

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

QWEST CORPORATION D/B/A
CENTURYLINK QC

Respondent.

DOCKET NO. UT-190209

BRIEF OF PUBLIC COUNSEL

April 30, 2020

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I. INTRODUCTION

1. On July 12, 2017, Washington’s 911 system suffered a partial outage for three hours that “severely disrupted emergency and public safety communications.”¹ Staff of the Washington Utilities and Transportation Commission (“Commission”) conducted an investigation to determine whether CenturyLink Communications LLC (“CenturyLink” or “Company”) and its vendor, Intrado Life and Safety, Inc. (formerly, West Safety Services, Inc.) (“Intrado”), complied with state law and Commission rules during the outage. Staff found that CenturyLink committed 222 violations of RCW 80.36.080 and WAC 480-120-450(1) and recommended a maximum penalty of \$222,000 for the violations. Public Counsel submits this brief in support of Staff’s findings and recommends that the Commission impose the maximum recommended penalty on CenturyLink. The Commission should disregard CenturyLink’s misleading interpretations of state law and Commission rule, and dismiss Intrado’s arguments intended to scare the Commission from exercising its oversight of Washington’s critical 911 service.

II. BACKGROUND

A. Description of 911 Outage

2. At the time of the July 2017 outage, CenturyLink, Washington’s major Incumbent Local Exchange Carrier (ILEC), was under contract with the Washington State Military Department (WMD) to provide statewide 911 services. CenturyLink was, therefore, responsible for ensuring its network delivered 911 calls to the appropriate public safety answering points (PSAPs).

¹ Michael L. Turcott, Exh. MLT-2 at 4 (Commission Investigative Report CenturyLink, April 2019).
PUBLIC COUNSEL’S BRIEF
DOCKET UT-190209

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3. CenturyLink contracted with Intrado, a third party vendor, to provide components of Washington’s 911 system. Intrado operates two Emergency Communications Management Centers (ECMCs) located in Colorado and Florida, which route 911 calls to the appropriate PSAPs.² CenturyLink, as the regulated company, was responsible for Intrado’s actions and management of its obligations to deliver 911 services to Washington.³

4. On the day of the outage, Intrado was migrating a portion of Washington’s 911 traffic to a new switch in the Colorado ECMC as part of a larger upgrade project.⁴ Part of the migration process involved exporting a database containing Ingress Trunk Group (ITG) flags that inform the ECMC where a 911 call originated and the default PSAP associated with that call.⁵ Although Intrado took efforts to minimize potential negative impacts on the 911 system,⁶ a portion of the ITG flags did not upload correctly to the new switch during the database transfer.⁷ Calls to 911 without ITG flags were rejected by the Colorado ECMC.⁸

5. No PSAP suffered a total loss of 911 service,⁹ but the outage affected 29 western Washington PSAPs. Nineteen of those PSAPs experienced failed 911 calls,¹⁰ and 222 out of

² Turcott, Exh. MLT-2 at 4.

³ See *Wash. Utils. And Transp. Comm’n v. Qwest Corp.*, Docket UT-140597, Order 03: Final Order Approving Settlement Agreement, ¶ 25 (Feb. 22, 2016) (“CenturyLink 2014 911 Outage Order”).

What is important for our review is to ensure that CenturyLink has adequate management and oversight systems in place to both reduce the risks of such errors occurring and also to have systems in place to provide awareness of outages and to restore 911 service as rapidly as possible. This applies both to the Company itself and to any contractor or vendor such as Intrado. In other words, we require regulated companies to implement measures that are reasonable under the circumstances to minimize service disruptions and other violations of Commission requirements.

⁴ Response Testimony of Random Mills, Exh. RM-1T at 3.

⁵ *Id.*

⁶ *Id.* at 8.

⁷ Mills, Exh. RM-1T at 3.

⁸ *Id.*

⁹ *Id.* at 5.

¹⁰ Turcott, Exh. MLT-2 at 8.

