

**Exh. SP-24T
Docket UT-171082
Witness: Susie Paul**

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

**QWEST CORPORATION D/B/A
CENTURYLINK QC,**

Respondent.

DOCKET UT-171082

REBUTTAL TESTIMONY OF

Susie Paul

**STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

*Commission Staff's Rebuttal to the Response Testimony
of Philip E. Grate*

July 3, 2018

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LIST OF EXHIBITS

- Exh. SP-25 Excerpt of Hearing Transcript in Docket UT-130477, dated 10/16/13
- Exh. SP-26 Appendix K from Staff’s Investigation Report, filed on 12/8/17, in Docket UT-171082

1
2
3 **I. INTRODUCTION**

4 **Q. Are you the same Susie Paul who provided testimony in this proceeding, Exh.**
5 **SP-1T and related exhibits, on behalf of the Staff of the Washington Utilities**
6 **and Transportation Commission (Commission)?**

7
8 A. Yes.

9
10 **II. PURPOSE OF TESTIMONY**

11 **Q. What is the scope of your testimony?**

12 A. The purpose of my testimony is to rebut the June 1, 2018, testimony of
13 CenturyLink’s State Regulatory Affairs Director, Philip E. Grate. My testimony
14 reaffirms Commission Staff’s (Staff’s) position that the business practices of Qwest
15 Corporation d/b/a CenturyLink QC (“CenturyLink” or “Qwest Corporation” or
16 “Company”) violate state rules related to the extension of residential basic local
17 exchange service and record keeping.

18 **Q. Please summarize your testimony.**

19 A. My testimony rebuts the response testimony presented by Mr. Grate. My testimony
20 explains why CenturyLink is in violation of WAC 480-120-071 for refusing to
21 extend service to a customer, and RCW 80.36.090 for refusing to provide service on
22 demand. My testimony also addresses CenturyLink’s failure to keep Commission-
23 referred complaints for at least two years, in violation of WAC 480-120-166, and the

1 Company's failure to retain and preserve records and reports, in violation of WAC
2 480-120-349.

3 III. DISCUSSION

4 A. Context

5
6
7 **Q. Can you please briefly describe this case?**

8 A. The case is an enforcement proceeding against CenturyLink due to the Company's
9 failure to extend service to a CenturyLink retiree, Mr. Saum.

10
11 **Q. What are the issues that need to be decided in this case?**

12 A. The primary issue in the proceeding is the application of the line extension rule to
13 Mr. Saum's request for service. The other issues concern CenturyLink's record
14 keeping.

15
16 **Q. In his response testimony, CenturyLink's Mr. Grate raises the issue of**
17 **competition, providing evidence of land line loss. Is this relevant to the**
18 **Commission's enforcement action?**

19 A. No. CenturyLink has the right to seek a Commission determination when it believes
20 that a customer is not reasonably entitled to service. This can be accomplished by

1 requesting a declaratory order or a rule exemption. WAC 480-120-015, Exemptions
2 from rules in chapter 480-120 WAC, states:

3 The commission may grant an exemption from the provisions of any rule in
4 this chapter in the same manner and consistent with the standards and
5 according to the procedures set forth in WAC 480-07-110 (Exceptions from
6 and modifications to commission rules).

7 CenturyLink did not request a declaratory order or an exemption from the line
8 extension rule. In an exemption or declaratory order proceeding, competition may be
9 relevant to the Commission's determination of whether an applicant is reasonably
10 entitled to service, but it is not relevant to compliance with the line extension rule.

11
12 **B. Line Extension Rule**

13
14 **Q. Mr. Grate advances several arguments as to why CenturyLink should not be**
15 **required to extend service to Mr. Saum. Primarily, CenturyLink disagrees with**
16 **Staff about the inpretation of the "development exception" in the line extension**
17 **rule. Mr. Grate expresses this disagreement by claiming that Staff has invented**
18 **its own definition of development (Exh. PG-1T at 12:13-15). What is Staff's**
19 **understanding of the definition of development in the rule?**

20 A. Staff's interpretation of a development is exactly as stated in WAC 480-120-071(2),
21 which states that a "development" means "land which is divided or is proposed to be
22 divided for the purpose of disposition into four or more lots, parcels, or units." The
23 rule refers to "land," not to occupied houses. If the line extension rule is interpreted

1 to give companies the option of not serving homes constructed in developments then
2 basically no development, even one within 500 feet of facilities, is reasonably
3 entitled to service.

