

WUTC DOCKET: 181051
EXHIBIT: JHJ-10
ADMIT W/D REJECT

Exh. JHJ-10
Docket UT-181051
Witness: Jacque Hawkins-Jones

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

**CENTURYLINK
COMMUNICATIONS, LLC.,**

Respondent.

DOCKET UT-181051

**EXHIBIT TO
TESTIMONY OF**

JACQUE HAWKINS-JONES

**STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

*Wash. Utils. & Transp. Comm'n v. Centurytel of Inter Island, Inc. d/b/a CenturyLink,
Docket UT-132234, Order 03 (Octo. 20, 2015)*

December 15, 2021

[Service date October 20, 2015]

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	DOCKET UT-132234
)	
Complainant,)	
)	ORDER 03
)	
v.)	
)	
)	FINAL ORDER ACCEPTING AND
CENTURYTEL OF INTER ISLAND,)	ADOPTING SETTLEMENT
INC. D/B/A CENTURLINK,)	AGREEMENT WITH
)	CONDITIONS
Respondent.)	
.....)	

Synopsis: The Commission accepts and adopts the revised Settlement Agreement with three conditions: 1) CenturyLink shall extend an invitation to the Washington Military Department to participate in the drafting of the Washington State Emergency Communications Plan; 2) The parties shall file the San Juan County Emergency Communications Plan and the Washington State Emergency Communications Plan within three months of the effective date of this Order, in accordance with paragraph 30 below, as well as a reasonably detailed register of all meetings, calls, and other ancillary steps taken to develop such plans; and 3) The Commission assesses the full original penalty of \$173,210 against CenturyLink and suspends all but \$50,000 for one year following the Commission’s approval of the Emergency Communications Plans. The suspended penalty (\$123,210) shall be waived after this one year period if CenturyLink is not found to have violated WAC 480-120-412 or the provisions of either emergency communications plan during that time. If the Commission finds that CenturyLink has violated WAC 480-120-412 or the provisions of either emergency communications plan during the one year period, the suspended penalty (\$123,210) shall be imposed.

1 PROCEEDING. On November 5, 2014, the regulatory staff (Staff) of the Washington Utilities and Transportation Commission (Commission) filed a complaint against CenturyTel of Inter Island, Inc. d/b/a CenturyLink (CenturyLink or Company). The complaint alleges CenturyLink committed 15,935 violations of WAC 480-120-412, the

**DOCKET UT-132234
ORDER 03**

PAGE 2

Commission rule related to major outages, and recommended the Commission assess a penalty of up to \$173,210.¹

- 2 **PARTY REPRESENTATIVES.** Lisa Anderl, Senior Associate General Counsel, Seattle, Washington, represents CenturyLink. Lisa Gafken, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section of the Washington Office of the Attorney General (Public Counsel). Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents Staff.²

MEMORANDUM

I. Background and Procedural History

- 3 On November 5, 2013, CenturyLink's voice and data customers in the San Juan Islands experienced a widespread service interruption when a portion of an underwater fiber cable on the Company's telecommunications and broadband system failed as a result of a severed segment that connected facilities on Lopez Island to the Company's main switch and other network elements on San Juan Island.³ As a consequence of the system failure, CenturyLink customers on Orcas, Decatur, and Lopez Islands experienced complete and prolonged disruptions to their local, long distance, and data services (i.e., broadband service) to varying degree. During the pendency of the outage, some local intra-island service was restored on each island, but off-island calling was gradually restored as alternative network arrangements with other entities were implemented.⁴

¹ Commission Staff, with the assistance of outside consultant, Robert Munoz, Undersea Cable Consultants, LLC, prepared an investigation report (Investigation Report) that details the ten day service outage that began on November 5, 2013, when an underwater fiber failure caused extensive local, toll and data service interruption in San Juan County.

² 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 the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See*, RCW 34.05.455.

³ Investigation Report at 9.

⁴ *Id.*

**DOCKET UT-132234
ORDER 03**

PAGE 3

4 During the network disruption, affected customers also were unable to dial 911 for emergency services.⁵ In a press release, CenturyLink instructed customers to call their local fire department in the event of an emergency.⁶ CenturyLink customers on San Juan Island could access 911 but not inter-island or long-distance service.⁷

