

**BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

**QWEST CORPORATION d/b/a
CENTURYLINK QC,**

Respondent.

DOCKET UT-190209

CENTURYLINK'S CLOSING BRIEF

April 30, 2020

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I. INTRODUCTION

1. In this case Commission Staff seeks to exact penalties against CenturyLink for a brief and partial interruption of 911 service. If the Commission agrees, the penalty assessment will do nothing more than punish a well-planned, carefully executed, and necessary network upgrade which was subject to a brief and unforeseeable error. This should not be the result the Commission supports, nor the precedent it sets.
2. The uncontested evidence in this case establishes that during the entire event the NG911 system was operational on a redundant path. 1,183 calls were completed during this same time period and 222 calls did not complete on the available redundant route. While Staff seeks to characterize the interruption as both catastrophic and preventable, that is inaccurate, and Staff lacks technical qualifications and knowledge to support its contentions.
3. CenturyLink appreciates the importance of public safety, supported by a resilient, robust 911 network, and does not minimize the impact of network outages. This single service interruption occurred toward the end of an important year-long upgrade designed to enhance the NG911 network, when an unforeseen machine error caused a truncation of trunk group information, rendering some calls unable to route properly. There were multiple protocols in place to ensure against errors, and none had occurred up to this time. Unrebutted testimony establishes that CenturyLink and its vendor could not have anticipated this error, and that the reaction to the service interruption was swift and effective.

4. It is true that CenturyLink and Intrado established additional protocols after the event, but it was the fact of the event happening that established the need for those protocols – no one could have known of the need for them in advance. In fact, Mr. Mills is the only witness who is qualified to testify as an expert on this point, and his essentially un rebutted testimony establishes that the network upgrade was necessary, well-planned, and carefully executed in a manner consistent with the rule and the statute at issue and the Commission’s prior statement on operator expectations.¹
5. Under the circumstances presented in this case, the Commission should decline to impose penalties even if it does find a technical violation of the rule or statute. However, as will be discussed below, no violation of either the rule or the statute occurred.

II. COMMISSION DISCRETION

6. The Commission has discretion, upon a finding of violations of rule or law, to assess penalties under RCW 80.04.380 not to exceed \$1,000 per violation per day. In a recent open meeting the Commission stated, in regard to the Covid-19 pandemic, that it would exercise its prosecutorial discretion in connection with compliance matters. This is wise, and a recognition that behaviors should not be considered in a vacuum – rather, all of the circumstances surrounding an event or incident must be taken into consideration.
7. In this case as well, the Commission should consider all of the circumstances around the July 12, 2017 partial interruption of service and determine that due to all of the mitigating

¹ Docket UT-140597, Order 03: Final Order Approving Settlement Agreement, ¶ 25 (Feb. 22, 2016).

circumstances described herein, including lack of foreseeability and prompt and effective response to the outage, no penalties are warranted.

8. CenturyLink is no longer the service provider for 911, so penalties serve no deterrent effect. Penalties would, however, tell carriers that even the most well-planned and well-executed network upgrade, even if necessary, may face severe repercussions unless it goes perfectly. This is the wrong message, especially in light of the Commission's previous recognition that no system is foolproof, discussed below in Section V.b.

III. THE INCIDENT

9. On July 12, 2017 there was a service interruption affecting some 911 calls during a three-hour window. This service interruption is described in multiple places in the record, but will be summarized here based on the testimony of Mr. Mills, who is employed by CenturyLink's vendor Intrado.²
10. Mr. Mills is the most qualified witness to describe and characterize the incident. He has 20 years of experience in the telecommunications industry, and his current responsibilities include engineering new product lines, turning up customers and interconnections on the network, and maintaining circuits and equipment in the 911 call path, including replacing and upgrading equipment. RM-1T, 2:2-7. No other witness has this degree of technical background on the specific issues in this case. Staff admits that its witness is not a telecommunications expert and has never testified in a telecommunications case – rather he is offered as an expert on enforcement issues. MLT-4X, pages 2-4. Public Counsel's witness has never worked for a telecommunications

² At the time of the incident Intrado was known as West Safety Services, Inc., or West. The name was subsequently changed to Intrado Life & Safety, Inc. Depending on when certain documents were created the reference may be to Intrado or to West, but they are the same entity.

company, and while she may have an extensive regulatory and policy background, she has no technical credentials that give any weight to her conclusions about the nature of the outage. SMB-2.

