

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

**BRIEF ON BEHALF OF COMMISSION STAFF**

April 30, 2020

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**CONFIDENTIAL PER PROTECTIVE ORDER  
REDACTED VERSION**

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. BACKGROUND .....1

III. DISCUSSION.....2

    A. CenturyLink Violated RCW 80.36.080 Because the 911 Service Failure was a Failure to Render the Service as Required by Washington Law .....2

    B. CenturyLink Violated WAC 480-120-450 Because it Failed to Provide 911 Service .....5

    C. Penalties of up to \$1,000 per Violation Based on 222 Violations are Appropriate .....8

IV. CONCLUSION.....8

**TABLE OF AUTHORITIES**

*Statutes*

RCW 80.04.380 ..... 8  
RCW 80.36.080 ..... 2, 3, 4, 5, 8

*Rules*

WAC 480-120-450 ..... 2, 4, 5, 6, 7

*Administrative Authorities*

*In Re Amending, Adopting and Repealing: Chapter 480-120 WAC Relating to Telephone Companies,*  
Docket UT-990146 (Dec. 16, 2002) .....7  
*In Re Notice of Proposed Rulemaking Relating to Telephone Companies,*  
Docket UT-990146 (filed January 23, 2002).....7  
*Wash. Utils. & Transp. Comm’n v Qwest Corp. d/b/a CenturyLink QC,*  
Docket UT-140597, Order 03 (Feb. 22, 2016) .....4, 5  
*Wash. Utils. & Transp. Comm’n v. Puget Sound Energy,*  
Docket UG-001116 (July 25, 2002) .....9

## I. INTRODUCTION

1 This is a case about another failure in the 911 system caused by a vendor of Qwest Corporation d/b/a CenturyLink QC (“CenturyLink” or “Company”). CenturyLink was the statewide 911 provider at the time of the failure and now seeks to evade responsibility by raising various technicalities in the state regulatory regime and in the design of the 911 system. CenturyLink, however, is responsible because the actions of its vendor resulted in a partial outage of the 911 system, the most important public safety network in the state. It is appropriate for the Washington Utilities and Transportation Commission (Commission) to impose a penalty on CenturyLink for the violations of state law and Commission rule that are associated with this outage.

## II. BACKGROUND

2 In the summer of 2017, CenturyLink was the statewide vendor for 911 services in Washington.<sup>1</sup> CenturyLink was responsible for the network that connects 911 callers in Washington to the appropriate Public Safety Answering Point (PSAP).<sup>2</sup> On July 12, 2017, there was a partial outage of the 911 system in Washington, lasting nearly three hours.<sup>3</sup> During this time, 222 calls to 911 failed,<sup>4</sup> and a number of PSAPs were affected.<sup>5</sup>

3 Two days after the failure, CenturyLink sent Commission Staff an email to provide a “courtesy notification of non-major outage.”<sup>6</sup> The notification explained that CenturyLink’s contractor, Intrado Life & Safety, Inc. (Intrado), “did a system upgrade/reboot on

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<sup>1</sup> Turcott, Exh. MLT-1T at 4:18-21.

<sup>2</sup> Turcott, Exh. MLT-1T at 4:21 – 5:2.

<sup>3</sup> Turcott, Exh. MLT-1T at 3:4-6.

<sup>4</sup> *Id.* at 3:6-7.

<sup>5</sup> Turcott, Exh. MLT-2 at 8, 31.

<sup>6</sup> Turcott, Exh. MLT-1T at 3:19-20.

Wednesday morning that caused potential issues with more than 200 911 calls in the state of Washington.”<sup>7</sup>

4 Staff began an investigation and issued data requests to CenturyLink in August of 2017 concerning the outage. The root cause analysis provided to Staff describes the root cause as [REDACTED]”<sup>8</sup>

5 The 911 service failure occurred during an upgrade of Intrado’s switch in Englewood, Colorado, when Intrado was in the process of migrating Washington 911 traffic to the new switch.<sup>9</sup> Mr. Mills of Intrado testifies that machine error and not human error caused the outage.<sup>10</sup> Following the outage, to detect error, Intrado added an additional validation step to its process of migrating data over to the new switch.<sup>11</sup>

### III. DISCUSSION

6 The 911 service failure on July 12, 2017, constituted a violation of RCW 80.36.080, the state law setting out service and facility requirements, because the outage occurred as a result of substandard service and facilities. The service failure was also a violation of WAC 480-120-450, the Commission’s Enhanced 911 rule. Penalties of up to \$1,000 per violation are appropriate, and a total number of 222 violations, calculated on the number of failed calls is consistent with the law and Commission precedent.