5 According to Staff’s Investigation Report, at 3:47 a.m. on November 5, 2013, the first day of the network outage, CenturyLink’s automated outage reporting system provided notification of a service disruption, approximately 2 minutes after it began and reported a projected restoration time of 8:00 a.m.⁸ Subsequent to the initial alert, the Company did not officially communicate with Staff again about the actual nature and extent of the outage until November 8, 2013.⁹ Additionally, the San Juan County Department of Emergency Management (County DEM), which coordinates 911 services for the County, did not receive any information from the Company until 3:00 p.m. on the day the outage occurred, nearly 12 hours following the start of the outage.¹⁰ The Director of the County DEM complained to Staff that “he never received clear information from CenturyLink... [and t]he information he did receive was sparse and confusing.”¹¹ According to Duncan Wilson, the Friday Harbor Town Administrator, “[t]he information that was being passed down the line that we could pass on to our citizens was muddled at best.”¹²

6 At the Commission’s public comment hearing on December 9, 2013, small business owners, residents, and public officials also reported receiving insufficient and inconsistent information from CenturyLink during the course of the outage.¹³ As facts surrounding the scope and magnitude of the outage emerged, the Company began issuing

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Complaint, ¶ 4. The alert emanated from an automated public utility commission (PUC) system CenturyLink utilizes for reporting network outages to state regulatory agencies such as the Commission.

⁹ *Id.*

¹⁰ *Id.*, ¶ 5.

¹¹ *Id.*, ¶ 6.

¹² Investigation Report at 20. Although the Friday Harbor Town Administrator is referred to in the Investigation Report as both Mr. Duncan and Duncan Wilson, we’ve confirmed the correct name is Duncan Wilson.

¹³ Complaint, ¶ 7.

**DOCKET UT-132234
ORDER 03**

PAGE 4

daily news releases to the media but didn't begin posting such information locally until the third day of the outage.¹⁴ Even then, CenturyLink's media postings were only in Friday Harbor on San Juan Island, not on any of the other islands.¹⁵ Staff asserted in the complaint that the Company "did not implement any plan that provided for disseminating information to the public and public officials in the outage area or that was effective for this type of outage."¹⁶

7 In addition to the testimony received during the public comment hearing, a number of customers submitted written comments to the Commission expressing their frustrations with what they claimed as the Company's ineffective and disorganized process for disseminating information regarding the outage. Customers noted that "CenturyLink was slow in releasing information about the outage and was completely dependent on media outlets to distribute their press releases,"¹⁷ they asked for the Company to "just give us the information without spin,"¹⁸ and noted that "[t]here is no excuse for lack of a backup [system]."¹⁹

8 Notwithstanding the communications' challenges that arose during the outage, the Company's response to the technical aspects of addressing the severed submarine fiber optic cable and establishing alternative facilities to restore service were notably effectual and particularly resourceful, given the adverse operational and climactic conditions facing its restoral efforts. For example, as Staff's consultant, Mr. Munoz stated:

The cable service was restored in less than 10 days after the break, which is somewhat unusual for shallow water repairs. Shallow water repairs require specialized equipment such as a barge, navigation tools, cable chute, a powered cable reel and experienced repair personnel. A ROV (Remote Operated underwater Vehicle) was also on site to assist with locating the cable break and performing the repair. For all of these tools and resources to be available on such

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Investigation Report at 20 (citing to a comment from Paul Kamin, Manager, Eastsound Water Users Association).

¹⁸ *Id.* (quoting a comment from Sandra Green of the Four Winds Camp).

¹⁹ *Id.* (citing Roger Sherman of Microsoft).

**DOCKET UT-132234
ORDER 03**

PAGE 5

short notice is an achievement worth noting. It usually takes up to a month or more to mobilize the necessary tools and resources for a shallow water repair.²⁰

CenturyLink fully restored service on November 15, 2013.²¹ CenturyLink incurred more than \$2 million repairing the underwater fiber optic cable during this outage.²²

- 9 Since the outage, CenturyLink has obtained and installed two microwave facilities between Friday Harbor (on San Juan Island) and Mt. Constitution and between Mt. Constitution and Bellingham at a cost of more than \$650,000.²³ These digital microwave systems offer redundancy and have sufficient capacity to maintain the Company's intrastate voice and critical services traffic, i.e., 911 and SS7 links, between the islands and the mainland at normal call volumes.²⁴ These facilities act to provide improved diversity and backup for service to San Juan County in addition to serving as a primary path for other Company services.
- 10 On August 19, 2014, Staff submitted its Investigation Report providing background, and the results of its examination, conclusions, and recommendations regarding the technical, operational, and communications-related circumstances encompassing the outage. Following submission of the Investigation Report, on November 5, 2014, the Staff filed a complaint with four causes of action against the Company, alleging:
- Three violations of WAC 480-120-412(2)²⁵ for CenturyLink's failure to notify the Commission directly of a major outage for each day the Company failed to act on November 5, 6, and 7.²⁶

²⁰ Investigation Report at 10-11.

