

**BEFORE THE WASHINGTON
UTILITIES & TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Complainant,

v.

CENTURYLINK COMMUNICATIONS, LLC

Respondent.

DOCKET UT-210902

**CROSS-ANSWERING TESTIMONY OF COREY J. DAHL
ON BEHALF OF
WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL
PUBLIC COUNSEL UNIT**

Exhibit CJD-3T

February 17, 2023

CROSS-ANSWERING TESTIMONY OF COREY J. DAHL

EXHIBIT CJD-3T

DOCKET UE-210902

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CROSS-ANSWERING TESTIMONY OF COREY J. DAHL

EXHIBIT CJD-3T

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EXHIBIT LIST

Exhibit CJD-4	CenturyLink Response to Public Counsel Data Request No. 1
Exhibit CJD-5C	CenturyLink Response to Public Counsel Data Request No. 2 with Confidential Attachment PC-2C
Exhibit CJD-6	CenturyLink Response to Public Counsel Data Request No. 3 with Attachment PC-3
Exhibit CJD-7	CenturyLink Response to Public Counsel Data Request No. 9
Exhibit CJD-8	CenturyLink Response to Public Counsel Data Request No. 5

I. INTRODUCTION AND SUMMARY

1 **Q. Are you the same Corey Dahl who filed testimony on November 18, 2022, on**
2 **behalf of the Public Counsel Unit of the Washington Attorney General’s**
3 **Office (Public Counsel)?**

4 A. Yes.

5 **Q. Are you sponsoring any exhibits to your Cross-Answering Testimony?**

6 A. Yes, I am sponsoring the following exhibits:

- 7 • Exhibit CJD-4: CenturyLink Response to Public Counsel Data Request
8 No. 1
- 9 • Exhibit CJD-5C: CenturyLink Response to Public Counsel Data Request
10 No. 2 with Confidential Attachment PC-2C
- 11 • Exhibit CJD-6: CenturyLink Response to Public Counsel Data Request
12 No. 3 with Attachment PC-3
- 13 • Exhibit CJD-7: CenturyLink Response to Public Counsel Data Request
14 No. 9
- 15 • Exhibit CJD-8: CenturyLink Response to Public Counsel Data Request
16 No. 5

17 **Q. What is the purpose of your Cross-Answering Testimony?**

18 A. The purpose of my testimony is to respond to the testimony of CenturyLink
19 Commutations LLC’s (CenturyLink or Company) witness Peter Gose (Exhibit
20 PJG-1T). Additionally, my testimony reaffirms Public Counsel’s recommendation
21 to the Washington Utilities and Transportation Commission (Commission) that I

1 presented in my Revised Response Testimony, Exhibit CJD-1Tr (Response
2 Testimony).

3 **Q. Please summarize your testimony and recommendations.**

4 A. My testimony addresses the requests for mitigation presented by Peter Gose. I
5 address the following issues:

- 6 • Pandemic-related staffing difficulties.
- 7 • The intentionality of the violations.
- 8 • Efforts to prevent disconnections and suspensions.
- 9 • Efforts to correct the violations.
- 10 • Likelihood of recurrence.
- 11 • The necessity of adequate compliance programs.
- 12 • Minimization of the violations' impact.
- 13 • Justification for partial penalty mitigation.

14 After responding to CenturyLink's arguments and reviewing the evidentiary
15 record, I continue to recommend that the Commission impose the full statutory
16 penalty.

II. FULL PENALTIES CONTINUE TO BE APPROPRIATE

17 **Q. Please briefly summarize the Response Testimony of CenturyLink witness**
18 **Peter Gose.**

19 A. Peter Gose is Director of State and Local Government Affairs for Lumen
20 Technologies, the parent company of CenturyLink, and has been employed by the
21 Company since March 2021. In Response Testimony, Gose attempts to rebut the

1 testimony of Commission Staff (Staff) witness Bridgit Feeser and provides the
2 Company's justification as to why the Commission should waive the penalty
3 entirely or reduce the penalty by 90 percent to only \$100 per violation.¹ The
4 testimony also describes the "entirely unintentional nature of the violation and the
5 extraordinary circumstances surrounding CenturyLink's errors" and steps the
6 Company has taken since the violations were discovered.² The Company does not
7 seek to further contest its liability for the violations at issue in this proceeding.³