11. Mr. Mills is also the only witness with first-hand knowledge of the incident. He was personally involved in the maintenance event that led to this partial 911 interruption. He was also the technician at Intrado that immediately noticed the incident and started reverting the changes back to resolve the 911 interruption, while working with Intrado's switch vendor to find a solution to the issue. Finally, Mr. Mills participated in drafting the Reason for Outage (RFO) document provided to CenturyLink. RM-1T, 2:8-14. No other witness has this level of knowledge regarding the outage, the complexity of the upgrade, and the response.

a. *This isolated and brief incident occurred during a proactive network upgrade.*

12. The 911 service interruption on July 12, 2017 occurred during a maintenance window that was part of a bigger project to upgrade Intrado's redundant Emergency Call Management Center (ECMCs) in Englewood, Colorado and Miami, Florida. Intrado implemented the switch upgrade project from late 2016 to late 2017 after a year of planning. Voice traffic was selectively migrated in segments during the project according to a detailed project plan. On the day of the interruption, Intrado was in the process of migrating a portion of the Washington 911 traffic to the new switch in Englewood. Part of this migration process involved exporting the database with all trunk group information from the legacy switch to the new switch, which includes Ingress Trunk Group (ITG) flag information. RM-1T, 2:16-3:6.

13. During the database transfer, a machine error resulted in ITG flags not uploading correctly to the provisioning database for the new Englewood switch for a small portion of the migrating trunk groups. The ITG flag is responsible for informing the Intrado ECMC where the 911 call originated and what default PSAP is associated with the connected trunk group. Without the ITG tag, the ECMC in Englewood rejected certain 911 calls from affected trunk groups during the interruption on July 12, 2017 because the ECMC did not have the necessary routing information for delivery to the appropriate PSAPs. RM-1T, 3:6-15.

14. The affected 911 calls were returned to the originating service providers (OSPs) with a cause code 34, which translates to “no circuits available.” This code gives the OSPs an opportunity to redirect the affected calls to Intrado’s alternate switch and ECMC in Miami, which was processing calls without issue during the 911 interruption. Over a thousand calls successfully completed at the Miami ECMC during the interruption. RM-1T, 3:13-18.

b. The network upgrade was necessary to ensure modern, adequate, sufficient and efficient 911 facilities.

15. This multi-stage, national implementation was to upgrade Intrado’s emergency switches over the course of a year-long period. This project was consistent with Intrado’s goal to provide modern, adequate, sufficient and efficient 911 services and equipment to its customer CenturyLink by keeping Intrado’s switching facilities in good condition and repair. Intrado implemented the switch upgrade project in a methodical fashion, with voice traffic migrating to the new switch in incremental stages to minimize and isolate potential network impact. Intrado used a feature that allowed it to complete the switch project without having to obtain new point codes and requiring all OSPs to re-order their

trunk groups, which would have had a significantly higher risk of user and network error. RM-1T, 5:4-18.

16. The legacy switches at Intrado were aging, end-of-life hardware with no future support available, whereas the new switches are modern, fully supported hardware with more feature functionality and inherent resiliency. The new switches enhanced the reliability and resiliency of CenturyLink's 911 service via Intrado's 911 network. As such, the upgrade was a network necessity. RM-1T, 6:4-9.

c. The upgrade was performed with multiple precautions in place.

17. Intrado took a number of precautions to ensure that database errors would not occur. Intrado created a detailed project plan and timeline to manage the project. Traffic was selectively migrated in small segments during short, off-hour maintenance windows in the middle of the night in order to minimize and isolate potential network issues. As a result, the July 12, 2017 interruption was both relatively short in duration and scope, with prompt root cause identification and only a small number of migrated trunks affected by the incident. Importantly, 911 service in Washington was never "hard down" during this partial interruption, meaning 911 calls continued to process during the incident through the Miami switch. RM-1T, 8:1-13.
18. Additionally, Intrado applied 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 database conversion. Intrado further deployed network alarms during the switch project, which worked as designed by identifying the lack of ITG tags for the affected 911 calls during the interruption on July 12, 2017. RM-1T, 8:15-20

d. The cause of the incident was unforeseeable and therefore could not reasonably have been prevented.