#### A. CenturyLink Violated RCW 80.36.080 Because the 911 Service Failure was a Failure to Render the Service as Required by Washington Law

7 Washington law requires telecommunications carriers to render prompt, expeditious, and efficient service, to keep its facilities, instrumentalities, and equipment in good

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<sup>7</sup> *Id.* at 3:20 – 4:2.

<sup>8</sup> Baldwin, Exh. SMB-6C at 4.

<sup>9</sup> Mills, Exh. RM-1TC at 2:16-18 and at 3:2-3.

<sup>10</sup> Mills, Exh. RM-1TC at 7:6-15.

<sup>11</sup> Mills, Exh. RM-1TC at 8:19-20.

condition and repair, and to ensure that its appliances, instrumentalities, and services are modern, adequate, sufficient, and efficient. RCW 80.36.080. When CenturyLink's vendor migrated to the new switch and caused a system malfunction, CenturyLink failed to meet this standard for service in Washington.

8 CenturyLink takes issue with the applicability of this statute to the outage, but the Company's grounds are not credible. First, Mr. Grate of CenturyLink testifies that Staff has not identified facilities that are not in good condition, or repair or appliances, instrumentalities or service that are not modern or efficient.<sup>12</sup> It is not necessary to identify facilities that were not in good condition or repair, however, because it is uncontroverted that the system was not working right for nearly three hours on July 12, 2017.

9 Next Mr. Grate testifies that the adequacy and sufficiency of CenturyLink's 911 service is not open to question because statewide 911 service is the subject of a contract between CenturyLink and the Washington State Military Department (MIL).<sup>13</sup> Mr. Grate, however, is wrong. CenturyLink is a telecommunications carrier regulated by the Commission, and the Commission is charged with enforcing the statutory requirement for adequate and sufficient service, regardless of who the customer is and the terms of service. The Commission does not seek remedies under the state 911 contract but rather penalties for violations of the statutes and rules the Commission enforces. The existence of the contract does not mean that the Commission cannot require the compliance of CenturyLink with the statutory requirements of adequate and sufficient service.

10 In the face of the 911 outage caused by CenturyLink's vendor, it cannot be maintained that CenturyLink's service was adequate or sufficient. Rather, on July 12, 2017,

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<sup>12</sup> Grate, Exh. PEG-1T at 8:24 – 9:2.

<sup>13</sup> Grate, Exh. PEG-1T at 9:4-7.

CenturyLink's service was inadequate and insufficient when it malfunctioned for approximately three hours. The outage also caused CenturyLink to fail to render prompt, expeditious, and efficient 911 service during this time.

11           Intrado intimates that it is not responsible for its inadequate facilities and services because it returned affected calls to the underlying carriers with the correct "cause code," and "has no control over . . . [the] switch configuration or logic" of the underlying carriers.<sup>14</sup> In other words, according to Intrado, the carriers of callers trying to reach 911 were responsible for the call at that point. Whether the underlying carriers acted to mitigate the problem Intrado caused, however, does not change the fact that CenturyLink's 911 service was malfunctioning and Intrado caused it. Staff understands that upgrades must and should occur and recognizes that appropriate remedial measures were taken but, as Mr. Turcott points out, the fact that things could have been worse is "of little consolation to the 148 consumers who needed emergency assistance, some of whom called more than once."<sup>15</sup>

12           The Commission assessed penalties against CenturyLink for violating RCW 80.36.080 during the last big 911 outage, in 2014, and the 911 service failure in 2017 similarly violated RCW 80.36.080. In 2014, there was a failure in CenturyLink's 911 system when its vendor Intrado experienced a software problem in the same Englewood Colorado switch that is at issue in the instant case.<sup>16</sup> The Commission approved a settlement resolving the case and imposed penalties of \$2,854,750 on CenturyLink, in part for violations of RCW 80.36.080 (and also of WAC 480-120-450).<sup>17</sup> The amount of the penalty was calculated on

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<sup>14</sup> Mills, Exh. RM-1T at 12:5-11.

<sup>15</sup> Turcott, Exh. MLT-3T at 4:13-14.