²¹ *Id.* at 11.

²² Joint Testimony, Exh. No. JT-1T at 20:16-17.

²³ Joint Testimony, Exh. No. JT-1T at 20:20-22.

²⁴ Settlement, ¶ 15.

²⁵ WAC 480-120-412(2) provides that "[w]hen a company received notice of or detects a major outage, it must notify the commission and any [public safety answering point] serving the affected area as soon as possible."

²⁶ Investigation Report at 19.

**DOCKET UT-132234
ORDER 03**

PAGE 6

- Ten violations of WAC 480-120-412(3)²⁷ for CenturyLink's failure to provide meaningful periodic updates on the status of the outage for its duration to county and state emergency agencies from November 5 through November 15.²⁸
- One violation of WAC 480-120-412(5)²⁹ for the Company's failure to implement procedures specific to this outage to disseminate information to the public and public officials.³⁰
- Violations of WAC 480-120-412(5) totaling 15,921 for CenturyLink's failure to communicate adequately with its customers during the outage.³¹

Staff's over-all allegations encompass 15,935 violations of WAC 480-120-412, the Major Outages rule, reflecting a combined total recommended penalty of up to \$173,210.³²

11 On June 2, 2015, the Company, Staff, and Public Counsel filed a full Settlement Agreement (Settlement) resolving all issues raised in the Complaint. On June 26, 2015, the parties filed a revised Settlement, which is attached to, and adopted by reference into this Order as Appendix A, and joint testimony in support of the Settlement. Subsequent to the revised Settlement, the Commission issued a bench request on August 11, 2015, seeking information on the length of spectrum licenses granted by the Federal Communications Commission and the Canadian authorities to CenturyLink for its two

²⁷ Pursuant to WAC 480-120-412(3), CenturyLink must notify the county E911 coordinator and the state emergency management authorities when a major outage affects any emergency response facility, and provide periodic updates on the status of the outage. Further, the regulation requires that "[t]he company must coordinate service restoration with the state emergency management authorities if it requests it, and, if requested to do so by the commission, report daily to it the progress of restoration efforts until the company achieves full network recovery."

²⁸ Investigation Report at 20.

²⁹ WAC 480-120-412(5) provides:

Unless heightened security concerns exist, during major outage recovery efforts all companies must implement procedures to disseminate information to the public, public officials, and news media. All companies must provide a statement about the major outage that includes the time, the cause, the general location and approximate number of affected access lines, and the anticipated duration.

³⁰ Complaint, ¶ 20.

³¹ Investigation Report at 21.

³² Complaint, ¶ 26 and Investigation Report at 22.

microwave systems and whether the systems have sufficient capacity for the Company's broadband services in San Juan County.

- 12 The Commission convened a settlement hearing on August 27, 2015. The settlement panel witnesses were: Rayne Pearson and Bob Williamson on behalf of Staff, Stefanie Johnson on behalf of Public Counsel, and Mark Reynolds on behalf of CenturyLink.

II. Settlement Terms and Supporting Testimony

- 13 The Settlement consists of several major provisions governing alleged violations and penalties, development and implementation of communications plans for San Juan County and statewide, prospective technical and maintenance practices, and improvements to problematic service areas in other Washington locations. CenturyLink, Staff, and Public Counsel all agree that the Settlement fully resolves the issues raised in the Commission's complaint, and that the filing is in the public interest and should be accepted by the Commission. Each major provision of the Settlement is summarized below.

- 14 First, CenturyLink admits to notification violations of WAC 480-120-412, and the Company agrees to pay a penalty of \$50,000.³³ Although CenturyLink disputes some of the contentions of Staff's Investigation Report and the allegations set forth in the complaint, the Company concedes to some of the assertions and specifically accepts the terms of the agreement as a fair resolution of the outstanding issues.³⁴ Public Counsel supports the Company facing a monetary penalty for its alleged communications failures.³⁵ It maintains that the \$50,000 penalty, combined with the additional expense of repairs within six designated, rural areas (described below), at a total of approximately \$100,000, "is a reasonable compromise."³⁶

- 15 The parties to the Settlement point out that the penalty is in addition to the \$2 million in repair costs the Company has already incurred to repair the submarine fiber optic cable, over \$650,000 expended to obtain and install the microwave facilities, and \$271,487 in

³³ Settlement, ¶¶ 11 and 12. Staff originally recommended a penalty of up to \$173,210. Investigation Report at 22.

³⁴ Joint Testimony, Exh. No. JT-1T at 20:8-9.

³⁵ Joint Testimony, Exh. No. JT-1T at 26:15-16.