8 **Q. How does Gose respond to claims that the disconnections and suspensions**
9 **during Governor Inslee's Emergency Proclamation were serious and**
10 **harmful?**

11 A. Feeser states that CenturyLink's disconnection or suspension of 923 customers
12 during the effective dates of Proclamation 20-23.2 (Proclamation) were "both
13 serious and harmful to the public."⁴ In response to Staff's assertion, Gose states
14 that the Company "sincerely regrets that a small fraction of its customers in
15 Washington were inadvertently disconnected."⁵ Gose indicates that pandemic-
16 related staffing changes and shortages placed a serious strain on the Company⁶
17 and made it difficult for the Company to manage all of its regulatory requirements
18 in the 36 states where it operates.

¹ Response Testimony of Peter Gose, Exh. PJG-1T at 3:8–12.

² *Id.* at 3:12–16.

³ *Id.* at 3:16–17.

⁴ Direct Testimony of Bridgit Feeser, Exh. BF-1T at 5:12.

⁵ Gose, Exh. PJG-1T at 4:8–10.

⁶ *Id.* at 4:14–16.

1 **Q. Prior to Gose’s testimony, how has the Company responded to alleged**
2 **violations as a result of disconnecting and suspending customers during the**
3 **pendency of the Proclamation?**

4 A. CenturyLink addressed the alleged violations in response to Staff’s Complaint. In
5 response to Staff’s claim that disconnection or suspending 923 customers during
6 the pendency of the Proclamation was forbidden,⁷ the Company disagreed⁸ and,
7 thus, abdicated responsibility for its actions. The remorseful tone expressed by
8 Gose is a reversal from the Company’s complete denial of responsibility.
9 However, it appears that CenturyLink attempts to diminish its violations even
10 though the Commission has found it liable.

11 **Q. How do you respond to Gose’s testimony regarding staffing impacts on the**
12 **Company’s ability to comply with the Governor’s Proclamation?**

13 A. As I previously testified in this proceeding, the Commission has already rejected
14 CenturyLink’s arguments about pandemic-related personnel issues preventing
15 compliance.⁹ In Docket UT-220397, the Company claimed that “personnel
16 reductions” led to lack of compliance with long-standing Commission rules.¹⁰
17 The Commission rejected that argument and reaffirmed the Company’s duty to
18 maintain compliance, regardless of staffing issues.¹¹ The Commission should
19 similarly reject the Company’s argument in this proceeding. Just as

⁷ Complaint and Notice of Prehearing Conference, ¶ 33 (issued Apr. 6, 2022).

⁸ CenturyLink Response to the Complaint of Comm’n Staff, ¶ 33 (filed Apr. 26, 2022) and Investigation Report Attachments. of Comm’n Staff (Attach. F) (filed Apr. 6, 2022).

⁹ Revised Response Testimony of Corey J. Dahl, Exh. CJD-1Tr at 21:14–22:2.

¹⁰ *Id.* at 21:10–12.

¹¹ *In re Penalty Assessment against CenturyLink*, Docket UT-220397, Order 02: Denying Petition for Review (Nov. 17, 2022).

1 CenturyLink’s duty is to maintain compliance with the Commission’s rules,
2 CenturyLink had a corresponding duty to comply with the Governor’s
3 Proclamation.

4 **Q. Does Gose address the intentionality of CenturyLink’s violations?**

5 A. Yes. Gose incorrectly claims that Feeser’s testimony contradicts itself in declaring
6 that Staff does not find evidence of intentionality yet also believes the violations
7 were intentional.¹² This assertion either misunderstands or misconstrues Feeser’s
8 testimony. The testimony states that Staff would support CenturyLink’s “claims
9 that the disconnections were unintentional” if there was no evidence to suggest
10 intentionality.¹³ Feeser goes on to state that CenturyLink’s belief that “it was
11 allowed to suspend customers’ service despite Proclamation 20-23.2” is evidence
12 of intentionality.¹⁴ Feeser refers to both disconnections *and* suspensions, yet
13 Gose’s testimony conflates the two processes through which customers were
14 prevented from accessing telecom services. Feeser’s testimony does not contradict
15 itself.