19. The interruption on July 12, 2017 was caused by an unforeseeable machine error. Intrado applied pre-validation steps to the traffic migration, including an audit of the ITG tags. The pre-validation steps did not reveal any errors in the database export and transfer. This was a very thorough upgrade process that Intrado planned and implemented over a two-year period (a year of planning and a year of implementing). RM-1T, 11:14-19.
20. Though the machine error was originally reported as human error, the unrebutted testimony of Mr. Mills describes the difference, and explains that the mistake was in the original report made shortly after the event. The loss of the ITG tags was the result of unforeseeable configuration errors on the provisioning server. RM-1T, 7:6-15. Based on nearly eight months of experience with the project, without incident, Intrado simply had no way of knowing the provisioning server would fail to transmit a small portion of ITG tag data during the Washington migration.
21. Prior to the migration of Washington traffic on July 12, 2017, Intrado did not experience any service interruptions over the course of approximately eight months of migration work. Because of the large quantity of 911 calls³ in Washington, the Washington migration was planned for the end of the project timeline, after full development of a method of procedure. After the interruption on July 12, 2017, there were no other issues during the switch migration project in Washington. RM-1T, 5:19-6:2.

³ Washington was averaging well over 12,000 calls per day – over 387,000 per month to 911. SMB-13X, page 3.

e. CenturyLink and Intrado took prompt and appropriate action during and after the outage.

22. Immediately after the outage began, call failure alarms worked as designed and identified the lack of ITG tags on certain trunk groups during the interruption. Intrado responded promptly and internal fault management protocols were triggered. Intrado engaged in direct communication with CenturyLink – each company has a network operations center (NOC) and NOC-to-NOC communication was set up immediately. Intrado then forced a busy condition on the affected trunks, which in turn forced 911 calls to automatically alternate route to the switch in Miami. RM-1T, 9:11-18.
23. After the service interruption, Intrado added a third validation check to the database migration process requiring Intrado’s technicians to manually inspect all trunk group data after transfer completion by the provisioning server. Additionally, Intrado implemented a policy of pre-notification of all maintenance events to CenturyLink regardless of severity level or disruption potential. Intrado also upgraded the physical resources of Intrado’s provisioning server and restricted user access to reduce the potential for unforeseen resource absorption. RM-1T, 10:5-12.
24. These detailed planning and mitigation measures, including selective and segmented migration and after-hours work over short periods of time, greatly reduced the impact and duration of this partial interruption. Planned network and fault management processes worked as designed, and Intrado was quickly able to force calls to the alternate route. RM-1T, 11:19-12:4.

25. In addition, during the service interruption, the affected calls were returned to the OSPs with the appropriate cause code 34. At that point, the OSPs had the opportunity to route their end users' 911 calls to the redundant switch in Miami, which was fully functional during the incident. Although certain carriers advanced routed their calls, others decided to retry their trunk groups to the affected Englewood switch. Neither Intrado nor CenturyLink had any control over the routing decisions of the OSPs. RM-1T, 12:6-11.

IV. THE RULE - WAC 480-120-450

26. WAC 480-120-450 requires each local exchange carrier to provide customers with the ability to dial 911, "with the call and the caller's ELIN transmitted to the E911 selective router. . ." Staff contends that each of the failed calls constitutes a violation of WAC 480-120-450. The uncontested facts and plain language of the rule establish that this cannot be the case. As described in the unrebutted testimony of Mr. Grate, exhibit PEG-1T, 7:10-20, all 222 calls were transmitted to the selective router. This fact is confirmed in the unrebutted testimony of Mr. Mills as well. RM-1T, 4:1-17.

a. The rule does not apply to CenturyLink as the NG911 provider.