³⁶ *Id.*, at 26:16-20.

**DOCKET UT-132234
ORDER 03**

PAGE 8

customer credits provided to subscribers in the San Juan Islands.³⁷ Public Counsel indicated that the amount of \$271,487 in credits provided to customers was more than twice the \$111,925 CenturyLink was required to credit to customers.³⁸

16 Second, the Settlement establishes a framework for development and implementation of two Emergency Communications Plans, one to address San Juan County and the other to address the entire state.³⁹ For the San Juan County emergency communications plan, the Company commits to meet with Staff and Public Counsel, as well as any representatives of the County DEM and the Washington Military Department that wish to attend, to formulate an emergency communications plan for San Juan County that is responsive to the requirements in WAC 480-120-412.⁴⁰ The Settlement provides for one meeting to take place in San Juan County within six months of this Order's effective date, with Staff initiating, coordinating, and facilitating the meetings.⁴¹ The Company agrees to produce an emergency communications plan for San Juan County within eight months after this Order's effective date.⁴² Public Counsel lauded this development, stating that "[t]his new county-specific plan should address the shortcomings of CenturyLink's communications with the San Juan County 911 coordinator in future outages."⁴³

17 Similarly, CenturyLink commits to working with Staff and Public Counsel to develop a statewide emergency communications plan to address any future Washington outages consistent with WAC 480-120-412.⁴⁴ The Settlement provides for one meeting to take place at the Commission's headquarters in Olympia within six months of this Order's effective date, with Staff initiating, coordinating, and facilitating the meetings.⁴⁵ The

³⁷ *Id.*, at 20:16-21:4.

³⁸ *Id.*, at 27:6-7 and n.4. Public Counsel asserts that the Company was only required to credit customers for the ten days of lost local exchange services, while CenturyLink customers actually received credits for fifteen days for all services impacted, not just local exchange services. *Id.*

³⁹ Collectively the Washington State Emergency Communications Plan and the San Juan County Emergency Communications Plan will be referred to in this Order as the Emergency Communications Plans.

⁴⁰ Settlement, ¶ 13.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Joint Testimony, Exh. No. JT-1T at 25:17-19.

⁴⁴ Settlement, ¶ 14.

⁴⁵ *Id.*

**DOCKET UT-132234
ORDER 03**

PAGE 9

Company agrees to produce an emergency communications plan for Washington within eight months of this Order's effective date.⁴⁶ Staff argues that having a statewide plan "should ensure that information is more quickly and widely disseminated to CenturyLink customers in the event of an outage."⁴⁷ Public Counsel asserts "that information from CenturyLink to its customers and public officials [should] be swift, efficient, and effective."⁴⁸

18 The third provision of the Settlement pertains to precautionary measures to be implemented to reduce the potential for future submarine fiber optic system failures. Specifically, by virtue of a series of mandatory inspection and reporting obligations, CenturyLink is required to submit annual inspection plans for the San Juan Submarine Facilities to the Commission, by November 30 of each year, reporting with specificity on its exact plans for conducting inspections of the submarine fiber optic system for the subsequent calendar year.⁴⁹ The inspection plans will contain the locations of the facilities to be inspected and the precise frequency and manner in which the inspections will be conducted.⁵⁰ Subsequent to each year's inspections, the Company agrees to report by March 31 of the following year, the results of all inspections and maintenance performed during the preceding calendar year for both underwater fiber cable and the microwave systems.⁵¹ As to the underwater fiber cable inspections, CenturyLink's report will:

- Identify the baseline measurements of decibel and signal strength;
- Identify any loss of decibel or signal strength; and
- Describe ongoing monitoring for each underwater facility.

⁴⁶ *Id.*

⁴⁷ Joint Testimony, Exh. No. JT-1T at 13:4-6.

⁴⁸ *Id.*, at 26:10-11.

⁴⁹ Settlement, ¶ 16(1). The term "San Juan Submarine Facilities" is defined within the Settlement and includes sections of the cable running from Friday Harbor on San Juan Island to Lopez Island, from Lopez Island to Anacortes on the mainland, and from Blakely Island to Orcas Island. Joint Testimony, Exh. No. JT-1T at 7:11-14.

⁵⁰ Settlement, ¶ 16(1).

⁵¹ *Id.*, ¶ 16(2).