1,405 emergency calls (16 percent) failed to reach a PSAP call center.¹¹ Eight of the failed calls were from unique wireline telephone numbers, and 140 were from unique wireless numbers.¹² CenturyLink notified 28 of the 29 affected PSAPs more than five hours after the outage was restored and notified one PSAP 23 days after the outage was restored.¹³ Commission Staff were notified of the incident through an email from the WMD the afternoon of the outage, but did not receive notification from CenturyLink directly until two days later.¹⁴

B. Staff Investigation and Findings

6. Staff investigated the outage and determined that residents were denied access to vital emergency and public safety services during the nearly three-hour outage and found that “CenturyLink’s failure deprived Washingtonians of the most basic telecommunications service, which is the ability to dial 911 and reach emergency services.”¹⁵ Staff concluded that CenturyLink, by failing to deliver 911 calls during the outage, violated RCW 80.36.080, which requires prompt, adequate, sufficient, and efficient services and facilities, and WAC 480-120-450(1), which requires LECs to provide enhanced 911 service.¹⁶ Staff considered each failed 911 call a separate violation and recommended the maximum penalty of \$222,000, or \$1000 per violation.¹⁷

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 9.

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 10.

¹⁶ *Id.*

¹⁷ *Id.* at 5.

III. CENTURYLINK FAILED TO PROVIDE SAFE, ADEQUATE, AND EFFICIENT 911 SERVICE IN VIOLATION OF STATE LAW AND COMMISSION RULE

7. In 2015, CenturyLink was similarly charged with violating RCW 80.36.080 and WAC 480-12-450 for a six-hour outage of its 911 service in 2014. In its Final Order, the Commission stated, “[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”¹⁸ and found that the unavailability of 911 service was a “serious violation of applicable law.”¹⁹

8. In this instance, CenturyLink was the statewide provider of 911 service responsible for ensuring Washington residents could successfully contact vital emergency services. While the 911 outage at issue here was not as extensive as CenturyLink’s 2014 outage, the threat posed to the health, safety, and welfare of each person who tried and failed to call 911 during the outage was no less severe. Public Counsel, therefore, agrees with Staff’s finding that CenturyLink’s 911 outage in July of 2017 was a violation of RCW 80.36.080 and WAC 480-12-450.

A. The Commission Should Disregard CenturyLink’s Misleading Interpretations of RCW 80.36.080 and 80.04.380

9. CenturyLink asserts that the outage did not violate RCW 80.36.080 because Staff did not identify any facilities or equipment in disrepair or services and appliances that were outdated and inefficient.²⁰ The statute, however, regulates more than the condition of the Company’s facilities and equipment. RCW 80.36.080 states,

All rates, tolls, contracts and charges, rules and regulations of telecommunications companies, for messages, conversations, services rendered and equipment and facilities supplied, whether such message, conversation or service to be performed

¹⁸ CenturyLink 2014 911 Outage Order, ¶ 9.

¹⁹ *Id.*, ¶ 30.

²⁰ Response Testimony of Philip E. Grate, Exh. PEG-1T at 8-9.

be over one company or line or over or by two or more companies or lines, shall be fair, just, reasonable and sufficient, and the service so to be rendered any person, firm or corporation by any telecommunications company shall be rendered and performed in a prompt, expeditious and efficient manner and the facilities, instrumentalities and equipment furnished by it shall be safe, kept in good condition and repair, and its appliances, instrumentalities and service shall be modern, adequate, sufficient and efficient.²¹

10. CenturyLink selectively focuses on language in the statute regarding the upkeep and modernity of its equipment and ignores the requirement for service to be adequate and sufficient and rendered in a prompt, expeditious, and efficient manner. An outage is, by definition, a clear failure to provide service at all, much less adequate, sufficient, or expeditious service. In this case, the outage is of particular concern because it resulted in 222 failed 911 calls. Each instance where a caller was denied 911 service was a failure to render service as required by RCW 80.36.080. CenturyLink cannot simply choose the sections of the statute that fit its narrative to evade the consequences of the outage.

11. CenturyLink additionally opines that “under Staff’s interpretation of RCW 80.36.080, any failed call by any LEC could be considered a failure to render prompt, expeditious, and efficient service punishable by a \$1,000 fine. This is an unduly punitive interpretation of that statute and is contrary to [RCW 80.04.380, the statute that governs the assessment of penalties].”²² CenturyLink’s interpretation of RCW 80.36.080 is unnecessarily narrow. Indeed, CenturyLink’s argument is a red herring intended to distract from the statute’s application to a serious failure to provide 911 service. The Commission retains its discretion over how to impose penalties for violations, and nothing in this statute or RCW 80.04.380²³ requires the drastic result CenturyLink imagines.