27. The testimony of Mr. Grate describes in detail that the rule applies only to the local exchange carrier (LEC) who is originating the call, and that by its own terms applies only to E911 calls, not NG911 calls. A prior Commission rule governed basic 911 service and was updated to address E911. The 911 service that was being provided at the time of the interruption was next generation 911, or NG911. The change in technology from E911 to NG911 was mandated by the Washington State Military Department, which is the entity responsible for contracting for the provision of 911 services. Although the service has

been NG911 since 2009, the Commission has not promulgated rules to govern it. PEG-1T, 5:15-6:10.

b. Staff and Public Counsel misinterpret the rule.

28. Staff dismisses this argument with a generalization that has no place in the proper interpretation of a rule. Staff states that “while it is true that aspects of the rule are directed specifically at E911, the rule sets a minimum threshold for 911 service, and all providers, including CenturyLink, must comply with the rule.” MLT-3T, page line. This argument is disingenuous at best. There is not a single reference to 911 service in the rule that does not identify it as enhanced 911 or E911. The only time that “911” is used unmodified is when there is a discussion about a customer dialing 911. This makes sense as a customer could not dial E911. The simple fact is that the rule does not apply to NG911.

29. Furthermore, the rule is not applicable to CenturyLink as the NG911 provider. It specifically applies to the local exchange carrier who originates the call, and has no application to the dedicated NG911 service provided by CenturyLink. Although CenturyLink was admittedly the originating carrier on one of the affected calls, even that call did in fact reach the selective router. The call failure occurred in a location downstream of the selective router, and WAC 480-120-450(1) does not prescribe standards applicable to 911 call routing downstream from the selective router. PEG-1T, 7:10-20.

30. Staff responds to this set of facts by again reading plain language out of the rule, and inserting Staff’s interpretation of the intent of the rule. Staff claims that the language regarding delivery of calls to the selective router should be disregarded in favor of what Staff would prefer the rule to say which is simply that every call to 911 must be completed under a strict liability standard. MLT-3T, 6:8-10, stating that consumers don’t care about the selective router, only whether the call goes through. Nevertheless, delivery of the call to the selective router is what the rule requires, and all calls were so-delivered. Staff’s misapplication of the rule to pursue their ends should not be endorsed by the Commission.
31. Public Counsel fares no better on this point. In attempting to rebut Mr. Grate’s analysis regarding the language of the rule and the facts as they exist in this case, Public Counsel’s witness states that CenturyLink’s interpretation of the rule is “splitting hairs.” SMB-11T, 3:10-14. Public Counsel, however, reads the plain language referencing E911 out of the rule altogether. It is unclear when “splitting hairs” became the pejorative for “give meaning to every word in the rule”, which is a clear tenet of statutory construction.⁴
32. Importantly, 911 was reachable during the event, and 1,183 calls to 911 were successfully completed during the service interruption. Originating carriers on the failed calls had the calls returned to them with a cause code 34, which instructed the carriers to reroute the calls to the operative alternative switch, which was processing calls without interruption during the event. RM-1T, 3:13-18.

⁴ “Each word of a statute is to be accorded meaning. Whenever possible, statutes are to be construed so no clause, sentence or word shall be superfluous, void, or insignificant.” (Internal quotes and citations omitted). *HomeStreet, Inc. v. Dep’t of Revenue*, 166 Wn.2d 444, 452; 210 P.3d 297, 301; 2009 Wash. LEXIS 626, 10.

V. THE STATUTE – RCW 80.36.080

33. The statute at issue in this case is RCW 80.36.080. That statute provides, in relevant part, that the “facilities, instrumentalities and equipment furnished by [a telecommunications company] shall be safe, kept in good condition and repair, and [the company’s] appliances, instrumentalities and service shall be modern, adequate, sufficient and efficient.” It is this provision that Staff claims was violated by the service interruption of July 12, 2017.
34. CenturyLink pointed out in its response testimony that Staff’s complaint and testimony utterly failed to identify any facilities or equipment not in good condition or repair, and failed to show that either CenturyLink’s or West’s appliances, instrumentalities or service were not modern or efficient. PEG-1T, 8:24-9:2. Indeed, even the failed calls cannot be considered a failure of adequate service – those calls were returned to the originating carriers who had the opportunity to reroute the calls to the functioning, redundant route, a route to which Intrado quickly forced all calls, resulting in significant and rapid impact mitigation. This is the very definition of a modern and adequate service.
35. Staff has claimed that “[b]y failing to ensure that its vendors properly test software configuration changes before implementation and have redundancy in place to prevent future failures, CenturyLink allowed this outage to occur.” MT-2, page 11. Staff makes another claim that insufficient redundancy existed at page 12 of MT-2.
36. However, Intrado has described the two-part data validation process it followed regarding testing prior to implementation. RM-3TC, 6:9-12. And Intrado has also described the redundant route to Miami that was available for each call but not utilized by the originating service providers. RM-3TC, 6:16-19. Finally, Intrado acted swiftly to force a

busy condition on the affected trunks which forced all calls to the available redundant route. RM-1T, 9:16-18.