**DOCKET UT-132234
ORDER 03**

PAGE 10

- 19 For the microwave systems inspections and maintenance reports, CenturyLink will state whether it followed its current Antenna and Tower Routine Inspection.⁵² Further, if the Company makes changes to its Antenna and Tower Routine Inspection, CenturyLink will provide a copy of the new document to the Commission on or before March 31 of each year.⁵³ All of the inspection and reporting commitments will continue in full force and effect through March 31, 2025.⁵⁴
- 20 CenturyLink will report to the Commission, by March 31 of each year, the ability of both microwave systems to provide redundant capacity between the various island customers to the host switch in Friday Harbor and the redundant capacity between Friday Harbor and Bellingham, Washington.⁵⁵ The Company will also affirm that the microwave systems have sufficient capacity to maintain CenturyLink’s intrastate voice and critical services traffic on a diverse route between the islands and the mainland at normal call volumes.⁵⁶ CenturyLink agrees to petition the Commission for approval of any plan to reduce or eliminate the redundant service between the islands and from the islands to the mainland.⁵⁷ The Settlement ensures the Company will maintain the microwave redundancies over the next ten years.⁵⁸ As Staff states, the various reporting requirements contained within the Settlement “ensure reasonable inspections and monitoring, which mitigates the possibility of another total failure of telecommunications in the San Juan Islands.”⁵⁹
- 21 The final major provision of the Settlement pertains to commitments by CenturyLink to improve facilities in a number of areas of Washington, other than San Juan County, that are reported to suffer from recurring service and maintenance difficulties. Specifically, the Company commits to replace the facilities in six counties in an effort to improve

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Joint Testimony, Exh. No. JT-1T at 9:4.

⁵⁵ Settlement, ¶ 16(3).

⁵⁶ *Id.* The Company agrees to provide information to Staff regarding the microwave systems’ status on request.

⁵⁷ *Id.*, ¶ 16(4)

⁵⁸ Joint Testimony, Exh. No. JT-1T at 18:2-3. Settlement, ¶ 16(4) provides: “CenturyLink will petition the Commission for approval of any company plans to reduce or eliminate redundant service between the islands and from the islands to the mainland.”

⁵⁹ Joint Testimony, Exh. No. JT-1T at 19:1-2.

service quality.⁶⁰ Staff identified the locations for the facility replacement based on consumer complaints in Enumclaw, King County; Colville, Stevens County; Tacoma, Pierce County; Keller, Ferry County; Longview, Cowlitz County; and Walla Walla, Walla Walla County.⁶¹ Pursuant to this provision of the Settlement, CenturyLink agrees to complete the work by December 31, 2015, and the Company will notify the Commission upon completion.⁶²

- 22 Staff urges the Commission to approve the Settlement, stating that CenturyLink “has committed to making improvements not only to its infrastructure, but also to its internal processes and procedures.”⁶³ Staff also contends that the Settlement results in service quality improvements in rural areas of Washington that the Company otherwise would not have made.⁶⁴

III. Commission Determination

- 23 We fully recognize that modern telecommunications and broadband services are essential contributions to effective social welfare and the lifeblood of efficient economies. These services negate and eliminate the effect of time and space between people, communities, and businesses by facilitating essential and efficient interactions. Telecommunications and broadband-based network services also enable remote healthcare, distance education, and access to financial capital and the arts to the point where less urban areas such as San Juan County are more attractive now, than ever before, as a place to live and conduct business.

- 24 The importance of telecommunications and broadband to the communities of San Juan County, long defined by their distance and isolation from more urban areas of Washington, is exemplified by the need for complete and unmitigated access to connectivity and information. Indeed, our record is replete with comment from consumers and businesses in San Juan County that underwent tremendous hardship

⁶⁰ Settlement, ¶ 17.

⁶¹ *Id.*

⁶² *Id.*, ¶ 18.

⁶³ Joint Testimony, Exh. No. JT-1T at 13:21-23.

⁶⁴ *Id.* at 14:1-2. Staff notes that the six locations were selected based on residential complaints received by the Commission. *Id.* at 14:14-15.

**DOCKET UT-132234
ORDER 03**

PAGE 12

during the pendency of the outage. We heard firsthand about the absence of telephone, computers, internet, mobile phones, and other communications means that produced enormous adversity to the community.⁶⁵ The distress expressed by government, public safety, businesses and consumers demonstrated the absolute necessity of uninterrupted access to robust technology and communications capability. Our record clearly demonstrates that a lack of access to such connectivity, whether of short or extended duration, can have a direct and severe impact on such communities such that they run the risk of being marginalized.

