

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

DOCKET UT-210902

v.

CENTURYLINK COMMUNICATIONS
LCC d/b/a LUMEN TECHNOLOGIES
GROUP; QWEST CORPORATION;
CENTURYTEL OF WASHINGTON, INC.;
CENTURYTEL OF INTER ISLAND, INC.;
CENTURYTEL OF COWICHE, INC.;
UNITED TELEPHONE COMPANY OF
THE NORTHWEST

CENTURYLINK'S OPENING BRIEF

April 21, 2023

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I. INTRODUCTION

1. This case is about the unintentional disconnection or suspension of a number of telecommunications customers over a seventeen-month period of the Governor's moratorium on disconnections issued during the COVID-19 pandemic. CenturyLink Communications LLC d/b/a Lumen Technologies Group; Qwest Corporation; CenturyTel of Washington, Inc.; CenturyTel of Inter Island, Inc.; CenturyTel of Cowiche, Inc., and United Telephone Company of the Northwest (collectively, "CenturyLink") mistakenly discontinued service to a small fraction of its Washington customers. The liability portion of this proceeding has been established, and the only remaining issue is the appropriate penalty (if any) that should be assessed in light of the unique circumstances of this case.
2. The Staff of the Washington Utilities and Transportation Commission ("Commission Staff" or "Staff") and the Public Counsel Unit of the Washington Attorney General's Office ("Public Counsel") seek the maximum penalties possible for these accidental, human-caused errors. CenturyLink regrets the disconnections and suspensions and has worked with impacted customers to correct the accidental disconnections. Commission Staff and Public Counsel ignore or vastly downplay uncontested evidence such as the likelihood of recurrence, the steps CenturyLink took that successfully prevented 98 percent of the potential disconnections, and CenturyLink's cooperation during Commission Staff's investigation.
3. The prohibition against disconnections is no longer in effect and has not been for nineteen months. CenturyLink has learned valuable information to improve its processes for implementing operational changes on short notice. Any penalty would do nothing more than punish CenturyLink for isolated mistakes that were reported and addressed as soon as they were

discovered. As discussed below, these and other factors call for no penalty, or at most a penalty of \$100/violation.

II. FACTS AND BACKGROUND

A. Proclamation 20-23.2

4. Near the beginning of the COVID-19 pandemic Governor Inslee issued Proclamation 20-23.2 (“Proclamation”), which prohibited all energy, telecommunications, and water providers in Washington State from conducting the following activities: (1) disconnecting any residential customers from energy, telecommunications, or water service due to nonpayment, except at the request of the customer; (2) refusing to reconnect any residential customer who has been disconnected due to nonpayment; and (3) charging fees for late payment or reconnection of energy, telecommunications, or water service.¹ The Proclamation’s restrictions were in effect from March 23, 2020, through September 30, 2021.²

B. The Commission’s COVID-19 Response

5. Shortly after the Proclamation went into effect the Commission opened Docket U-200281 to address issues related to the COVID-19 pandemic. In that docket energy stakeholders formed a response workgroup to facilitate development of guidelines to ensure customers experiencing economic hardship due to the COVID-19 pandemic retained access to essential services after the Proclamation expired and the disconnection moratorium was no longer in effect.³ Staff first facilitated development of guidelines for regulated electric and gas, then water companies.⁴

¹ See Attach. A to Investigation Report.

² See *id.*

³ See Investigation Report at p. 5.

⁴ See *id.*

6. After those guidelines were established, Staff shifted its focus to telecommunication companies, but the Commission ultimately declined to establish guidelines for the telecommunications industry as part of that docket.⁵ Staff never provided technical assistance to CenturyLink related to the Proclamation, and CenturyLink was never part of a COVID-19 response workgroup. Nonetheless, as part of Staff’s fact-finding efforts in Docket U-200281, Staff issued data requests to several telecommunications companies to gather information about each company’s actions, plans, and responses related to disconnections, late payments, and other economic impact hardships related to COVID-19 recovery.⁶ Staff issued several rounds of data requests to CenturyLink, and CenturyLink responded to each, both in writing and via conference calls.⁷
7. Additionally, the Commission held a special open meeting on June 16, 2020, to hear from regulated companies about their COVID-19 recovery plans. Lisa Anderl appeared at the special open meeting on behalf of CenturyLink and updated the Commission on the company’s response plans. Ms. Anderl informed the Commission that CenturyLink intended to comply with the Proclamation and would continue to do so if the Proclamation was extended.⁸

C. CenturyLink’s COVID-19 Response

8. During the Keep America Connected (“KAC”) pledge period (which expired at the end June 2020), CenturyLink’s disconnection functionality was universally suppressed across all its

⁵ See *id.* See also, *In the Matter of Response to the COVID-19 Pandemic*, Docket U-200281, Order 03 (adopting term sheet for related energy companies) (May 18, 2021) and Order 05 (adopting term sheet for regulated water companies) (July 9, 2021). Docket U-200281 was closed on April 1, 2022.

⁶ See Investigation Report at p. 5 and Attachs. C and D thereto.

⁷ See Attachs. C through F of Investigation Report. See also, Feeser, Exh. BF-2 and Exh. BF-3.

⁸ Wash. Utils. & Transp. Comm’n, Special Open Meeting, at 1:30:18 (June 16, 2020), <https://wutc.app.box.com/v/OpenMeetings/file/745577687782> (Comments of Lisa Anderl representing CenturyLink).

jurisdictions.⁹ When the KAC pledge expired, there was no longer a nationwide suspension or disconnection prohibition, meaning that the company reinitiated its typical collections systems and practices in most jurisdictions.¹⁰ A number of states, including Washington, continued to maintain restrictions beyond expiration of the KAC pledge.¹¹ Those requirements varied broadly among those states and contained substantial nuances as to affected service, prohibited activity and time period.¹²

9. For Washington, the company ran several custom computer scripts (software code) designed to extract potential suspensions and disconnections.¹³ The process involved complex billing and provision systems not otherwise designed for unconventional requirements of varying, short-term disconnection restrictions.¹⁴ CenturyLink's Information Technology department personnel created and ran the custom software code, but the actual extractions required manual intervention by billing agents.¹⁵ While those agents were largely successful in removing potential suspensions and disconnections from the queue, a small number of them trickled through due to human error.¹⁶ Either the agent simply missed removing a particular customer from the queue or mistyped the commands to remove the customer.¹⁷ In some cases, the agent may have also misunderstood the instructions and allowed the suspension or disconnection to flow through.¹⁸ At

⁹ See Gose, Exh. PJG-1T at 7:21-8:1.