²¹ RCW 80.36.080 (emphasis added).

²² Grate, Exh. PEG-1T at 9:11-14.

²³ RCW 80.04.380 Penalties—Violations by public service companies.

12. CenturyLink alternatively argues that, even if the 911 outage had been a violation of statute or rule, there would have been only one violation because neither the statute nor rule applies to individual calls.²⁴ CenturyLink accuses Staff of merely inventing a per-call standard to greatly inflate the number of alleged violations.²⁵ The Commission, however, has previously found a similar treatment for penalties stemming from a 911 outage to be reasonable. The Commission approved a Settlement Agreement pertaining to the 2014 CenturyLink 911 outage that treated each call missed during the incident as a separate violation.²⁶ Furthermore, nothing in RCW 80.36.080 prohibits the Commission from using its discretion to treat each missed call as a separate violation. In fact, the statute explicitly states that “[e]very violation of any such order, direction, or requirement of this title shall be a separate and distinct offense.”²⁷ Staff’s proposed calculation of penalties in this instance is reasonable, and the Commission should not be swayed by CenturyLink’s hyperbolic and misleading interpretation of either RCW 80.36.080 or RCW 80.04.380.

Every public service company, and all officers, agents and employees of any public service company, shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of this title, so long as the same shall be and remain in force. Any public service company which shall violate or fail to comply with any provision of this title, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction or requirement of this title shall be a separate and distinct offense, and in case of a continuing violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense.

²⁴ Grate, Exh. PEG-1T at 10:7-15.

²⁵ *Id.*

²⁶ CenturyLink 2014 911 Outage Order, ¶ 10.

²⁷ RCW 80.04.380 (emphasis added).

B. CenturyLink’s Interpretation of WAC 480-120-450 is Unreasonable

13. WAC 480-120-450 lays out the minimum requirements and obligations for Washington

LECs to provide 911 services. In relevant part, the rule states,

(1) Local exchange companies (LECs) must provide enhanced 9-1-1 (E911) services including:

(a) For single line service, the ability for customers to dial 911 with the call and caller's ELIN transmitted to the E911 selective router serving the location associated with the ERL for that line;

(b) For multiline customers, the ability for customers to dial 911 with common signal protocols available which permit the call and caller's ELIN to be transmitted to the E911 selective router serving the location associated with the ERL for that line.

14. CenturyLink argues that WAC 480-120-450(1) does not apply to its 911 service because

the rule is titled “Enhanced 9-1-1 (E911) obligations of local exchange companies,” but

CenturyLink provides newer, Next Generation 911 (“NG911”) services. CenturyLink adds that

the Commission has not promulgated new rules to regulate NG911 service.²⁸ Public Counsel

disagrees with CenturyLink’s interpretation of the WAC. As Staff states in its response

testimony, the existing rule set a minimum threshold for 911 service for which all companies,

including CenturyLink, are responsible.²⁹ If the Commission were to accept CenturyLink’s

argument, it would imply that companies can simply upgrade their way out of Commission

oversight and regulation, which would be an absurd and unreasonable result.

15. CenturyLink alternatively argues that, if the rule did apply to its NG911 service, the

company met its obligations under the rule to deliver 911 calls to the selective router and is not

otherwise responsible for the failure of the 911 calls downstream of the selective router.³⁰

²⁸ Grate, Exh. PEG-1T at 5:15-6:2.

²⁹ Rebuttal Testimony of Michael L. Turcott, Exh. MLT-3T at 6:17-23.

³⁰ Grate, Exh. PEG-1T at 6:15-7:20.

CenturyLink adds that the Commission had an opportunity in 2002 to clarify the responsibilities of LECs who provide routing and data management services downstream of the selective router, but declined to do so.³¹ CenturyLink, however, narrowly interprets the rule and fails to recognize that the rule does not limit the obligations of LECs to only deliver 911 calls to the selective router. Notably, the rule states that LECs must provide 911 service including delivery of the call to the selective router, which indicates that the rule, as written, is a minimum requirement for LECs.

16. Silence by the Commission regarding its oversight of the specific technology used to provide 911 service does not equate to a determination by the Commission that it is disinterested or precluded from such oversight.³² CenturyLink’s interpretation of WAC 480-120-450 ignores the clear intent of the Commission to ensure that consumers have safe, adequate, and reliable 911 service. Moreover, CenturyLink’s interpretation would allow the company to circumvent its obligations.