25 It is against this backdrop that we weigh the implications of the outage against the proposed Settlement's terms. We must exercise our judgment in assessing the proposed financial, operational, and technical provisions of the agreement as remedies or conditions necessary to reasonably prevent a recurrence of an outage of this scope and magnitude in the San Juan Islands. Accordingly, our evaluation must "determine whether a proposed settlement meets all pertinent legal and policy standards."⁶⁶ Settlements may be approved "when doing so is lawful, when the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the [C]ommission."⁶⁷

⁶⁵ We note that a number of comments by individuals and businesses point to the impact of the outage on services purchased by such consumers from other service providers such as unaffiliated cellphone and internet service providers. To the extent those other providers utilized CenturyLink's wholesale services, in part, as a means to provide their own retail telecommunications or broadband services, these carriers and their customers were also impaired to some degree. However, we also note that other carrier's decisions to utilize CenturyLink's wholesale service arrangements are done so by their own choice including the risk that the services may experience outages from time to time. The Commission specifically points out that unaffiliated carriers bear their own responsibility to construct, maintain, or procure network facilities or services used in the provision of their retail service offerings to consumers, including those consumers in San Juan County. Ultimately it is their responsibility, not CenturyLink's, to ensure the reliability and redundancy of their own network arrangements necessary for the provision of their retail service offerings. Despite the additional network arrangements CenturyLink undertook to improve reliability and redundancy pursuant to the Settlement, we assume and strongly encourage each unaffiliated service provider to undertake their own assessment of their own network vulnerabilities and make all necessary changes to reduce or eliminate the effects of future outages should they arise.

⁶⁶ WAC 480-07-740.

⁶⁷ WAC 480-07-750(1).

**DOCKET UT-132234
ORDER 03**

PAGE 13

- 26 Specifically, the Commission must reach one of three possible results:
- Accept the proposed settlement without condition.
 - Accept the proposed settlement subject to one or more conditions.
 - Reject the proposed settlement.⁶⁸
- 27 The Commission often encourages the parties to narrow the issues in an adjudication and has favored settlement agreements in past cases. Here, the parties have arrived at a settlement that addresses the inadequacies of some aspects of the Company's response to the outage, proposed measures intended to reduce or eliminate prospects for a recurrence of an outage of this scope and magnitude, and acknowledged deployment of new transmission facilities intended to improve reliability and redundancy, among several other provisions. We acknowledge that the parties have worked diligently to reach agreement on a range of measures and accept, subject to the discussion and modifications set forth below, the Settlement as a reasonable and appropriate resolution of this proceeding.
- 28 We approve, without modification, Sections B (Violations), F (Technical Agreements), and G (Service Quality Repairs) of the Settlement which pertain to CenturyLink's admissions of violations of Commission rules, the technical agreements, and service quality repairs, respectively. We modify Sections C (Penalty), D (Emergency Communications Plan for San Juan County, and E (Washington Communications Plan). Our modifications are discussed below.
- 29 We believe the Settlement provisions regarding the penalty amount and the communications plans are, when taken together, insufficient to address the full impact the outage and lack of information about the outage had on thousands of residential and commercial customers who lost telecommunications services for up to ten days. During the outage, residential customers were, in varying degree, without access to telephone, internet, and even basic 911 emergency services for extended and varying lengths of time. We also note that commercial customers lost valuable business calls from patrons. An overriding theme of the public input during this proceeding was the perceived, even demonstrated, inadequacy and insufficient ability of the Company to effectively convey to consumers, government and public safety officials, and the media about specific aspects of the outage. Simply stated, the public expressed sustained indignation that

⁶⁸ WAC 480-07-750(2).

**DOCKET UT-132234
ORDER 03**

PAGE 14

CenturyLink was slow to respond in efforts to inform consumers, media, and governmental entities about various aspects of the outage, including the scope of its effect, expected duration, or restoration efforts. We acknowledge that CenturyLink believes its communications efforts were more earnest and well-intentioned than perceived by the public and others, and accept its assurances that the Company has already implemented improved processes to ameliorate such criticisms in the future by virtue of its own internal actions that will complement the Settlement's provisions relating to the establishment of Emergency Communications Plans. Nevertheless, we are concerned that too much time has elapsed, nearly two years, since the outage occurred and are bothered by the additional eight month timeframe allowed for submission and implementation of appropriate plans which may be necessary in the event of future outages. We are also concerned with the lack of detail regarding such plans and the process, if any, the parties intend for appropriate vetting and approval of the plans by the Commission.

30 We find Sections D and E are rather vague with respect to the process and timeframes the parties envision for development and approval of the Emergency Communications Plans. We reduce from eight to three months the timeframe set forth in Sections D and E for the development and submission of acceptable Emergency Communications Plans. Absent this modification, the Emergency Communications Plans would likely not be approved until nearly three years after the outage. When questioned at hearing, the parties were unable to articulate why the eight month time frame was selected and CenturyLink's witness conceded that the plans could be drafted and submitted within a shorter time frame.⁶⁹ We direct the settling parties to file the fully-developed Emergency Communications Plans discussed in Sections D and E of the Settlement within three months of the effective date of this Order. This docket shall remain open for receipt of

⁶⁹ Commissioner Jones: (...) "So how did you come up with eight months instead of two, three, four months?"