¹⁰ See Gose, Exh. PJG-1T at 8:1-3.

¹¹ See Gose, Exh. PJG-1T at 8:3-4.

¹² See Gose, Exh. PJG-1T at 8:4-6.

¹³ See Gose, Exh. PJG-1T at 8:7-8; *See also*, Gose, Exh. PJG-4C.

¹⁴ See Gose, Exh. PJG-3T at 3:8-12.

¹⁵ See Gose, Exh. PJG-3T at 3:12-17.

¹⁶ See Gose, Exh. PJG-1T at 8:9-11.

¹⁷ See Gose, Exh. PJG-1T at 8:11-12.

¹⁸ See Gose, Exh. PJG-1T at 8:12-14.

the same time, CenturyLink was also experiencing staffing reductions due to the impacts of the pandemic, including the departure of all four state regulatory and legal employees assigned to Washington.¹⁹

10. Despite the challenges of implementing manual processes involving personnel from multiple departments, those efforts were by and large successful. CenturyLink typically suspends approximately 1,500 residential voice accounts in Washington per month.²⁰ As such, a projected 25,500 residential voice accounts in Washington would likely have been suspended had CenturyLink not taken these steps to prevent such treatment.²¹ CenturyLink suppressed a projected 96 percent of suspensions during the effective period of the Proclamation. As for involuntary disconnections, CenturyLink estimates that it involuntarily disconnects over 500 residential customers in Washington per month.²² Therefore, a projected 8,500 residential voice accounts in Washington would have been disconnected had CenturyLink not taken appropriate steps to prevent such treatment.²³ Thus, CenturyLink suppressed a projected 98 percent of disconnections during the effective period.²⁴ In total, 923 subscribers were inadvertently disconnected or suspended during the seventeen months the Proclamation was in effect, but approximately 34,000 disconnections and suspensions were proactively prevented. The Proclamation expired at the end of September 2021, and CenturyLink's authority to resume its normal processes was reinstated.

¹⁹ See Gose, Exh. PJG-3T at 3:8-9. See also Gose, Exh. PJG-6XC and Exh. PJG-7XC.

²⁰ See Gose, Exh. PJG-1T at 7:8-10.

²¹ See Gose, Exh. PJG-1T at 7:10-12.

²² See Gose, Exh. PJG-1T at 7:13-14.

²³ See Gose, Exh. PJG-1T at 7:14-16.

²⁴ See Gose, Exh. PJG-1T at 7:17-18.

11. CenturyLink discovered the disconnections while reviewing its operations to respond to Staff's above-referenced data requests in Docket U-200281.²⁵ CenturyLink timely notified Staff.²⁶ It also reached out to disconnected customers and offered to reconnect them free of charge.²⁷ Staff has acknowledged that CenturyLink corrected the violations before the complaint was issued in this case.²⁸

D. An Appropriate Penalty is No Penalty

12. The Commission issued its complaint in this proceeding, the parties engaged in formal discovery, and the Commission ruled on cross-motions for summary determination, finding that CenturyLink violated WAC 480-120-172(3)(a) and is liable for suspensions or disconnection of service to 923 customers.²⁹ The only issue that remains in this proceeding is the appropriate penalty. The Commission's Enforcement Policy Statement issued in January 2013 in Docket A-120061 ("Policy Statement") articulates the Commission's position and policies regarding enforcement actions and penalties. In the Policy Statement, the Commission sets forth the following eleven factors ("Factors") for consideration in actions to enforce applicable statutes, rules, orders, or tariffs:

- (1) how serious or harmful the violation is to the public;
- (2) whether the violation is intentional;
- (3) whether the company self-reported the violation;

²⁵ See Gose, Exh. PJG-1T at 6:15-18.

²⁶ See Feeser, Exh. BF-2 at 2.

²⁷ See Dahl, Exh. CJD-6.

²⁸ See Investigation Report at p. 10.

²⁹ See Order 03 at ¶ 19.

- (4) whether the company was cooperative and responsive;
- (5) whether the company promptly corrected the violations and remedied the impacts;
- (6) the number of violations;
- (7) the number of customers affected;
- (8) the likelihood of recurrence;
- (9) the company's past performance regarding compliance, violations, and penalties;
- (10) the company's existing compliance program, and
- (11) the size of the company.

13. Staff testifies that Factors (1), (2), (6), (7), (8) and (11) are the most important Factors,³⁰ and Public Counsel testifies that Factors (1), (2), (9) and (10) are the most important Factors.³¹ The analysis below considers all the Factors in light of the Policy Statement, Commission precedent, the circumstances during the Proclamation's effective period, and the termination of the Proclamation itself. The results support no penalty. If the Commission disagrees, a small penalty in the amount of \$92,300 (\$100 per violation) would be more than adequate to appropriately further the Commission's objective. Additionally, if the Commission does assess a penalty against CenturyLink, the Commission may suspend all or a portion of the penalty. Such suspension would be appropriate in this case where, as described below, it is a first-time penalty and CenturyLink can ensure future compliance.

³⁰ See Feeser, Exh. BF-1T at 9:1.

³¹ See Dahl, Exh. CJD-1Tr at 28:8-20.

III. PENALTY ASSESSMENT

A. The Commission Has Discretion in Assessing and Suspending Penalties

14. The Commission's objective when enforcing statutes, rules, orders, and tariffs is to ensure services within the Commission's jurisdiction are delivered safely, adequately, efficiently, and at rates and charges that are just and reasonable.³² "The Commission's ultimate objective in any enforcement action is to obtain compliance with applicable law."³³ Upon a finding of a violation of WAC 480-120-172, the Commission may assess penalties not to exceed \$1,000 per violation per day. The Commission may decline to assess penalties even if a violation occurred and has chosen to forego penalties when future compliance is anticipated.³⁴ The Commission may also suspend penalties and subsequently waive them upon conditional performance.³⁵

B. The Issue Here is an Appropriate Penalty Assessment, Not Mitigation of Penalties

15. Both Staff³⁶ and Public Counsel have proceeded throughout this case as if the Commission has already assessed and ordered the maximum penalty against CenturyLink, and the only remaining issue is whether to mitigate down from that assessed penalty. Public Counsel repeatedly, incorrectly, and inappropriately refers to the testimony of CenturyLink witness Peter

³² See Policy Statement at ¶ 9.

³³ *Wash. Utils. & Transp. Comm'n. v. Qwest Corp. d/b/a CenturyLink QC*, Docket UT-140597, Order 03 at ¶ 10 (Feb. 22, 2016).