4

5 **Q. Another argument that Mr. Grate makes is that the AFOR relieves**
6 **CenturyLink from the obligation to extend service to Mr. Saum because**
7 **CenturyLink is to be treated as a competitively classified carrier under the**
8 **AFOR (Exh. PG-1T at 21:20 - 22:2). Do you agree?**

9 A. No. CenturyLink was granted an AFOR in Docket UT-140477, Order 04, in January
10 2014; but the Commission did not waive the line extension rule when it approved the
11 AFOR. The Commission did not waive RCW 80.36.090 either, which requires
12 carriers to furnish service on demand. CenturyLink even provided testimony in the
13 AFOR proceeding that the AFOR would not have any effect on CenturyLink's
14 carrier of last resort obligations.¹

15

16 **Q. Are CLECs subject to RCW 80.36.090?**

17 A. Yes. WAC 480-121-063 lists the statutes and rules that the Commission typically
18 waives for CLECs, and RCW 80.36.090 is not there.

19

20 **Q. Are CLECs subject to WAC 480-120-071, the line extension rule?**

¹ Paul, Exh. SP-25.

1 A. The line extension rule is also *not* in the list of statutes and rules that are waived for
2 CLECs under WAC 480-121-063. A CLEC could be subject to the line extension
3 rule if the company meets the criteria under WAC 480-120-071(1): “This rule
4 applies to local exchange companies receiving federal high-cost universal service
5 support.”

6

7 **Q. Mr. Grate also suggests that CenturyLink should not have to extend service to**
8 **Mr. Saum under the line extension rule because the Company does not receive**
9 **federal high-cost universal service support for voice telephony in the census**
10 **block in which Mr. Saum lives (Exh. PG-1T at 19:19 - 20:3). What is your**
11 **response?**

12 A. I did not address this issue in my investigation. I have read the rule, however, and it
13 states that the rule “applies to local exchange companies receiving federal high-cost
14 universal service support.” I do not see anything in the rule stating that companies
15 are relieved from extending service in certain areas. Staff recently filed a motion for
16 partial summary determination in this proceeding, and CenturyLink’s argument is
17 addressed in the motion in greater detail.

18

19 **C. Obligation To Furnish Service on Demand**

20

21 **Q. Can you please review CenturyLink’s obligation to furnish service on demand?**

22 A. CenturyLink has an obligation to serve customers in its service territory as provided
23 for in RCW 80.36.090, which states, “Every telecommunications company shall,

1 upon reasonable notice, furnish to all persons and corporations who may apply
2 therefor and be reasonably entitled thereto suitable and proper facilities and
3 connections for telephonic communication and furnish telephone service as
4 demanded.”

5
6 **Q. Do you agree that CenturyLink may serve or not serve customers in its service
7 territory at its own discretion?**

8 A. No. CenturyLink has a legal obligation to provide service on demand as required by
9 RCW 80.36.090. Violating the line extension rule by not extending service violates
10 RCW 80.36.090.

11
12 **Q. Does Staff agree with Mr. Grate’s testimony (Exh. PG-1T at 22:8) that it is a
13 question for the Commission to decide when a person is reasonably entitled to
14 facilities?**

15 A. Yes. A telecommunications company should not unilaterally decide who is entitled
16 to service. If a company believes an applicant is not reasonably entitled to service,
17 the company must obtain a determination from the commission that this is the case;
18 otherwise, the company must furnish service.

19
20 **Q. Is Staff concerned that CenturyLink is unilaterally deciding who is entitled to
21 service?**

22 A. Yes. And this is the reason that CenturyLink’s policy of not maintaining records of
23 service denials is so worrisome to Staff. Staff simply cannot investigate the issue of

1 service denials by CenturyLink if the Company does not create and maintain records
2 of service denials.

3

4 **Q. In your direct testimony you discussed indications that CenturyLink is not even**
5 **offering to serve all developments. Mr. Grate addresses your testimony by**
6 **denying that CenturyLink told Mr. Brocker that the “cost of coming in versus**
7 **the opportunity for revenue is not worth it to CenturyLink financially and that**
8 **the Company was opting out” (Exh. PG-1T at 14:12-16). Did you follow-up with**
9 **Mr. Brocker?**

10 A. Yes. I had a telephone conversation with Mr. Brocker on June 21, 2018. I identified
11 myself and reminded Mr. Brocker of our conversation last October related to
12 CenturyLink not providing service in the Applewood subdivision. I read my April 6,
13 2018, testimony to Mr. Brocker, related to CenturyLink’s refusal to install facilities
14 for reasons other than disagreement over terms of a PAHD (Exh. SP-1T at 15:9-14).
15 Mr. Brocker stated my testimony is accurate.

16 I reviewed Mr. Grate’s June 1, 2018, testimony (Exh. PG-1T at 14:12-21)
17 with Mr. Brocker. Mr. Brocker said he remembers his conversation with
18 CenturyLink because, at the time of his conversation with the Company, he
19 understood CenturyLink’s reasoning, that it was not worth it financially to come in,
20 and he went with Comcast. Mr. Brocker told me he does not recall ever receiving a
21 PAHD agreement from CenturyLink for the Applewood subdivision.