Ms. Pearson: Actually, I'm going to defer to Mr. Reynolds on this one.

Commissioner Jones: Mr. Reynolds?

Mr. Reynolds: Stretching my memory here. I think it was a negotiated time frame. To the extent that, you know, we want to work with Staff on a sooner meeting, I don't think we are opposed to that. It's the numbers that came out in the settlement negotiations, so I don't think there is anything magical about it.

DOCKET UT-132234
ORDER 03

PAGE 15

the plans, which will be discussed and either approved or rejected at a Commission open meeting.

- 31 Due to the lack of clarity and nebulosity of the exact process and roles that the parties envisioned in the development of the communications plans, we also modify Sections D and E to require the parties to submit, contemporaneously with the filing of the Emergency Communications Plans, a reasonably detailed register of all meetings, calls, and other ancillary steps taken to develop such plans. The filings should include dates, times, locations, and the identity and titles of all individuals involved with specific actions or events associated with the development of each plan. The Commission intends to review and assess the adequacy of the parties' efforts to develop and implement sufficiently robust Emergency Communications Plans.
- 32 We also modify Section E of the Settlement to require the Company and other parties to ensure that the Washington Military Department is consulted with or otherwise included in the meetings and other efforts that will take place in formulating the Washington State Communications Plan. Section D of the Settlement provides for inclusion of the Washington Military Department for the development of the San Juan County emergency communications plan, but for some, unexplained reason, not for the statewide plan set forth in Section E. We are confused by this oversight. Accordingly, we direct the parties to extend an invitation to the Washington Military Department to participate in meetings and drafting of the statewide plan.
- 33 Finally, the Commission modifies Section C of the Settlement pertaining to the penalty amount for CenturyLink's violation of Commission rules. Specifically, the Commission imposes the full fine of \$173,210 originally recommended by Staff but suspends all but \$50,000. We acknowledge the Company has spent over \$2 million to repair the submarine fiber cable break and invested another \$650,000 to obtain and install redundant microwave systems to provide a backup communications route should the San Juan Island connections again become imperiled. CenturyLink has also provided credits in the amount of \$241,487 to its affected customers above and beyond what might be normally provided for a ten-day outage. Finally, we also recognize that the Company has committed to installing new facilities in six rural areas of the state at an estimated cost of approximately \$100,000. Thus, prior to assessment of any penalty, the Company has and will incur nearly \$3 million in new investments and customer credits as a consequence of its own efforts and certain provisions of the Settlement.

**DOCKET UT-132234
ORDER 03**

PAGE 16

- 34 Because of the Company's combined outlay to resolve the outage quickly and make investments in redundant systems to ensure more reliable service, the Commission is willing to suspend application of the full penalty resulting in a reduction to \$50,000. The remainder of the penalty amount, \$123,210, is suspended for a one year period following Commission review and approval of the Emergency Communications Plans. The suspended amount will be waived in full if, at the end of the one year period following Commission approval of the Emergency Communications Plans, CenturyLink has complied with WAC 480-120-412 and all details of the plans. In the alternative, should the Commission determine during the one year suspension period that the Company has violated WAC 480-120-412 or any provision of the approved Emergency Communications Plans, the suspension may be lifted, thereby subjecting CenturyLink to full imposition of the remaining penalty amount.
- 35 We find that the Settlement as conditioned above is lawful, supported by the evidentiary record, and in the public interest. We accept and approve the Settlement as conditioned in paragraphs 30 through 34.

FINDINGS OF FACT

- 36 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:
- 37 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including telecommunications companies.
- 38 (2) CenturyLink provides telecommunications services including, but not limited to, basic local exchange service to the public for compensation within the state of Washington.
- 39 (3) On November 5, 2013, CenturyLink customers on the San Juan Islands experienced a loss of toll calls, data communications, and local calls due to a break in an underwater fiber cable connecting Lopez Island with the main switch

**DOCKET UT-132234
ORDER 03**

PAGE 17

on San Juan Island. The outage affected 15,921 access lines, and CenturyLink fully restored service on November 15, 2013.

