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September 16, 2022

Amanda Maxwell
Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

RE: *Washington Utilities and Transp. Comm'n v. Qwest Corporation; CenturyTel of Washington; CenturyTel of Inter Island; CenturyTel of Cowiche; and United Telephone Company of the Northwest*
Docket UT-220397

Dear Ms. Maxwell:

On June 1, 2022, the Washington Utilities and Transportation Commission (Commission) issued a penalty assessment against Qwest Corporation, CenturyTel of Washington, CenturyTel of Inter Island, CenturyTel of Cowiche, and United Telephone Company of the Northwest (collectively CenturyLink or Company) in the amount of $226,600 for violations of Order 04 in Docket UT-130477 with respect to the "rate change notification" requirement. The relevant provision of the settlement adopted by the Commission in Order 04 required CenturyLink to "provide notice to the Commission of any changes to its flat-rated stand-alone residential rates at the same time CenturyLink notifies its customers of the rate change. The filing will identify the rate to be changed and will include all of the then-current rates of the ILEC operating companies." *In re Petition of the CenturyLink Companies*, Docket UT-130477, Appx. A at 4 (Jan. 9, 2014).

On June 8, 2022, CenturyLink filed with the Commission an application for mitigation of penalties. In its request for mitigation, the Company: (1) admitted the violations, (2) stated that the Company's penalty should be reduced, and (3) requested that the Commission base its decision on the paper record filed in this case. *See generally in re the Penalty Assessment Against the CenturyLink Companies*, Docket UT-220397, Application for Mitigation of Penalty (June 8, 2022) (hereinafter ("Application").

On September 6, 2022, the Commission by notice required Staff to file a letter responding to CenturyLink's application for mitigation. *In re the Penalty Assessment Against the CenturyLink Companies*, Docket UT-220397, Notice Requiring Staff Response, at 1, 2 (Sept. 6, 2022). Staff recommends that the Commission deny CenturyLink's application because it finds none of the Company's arguments in favor of mitigation compelling.

CenturyLink first contends that staffing reductions caused by the COVID-19 pandemic justify or mitigate its non-compliance with the rate change notification requirement of Order 04. Application at 2 ¶ 3. The Company goes on to claim that, given that turnover, the Commission should refrain concluding that it had actual or constructive knowledge of the rate change notification requirement. *Id.* at 4 ¶ 8. Even if the Commission accepts that argument, and it should not, as explained below, that should not cause the Commission to mitigate the penalty. CenturyLink's violations are aggravated by one of two alternate penalty factors: either the Commission must conclude that it had actual or constructive knowledge of the requirements of Order 04, or the Commission must conclude that CenturyLink's compliance program does not function as it should because it does not know or follow the document that governs its operations in Washington. *Compare in re Enforcement Policy of the Wash. Utils. & Transp. Comm'n,* Docket A-120061, Enforcement Policy of the Wash. Utils. & Transp. Comm'n, at 8 (Jan. 4, 2013) (factor two, whether the violations were intentional) *with id.* at 9 (factor 10, the company's compliance program). Either of those justifies the penalty imposed.

Regardless, the Commission should charge CenturyLink with knowledge, actual or constructive. It is a well-known legal "presumption" that "people know the law." *Hutson v. Wenatchee Fed. Savings & Loan Ass'n,* 22 Wn. App. 91, 98, 588 P.2d 1192 (1978). Courts use the presumption in the "civil area," and apply it with regard to a person's "dealings with a governmental entity." *Id.* Relevant here, "[t]he presumption also applies to those who ought to know the law," including those working in technical fields. *Id.* (citing as an example, "a state banking supervisor, who should be presumed to know banking law."). CenturyLink operates in a regulated environment, and it or the personnel employed in its compliance program are presumed to know the requirements of Order 04. Turnover should not suffice to nullify the presumption, especially given that some of these violations stretched out over a year, meaning that new employees to the compliance program had sufficient time to read and internalize the requirements of Order 04.

CenturyLink next contends that it gained nothing from the violations, and that ratepayers suffered no injury because of them, and the Commission should therefore mitigate the penalty because the violations did not injure the public interest. Application at 2 ¶ 4. Its arguments here suffer from two fatal defects.

Initially, CenturyLink bases its argument on the premise that the Commission was powerless in the face of the rate changes. Application at 2 ¶ 4. While CenturyLink does operate under an AFOR, *see* RCW 80.36.135, that does not strip the Commission of all regulatory authority over the Company. The Commission could terminate the waivers that allowed CenturyLink's rate changes at any time. RCW 80.36.320(3), .330(7). And, the Commission could have consulted with the Governor about suspending the relevant waivers due to the COVID-19 state of emergency. RCW 80.36.320(5), .330(9).

Further, CenturyLink disregards the purposes underlying the rate change notification requirements. As CenturyLink, Staff, and Public Counsel agreed in their testimony supporting the settlement that produced the alternative form of regulation (AFOR) that the Company

operates under, the rate change notification provision and others were intended to "provide appropriate oversight and consumer protection" while the AFOR gave "CenturyLink . . . appropriate flexibility to respond to market conditions." *In re Petition of the CenturyLink Companies*, Docket UT-130477, Testimony in Support of Settlement Agreement, at 7-8 (Sept. 19, 2013). By denying Staff the information it needed to oversee the AFOR, CenturyLink injured the public interest.

Finally, CenturyLink asks the Commission to mitigate the penalty based on two arguments regarding the way Staff counted the violations. Neither should persuade the Commission.

First, the Company contends that Staff impermissibly stacked violations by separately citing each operating company rather than citing CenturyLink as a single entity. But the company structured its operations with each operating company as a separate legal entity. The penalty assessment simply reflects that reality.

Second, CenturyLink argues that the Commission should refrain from treating the violations as continuing violations, stating that its obligation to notify Staff "was a singular event for each notice" and that it "did not have an obligation to file the notice the day after or the day after that." That argument misses the point. CenturyLink had an obligation to notify Staff. It did not do so at the time the AFOR required that notice, and it did not do so for many days afterwards. The AFOR did not require the notice so that CenturyLink would simply file a piece of paper; it required the notice so that Staff would know of the rate change, enabling the Commission to monitor CenturyLink's compliance with the AFOR's terms. Each day that Staff lacked that notice, the Commission could not perform that monitoring. Given the purposes of the rate change notification term, the Commission should treat the violations as continuing for each of those days and impose a penalty accordingly. *See* RCW 80.04.405.

Accordingly, Staff recommends that the Commission deny CenturyLink's application for mitigation of the penalty assessment.

Sincerely,

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