

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

QWEST CORPORATION;
CENTURYTEL OF WASHINGTON;
CENTURYTEL OF INTER ISLAND;
CENTURYTEL OF COWICHE; AND
UNITED TELEPHONE COMPANY OF
THE NORTHWEST

in the amount of \$226,600

DOCKET UT-220397

ORDER 01

DENYING MITIGATION

BACKGROUND

- 1 On January 9, 2014, the Washington Utilities and Transportation Commission entered Order 04, Final Order Approving Settlement Agreements and Establishing Alternative Form of Regulation (Order 04) in Docket UT-130477. Order 04, among other things, requires the CenturyLink Companies Qwest Corporation, CenturyTel of Washington, CenturyTel of Inter Island, CenturyTel of Cowiche, and United Telephone Company of the Northwest (CenturyLink ILECs or Companies) to provide notice to the Commission of any changes to its flat-rated stand-alone residential rates at the same time the Companies notify its customers of the rate change.
- 2 On June 1, 2022, the Commission issued a Penalty Assessment against the CenturyLink ILECs in the amount of \$226,600 for 2,266 violations of Order 04. The Penalty Assessment alleges that the Company failed to provide the Commission with notice according to the terms of Order 04. The Penalty Assessment assesses penalties of \$100 per day per company between the dates the notices should have been filed and when they were actually filed.
- 3 On June 8, 2022, the Companies filed an application for mitigation (Application), requesting a decision based on the information provided. In their Application, the Companies admitted they failed to timely notify the Commission of the rate increases, stating that pandemic-related personnel reductions resulted in an overwhelmed staff that was unaware of the filing requirement. In support of its Application, the Companies claim that they received no benefit from their failure, and suggest that even had they

filed, the Commission would not have the authority to intervene in the rate changes and so the Companies' failure was not substantial nor harmful to the public interest.

4 The Companies further assert that the Commission's assessment of both per-day and per-company penalties is unnecessarily excessive. The Companies suggest the failure to notify the Commission "at the same time" that customers were notified is a singular event rather than a continuing violation and they should be penalized only for the initial failure. The Companies then claim that they should be penalized "as a whole," rather than as five separate companies.

5 On September 16, 2022, Commission staff (Staff) filed a response recommending the Commission deny the Companies' Application. In its response, Staff states that the Companies' compliance program employees had ample time to inform themselves of the compliance requirements and that the failure shows that the Companies' compliance program is not operating as it should, or is not a priority, either or both of which would support the imposition of penalties.

6 Staff also disagrees with the Companies' assertions that the violations caused no injury to the public interest, that the Commission had no authority to act in response to the rate increases, and that the penalty calculation was excessive.

DISCUSSION AND DECISION

7 As a preliminary matter we address the Companies' claims that the Commission "stacked" penalties. Order 04 requires that the Companies inform the Commission at the same time they inform customers of an increase in rates. RCW 80.04.405 allows penalties of \$100 for each violation, and in the case of an ongoing violation, every day's continuance is considered a separate and distinct violation. The Companies' duty to notify the Commission began the day that their customers were notified of the increase in rates and continued until the day they notified the Commission. By the Companies' logic, a \$100 penalty would be the maximum penalty the Commission could impose whether the Companies' complied a day late or never. We find this argument unpersuasive and affirm the per-day penalty calculation.

8 Additionally, we find the Companies' argument that they should be considered "as a whole" for the purpose of penalty calculation equally unpersuasive. CenturyLink chooses to operate the Companies' as individual entities, and must accept that whatever advantages and protections such a structure provides will also be accompanied by a cost. By law and by choice, the Companies are separate entities and have each individually

violated Order 04. We therefore agree with Staff that the penalties were calculated appropriately.

9 The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring the company's compliance.¹

10 We find that the Companies' failed to introduce any new information that would warrant mitigation of the penalty. The Companies' staffing issues may have been an excuse for a delay in notification, but in this instance the Companies did not notify the Commission until Staff reached out to investigate whether there had been any increases that were not communicated to the Commission. The length of time that passed between the increase and notification show that the Companies' failed to make compliance with Order 04 a priority and does not support mitigation. Further, the Companies' assertion that the Commission had no authority to act in response to the increase in fees is alarming, and suggests that the Companies fail to understand their responsibilities and the Commission's role in the alternative form of regulation authorized by Order 04. While the Commission is not in a position to approve or deny the Companies' rate increase, it is not without recourse should it find that an increase will injure the public interest. The Companies' apparent disregard for the importance of the notification provision also does not support mitigation. We therefore deny the Application.

ORDER

THE COMMISSION ORDERS THAT:

11 (1) CenturyLink Companies Qwest Corporation, CenturyTel of Washington, CenturyTel of Inter Island, CenturyTel of Cowiche, and United Telephone Company of the Northwest's request for mitigation is DENIED.

¹ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013) at ¶19.

- 12 (2) CenturyLink Companies Qwest Corporation, CenturyTel of Washington, CenturyTel of Inter Island, CenturyTel of Cowiche, and United Telephone Company of the Northwest is assessed a penalty of \$226,600.

DATED at Lacey, Washington, and effective September 29, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AMANDA MAXWELL
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website.