16 My Response Testimony also points to the Company’s belief it was
17 allowed to suspend customer service during the pendency of the Proclamation as
18 evidence of intentional action.¹⁵ Indeed, one could deduce from CenturyLink’s
19 belief that it could suspend customers under the Proclamation that the Company

¹² Gose, Exh. PJG-1T at 5:8–12.

¹³ Feeser, Exh. BF-1T at 5:20–21.

¹⁴ *Id.* at 5:21–6:2.

¹⁵ Dahl, Exh. CJD-1Tr at 13:4–12.

1 analyzed the Proclamation to determine what it believed the boundaries were.
2 Because CenturyLink believed it could suspend customers, its actions to suspend
3 customers were intentional. Additionally, CenturyLink set up a manual process
4 through which suspensions and disconnections occurred,¹⁶ making those activities
5 intentional because each action had to be manually completed rather than through
6 an automated process. Furthermore, my Response Testimony points to the
7 Company's repeated commitments before the Commission to follow the
8 Governor's proclamation as long as it was effective as additional evidence to
9 support a finding of intentionality.¹⁷ Public Counsel maintains that this evidence
10 supports issuing the full, recommended penalty.

11 **Q. How do you respond to Gose's assertion that "CenturyLink was**
12 **overwhelmingly successful in preventing involuntary disconnections of**
13 **residential customers" during the Proclamation's effective dates?¹⁸**

14 A. Gose claims that the Company's compliance efforts were highly successful in
15 preventing customer disconnections and suspensions, but a "small number of
16 [suspensions and disconnections] trickled through" the Company's processes that
17 existed at the time.¹⁹ The Company supports claims of overwhelming success in
18 preventing suspensions and disconnections with projections that 96 percent of
19 suspensions²⁰ and 98 percent of disconnections²¹ were prevented during the

¹⁶ Gose, Exh. PJG-1T at 8:8-9.

¹⁷ Dahl, Exh. CJD-1Tr at 14:15-16:3.

¹⁸ Gose, Exh. PJG-1T at 7:1-3.

¹⁹ *Id.* at 8:9-11.

²⁰ *Id.* at 7:12-13.

²¹ Dahl, Exh. CJD-4 at 2 (CenturyLink Response to Public Counsel Data Request No. 1, subpart d).

1 Proclamation's effective period. However, the Company is unable to produce any
2 workpapers or additional analysis to support the projections included in Gose's
3 testimony.²² As a result, it is impossible for any party or the Commission to
4 examine the accuracy of the projections. As a result, the Commission should
5 ignore these projections.

6 Furthermore, the Company's focus on "overwhelming success" in regard
7 to suspensions and disconnections obscures many other violations of the
8 Proclamation. Staff's Investigation Report indicates that CenturyLink
9 disconnected 243 customers from service whose service was suspended before the
10 Proclamation was effective, charged customers late payment fees 39,799 times,
11 and charged customers reconnection fees 1,634 times.²³ While these violations are
12 outside the scope of this proceeding in terms of the penalty in question, they
13 illustrate the overall failure of the Company's compliance with the Proclamation.
14 CenturyLink did not simply violate the Proclamation 923 times. The Company
15 violated the Proclamation more than *40,000 times*, making CenturyLink's non-
16 compliance much more pervasive.

17 Ultimately, the Company has an obligation to meet all of Washington's
18 regulatory mandates, and CenturyLink failed to do so during a global health crisis.

²² Dahl, Exh. CJD-4 at 1 (CenturyLink Response to Public Counsel Data Request No. 1, subpart e).

²³ Dahl, Exh. CJD-1Tr at 27:7-12.