22 Mr. Brocker’s recollection of statements made by CenturyLink are certainly
23 similar to statements made to Commission Staff by Mr. Grate in his April 21, 2017,

1 letter to Consumer Protection’s assistant director. In this letter, Mr. Grate states, in
2 part, that requiring 1,000 feet of “free line extension to developments where wireline
3 and wireless services are already available from other providers will waste the
4 ILEC’s very limited (and ever shrinking) resources that could be used for
5 economically viable investments.”²
6

7 **Q. Mr. Grate testifies that Mr. Lipe of Prairie Electric was inaccurate when he**
8 **informed Commission Staff that CenturyLink employee Larry McDonald**
9 **commented that CenturyLink is not dropping lines in smaller developments**
10 **because CenturyLink is losing money (Exh. PG-1T at 15:2-8). Did you follow-up**
11 **with Mr. Lipe?**

12 A. Yes. I contacted Mr. Randy Lipe by telephone on June 26, 2018, identified myself,
13 and reminded him of our previous conversations. Mr. Lipe said he remembers our
14 previous conversations and that he had sent me emails.

15 I reviewed my testimony, and CenturyLink’s response to my testimony (Exh.
16 PG-1T at 15:2-7), with Mr. Lipe. Mr. Lipe told me that he did not misunderstand
17 CenturyLink’s comments and that my testimony is accurate.

18 As in Mr. Brocker’s recollection, Mr. Lipe’s recollection of CenturyLink’s
19 position for not dropping lines in a development is very similar to claims made by
20 Mr. Grate in the April 21, 2017, letter to Commission Staff that is discussed above.

² See Paul, Exh. SP-8 at 10.

1 **Q. CenturyLink testifies that under Staff’s interpretation of the extension of**
2 **service rule, if all twelve lots of this subdivision asked for service, CenturyLink**
3 **would be compelled to deploy its facilities for free at very high cost because the**
4 **subdivision is already built with paved streets, sidewalks, and other buried**
5 **utilities already installed (Exh. PG-1T at 25:14-24). Is it your understanding**
6 **that CenturyLink had an opportunity to drop lines prior to the trenches being**
7 **filled and streets paved in the subdivision?**

8 A. Yes. Prairie Electric sent an email to CenturyLink on April 11, 2016, providing the
9 Company with the utility design for the subdivision.³ CenturyLink had the
10 opportunity at that time to drop lines prior to the sidewalks and streets being paved.

11
12 **D. Retaining and Preserving Records**

13
14 **Q. After reviewing Mr. Grate’s response testimony, do you now agree with the**
15 **Company’s claim that it should not be found in violation of WAC 480-120-349**
16 **for not maintaining service denial records?**

17 A. No. WAC 480-120-349 requires telecommunications companies to keep all records
18 and reports for three years. The records that CenturyLink retains must include
19 service denials if Staff is to have meaningful oversight into whether CenturyLink is
20 meeting its obligation to serve.

21

³ Paul, Exh. SP-17.

1 **E. Commission-Referred Complaints**

2

3 **Q. Mr. Grate explained in his testimony (Exh. PG-1T at 30:1-18), “When**
4 **CenturyLink QC stated that it kept complaint records going back only to ‘early**
5 **January of 2016’ CenturyLink QC was referring to a searchable database of**
6 **both internal and Commission-referred complaints, and where the search**
7 **parameters are categorized by the type of issue complained of as opposed to**
8 **specific customer-identifying information such as phone number, name, or**
9 **address.” Does Mr. Grate’s testimony satisfy you that CenturyLink keeps**
10 **Commission-referred complaints for the required two years?**

11 **A.** No. From his description of the databases CenturyLink uses, it appears that
12 Commission-referred complaints do not reliably appear in search results. When Staff
13 asked for records of service denials, to include consumer complaints,⁴ Mr. Saum’s
14 complaint (opened at the Commission February 3, 2017), at least, should have been
15 supplied. Another Commission-referred complaint, CAS-07460-J1J8H4, likely
16 should have been retrievable as well, because it was originally a service denial.⁵ If
17 Commission-referred complaints are not retrieved in a company search, then,
18 effectively, they are not being retained.

19

⁴ Paul, Exh. SP-23.

⁵ See Paul, Exh. SP-3 at 11; Exh. SP-26 (Appendix K to Investigation Report); Exh. SP-23.

1
2
3 **IV. CONCLUSION**

4 **Q. Has Staff's recommendation to the Commission changed in any way?**

5 A. No. Staff continues to recommend that CenturyLink be assessed a penalty of up to
6 \$351,000, as itemized in my direct testimony. This case, and the penalty that Staff
7 recommends, concerns only the extension of service to Mr. Saum, but I continue to
8 believe that there is a broader problem with service denials by CenturyLink.

9 **Q. Does this conclude your testimony?**

10 A. Yes.