37. Staff, when asked directly, was unable to identify any testing that should have taken place that did not, and was further unable to identify any redundancy that should have existed that did not. MLT-4X, pages 8 and 9.
38. Staff attempts to bolster its claim on rebuttal with unsupported allegations, making false claims about the network upgrade. For example, Staff states that because the project had a long timeline, “there was no need to rush or cut corners.” MLT-3T, 3:13. There is exactly zero evidence that CenturyLink or Intrado rushed or cut corners.
39. Actually, the evidence is the opposite. Intrado broke the project into small manageable segments, and performed the work in short, off-hour maintenance windows. RM-3TC, 6:3-8. The project started in 2016 and the Washington work was planned near the end, due to high call volumes and the desire to have a good deal of experience with the migration before starting in Washington. In fact, Washington was not started until May 24, 2017, eight months into implementation of the project. RM-3TC, 6:12-20. There was no rush, and corners were not cut.

a. Staff misinterprets the statute.

40. Staff misreads the statute in its attempt to hold CenturyLink strictly liable for the July 12, 2017 disruption. The discussion in Section III. above establishes that the network upgrade was done in order to maintain compliance with the statute and to provide modern, adequate, sufficient and efficient facilities. CenturyLink appreciates the importance of public safety and of a resilient, robust 911 network, but this does not give Staff or Public Counsel license to rewrite the law. Nowhere does the statute impose strict

liability for a service failure. Nowhere does the statute create liability on a per-call basis. Yet that is precisely the meaning Staff attributes to the statute. Unless everything works perfectly every time, the company is automatically liable for penalties on a per call basis. Not only is this interpretation unsupported by the plain language of the statute, it also conflicts with prior Commission interpretations of the required standard of performance.

41. In sum, Staff’s position is that telecommunications companies must be both perfect in the moment and clairvoyant – looking into the future to see the as-yet unknown. This is simply unreasonable. Yet that is Staff’s testimony. Staff states “[t]his technology must work every time.” MLT-3T, 6:13. Staff cites space shuttles and pacemakers as technology that must work every time as well, conveniently ignoring that those technologies do not work every time either.
42. Discussing the process improvements put into place after the outage, Staff claims that “as a lay person, I would expect that Intrado or CenturyLink would have taken these steps before.” MLT-3T, 5:6-7. But Staff has no technical qualifications to make such a claim. Indeed, while Intrado should be commended for adding additional steps, Staff offers no evidence that these steps would have prevented the error either. Mr. Mills, as an expert on the issue, testified credibly that there was no way to foresee the machine error – thus, there could have been no way to know that the additional process improvements should be implemented.

b. Prior discussions regarding adequacy of facilities and services.

43. Both Staff and Public Counsel suggest that the 911 outage that occurred in April 2014 is somehow an aggravating factor in this case – in other words, it happened once before, it should never have happened again. This argument is simply wrong. Staff and Public

Counsel ignore that the reason for the prior outage had nothing to do with the 2017 event, that far fewer calls were affected in 2017 (222 versus more than 5,000), that the 2017 event was a partial outage, that the alerting and response time and effort in 2017 was much better, and that significant process improvements were implemented between 2014 and 2017. RM-3TC, 4:3-19.

44. The 2014 outage is informative on one point, and that is what the Commission's expectations are for companies. In the 2016 Final Order Approving Settlement Agreement⁵, the Commission said:

“No system is foolproof, whether it depends on computers, people, or a combination of both. Errors will inevitably occur in software coding, for example, both in its development and in its deployment in actual 911 operating systems. 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.”