1 **Q. How do you respond to Gose’s testimony about the process by which**
2 **CenturyLink “prevented” disconnections and suspensions?**

3 A. Gose testifies that “the company ran several custom scripts designed to extract
4 potential suspensions and disconnections” at which point billing agents manually
5 removed customers from the disconnections queue.²⁴ Through this manual
6 process, disconnections and suspensions occurred due to “human error”²⁵ because
7 CenturyLink claims billing agents may have “misunderstood the instructions.”²⁶
8 In regard to the “instructions” provided to billing agents and other CenturyLink
9 staff involved in complying with the Proclamation, Public Counsel requested the
10 Company to provide evidence of training to facilitate compliance.²⁷ The
11 Company objected to the request but provided its response.²⁸ The Company’s
12 search for evidence of staff training produced only one brief document relating to
13 custom scripts.²⁹ The document does not reference Washington-specific mandates
14 and does not appear to impress upon its staff the importance of keeping customers
15 connected pursuant to Governor Inslee’s Proclamation.³⁰ The Company did not
16 provide evidence of training for employees completing the automated and manual
17 processes, dates of training, how training was conducted, the number of

²⁴ Gose, Exh. PJG-1T at 8:7–9.

²⁵ *Id.* at 8:10–11.

²⁶ *Id.* at 8:12–13.

²⁷ Dahl, Exh. CJD-5C (CenturyLink Response to Public Counsel Data Request No. 2, subpart d). CenturyLink supplied a confidential response to Public Counsel Data Request No. 2 with incorrectly labeled subparts. CenturyLink’s response to subpart d of Public Counsel’s Data Request No. 2 is provided in the narrative response labeled subpart c and attachment PC-2C.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* (Confidential Attachment PC-2C).

1 employees trained, or the different employee classifications that received training.
2 There is no evidence that CenturyLink provided any meaningful training to its
3 staff, leaving customers vulnerable to involuntary disconnection during the
4 pandemic. This is also additional support for intentional action and, thus, a strong
5 penalty.

6 **Q. How do you respond to CenturyLink’s assertion that it promptly corrected**
7 **the 923 violations?**

8 A. In Response Testimony, Public Counsel concurred with Staff that the Company
9 did not promptly correct the disconnections and suspensions.³¹ My testimony also
10 reiterated that the Company refused to admit that suspensions amount to a
11 violation of the Proclamation.³²

12 Gose testifies that CenturyLink reached out to disconnected customers
13 after learning that customers had been “inadvertently disconnected” and that
14 “10% - 15% of customers contacted reconnected.”³³ As CenturyLink concedes,
15 this customer outreach occurred only after Staff initiated its investigation into the
16 Company’s practices in response to the Proclamation.³⁴ In response to Public
17 Counsel Data Request No. 3, the Company indicates that it sent a “total of 535
18 letters to the residential customers in Washington who had been disconnected
19 during the effective period of the Governor’s Proclamation.”³⁵ The outreach

³¹ Dahl, Exh. CJD-1Tr at 18:7–8.

³² *Id.* at 18:8–10.

³³ Gose, Exh. PJG-1T at 9:3–6.

³⁴ *Id.* at 6:12–15.

³⁵ Dahl, Exh. CJD-6 (CenturyLink Response to Public Counsel Data Request No. 3).

1 letters, according to CenturyLink, were sent to customers who were disconnected
2 during the Proclamation's effective dates. However, the Company does not
3 provide any evidence of corrective actions to remedy the impact on suspended
4 customers. Additionally, the outreach letter sent to disconnected customers does
5 not explain that the Company improperly disconnected their service, and it
6 requires customer action to be reconnected.³⁶ The Company should have
7 proactively reconnected customers who were improperly disconnected. Not only
8 did CenturyLink require customer action to be reconnected, but the Company also
9 requested customers to call them.³⁷ This is both burdensome and absurd given
10 that affected customers were disconnected from telephone services. The
11 Commission should ignore CenturyLink's request for mitigation because its
12 corrective action was both incomplete and inadequate.³⁸

13 **Q. Does Peter Gose comment on the likelihood of recurrence?**

14 A. Yes. Gose asserts that there is no likelihood of recurrence and points to the
15 Commission's order in Docket UT-190209, the complaint against CenturyLink
16 for its 2017 9-1-1 outage.³⁹ The Company claims that the Administrative Law
17 Judge's ruling in the 2017 9-1-1 outage proceeding applies in this case because
18 "there is no chance of recurrence."⁴⁰

³⁶ *Id.* (CenturyLink Response to Public Counsel Data Request No. 3, Attachment PC-3).

³⁷ *Id.*

³⁸ Gose, Exh. PJG-1T at 9:7-8.