C. The Commission Should Dismiss Intrado’s Unreasonable Argument Which Only Seeks to Avoid Enforcement of the Commission’s Requirements

17. In its testimony, Intrado discusses the need for the switch upgrade and states that the switch upgrade project was critical for 911 network reliability.³³ Intrado then asserts that holding CenturyLink accountable for the 911 outage would discourage such upgrade projects, resulting in a “longer time of repair and outage restoration, which presents an indefensible threat of harm to public safety.”³⁴ Intrado presents a false choice between necessary upgrades and regulatory

³¹ *Id.* at 7:22-8:10.

³² Rebuttal Testimony of Susan M. Baldwin, Exh. SMB-11T at 2:18-3:2.

³³ Mills, Exh. RM-1T at 6:19.

³⁴ *Id.* at 6:20-7:5.

oversight, warning of threats to public safety if regulations are enforced. This argument, if given credence, would set a dangerous and undesirable precedent.

18. Furthermore, Intrado fails to recognize that CenturyLink, and by extension Intrado, are required by RCW 80.36.080 to maintain and upgrade its 911 system. To reiterate, the statute states that “the facilities, instrumentalities and equipment furnished by it shall be safe, kept in good condition and repair, and its appliances, instrumentalities and service shall be modern, adequate, sufficient and efficient.”³⁵ The Commission should dismiss this argument as nothing more than an attempt to evade enforcement.

IV. THE MAXIMUM RECOMMENDED PENALTY IS APPROPRIATE BECAUSE OF THE SEVERITY OF AND RISKS POSED BY THE 911 OUTAGE

19. The Commission’s Enforcement Policy sets forth 11 factors to consider in determining whether an enforcement action is appropriate, and, if so, which action to take.³⁶ Of the 11 factors, the primary factors in this instance that justify assessing a penalty against CenturyLink are:

- How serious or harmful the violation is to the public;
- Whether the violations were intentional;
- Number of violations;
- Number of customers affected;
- Company’s past performance regarding compliance, violations, and penalties; and
- The size of the company

³⁵ RCW 80.36.080.

³⁶ *In re the Enforcement Policy of the Wash. Utils. and Transp. Comm’n*, Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission, ¶ 15 (Jan. 7, 2013).

20. **How serious or harmful the violation is to the public.** The violations in this case are both serious and harmful to the public. As noted above, the Commission previously determined, “[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”³⁷ and found that the unavailability of 911 service was a “serious violation of applicable law.” In this instance, Staff found that the outage lasted nearly three hours and impacted the most populous counties in the Puget Sound Area.³⁸ The potential impact was only mitigated by the fact no major disasters or incidences occurred during the outage.³⁹ Even so, 148 individuals attempted 222 calls to 911 that were unsuccessful.⁴⁰ One third of the calls attempted were repeated calls. Although we will never know what events led to each 911 call, the repeated attempts are evidence of callers’ strong desire to reach public safety officials.

21. The specific, individual harms experienced by the callers are unknown, but, individuals do not generally call 911 repeatedly without sufficient reason and need. As explained by Staff, “[t]he duration or extent of a 911 outage is of no interest to the individual caller who needs help in an emergency. Each call must go through. The failure of even a single call is potentially very harmful and is of great concern.”⁴¹ Public Counsel agrees with Staff’s assessment of this factor. Moreover, the Commission’s strong stance on the importance of reliable 911 service indicates

³⁷ CenturyLink 2014 911 Outage Order, ¶ 9.

³⁸ Turcott, Exh. MLT-2 at 11.

³⁹ *Id.*

⁴⁰ See Response Testimony of Susan Baldwin, Exh. SMB-1T at 12:9-13:20.

⁴¹ Turcott, Exh. MLT-2 at 11.

that this factor should weigh heavily towards imposing the maximum recommended penalty in this case.