⁵ Docket UT-140597, Order 03: Final Order Approving Settlement Agreement, ¶ 25 (Feb. 22, 2016).

45. The testimony and evidence in this case demonstrates that CenturyLink and Intrado did have adequate management and oversight systems in place to reduce the risk of errors, to provide awareness of the outage quickly, and to restore service rapidly. Mr. Mills testified, and no one challenged, that Intrado had created a detailed and prudent project plan and timeline. Intrado applied a two-stage data validation process prior to the migration, with no evidence of errors in the database export and transfer. Intrado had appropriate alarms in place that provided immediate notification of the issue. Intrado had a process in place to return the affected calls to the originating carriers, who had an opportunity to forward route to Miami. Finally, Intrado promptly busied out the affected trunks to force calls to the Miami route until the error was fixed. RM-3TC, 6:3-23. Candidly, if this does not meet the standard articulated by the Commission in 2016, then it seems nothing would.

c. There were not 222 violations.

46. In spite of all this, Staff claims that CenturyLink must be liable for 222 violations of the statute based on 222 calls that did not complete during the incident. Staff claims that each call is a violation based on prior settlement agreements entered into by CenturyLink and approved by the Commission. (MLT-3T, 7:14-19). However, those agreements specifically state that they are not precedential, so Staff's reliance on them is misplaced. Staff was unable to provide a single example of a contested case in which the Commission affirmatively decided that each failed call constituted a violation. MLT-4X, page 11.

d. RCW 80.04.380, the penalty statute.

47. RCW 80.04.380 is the statute that confers authority on the Commission to assess penalties. That statute provides, in relevant part, that “[a]ny 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.” (emphasis added).
48. The only reasonable interpretation of this language is that if in fact CenturyLink’s facilities were not modern, efficient, adequate and sufficient as required by RCW 80.36.080, the violation is to be counted by the number of days impacted, not the number of calls. The machine error was a single day event, not 222 separate events.
49. Thus, even had there been a violation of the rule or statute there would have been, at most, one violation, not 222. Neither the rule nor statute applies to individual calls. The per-call standard is Staff’s invention that serves to greatly inflate the number of alleged violations. If, in fact, the maintenance error were a violation of the statute, then it could constitute only one violation; the maintenance error did not recur every time a call to 911 did not go through. And if the one failed call where CenturyLink was actually the originating LEC (as opposed to the dedicated NG911 provider) were a violation of WAC 480-120-450(1), then that single call could constitute only one violation.

50. Thus, if the Commission determines that the partial interruption of 911 service on July 12, 2017 constitutes a violation of the statute, the Commission is still faced with this issue of first impression – whether the statute is violated by the facilities failure itself, which is a single incident, or by the *result* of the facilities failure, which is the number of failed calls. CenturyLink submits that the better reading is that if the Commission finds that the facilities were inadequate (which they were not), then the Commission can find only a single violation of the statute under the facts and circumstances of this case.

VI. PENALTY ASSESSMENT

51. Given that no violations have been credibly established, no discussion of the amount of a penalty even seems warranted. Nevertheless, both Staff and Public Counsel spent no small amount of time discussing the amount of the penalty and why such an amount might be appropriate, and CenturyLink rebutted these arguments in its testimony, so discussion in this brief seems necessary.
52. Both Staff and Public Counsel advocate that the Commission find 222 violations, one per call. Staff clarifies that its recommendation is that the Commission impose a penalty of “up to” \$222,000 (MLT-3T, page 7:20). Public Counsel advocates for the full \$222,000 (SMB-11T, page 4:12-19). Neither recommendation is helpful as the Commission considers this issue.
53. Staff’s recommendation of “up to” \$222,000 in penalties is not really a recommendation – it is tossing the ball to the Commission to decide with such a lack of specificity as to basically give no guidance. “Up to” is the ceiling, and clearly not warranted given the mitigating factors discussed above in terms of the care that was taken in the entire system

upgrade. What does Staff think is the minimum amount that serves Staff's goals in filing this complaint and seeking penalties? No one knows.