³⁹ *Id.* at 10:4-5.

⁴⁰ *Id.* at 10:1-7.

1 **Q. How does Public Counsel respond to CenturyLink’s claims regarding the**
2 **likelihood of recurrence?**

3 A. To this claim, I respond in three parts. First, as I previously testified, it is
4 impossible to predict whether a wide-scale emergency will prompt Washington’s
5 governor to issue a similar proclamation prohibiting utility shutoffs.⁴¹
6 CenturyLink’s response to the likelihood of recurrence, as summarized above,
7 focuses on the possibility of identical circumstances leading to similar action from
8 the State of Washington.⁴² While everyone hopes for the best, it is dubious to
9 claim confidently that we will never face a public health, public safety, or
10 economic crisis that warrants such a necessary, life-saving response from our
11 elected officials.

12 Second, an emergency proclamation is not the only action that might
13 affect the Company’s ability to involuntarily disconnect customers or charge fees.
14 For example, the Commission could alter existing rules or CenturyLink’s
15 Alternative Form of Regulation (AFOR) to that effect. Additionally, the
16 Washington Legislature could pass new statutes that alter utilities’ ability to
17 involuntarily disconnect customers or charge fees. In any of those scenarios, the
18 Company would have an obligation to comply, just as it did under the Governor’s
19 Proclamation. The only means of future compliance the Company offers for a
20 similar event are the processes that ultimately led to the 923 violations at issue in

⁴¹ Dahl, Exh. CJD-1Tr at 19:16–18.

⁴² Gose, Exh. PJG-1T at 10:26–11:1.

1 this proceeding.⁴³ The Commission should have little confidence of a better future
2 outcome.

3 Finally, the Company's history of lackluster compliance provides a
4 general indicator of the likelihood of recurrence. As I previously testified,
5 CenturyLink has been the subject of nine complaints or investigations since
6 2013.⁴⁴ This history of compliance issues supports Commission action to enforce
7 the full, recommended penalty of \$1,000 per violation.⁴⁵

8 **Q. What is Public Counsel's response to Peter Gose's testimony regarding the**
9 **need for compliance programs?**

10 A. Gose testifies that because the Proclamation expired "long ago," there is no
11 reason for a compliance program in that specific instance.⁴⁶ However,
12 CenturyLink cannot rule out that it will have to meet similar regulatory or legal
13 obligations in the future. In the event that the Company's ability to involuntarily
14 disconnect customers or charge fees is changed, the only compliance programs in
15 place are the ones that were in place during the Proclamation's effective dates.⁴⁷ It
16 is clear that CenturyLink's pre-existing safeguards are inadequate to meet any
17 future compliance obligations.

18 Furthermore, the Company incorrectly assesses its need for compliance
19 programs at the time the violations occurred. The Enforcement Policy of the

⁴³ *Id.* at 11:2–6.

⁴⁴ Dahl, Exh. CJD-1Tr at 24:12–14.

⁴⁵ *Id.* at 25:9–13.

⁴⁶ Gose, Exh. PJG-1T at 10:26–11:1.

⁴⁷ *Id.* at 11:1–6.

1 Washington Utilities and Transportation Commission (Enforcement Policy)

2 states:

3 In order to facilitate compliance, the Commission expects
4 companies to have a compliance program in place. A compliance
5 program should include personnel whose stated job responsibilities
6 include understanding and implementing Commission statutory and
7 regulatory requirements. The program also should designate
8 personnel responsible for interacting with the Commission on
9 enforcement matters and should also include systems and programs
10 to detect and correct violations and to report those violations to
11 company management.⁴⁸

12
13 The Enforcement Policy establishes the need for a compliance program
14 and some of the specific components the Commission expects companies to have
15 in place. The anticipated compliance program is not intended to be put in place
16 after a violation, but is supposed to be in place to prevent and proactively detect
17 violations. When asked about what personnel and systems were in place to ensure
18 compliance in line with the Enforcement Policy, the Company stated that it was
19 not “required or expected to have a formal ‘compliance program’ in place” before
20 the violations were discovered.⁴⁹ CenturyLink is incorrect that the Commission
21 only expects compliance programs after a violation occurs and is corrected.⁵⁰

22 Compliance programs, as described in the Enforcement Policy, fall under
23 a company’s basic responsibilities. Maintaining a compliance program is a
24 company responsibility concurrent with complying with all statutory and

⁴⁸ *In re Enforcement Policy of the Wash. Utils. & Transp. Comm’n*, Docket A-120061, Enforcement Policy of WUTC, ¶ 8 (2013).