³⁴ *Wash. Utils. & Transp. Comm'n. v. Electric Lightwave, Inc.*, Dockets UT-001532/001533, Final Order at ¶ 18 (March 12, 2001).

³⁵ Policy Statement at ¶ 20. See also, e.g., *Wash. Utils. & Transp. Comm'n v. CenturyTel of Inter Island, Inc. d/b/a CenturyLink*, Docket UT-132234, Order 03 at ¶ 51 (Oct. 20, 2015).

³⁶ See, e.g., Feeser, Exh. BF-1T at 8:21-23: "Factors 4 (whether the company was cooperative and responsive) and 5 (whether the company promptly corrected the violations and remedied the impacts) indicated some mitigation might be warranted."

Gose as CenturyLink’s “request for mitigation.”³⁷ CenturyLink has not requested mitigation of any penalty in this proceeding because no penalty has been assessed. Further, as described below, no penalty is warranted in this case because, among other reasons, there is absolutely no likelihood of recurrence given the expiration of the Proclamation over eighteen months ago.

16. Staff’s and especially Public Counsel’s fixation on mitigation reveals a fundamental misapplication of the Factors to be considered in the Commission’s Policy Statement. The idea of mitigation presupposes that the maximum penalty is the baseline, or default, position, and it is the company’s burden to show cause to reduce that maximum penalty. But the Policy Statement supports the opposite conclusion. It is incremental in nature, starting with informal inspections, and progressing as necessary and appropriate under the circumstances to accomplish the Commission’s objective of ensuring safe, adequate, and efficient delivery of services at rates and charges that are just and reasonable. For example, if the Commission finds there is potential non-compliance, then it will initiate an inspection or investigation.³⁸ The Commission may then provide technical assistance to the company.³⁹ If there is a finding of a violation following the inspection or investigation, then the Commission will consider whether an enforcement action, beyond technical assistance, is appropriate and, if so, which action to take.⁴⁰ If it decides to

³⁷ See Dahl, Exh. CJD-3T at 2:4; Dahl, Exh. CJD-3T at 10:10-12; Dahl, Exh. CJD-3T at 14:4, 18; Dahl, Exh. CJD-3T at 15:9-12, 19.

³⁸ Policy Statement at ¶ 5 “The Commission or Staff initiates an investigation when it has reason to suspect a company has violated a Commission statute, rule, order or tariff.”

³⁹ *Id.* at Section B: Technical Assistance, ¶ 10: “The Commission attempts to ensure compliance with statutes, rules, orders and tariffs by encouraging voluntary compliance by the companies it regulates.”

⁴⁰ *Id.* at ¶ 13.

initiate an enforcement action, the Commission has a range of procedural options at its disposal, beginning with sending a compliance letter and requesting voluntary compliance.⁴¹

17. Here, the Commission issued a complaint and found in Order 03 that CenturyLink's suspension or disconnection of 923 residential customers between March 23, 2020, and September 30, 2021, violated WAC 480-120-172(3)(a). The Commission should now consider the Factors stated in Section V.C of Policy Statement to determine the appropriate penalty, which may be zero. As described below, an analysis of the Commission's Factors weighs against penalties because they are not necessary to further the Commission's objective.

C. The Commission's Factors Favor No Penalty

1. Factor One: How serious or harmful the violation is to the public

18. CenturyLink deeply regrets that any of its subscribers were mistakenly disconnected while the Governor's Proclamation was in place. Even one customer mistakenly disconnected due to human error – despite the company's best efforts to prevent such from occurring – is important and problematic. Fortunately, CenturyLink's efforts were largely successful (as discussed in greater detail above) and only a very small percentage of the company's Washington customers were negatively affected.

19. The Commission, in its discretion, may wish to note the lack of public response/comment regarding CenturyLink's unintentional errors. Importantly, after CenturyLink recognized its error and notified affected customers of their ability to reconnect without charge, only about 10-15 percent of the customers chose to reconnect.⁴² Further, to CenturyLink's knowledge, there have

⁴¹ *Id.* at ¶ 17(1).

⁴² *See* Gose, Exh. PJG-1T at 9:5-7.

been no public comments or complaints regarding the disconnections submitted to the Commission or Public Counsel in this proceeding.

2. Factor Two: Whether the violation is intentional

20. The evidence in this proceeding demonstrates unquestionably that CenturyLink's violation was unintentional. The Factor states:

Whether the violation is intentional. A company that willingly and intentionally violates a Commission requirement may be dealt with more severely than a company that unknowingly committed a violation.⁴³

There is no doubt that CenturyLink intended to comply with the Proclamation. CenturyLink established new protocols in the form of code scripts to identify and suppress disconnections and suspensions, CenturyLink communicated those new protocols and processes with the appropriate personnel, and CenturyLink ensured that the Information Technology department, who was responsible for identifying potential disconnections and suspensions, communicated the process with its customer service and billing personnel.⁴⁴ Most importantly, the company unequivocally expressed its intent to comply with the Proclamation on the record in an open meeting on June 16, 2020. Neither Staff nor CenturyLink was aware of the relatively few disconnections that slipped through CenturyLink's processes until CenturyLink discovered and reported them to Staff on October 12, 2021.⁴⁵

21. CenturyLink's intention, plans, and processes applied to both suspensions and disconnections. Staff believes CenturyLink's disconnections were unintentional, but it thinks that

⁴³ Policy Statement at p. 8.

⁴⁴ See Gose, Exh. PJG-4C and Exh. PJG-5C.

⁴⁵ See Gose, Exh. PJG-1T at 6:16-18. See also Feeser, Exh. BF-2 at 2.

CenturyLink intended all the suspensions.⁴⁶ This discrepancy is based solely on one response to one of Staff’s informal data requests on February 10, 2022, months before this case was even initiated.⁴⁷ The response states, “CenturyLink notes that the Governor’s Proclamations did not restrict utilities from suspending customers for non-payment.”⁴⁸ However, one only needs to continue reading CenturyLink’s response in the very same paragraph to learn that CenturyLink nonetheless intended to, *and did*, suppress suspensions for the period of the Proclamation. “On average (under normal operating circumstances), approximately 1500 residential voice accounts per month are suspended for non-payment, meaning that absent CenturyLink’s efforts to suppress suspensions, it is likely that 25,500 residential voice suspensions would have occurred.”⁴⁹ CenturyLink proceeded to stop both suspensions and disconnections through the entire 17-month period because that was CenturyLink’s intent. The company’s plan was to prevent suspensions, regardless of whether or not the Proclamation (strictly speaking) prohibited such activity. Its February 2022 statement reflected merely the company’s legal opinion at the time (based on the plain language of the Proclamation) and did not negate that CenturyLink had intended to prevent (and in fact largely did prevent) suspensions of residential voice services in Washington.