22. **Whether the violations were intentional.** Public Counsel agrees with Staff’s assessment that, although the outage itself was unintentional, evidence suggests that it was preventable.⁴² Intrado states that an unforeseeable machine error failed to correctly upload the ITG flags on to the new switch.⁴³ Intrado’s actions, however, indicate that it was cognizant that an error could occur during the database import process. Intrado was cautious enough to apply two-stage data validation prior to all traffic migration, which included a check of all trunk data from the legacy switch and a check of all data after the database conversion.⁴⁴ Intrado’s verification process, however failed to detect the missing ITG flags before 911 calls were affected.⁴⁵ The failure of the data validation checks and the addition of a third verification step after the outage⁴⁶ indicates that Intrado could and should have been more vigilant while migrating this critical information.
23. **Number of violations and number of customers affected.** Broadly, “[e]very Washington resident west of the Cascade Range needing emergency services was potentially affected by this outage.”⁴⁷ One hundred and forty eight individual customers did, in fact, need emergency services during the almost three hour outage and attempted 222 calls to CenturyLink’s 911 service. Public Counsel agrees with Staff that “[e]ach and every call was

⁴² *Id.*

⁴³ Mills, Exh. RM-1T at 9:4-10.

⁴⁴ *Id.* at 8:15-19.

⁴⁵ *Id.*

⁴⁶ *Id.* at 8:19-20.

⁴⁷ *Id.* at 12.

critical, whether the customer made one or multiple attempts to get assistance through a call to 911”⁴⁸

24. Moreover, calls to 911 suggest a tangible need for assistance that could have involved grave and potentially life-threatening situations affecting not only the caller, but the person who is the subject of the emergency (who may not be the caller) or the family and friends of the person(s) in the emergency situation.⁴⁹ The true number of Washington residents who were affected by the fact that 222 calls to 911 were unsuccessful is unknown.⁵⁰ This is an aggravating factor that weighs in favor of maximum penalties.

25. **The company’s past performance regarding compliance, violations, and penalties.** CenturyLink has had prior issues with respect to providing 911 services that have led to Commission enforcement actions.⁵¹ The Commission assessed penalties against CenturyLink for violations related to 911 outages that occurred in 2013, 2014, and 2016.⁵² Like Staff,⁵³ Public Counsel finds this ongoing pattern of outages to be unacceptable. CenturyLink’s prior performance is a significantly aggravating factor that weighs in favor of imposing the maximum recommended penalties here.

26. **The size of the company.** CenturyLink is the major incumbent local exchange carrier offering telephony, data, and other services in the state of Washington, with an intrastate annual revenue of \$264.9 million in 2018.⁵⁴ CenturyLink has substantial resources and, as a result, had

⁴⁸ *Id.*

⁴⁹ Baldwin, Exh. SMB-1T at 29:9-13.

⁵⁰ *Id.* at 29:13-14.

⁵¹ *Id.* at 30:6-7.

⁵² Turcott, Exh. MLT-2 at 12.

⁵³ *Id.*

⁵⁴ Grate; Exh. PEG-2T at 14:17-18.

the ability to ensure that its vendor adequately managed its switch upgrades for this critical service.

27. Public Counsel agrees with Staff that the severity of the 911 outage and the risks posed to the public warrant a substantial penalty.⁵⁵ The factors applied to this incident support the maximum recommended penalty of \$222,000 for 222 violations of RCW 80.36.080 and WAC 480-120-450(1).⁵⁶

V. CONCLUSION

28. CenturyLink has attempted to evade responsibility for this 911 outage by minimizing the event as a machine error and narrowly interpreting state law and Commission rule. The actions of CenturyLink’s vendor, however, show that this was an avoidable event. The integrity of the 911 system is an overriding safety priority, and, if an upgrade is necessary, all steps and precautions should be taken to ensure that the system continues to operate throughout the upgrade process. CenturyLink, however, failed to meet its obligation to provide adequate and sufficient 911 service, and 222 calls to emergency services failed because of this outage. We may never know the full extent of the harm caused to the people who were unable to reach 911 services during the outage, but it is undeniable that the system failed them when they needed it. Public Counsel, therefore, recommends the Commission find that CenturyLink committed 222

⁵⁵ Turcott, Exh. MLT-2 at 11.

⁵⁶ See Turcott, Exh. MLT-3T at 7:20-82. In rebuttal testimony, Staff stated that, under RCW 80.04.380, it technically could have proposed \$444,000 in penalties, but believes a maximum penalty of \$222,000 is “consistent with the Commission’s enforcement policy and appropriate for the context of this case.” *Id.*

violations of RCW 80.36.080 and WAC 480-120-450(1) and impose the maximum recommended penalty of \$222,000 on the company.

DATED this 30th day of April, 2020.

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