⁴⁹ Dahl, Exh. CJD-7 (CenturyLink Response to Public Counsel Data Request No. 9).

⁵⁰ *Id.*

1 regulatory requirements⁵¹ and correcting violations when they are uncovered.⁵²

2 Because CenturyLink did not and does not maintain a compliance program the
3 Commission is justified in assessing the maximum penalty in this case.

4 **Q. What other factors does Peter Gose claim warrant penalty mitigation?**

5 A. In testimony, Gose states that the overall size of the Company relative to the
6 number of customers disconnected or suspended during the Proclamation is
7 justification for fully mitigating the penalty.⁵³ Even though the Company claims
8 that it does not intend to suggest the “disconnections were insignificant,”⁵⁴ Gose
9 returns to a constant refrain of the “small portion of disconnects”⁵⁵ throughout the
10 Response Testimony. In fact, Gose’s testimony reiterates the “small” nature of the
11 disconnection problem seven times in 12 page testimony.⁵⁶ By doing so, the
12 Company frames the violations in a way that seeks to minimize the seriousness
13 and harm caused by these disconnections.

14 The Proclamation and the mandates contained therein were intended to
15 respond to the greatest health and economic crisis of our time and save lives in the
16 process. While 923 is not a large share of CenturyLink’s total Washington
17 customers, it *is* a large number of people impacted in the context of the
18 emergency. The Commission should reject CenturyLink’s request for mitigation.

⁵¹ *In re Enforcement Policy of the Wash. Utils. & Transp. Comm’n*, Docket A-120061, Enforcement Policy of WUTC, ¶ 6 (2013).

⁵² *Id.* ¶ 7.

⁵³ Gose, Exh. PJG-1T at 12:1–4.

⁵⁴ *Id.* at 12:9–10.

⁵⁵ *Id.* at 12:12.

⁵⁶ *Id.* at 4:8, 6:14, 8:10, 9:3, 9:18, 12:8, and 12:12.

1 **Q. Are there any other aspects of Gose’s Response Testimony you would like to**
2 **address?**

3 A. Yes. CenturyLink ultimately believes that the Commission should not enforce any
4 penalty, but believes \$100 per violation would be appropriate if the Commission
5 issues a penalty.⁵⁷ There is no justification or foundation for reducing the penalty
6 by 90 percent, from \$1,000 per violation to \$100 per violation. When asked to
7 explain the justification for reducing the penalty by 90 percent, CenturyLink
8 simply states that Gose’s Response Testimony provides justification.⁵⁸ My
9 testimony refutes the Company’s request for mitigation, and the Company
10 provides no additional evidence as to why 90 percent is reasonable or justifiable.
11 Not only should the Commission reject CenturyLink’s request for mitigation, but
12 it should also impose the full statutory penalty for violations.

III. CONCLUSION

13 **Q. Please summarize your testimony.**

14 A. CenturyLink witness Peter Gose responded to the testimony of Bridgit Feeser in
15 an attempt to refute the case for penalties. My testimony addresses Gose’s
16 arguments, including staffing issues, the intentionality of the violations, the
17 Company’s efforts to prevent disconnections and suspensions, the Company’s
18 efforts to correct the violations, likelihood of recurrence, compliance programs,
19 minimization of the violations, and arguments for 90 percent penalty mitigation.

⁵⁷ *Id.* at 13:6–9.

⁵⁸ Dahl, Exh. CJD-8 (CenturyLink Response to Public Counsel Data Request No. 5).

1 **Q. Has your recommendation changed since filing Response Testimony?**

2 A. No. Overwhelming evidence supports penalties of \$1,000 per violation.

3 Furthermore, the Commission should not be persuaded by the Company's

4 arguments for full or 90 percent mitigation. The serious and harmful nature of the

5 violations in question necessitate the highest penalty.

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

7 A. Yes, it does.