54. As discussed above, the circumstances in this matter should direct the Commission to find no violations and assess no penalties, or at least a fair and proportionate amount in recognition of all the mitigating factors in this event, and in support of the sound policy rationale of recognizing the substantial planning that went into the upgrade, the precautions that were taken, and the swift and effective responsive. Excessive punitive action in this case would simply discourage necessary improvements to the network.
55. Public Counsel's position is no more helpful on this question. Public Counsel's default position seems to be for maximum penalties (see the 2014 outage) but, here, the requested penalty is \$500 per call for violating the rule and \$500 per call for violating the statute. This is essentially what the penalty was in the 2014 case, and CenturyLink has presented abundant evidence that this network event was far less severe than 2014 and was handled far more quickly and efficiently.
56. Both Staff and Public Counsel err in their analysis of the Commission's policy statement that offers guidance on how to determine a penalty amount. Staff's analysis is contained at pages 11-12 of the Investigation Report, MLT-2. Public Counsel's analysis is at pages 27-32 of SMB-1CT. Mr. Grate responded to these analyses in PEG-2T, pages 5-14. Without admission that any penalty amount is warranted, this testimony establishes that of the eleven factors in the policy statement, each of them is either neutral or positive in CenturyLink's favor on the issue of the amount of a penalty to be assessed.

57. Briefly, PEG-2T establishes the following with regard to the points of consideration. (Summary at pages 16 and 17, cites below to the more detailed discussion of each point in the pages preceding the summary).

1. How serious or harmful the violation is to the public. There was no violation. 911 is a critical service. There is no evidence in the record of harm, so the most that can be concluded on this point is that any harm from the 222 failed calls is unknown. PEG-2T 5:9-17
2. Whether the violation is intentional. There was no violation. The failure of the calls was completely unintentional. Intrado took great care attempting to avoid such an incident. PEG-2T 5:18-7:11
3. Whether the company self-reported the violation. There was no violation to report. The company notified the Commission of the event despite it being nonreportable. PEG-2T 7:12-8:15
4. Whether the company was cooperative and responsive. It was both. PEG-2T 8:16-8:19
5. Whether the company promptly corrected the violations and remedied the impacts. There was no violation. Intrado quickly discovered and corrected the problem. PEG-2T 9:1-9:13
6. The number of violations. There were no violations, or at the most there were two. PEG-2T 9:14-10:3
7. The number of customers affected. 148 callers to 911 were affected. PEG-2T 10:4-10:16

8. The likelihood of recurrence. None. CenturyLink is no longer the NG911 provider in Washington, and contrary to Public Counsel's suggestion, no violations have been alleged or established with regard to the December 2018 network event, where all calls to PSAPs served by CenturyLink completed successfully. PEG-2T 10:17-11:17
 9. The company's past performance regarding compliance, violations, and penalties. There has been one other event involving the NG911 system that involved the same rule and statute at issue in this case. PEG-2T 11:18-14:2.
 10. The company's existing compliance program. No compliance plans are applicable. CenturyLink is no longer the NG911 provider in Washington. PEG-2T 14:3-8.
 11. The size of the company. CenturyLink generated \$264.9 million of intrastate revenues in 2018 and has lost 2 million access lines since 2001. PEG-2T 14:9-15:6.
58. In summary, there are simply no factors that point to any enhanced penalty for this service interruption.

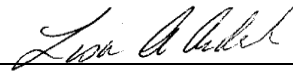
VII. CONCLUSION

59. The event violated neither RCW 80.36.080 nor WAC 480-120-450(1). Consequently, no fine is appropriate. The event lasted one-eighth of a day. Even if there were a violation of the rule or statute (which there was not), there could be a maximum of one violation of each, not 222 violations. WAC 480-120-450(1) requires all LECs to provide E911 services defined as delivering a 911 call to the selective router, not to complete each and every call in the NG911 system without fail.

- 60.** Similarly, RCW 80.36.080 requires adequate, not flawless, service. Intrado undertook the switch conversion with careful planning and a history of flawless execution. The statute requires adequacy, not perfection.
- 61.** The Commission should not severely penalize a single data glitch in an otherwise complex, well-planned and important network upgrade. Companies need to know that evidence of excellent planning and execution when implementing new and improved technology will mitigate or absolve minor, unforeseeable events that might briefly affect service.

Respectfully submitted this 30th day of April 2020.

CENTURYLINK



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