<sup>16</sup> See *Wash. Utils. & Transp. Comm'n v Qwest Corp. d/b/a CenturyLink QC*, Docket UT-140597, Order 03 (Feb. 22, 2016) ("2016 911 Order"), Exhibit A (Settlement Agreement) at 2-3.

<sup>17</sup> 2016 911 Order at 4, ¶¶ 10; 12, ¶¶ 41-42.

the basis of failed 911 calls.<sup>18</sup> The 2014 failure occurred because of a design flaw that was built into Intrado's network and that, therefore, was preventable.<sup>19</sup> The failure in 2017 was not built in but likely could have been prevented. We know it likely could have been prevented because Intrado subsequently implemented a process to prevent a recurrence.<sup>20</sup> Moreover, as Mr. Turcott points out, the timing and execution of the upgrade was at the discretion of and under the full control of Intrado and it did not need to take any shortcuts.<sup>21</sup> Because of the similarities in the 911 service failures of 2014 and 2017, it is appropriate to impose penalties on CenturyLink in the instant case based on violations of RCW 80.36.080.

**B. CenturyLink Violated WAC 480-120-450 Because it Failed to Provide 911 Service**

13 The Commission's rules require local exchange companies to provide enhanced 911 service:

(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;

WAC 480-120-450. Encompassed in this requirement is the requirement to provide 911 service. CenturyLink argues, however, on the basis of various technicalities, that its 911 service failure does not violate this rule.

14 CenturyLink claims that the rule applies to E911 service but not to Next Generation (NG) 911 and argues essentially that, because CenturyLink was providing NG911 service,

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<sup>18</sup> 2016 911 Order at 4, ¶ 10. See Mr. Turcott's discussion at Exh. MLT-3T at 7:14 – 8:2.

<sup>19</sup> See 2016 911 Order, Exhibit A, at 3, ¶¶ 16-17 (because of a pre-set call limit, the software automatically ceased routing 911 calls to PSAPs after the call limit was reached).

<sup>20</sup> See Mills, Exh. RM-1TC at 8:19-20; 10:5-12 (“Intrado added a third validation check to the database migration process requiring our technicians to manually inspect all trunk group data after transfer completion by the provisioning server.”).

<sup>21</sup> Turcott, Exh. MLT-3T at 3:10 – 4:10.



failing to provide NG911 service, as opposed to E911 service, does not violate the rule.<sup>22</sup> This is not an appropriate interpretation of the rule. WAC 480-120-450 requires LECs to provide at least E911 service, as a threshold, but does not exempt NG911 carriers from providing 911 service. As Mr. Turcott pithily stated, “I don’t believe any Washington consumer needing emergency assistance is interested in which system (E911 or NG911) is in place when they pick up the phone to call for help. This technology must work every time.”<sup>23</sup>

15 CenturyLink next asserts that, even if the rule applied to NG911 (which it does), it does not apply to the statewide 911 services that failed.<sup>24</sup> The Company’s rationale is that the rule applies only to LECs from which 911 calls originate. As can be seen from the Commission’s enforcement case involving the 2014 outage, however, the Commission traditionally takes a broader view of the scope of WAC 480-120-450. In that case, 5,684 calls failed to reach 911, and the decision contains no distinction among calls based on the identity or the type of originating carrier. In the event, however, that the Commission elects to interpret the rule as CenturyLink suggests, it should be noted that CenturyLink admits to one violation: “CenturyLink was the LEC on only one of those 222 calls.”<sup>25</sup>

16 CenturyLink takes the position, though, that even the call from its customer that did not go through to 911 does not constitute a rule violation. Somewhat outrageously, CenturyLink argues that, because all 222 calls reached the selective router, these failed 911 calls did not violate the rule.<sup>26</sup> But CenturyLink relies on only some of the language of the rule and ignores the threshold requirement to provide 911 service. While the rule does

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<sup>22</sup> Grate, Exh. PEG-1T at 5:15 – 6:2.

<sup>23</sup> Turcott, Exh. MLT-3T at 6:10-13.

<sup>24</sup> Grate, Exh. PEG-1T at 6:17-20.

<sup>25</sup> Grate, Exh. PEG-1T at 7:14-15.

<sup>26</sup> Grate, Exh. PEG-1T at 7:15-20.

specifically require LECs to provide “the ability for customers to dial 911 with the call and caller's ELIN transmitted to the E911 selective router,” that subsection begins with “Local exchange companies (LECs) must provide enhanced 9-1-1 (E911) services including. . . .” The rule’s requirements to provide “enhanced 9-1-1” services and “the ability . . . to dial 911” do not stop at the selective router.<sup>27</sup> Carrying the call to the selective router is only one nonexclusive element of providing E911 service.