- 40 (4) Staff brought a complaint against CenturyLink on November 5, 2014, alleging 15,935 violations of WAC 480-120-412, the Major Outages rule, and recommending a penalty of up to \$173,210.
- 41 (5) On June 2, 2015, the Company, Staff, and Public Counsel filed a full Settlement Agreement (Settlement). On June 26, 2015, the parties filed a revised Settlement which is attached to, and adopted by reference into this Order, and supporting Joint Testimony.
- 42 (6) The Settlement provides for, among others, (1) CenturyLink's admission of violations of WAC 480-120-412 in connection with the San Juan Islands major outage and agreeing to pay a penalty of \$50,000; (2) the development of a San Juan County Emergency Communication Plan within eight months from the effective date of this Order; (3) the development of a Washington State Emergency Communications Plan, in collaboration with Staff and Public Counsel, within eight months from the effective date of this Order; (4) annual inspection and maintenance plans submitted to the Commission for the San Juan Submarine Facilities, the underwater cable, and microwave facilities; (5) CenturyLink agrees to petition the Commission for approval of any plans to reduce or eliminate redundant services between the islands and between the islands and the mainland; and (6) facility replacements in six counties around the state, to be completed by December 31, 2015.
- 43 (7) The Commission convened a settlement hearing on August 27, 2015.

CONCLUSIONS OF LAW

44 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 45 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.

**DOCKET UT-132234
ORDER 03**

PAGE 18

- 46 (2) The Commission will approve a settlement that is lawful, supported by the evidentiary record, and in the public interest. The Commission may approve a settlement, approve with conditions, or reject a settlement.
- 47 (3) The Commission concludes that the Washington Military Department should be fully included in all meetings and discussions regarding the Washington State emergency communications plan.
- 48 (4) Contemporaneously with the filing of the Emergency Communications Plans, the parties shall submit a document which provides a sufficiently detailed account of the meetings, calls, and other efforts undertaken by the parties to develop each plan.
- 49 (5) While the Settlement provides the parties with eight months to draft two Emergency Communications Plans, the evidentiary record does not support this lengthy delay. The Company stated it is not opposed to working with Staff on a quicker time frame. The Commission concludes that the parties should file the Emergency Communications Plans with the Commission within three months of the effective date of this Order.
- 50 (6) The Commission will approve or reject the Emergency Communications Plans at an open meeting.
- 51 (7) Based on CenturyLink's investment to-date, the Commission concludes that the public interest is best served by imposing the original penalty of \$173,210 in full and suspending all but \$50,000 of the penalty for one year following the Commission's approval of the Emergency Communications Plans. The suspended amount will be waived completely if, during this one year period, CenturyLink complies with WAC 480-120-412 and the details of the approved Emergency Communications Plans. Should the Commission determine, during this one year suspension, that the Company has again violated WAC 480-120-412 or the provisions of the approved emergency communications plan, the suspension will be lifted, and the Commission will impose the remaining \$123,210.

ORDER

THE COMMISSION ORDERS THAT:

- 52 (1) The revised Settlement Agreement, which is attached to, and adopted by reference into this Order, and entered into by CenturyTel of Inter Island, Inc. d/b/a CenturyLink (CenturyLink), the Commission's regulatory staff (Staff), and the Public Counsel Section of the Washington Office of the Attorney General (Public Counsel), is accepted and adopted with the conditions set forth in paragraphs 30 through 34 above.
- 53 (2) CenturyLink, Staff, and Public Counsel will file the San Juan County Emergency Communications Plan and the Washington State Emergency Communications Plan in this docket within three months of the effective date of this Order. At this same time, CenturyLink will file a reasonably detailed register of all meetings, calls, and other ancillary steps taken to develop such plans.
- 54 (3) CenturyLink is assessed a penalty in the amount of \$173,210, and the Company shall remit \$50,000 of the penalty to the Commission within thirty days of the effective date of this Order.
- 55 (4) The remaining \$123,210 penalty will be suspended for one year following the Commission's approval of both Emergency Communications Plans. If, during that annum, the Commission has not found CenturyLink to have violated either WAC 480-120-412 or the details of the emergency communications plan, the \$123,210 will be waived. Conversely, if the Commission finds the Company has violated WAC 480-120-412 or the details of the emergency communications plan during the year following Commission approval of the Emergency Communications Plans, the Commission will impose the remaining \$123,210 penalty.

**DOCKET UT-132234
ORDER 03**

PAGE 20

56 (5) The Commission retains jurisdiction to effectuate the terms of this Final Order.

Dated at Olympia, Washington, and effective October 20, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. Any stipulating party may within 10 days reject the condition(s) proposed in this order, pursuant to WAC 480-07-750(2), in which case this order will become void and the matter set for hearing. If this order is not voided by rejection of the condition(s), judicial review may be available. Administrative relief from the terms of this order 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 or RCW 81.04.200 and WAC 480-07-870.