22. In his prefiled testimony, Mr. Gose then explains exactly how the Company took steps to stop both disconnections and suspensions. Following the expiration of the nationwide suspension and disconnection moratorium, CenturyLink reinstated its typical collections systems and processes but had to apply manual processes for those states, including Washington, where a

⁴⁶ See Feeser, Exh. BF-1T at 5:20-6:2.

⁴⁷ See Feeser, Exh. BF-4T at 5:1-11.

⁴⁸ Feeser, Exh. BF-3 at 2.

⁴⁹ Attachment F to Investigation Report at p. 49 (emphasis added). See also Gose, Exh. PJG-1T at 7:8-18.

moratorium remained in effect. For Washington, CenturyLink created and ran several custom scripts designed to extract potential suspensions and disconnections.

The actual extractions required manual intervention by billing agents. While those agents were largely successful in removing potential suspensions/disconnections from the queue, a small number of them trickled through due to human error. Either the agent simply missed removing a particular customer from the queue or mistyped the commands to remove the customer. In some cases, the agent may have also misunderstood the instructions and allowed the suspension/disconnection to flow through.⁵⁰

23. Exhibit PJG-4C contains a 144-page script CenturyLink used, and Exh. PJG-5C contains an example of one of the communications related to deployment of the script. Neither Staff nor Public Counsel has, or can, point to anything in either exhibit that distinguishes disconnects from suspensions. There is no instruction in the communication for separating suspensions from disconnections. It makes no sense for CenturyLink to create a new, manual process to identify and prevent both suspensions and disconnections if it did not intend to identify and prevent them both from occurring. Further, had CenturyLink intended to suspend Washington customers, why would it have suspended only several hundred out of tens of thousands? Neither Staff nor Public Counsel addresses this rather obvious flaw in their logic. The large number of suspensions and disconnections that were prevented, combined with the evidence showing communications between CenturyLink's personnel regarding the new, manual process and the computer scripts themselves, all support Mr. Gose's testimony that the few suspensions and disconnections that occurred were all unknown, accidental, and unintentional.

24. The Commission's Policy Statement expands on Factor Two to elaborate on the considerations that go into determining whether a company willingly and intentionally committed

⁵⁰ Gose, Exh. PJG-1T at 8:8-14.

a violation. Each of these additional considerations, which both Staff and Public Counsel have ignored to date, weigh against penalizing CenturyLink:

1. The company ignored Staff's previous technical assistance.⁵¹

Staff provided no technical assistance to CenturyLink for compliance with the Proclamation. Accordingly, CenturyLink did not ignore any previous technical assistance.⁵²

2. The company committed previous violations of the same statute or regulation.⁵³

Staff points to no examples of CenturyLink committing previous violations of the same regulation, either generally or in circumstances similar to the unusual context of this case.

3. The company appears to be hiding or obscuring the facts.⁵⁴

The record evidence shows that CenturyLink has been forthright and open before,⁵⁵ during,⁵⁶ and after⁵⁷ the investigation. CenturyLink is neither hiding nor obscuring facts. CenturyLink provided responses to multiple rounds of informal data requests before this proceeding was initiated, and CenturyLink timely responded to multiple rounds of formal data requests from both Staff and Public Counsel. CenturyLink supplemented both informal and formal data requests when necessary, providing additional information as it was obtained. CenturyLink provided as an exhibit the actual computer code used to suppress both

⁵¹ Policy Statement at p. 8.

⁵² *Compare, e.g., Re: Bremerton Kitsap Airporter*, Docket TE-150531, Notice of Penalties Incurred and Due for Violations of Law and Rules (June 9, 2015). “During Bremerton-Kitsap’s 2012 compliance review, Staff found that the Company’s controlled substance and alcohol testing program was not in compliance but that the violations are the result of lack of oversight by Company personnel and inadequacies in the current program and do not appear to be intentional. However, Staff has conducted four compliance reviews and provided technical assistance numerous times during the past 10 years.”

⁵³ Policy Statement at p. 8.

⁵⁴ Policy Statement at p. 8.

⁵⁵ See Wash. Utils. & Transp. Comm’n, Special Open Meeting, at 1:27:30 (June 16, 2020), <https://wutc.app.box.com/v/OpenMeetings/file/745577687782> (Comments of Lisa Anderl representing CenturyLink).

⁵⁶ See Attachments C through F of Investigation Report. See also, Feeser, Exh. BF-2 and Exh. BF-3.

⁵⁷ See, e.g., Gose, Exh. PJG-6XC (CenturyLink’s Response to Public Counsel’s Data Request No. 8 with Supplemental Response).

suspensions and disconnections,⁵⁸ and CenturyLink provided hundreds of pages of computer program scripts to Staff and Public Counsel in response to data requests.⁵⁹

4. There is clear evidence through documentation or other means that show the company knew of and failed to correct the violation.⁶⁰

The evidence shows the opposite to be true. The contemporaneous documents demonstrate that CenturyLink learned of the inadvertent disconnections during its internal investigation in response to Staff's informal data request regarding a separate docket. No party disputes this. Upon learning of the disconnections, CenturyLink took steps to correct the violation on its own, prior to initiation of this proceeding.⁶¹

25. Prior to issuing its Policy Statement, the Commission considered timing of the requirement as an indicator of intent. If the conduct was associated with new requirements, that suggested that the conduct was unintentional, weighing against penalties.⁶² The requirement here, an emergency Proclamation barring CenturyLink's authority to involuntarily disconnect and suspend certain customer accounts, was not only new – it was almost inconceivable – until it happened. When CenturyLink asked Public Counsel in a data request whether it was aware of any similar prohibitions prior to this Proclamation, Public Counsel could produce none, stating, “The COVID-19 pandemic was extraordinary in its breadth and scope...”⁶³ The complete analysis of Factor Two weighs heavily in favor of no penalties.

⁵⁸ See Gose, Exh. PJG-4C.

⁵⁹ See Gose, Exh. PJG-3T at 7:4-5.

⁶⁰ Policy Statement at p. 8.

⁶¹ See Dahl, Exh. CJD-6; *see also*, Investigation Report at p. 10.

⁶² See *Wash. Utils. & Transp. Comm'n v. Electric Lightwave, Inc.*, Dockets UT-001532/001533 Supplemental Order Denying Mitigation of Penalties at ¶ 19 (March 12, 2001), *citing MCI Metro Access v. U S WEST, Inc.*, Docket UT-971063, 9th Supp. Order at ¶ 166 (Sept. 25, 1998).