17 CenturyLink cites to the comments of the Washington Military Department Emergency Management Division (WMD) in the rulemaking that ultimately lead to the adoption of WAC 480-120-450 for the proposition that the rule does not apply to what happens once the call reaches the selective router.<sup>28</sup> The WMD suggested that the rules should clarify the distinctions of the responsibilities for all LECs versus LECs who provide E911 call routing and data management services.<sup>29</sup> The rule adoption order does not indicate that the Commission made any changes to the proposed rule associated with the comment quoted by CenturyLink.<sup>30</sup> This suggests that the Commission may not have drawn such a strict dividing line between services, perhaps especially because LECs may provide call routing and data management services as well as local exchange service. In other words, it is logical to interpret the rule as requiring LECs to do their part with whatever services they provide to enable callers to reach 911.

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<sup>27</sup> Note that the rule references a myriad of 911 services that LECs may provide and in subsection (3) refers even to selective routing.

<sup>28</sup> See Grate, Exh. PEG-1T at 7:26 – 8:6.

<sup>29</sup> *In Re Notice of Proposed Rulemaking Relating to Telephone Companies*, Docket UT-990146, Comments on behalf of Military Department Emergency Management Division from Robert G. Oenning, Washington E911 Administrator (filed January 23, 2002).

<sup>30</sup> See *In Re Amending, Adopting and Repealing: Chapter 480-120 WAC Relating to Telephone Companies*, Docket UT-990146, General Order No. R-507 (Dec. 16, 2002).

**C. Penalties of up to \$1,000 per Violation Based on 222 Violations are Appropriate**

18 CenturyLink disputes the number of violations and Staff’s recommended penalty.<sup>31</sup>  
As Mr. Turcott explains, Staff could have charged as many as 444 violations but chose to  
base its recommended number of violations on the same underlying number of failed calls:  
222.<sup>32</sup> Each failed call is a separate violation, and can be charged separately under RCW  
80.04.380. This penalty statute provides, “Every violation . . . shall be a separate and distinct  
offense.” Calculating the number of violations based on the number of failed calls is  
consistent with the penalty statute and also with past cases.<sup>33</sup>

19 Staff continues to recommend penalties of up to \$1,000 per violation. The 911  
outage is not an accident with no consequences. First, the service failure resulted from an act  
and omission by CenturyLink’s vendor (carrying out the upgrade and failing to implement  
all of the possible checks). This is not a case in which the outage was caused by a third  
party, such as a car running into a telephone pole. This is a case in which CenturyLink’s  
vendor affirmatively caused the outage. In addition, the consequences of failed 911 service  
are serious. Any 911 failure entails a high risk of harm to Washington residents. Mr. Turcott  
discusses the Commission’s enforcement policy in his investigation report,<sup>34</sup> and concludes  
that “CenturyLink’s 911 system failed due to a foreseeable and preventable technical error  
and related deficiencies.”<sup>35</sup> Penalties are appropriate.

**IV. CONCLUSION**

20 CenturyLink is no longer the statewide provider of 911 service, but it still should be  
held accountable for its vendor’s failure. Pursuing enforcement for this outage is also

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<sup>31</sup> Grate, Exh. PEG-1T at 9:11 – 10:15.

<sup>32</sup> Turcott, Exh. MLT-3T at 7:20 – 8:2.

<sup>33</sup> Turcott, Exh. MLT-3T at 7:14-19.

<sup>34</sup> Turcott, Exh. MLT-2 at 11-12.

<sup>35</sup> *Id.* at 11.

important because it may have implications for the Commission's enforcement relationship with the new provider. Accordingly we ask the Commission to especially consider the policy of general deterrence as it evaluates this case.

21 As the Commission has articulated before—

A penalty should send a message, both to companies who violate the law and to others who are watching. The message must be clear, however, and it must be thoughtfully applied. An appropriate penalty must strike the right balance and send the right message.<sup>36</sup>

CenturyLink's vendor caused a partial 911 service outage resulting in grave risk of harm to Washingtonians. The Commission should use available law and regulation to the greatest extent to craft a penalty that reflects CenturyLink's responsibility and sends the right message.

Respectfully submitted,

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<sup>36</sup> *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Docket UG-001116, Commission Order Accepting Settlement (July 25, 2002).