-120-412, one of which also included violations of RCW 80.36.080.⁹³ CenturyLink was aware of its obligations under these statutes and rules.
- 82 *Eighth Factor.* With respect to the size of the Company, CenturyLink is not a small telecommunications provider. In the Company's 2022 Annual Report, it claimed a total gross operating revenue of \$17,619,947.63.
- 83 Public Counsel recommends the Commission assess penalties of \$1,000 per violation for each failed 911 call and each of the 15 PSAPs the Company failed to notify of the outage. This would result in a total penalty of \$13,015,000 based upon our finding that CenturyLink committed 13,000 violations of RCW 80.36.080 and 15 violations of WAC 480-120-412(2).
- 84 Staff recommends the Commission assess penalties of \$100 per violation for each failed 911 call, and \$1,000 per violation for each of the 15 PSAPs that CenturyLink failed to notify of the outage. This results in a total penalty of \$1,315,000, based on the violations we find in this Order.

⁹² Because CenturyLink is no longer a 911 service provider there is no compliance program to consider.

⁹³ Hawkins-Jones, Exh. JHJ-3C at 6-7.

85 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.⁹⁴ Public Counsel recommends the Commission assess a penalty equivalent to 74 percent of the Company’s gross operating 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.

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. This amount is significant without being unduly punitive in proportion to the Company’s revenues. It also provides an incentive for the Company to comply with its current and future legal obligations.

FINDINGS AND CONCLUSIONS

- 87 (1) The Commission is an agency of the state of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including telecommunications companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 88 (2) CenturyLink is a public service company regulated by the Commission, providing service as a telecommunications company.
- 89 (3) The statewide 911 service CenturyLink was providing under contract with WMD on December 27, 2018, was a telecommunications service subject to the requirements in RCW 80.36.080, RCW 80.36.220, WAC 480-120-412(2), and WAC 480-120-450(1).
- 90 (4) Pursuant to RCW 80.36.080, telecommunications companies must render prompt, expeditious, and efficient service; keep its facilities, instrumentalities, and equipment in good condition and repair; and ensure that its appliances, instrumentalities, and services are modern, adequate, sufficient, and efficient.
- 91 (5) During the December 2018 outage, CenturyLink committed at least 13,000 violations of RCW 80.36.080 by failing to render prompt, expeditious, and

⁹⁴ Enforcement Policy at ¶15.

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.

- 92 (6) Pursuant RCW 80.36.220, telecommunications companies must receive, exchange, and transmit other telecommunications companies' messages without delay or discrimination, and shall receive and transmit messages for any person.
- 93 (7) The record evidence does not support a finding that CenturyLink violated RCW 80.36.220.
- 94 (8) WAC 480-120-412(2) requires telecommunications companies to notify the Commission and any affected PSAP "as soon as possible" after receiving notice of or detecting any major outage.
- 95 (9) CenturyLink committed 15 violations of WAC 480-120-412(2) by failing to notify the affected PSAPs it served or the Commission of the December 2018 major outage as soon as possible after receiving notice of or detecting the December 2018 major outage.
- 96 (10) WAC 480-120-450(1) requires LECs to provide E911 service.
- 97 (11) The record evidence does not support a finding that CenturyLink violated WAC 480-120-450(1).
- 98 (12) Any public service company that violates any provision of Title 80 RCW or any rule of the Commission may be penalized up to \$1,000 per violation.
- 99 (13) 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.
- 100 (14) The Commission should impose a \$1,000 penalty for each of the 15 violations of WAC 480-120-412(2) for a total of \$15,000.

ORDER

THE COMMISSION ORDERS:

- 101 (1) Public Counsel's Motion to Strike Testimony is GRANTED.

- 102 (2) The Commission assesses a \$1,315,000 penalty against CenturyLink Communications, LLC, due and payable immediately.

Dated at Lacey, Washington, and effective June 9, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

MILTON H. DOUMIT, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

EXHIBIT B

**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)¹ 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.

¹ 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.² We agree with the testimony of Brian Rosen that as part of

² *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.”³ 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.’”⁴ 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.”⁵ Those three witnesses are Martin Valence,⁶ Jeanne Stockman,⁷ and Valerie Lobdell.⁸ 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

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

⁴ CenturyLink Petition ¶ 2.

⁵ *Id.* ¶ 12.

⁶ Exhs. MDV-1TC through MDV-8.

⁷ Exhs. JWS-1TC; SJH-2 through SJH-15C; and JWS 16-C.

⁸ 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 2020.⁹ 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

⁹ 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