⁶³ Dahl, Exh. CJD-9X.

3. Factor Three: Whether the company self-reported

Whether the company self-reported the violation. The Commission may be more lenient with a company that self-reports to the Commission a violation that occurred.⁶⁴

26. As explained in the Investigative Report, Staff was in the process of developing guidelines in another proceeding to ensure customers experiencing economic hardship due to the COVID-19 pandemic retained access to essential services after the Proclamation expired and the disconnection moratorium was no longer in effect. Staff had completed such guidelines for energy and water companies and, as Staff explains, “The time has come for Commission Staff to obtain details concerning regulated telecommunications service providers’ actions, plans, and responses related to disconnections, late payments, and other economic impact hardships related to Covid-19 recovery.”⁶⁵ Staff then issued several general data requests to CenturyLink, as they did other telecommunications companies, and it was then that CenturyLink discovered and reported the inadvertent disconnections:

3. Please provide the number of customers disconnected for late payment or lack of payment each month during the period from March 2020 to August 2021.

We recently discovered that billing system process errors led to 407 customers of our residential voice system in Washington being involuntarily disconnected for non-payment between March 2020 and August 2021.⁶⁶

27. So, while Staff’s general data requests triggered CenturyLink’s internal inspection, CenturyLink discovered the disconnections, not Staff, and CenturyLink reported the

⁶⁴ Policy Statement at p. 8.

⁶⁵ Attachment C to Investigation Report.

⁶⁶ Feeser, Exh. BF-2 at 2.

disconnections to Staff as soon as it became aware of them. Accordingly, it is not completely accurate that, “Staff discovered the violations during ongoing work concerning the effects of the COVID pandemic,” as Ms. Feeser testified.⁶⁷

28. Although Public Counsel was not at all involved in any investigation, Mr. Dahl nonetheless agrees with Staff and says that because CenturyLink did not self-report, then “the Commission should impose a stern penalty...”⁶⁸ But as explained above, this factor is not so easily settled. While CenturyLink has conceded that it did not self-report a violation, the evidence shows that no one was aware of any disconnections or suspensions until CenturyLink discovered them and immediately reported them to Staff.

4. Factor Four: Whether the company was cooperative and responsive

Whether the company was cooperative and responsive. The Commission may consider the company’s cooperation and responsiveness during an investigation when it considers enforcement action after the investigation is completed.⁶⁹

29. Staff states that CenturyLink was cooperative and mostly responsive. Accordingly, Staff does not include this factor as support for any penalty. But Public Counsel (who, again, was not involved in the investigation in any way) describes CenturyLink as “minimally cooperative” because, it claims, CenturyLink “took almost three months to respond to a handful of straightforward data requests.”⁷⁰ Public Counsel raises this perceived delay as weighing against

⁶⁷ Feeser, Exh. BF-1T at 6:5-6.

⁶⁸ Dahl, Exh. CJD-1Tr at 17:11-12.

⁶⁹ Policy Statement at p. 8.

⁷⁰ Dahl, Exh. CJD-1Tr at 17:7-8.

CenturyLink for both Factor Three and Factor Four.⁷¹ “CenturyLink did not provide responses until nearly three months later on October 12, 2021.”⁷²

30. Public Counsel is mistaken. CenturyLink’s letter of October 12, 2021, the one Public Counsel states was provided “three months later,” was in response to additional, supplemental questions Staff issued on September 16, 2021, not the data requests issued on July 21, 2021.⁷³ The first sentence of the response says, “We’re writing to share our responses to the WUTC Staff’s informal data requests issued on September 16, 2021”. Even a cursory glance at the questions and answers would have revealed that CenturyLink’s October 12, 2021, letter was responding to additional, follow-up questions from Staff. In fact, the evidence demonstrates that CenturyLink and Staff had been communicating for months, both on the phone and through several rounds of written informal discovery.⁷⁴ Contrary to what Public Counsel calls “a handful of straightforward questions,” the investigation involved multiple conversations and correspondence spanning more than seven months.

31. Public Counsel was never involved in any part of the investigation, yet Mr. Dahl repeats his error several times, ultimately relying on his mistake to call for a “stern penalty” and a “strong penalty.”⁷⁵ Public Counsel can provide no insight into the investigation, and its opinions regarding Factors Three and Four should be rejected. The contemporaneous documentation in the

⁷¹ See Dahl, Exh. CJD-1Tr at 17:3-8 and 17:16-17.

⁷² Dahl, Exh. CJD-1Tr at 17:5-6.

⁷³ See Feeser, Exh. BF-2 at 1.

⁷⁴ *Id.* (“As we discussed over the phone, staff needs detailed information from your company in order to assess the impact of COVID on disconnection of phone services.”)

⁷⁵ See Dahl, Exh. CJD-1Tr at 17:2-12 and 18:3-5.

record for this proceeding establishes that CenturyLink was extremely cooperative and responsive throughout the investigation.

5. Factor Five: Whether the company promptly corrected the violations and remedied the impacts.

Whether the company promptly corrected the violations and remedied the impacts. The Commission may be more lenient when a company promptly corrects a violation, and any underlying system problems, when these are pointed out by Staff. For example, if the violation had an impact on customers, such as an overcharge, the Commission may be more lenient if the company immediately took steps to refund the money and to remedy any other harm.⁷⁶

32. Staff concedes that this Factor weighs in favor of CenturyLink because Staff acknowledged even before the Complaint was issued that, “CenturyLink has corrected the violations noted in this report.”⁷⁷ CenturyLink discovered the disconnections and suspensions before Staff did, so they (or any system problems) were not pointed out by Staff. CenturyLink does not charge for disconnections or suspensions, so no refund was warranted, but CenturyLink did send letters to customers offering to reconnect them at no charge:

After learning that a small fraction of CenturyLink’s total customers in Washington had been inadvertently disconnected, CenturyLink reached out to those affected customers to offer reconnections free of any non-recurring charges. Approximately 10% - 15% of customers contacted reconnected and the company processed adjustments for fees billed to credit those back to the customer. Staff acknowledges that CenturyLink’s prompt corrections and remedies likely warrant mitigation.⁷⁸

33. Despite Staff’s satisfaction that “CenturyLink has corrected the violations noted in this report,” and even though (again) Public Counsel was never involved in the investigation, Public

⁷⁶ Policy Statement at p. 8.

⁷⁷ Investigation Report at p. 10.

⁷⁸ Gose, Exh. PJG-1T at 9:3-8. *See also* Dahl, Exh. CJD-6.

Counsel was not content with CenturyLink’s efforts to reconnect affected customers. *Public Counsel states that CenturyLink should have proactively reconnected customers without their request.*⁷⁹ Asking customers to request reconnection, Mr. Dahl testifies, is both burdensome and absurd.⁸⁰ Doing as Public Counsel urges would have been illegal. Connecting a customer without authorization is “slamming” and is prohibited by law.⁸¹ In response to a CenturyLink data request, Public Counsel responded that it did not intend for CenturyLink to violate Washington or federal law as a remedial action for improperly disconnecting customers.⁸² Yet it has not withdrawn the suggestion from Mr. Dahl’s testimony.

6. Factors Six and Seven: The number of violations and the number of customers

The number of violations and number of customers affected. While numbers alone do not determine appropriate enforcement actions, the more violations the Commission finds, the more likely it is to take an enforcement action. The more customers affected by a violation, the more likely the Commission will take enforcement action.⁸³

34. Staff provided no direct testimony commenting on the number of violations or the number of customers affected, stating only the total number – 923. In its Investigation Report, Staff simply described the number as “significant.” Later, Staff suggests that the Commission ignore context and reference, and instead focus on the “absolute” number and weigh that heavily against CenturyLink.⁸⁴

⁷⁹ See Dahl, Exh. CJD-3T at 10:6-10.

⁸⁰ See Dahl, Exh. CJD-3T at 10:6-10.

⁸¹ See 47 U.S. Code § 258.

⁸² See Dahl, Exh. CJD-11X.

⁸³ Policy Statement at p. 9.

⁸⁴ Feeser, Exh. BF-4T at 9:3-5.

35. In Ms. Feeser’s rebuttal testimony, she contemplates a hypothetical number of customers instead of remarking on the actual customers affected in this case. She claims that the company would see the hypothetical customers to be “of no significance.”⁸⁵ Such an accusation is unfair and untrue. Before Ms. Feeser made that claim, Mr. Gose expressly testified that “Through this analysis CenturyLink is by no means suggesting that the disconnections were insignificant.”⁸⁶ CenturyLink recognizes that even one inadvertent disconnection or suspension is significant. However, the real number of violations and customers affected should be viewed relative to the number of disconnections and suspensions that were suppressed during the Proclamation’s effective period. The number of violations and customers affected should not be considered in a vacuum because whether a number is large or small necessarily depends on context. Staff and Public Counsel provide no context or reference for the number of violations.

36. On the other hand, CenturyLink’s witness provides the necessary information to put the number in perspective. As explained in Mr. Gose’s prefiled response testimony, CenturyLink typically disconnects over 500 residential customers and suspends another 1,500 residential customers in Washington *per month*. This means a total of 34,000 customers would have ordinarily had their service involuntarily discontinued between March 23, 2020, and September 30, 2021. 923 customers represent two percent of potentially affected customers. In this context, while even one inadvertent disconnection is important and problematic, the number of violations and customers impacted is objectively small.

⁸⁵ Feeser, Exh. BF-4T at 9:2.

⁸⁶ Gose, Exh. PJG-1T at 12:8-10.

7. Factor Eight: Likelihood of recurrence

The likelihood of recurrence. If the company has not changed its practices, or if the violations are repeat violations made known to the company in the course of an earlier inspection or investigation, the Commission will be more likely to take an enforcement action.⁸⁷

37. The likelihood of recurrence is zero, and the Commission should weigh this factor heavily in favor of no penalty or a suspended penalty. The liability at issue here is because CenturyLink involuntarily discontinued service to customers when it temporarily had no authority to do so. It was not a repeat violation, neither Staff nor Public Counsel take issue with CenturyLink's disconnection process, and CenturyLink's authority to discontinue service was restored when the emergency Proclamation terminated in September 2021.
38. Staff and Public Counsel incorrectly broaden the standard of this Factor beyond the Commission's express language and thereby change the analysis from what the Commission intended and has applied in the past. Specifically, Staff and Public Counsel consider the likelihood of a future state of emergency and "similar" violations, rather than what the factor expressly states – "recurrence" of the specific violation. In considering whether "the violations are repeat violations," this factor is obviously focused on a company's potential recidivism. This is not a repeat violation because CenturyLink had authority to do what it did before the Proclamation, and it regained that authority after the termination of the Proclamation. No party claims that CenturyLink's inadvertent errors were repeat violations.
39. This is also not a situation where the company must change its practices to ensure compliance with a rule. In her one-sentence analysis of this factor, Ms. Feeser testifies, "Staff is

⁸⁷ Policy Statement at p. 9.

not aware of any steps that CenturyLink has taken to prevent future similar violations.”⁸⁸ As stated above, the Factor is not considering “similar” violations, but repeat violations. There is no appropriate step CenturyLink can or should take to anticipate and prevent a disconnection during the pendency of the Proclamation because the Proclamation expired and does not exist anymore.

40. As stated in the prefiled response testimony of Peter Gose, the Commission has addressed situations like this, where a change in circumstances makes the likelihood of recurrence zero.⁸⁹ In Docket UT-190209, the presiding officer emphasized in an Initial Order that penalties are intended to provide an incentive to the company to comply with applicable law:

‘The Commission’s ultimate objective in any enforcement action is to obtain compliance with applicable law.’ [footnotes omitted] Penalties primarily provide an incentive to comply with legal requirements. * * * CenturyLink no longer even provides 911 service under contract with WMD. Assessing penalties under these circumstances would provide no incentive whatsoever for CenturyLink to comply with applicable law.⁹⁰

41. In the CenturyLink case above, Staff and Public Counsel claimed that CenturyLink violated RCW 80.36.080, which requires the company to render prompt, expeditious, and efficient service, to keep its facilities, instrumentalities, and equipment in good condition and repair, and to ensure that its appliances, instrumentalities, and services are modern, adequate, sufficient, and efficient.⁹¹ The basis for the claim was a partial interruption of 911 service. While CenturyLink was responsible for 911 service at the time of the interruption, by the conclusion of the case CenturyLink was no longer the 911 service provider. This important fact governed the

⁸⁸ Feeser, Exh. BF-1T at 7:8-9.

⁸⁹ See Gose, Exh. PJG-1T at 10:4-17.

⁹⁰ *Wash. Utils. & Transp. Comm’n. v. Qwest Corp., d/b/a CenturyLink QC*, Docket UT-190209, Order 03 at ¶ 30 (Initial Order Dismissal Complaint) (June 25, 2020).

⁹¹ *Id.* at ¶ 23 (Initial Order). See also RCW 80.36.080.

presiding officer's decision to not assess a penalty in that case because he recognized the futility of assessing a penalty for violations that are not likely to reoccur because of changed circumstance. "Even if we were to conclude that the outage violated RCW 80.36.080 and WAC 480-120-450(1), we would not assess a penalty for the violations."⁹²

42. Staff attempts to distinguish the order in Docket UT-190209 because it involves a service (911 service) that had been discontinued, where this case involves a requirement that has been discontinued.⁹³ That is not a relevant distinction. One involved a service, the other a requirement – both ended, meaning the obligation on the part of the company ended. In Docket UT-190209, the obligation was to provide service, and in this case, it is to refrain from discontinuing service. Staff argues that, "The Governor may need to issue a similar proclamation in the future because of events as varied as a natural disaster or a new pandemic (such as a new COVID-19 variant or some other disease)."⁹⁴ Public Counsel adds, "The COVID-19 pandemic was extraordinary in its breadth and scope, and there is no certainty that a similar circumstance will not take place in the future."⁹⁵ But again, a *similar* restriction for a *similar* circumstance is not a recurrence. The presiding officer in Docket UT-190209 did not contemplate CenturyLink possibly resuming 911 services sometime in the future because that is not a relevant exercise for this Factor's analysis.

43. Public Counsel witness Corey Dahl responded to Mr. Gose's testimony by imagining future scenarios like, "the Commission could alter existing rules ..." or "Additionally, the Washington Legislature could pass new statutes that alter utilities' ability to involuntarily

⁹² Docket UT-190209, Order 03 at ¶ 30 (Initial Order).

⁹³ See Feeser, BF-4T at 6:17-19.

⁹⁴ Feeser, BF-4T at 6:6-9.

⁹⁵ Dahl, Exh. CJD-9X.

disconnect customers or charge fees.”⁹⁶ It is important to understand the impact of Staff’s and Public Counsel’s position: they both recommend that the Commission order maximum penalties against CenturyLink as an incentive to comply with proclamations, regulations, and legislation that do not exist.

44. Public Counsel has made similar arguments in the past, and the Commission also rejected those. In Docket UT-140597, Public Counsel argued that a *similar* service outage *could* occur in the future, recommending additional penalties. The Commission refused, finding that “Public Counsel offered no evidence to demonstrate that CenturyLink could or should do anything more to ensure, to the best of its ability, that no future 911 outages will occur.”⁹⁷ In this case, Public Counsel also offers no evidence to demonstrate that CenturyLink could or should do anything more to ensure to the best of its ability, that no future unauthorized disconnections or suspensions will occur.

45. In essence, Staff and Public Counsel ask the Commission to impose maximum penalties under this factor premised on a hypothetical future violation of a hypothetical future statute, rule, or order. There is no legal or policy support for this extreme position, the adoption of which would be to effectively always demand maximum penalties given that any public utility could always violate some not-yet-existing obligation in the future.

8. Factor Nine: The company’s past performance regarding compliance, violations, and penalties

The company’s past performance regarding compliance, violations, and penalties. The Commission will deal more harshly with companies that have a

⁹⁶ Dahl, Exh. CJD-3T at 11:15-17.

⁹⁷ Docket UT-140597, Order 03 at ¶ 26.

history of non-compliance, repeated violations of the same or other regulations, and previous penalties.⁹⁸

46. Public Counsel lists nine complaints or investigations against CenturyLink (including this one) in an attempt to tarnish CenturyLink's past compliance performance, but CenturyLink prevailed in several of them.⁹⁹ Two have not yet been decided, fewer than half resulted in penalties, and one of those penalties was pursuant to a settlement. Again, CenturyLink does not minimize the significance of any rule violation. It simply does not believe that Public Counsel has demonstrated that past compliance performance – especially in a context similar to this case – calls for maximum penalties.

9. Factor Ten: The company's existing compliance program

The company's existing compliance program. The Commission is more likely to take enforcement action if the company does not have an active and adequate compliance program in place, or if the Commission has previously identified deficiencies with the company's compliance program and the company has not corrected the deficiencies.¹⁰⁰

47. Whether CenturyLink has an existing compliance program is not especially helpful in this case because there is no need to establish a plan to comply with a restriction that is no longer in effect, and there is no claim or even indication that the company's current operations are insufficient to comply with Commission rules. Staff's Investigation Report simply states, "Staff is not aware of any existing compliance program," and Ms. Feeser simply repeats that sentence in

⁹⁸ Policy Statement at p. 9.

⁹⁹ See Dahl, Exh. CJD-1; Tr at 20:14-24:14.

¹⁰⁰ Policy Statement at p. 9.

her direct testimony, with no further discussion.¹⁰¹ She does not list this Factor as one of the “important factors,”¹⁰² and her rebuttal testimony is silent on a compliance plan.

48. Public Counsel, on the other hand, calls for the maximum penalty based simply on the fact that any disconnections occurred. Public Counsel argues that CenturyLink’s efforts to prevent suspensions and disconnections were “clearly inadequate”, and that alone is reason to punish the company to the maximum extent possible.¹⁰³ Public Counsel attempted this strict liability approach in Docket UT-190209, and it was rejected. Strict liability is a doctrine in tort law and criminal law, but it is neither alleged in the complaint nor appropriate in this administrative proceeding.¹⁰⁴ It would also render any analysis of the Factors pointless, and that is not what the Commission intended with its Policy Statement.

49. CenturyLink itself experienced meaningful staff changes during the pandemic, including the departure of all four state regulatory and legal employees assigned to Washington.¹⁰⁵ In addition, the company experienced a significant decline in collections personnel during 2020, a year which also presented very large and unexpected increases in customer call volumes.¹⁰⁶ Whether labeled a “compliance plan” or simply the company’s response to rapidly changing demands to complex billing and provision systems in the middle of a pandemic, it is undisputed that CenturyLink took deliberate action to institute changes to its normal operations to comply with new, varying restrictions caused by the public health emergency. CenturyLink’s efforts to

¹⁰¹ Feeser, Exh. BF-1T at 7:18-19.

¹⁰² Feeser, Exh. BF-1T at 9:1-2.

¹⁰³ Dahl, Exh. CJD-1Tr at 26:5-8.

¹⁰⁴ Docket UT-190209, Order 03 at note 32 (Initial Order).

¹⁰⁵ Gose, Exh. PJG-6XC.

¹⁰⁶ Gose, Exh. PJG-6XC.

comply with the Proclamation prevented approximately 34,000 suspensions and disconnections in Washington. Even under difficult circumstances, CenturyLink's actions were largely successful – if not perfect.

50. Public Counsel ignores the measures CenturyLink took and the 34,000 customers who were not disconnected, and instead lists things that CenturyLink did not do, such as hold training sessions.¹⁰⁷ Public Counsel also complained that the company's internal communication regarding running the computer coding script did not reference Washington and did not “appear to impress upon its staff the importance of keeping customers connected pursuant to Governor Inslee's Proclamation.”¹⁰⁸ It is unclear how or why Public Counsel thinks these steps would constitute a compliance plan or would have any effect on the number of disconnections that occurred. When CenturyLink asked Public Counsel a data request for examples of an appropriate compliance plan, Public Counsel did not mention training sessions or reminder emails.¹⁰⁹ It did not provide any suggestions or any examples at all. Accordingly, even Public Counsel does not believe such steps would have prevented the disconnections.

51. Likewise, neither Staff nor Public Counsel criticizes CenturyLink's current operations or the actions CenturyLink did take to identify and suppress approximately 34,000 disconnections and suspensions. They only complain about the result.¹¹⁰ Staff and Public Counsel did the same thing in Docket UT-190209. “Again, however, Staff and Public Counsel complain only about the results of the malfunction that occurred during CenturyLink's switch migration project in

¹⁰⁷ See Dahl, Exh. CJD-3T at 8:15-17.

¹⁰⁸ Dahl, Exh. CJD-3T at 8:13-15.

¹⁰⁹ See Dahl, Exh. CJD-10X.

¹¹⁰ See, e.g., Dahl, Exh. CJD-10X.

Washington, not any particular aspects of the project planning or implementation.”¹¹¹ Public Counsel also did the same thing in Docket UT-140597, “Public Counsel offered no evidence to demonstrate that CenturyLink could or should do anything more to ensure, to the best of its ability, that no future 911 outages will occur.”¹¹² In cases like this one, where the record is devoid of any changes the company should have made or needs to make, penalties are not appropriate.¹¹³ “Assessing penalties under these circumstances would provide no incentive whatsoever for CenturyLink to comply with applicable law.¹¹⁴” While CenturyLink’s efforts did not result in perfection, they were extremely effective and they were reasonable measures under difficult circumstances.

52. Importantly, the Commission does not demand perfection. “No system is foolproof, whether it depends on computers, people, or a combination of both.”¹¹⁵ The Commission’s prior ruling in Docket UT-140597 is particularly helpful for this analysis because it addressed the same company and involved similar human deployment of computer software coding. The Commission made it clear then that perfection is not necessary. “Errors will inevitably occur in software coding, for example, both in its development and in its deployment...”¹¹⁶ “[W]e require regulated companies to implement measures that are reasonable under the circumstances to minimize service disruptions and other violations of Commission requirements.”¹¹⁷ Minimize, not eliminate. Reasonable, not infallible.

¹¹¹ Docket UT-190209, Order 03 at ¶ 31 (Initial Order).

¹¹² Docket UT-140597, Order 03 at ¶ 26.

¹¹³ Docket UT-190209, Order 03 at ¶ 30 (Initial Order).

¹¹⁴ *Id.*

¹¹⁵ Docket UT-140597, Order 03 at ¶ 25.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

53. The record here demonstrates that even though the Proclamation is no longer in effect, the automated and manual processes CenturyLink established for the COVID-19 pandemic could be re-engaged, if necessary. “[T]he underlying data querying and manual processes to CenturyLink billing and provisioning systems remain available and could more swiftly be implemented. Moreover, lessons learned from the small number of human errors in implementing the manual processes have been reviewed and corrected and the company will be even more careful in any future circumstance.”¹¹⁸ If the Commission nonetheless does determine that a penalty is warranted in this case, then suspending that penalty would be appropriate in this case, where CenturyLink took specific actions to remedy the violations and can ensure future compliance with the Commission’s rules.¹¹⁹

10. Factor Eleven: The size of the company

The size of the company. The Commission will consider the size of the company in taking enforcement actions. It is not the Commission’s intention to take enforcement actions disproportionate to companies of similar size with similar penalties, or to take enforcement actions disproportionate to a company’s revenues.¹²⁰

54. Like the number of violations and the number of customers affected, the size of the Company is merely a number that should be considered relative to applicable circumstances. Here, it is appropriate to consider the size of CenturyLink in terms of the number of jurisdictions in which it operated at the time the Proclamation was made. In 2020 the affiliated CenturyLink incumbent local exchange carriers operated in 36 states across the nation. Ensuring compliance

¹¹⁸ Gose, Exh. PJG-3T at 6:6-10.

¹¹⁹ See Policy Statement at p. 11 (factors the Commission will consider in determining whether to suspend a penalty).

¹²⁰ Policy Statement at p. 9.

with ever-changing pandemic rules and regulations across those states was a complex undertaking requiring substantially more effort on concurrent billing and provisioning projects than usual. The pandemic circumstances also necessitated swift changes to management of programs such as the federal Lifeline program, which placed further demands on company resources already stretched thin.¹²¹

55. While CenturyLink's efforts in Washington were not flawless, these unusual conditions should not be ignored. It would be unfair to consider the size of the company in only one context for the purpose of applying a penalty while disregarding size when considering the management demands of the company's multijurisdictional nature. When considering the results of CenturyLink's efforts in context of the true size of the company (both revenue and responsibility), this Factor weighs in favor of no penalty.

IV. CONCLUSION

56. For the reasons stated above, the appropriate penalty in this proceeding is either no penalty or a suspended penalty of \$100 per violation. The Commission should exercise its discretion and decline to penalize CenturyLink because no penalty amount will further the Commission's objective of ensuring services within the Commission's jurisdiction are delivered safely, adequately, efficiently, and at rates and charges that are just and reasonable. CenturyLink concedes that no disconnection should have occurred during the effective period of the Proclamation, but the company's safeguards installed during that time were both reasonable and remarkably successful. The Commission does not demand perfection in the deployment of a company's operations, and it recognizes the inevitable fallibility in both humans and computer


¹²¹ See Gose, Exh. PJG-1T at 11:20-22.

systems. The likelihood of recurrence of this violation is zero, yet CenturyLink still learned valuable information that will improve its operations in the future, should a similar event occur. An analysis weighing the Commission's enforcement Factors, Commission precedent, and the undisputed facts and circumstance in this proceeding, balances heavily in favor of no penalty.

Respectfully Submitted this 21st day of April, 2023

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