

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

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,

Respondents.

DOCKET UT-210902

**OPENING BRIEF OF PUBLIC COUNSEL**

April 21, 2023

**TABLE OF CONTENTS**

I. PUBLIC COUNSEL REQUESTS MAXIMUM PENALTIES .....1

II. LUMEN UNLAWFULLY DISCONNECTED CUSTOMERS DURING THE COVID-19 PANDEMIC, HARMING CUSTOMERS BY DENYING THEM ACCESS TO ESSENTAIL TELECOMMUNICATION SERVICES.....1

III. MAXIMUM PENALTIES ARE APPROPRIATE IN THIS CASE.....3

    A. Lumen Failed to Meet Minimum Regulatory Requirements.....3

    B. Factors Identified by the Commission in its Enforcement Policy Support Imposing the Maximum Penalty in This Case.....6

        1. Lumen’s violations were very serious and harmful. ....6

        2. Lumen intentionally denied service to customers for nonpayment during the pandemic.....7

        3. Lumen did not self-report the violations. ....9

        4. Lumen exhibited minimal cooperation and often failed to provide Staff with timely responses during its investigation. ....9

        5. Lumen did not promptly correct violations or remedy the impact.....9

        6. Lumen committed 923 violations, impacting 923 customers.....11

        7. Lumen has not demonstrated that it has practices in place to decrease the likelihood of recurrence.....12

        8. Lumen’s past performance strongly supports a strong regulatory response in this case. ....14

        9. Lumen does not maintain a compliance program. ....15

        10. Lumen is a large telecommunications company in Washington. ....16

IV. CONCLUSION .....17

**TABLE OF AUTHORITIES**

**Cases**

	<b>Pages</b>
<i>Dzaman v. Gowman</i> , 18 Wn. App. 2d 469, 478–79, 491 P.3d 1012 (2021).....	5
<i>State v. Zack</i> , 2 Wn. App. 2d 667, 672 & n.6, 413 P.3d 65 (2018).....	5

**Statutes**

RCW 80.04.380 .....	3
---------------------	---

**Proclamations**

Wash. Office of the Governor, Am. Proclamation 20-23.2, <i>Ratepayer Assistance &amp; Preservation of Essential Services</i> (2020).....	7
Wash. Office of the Governor, Proclamation 20-23.2 & 20-23.16 (Apr. 17, 2020 & July 2, 2023).....	2

**Administrative Code**

WAC 480-120-173(3)(a) .....	2, 3, 11
-----------------------------	----------

**UTC Orders and Decisions**

<i>In re Enf't Pol'y of the Wash. Utils. &amp; Transp. Comm'n</i> , Docket A-120061 (Jan 7, 2013).....	3, 4, 5, 6, 7, 9, 12, 16
<i>In re Penalty Assessment against CenturyLink</i> , Docket UT-220397, Order 01: Denying Mitigation (Sept. 30, 2022) .....	14
<i>In re Penalty Assessment against CenturyLink</i> , Docket UT-220397, Order 02: Denying Petition for Review (Nov. 17, 2022) .....	5, 12
<i>In re Penalty Assessment against CenturyLink</i> , Docket D-210811, Order 01: Denying Mitigation (Dec. 30, 2021).....	14
<i>Wash. Utils. &amp; Transp. Comm'n v. CenturyLink Communications, LLC</i> , Docket UT-181051 (Pending) .....	14

*Wash. Utils. & Transp. Comm’n v. CenturyLink of Inter Island*,  
Docket UT-132234, Order 03: Final Order Accepting and Adopting Settlement  
Agreement with Conditions (Oct. 20, 2015)..... 14

*Wash. Utils. & Transp. Comm’n v. CenturyLink*,  
Docket UT-210902, Order 03 (July 29, 2022)..... 1, 2, 3, 8

*Wash. Utils. & Transp. Comm’n v. CenturyTel of Inter Island*,  
Docket UT-132234, Order 06: Imposing Suspended Penalties (June 1, 2017)..... 14

*Wash. Utils. & Transp. Comm’n v. Quest Corp.*,  
Docket UT-171082, Order 03: Final Order (Aug. 23, 2018)..... 14

*Wash. Utils. & Transp. Comm’n v. Qwest Corp.*,  
Docket UT-140597, Order 03: Final Order Approving Settlement Agreement (Feb. 22,  
2016)..... 14

**Books and Reports**

Albert Bandura, *Selective Activation and Disengagement of Moral Control*, 46 J. Social  
Issues 27–46 (1990)..... 16

## I. PUBLIC COUNSEL REQUESTS MAXIMUM PENALTIES

1. This case is straightforward. The Washington Utilities and Transportation Commission (Commission) has determined liability.<sup>1</sup> The only remaining issue is what penalty the Commission should impose on CenturyLink Communications, LLC d/b/a Lumen Technologies Group, Qwest Corporation, CenturyTel of Inter Island, Inc., CenturyTel of Cowiche, Inc., and United Telephone Company of the Northwest (collectively, Lumen or Company).
2. Lumen committed serious violations during an unprecedented and dangerous time, placing customers at risk of substantial harm when it suspended or disconnected 923 customers while Governor Inslee's pandemic disconnection moratorium was in effect. The Public Counsel Unit of the Washington Attorney General's Office (Public Counsel) urges the Commission to reject Lumen's request to receive no penalty. Rather, the Commission should impose the maximum penalty under the law for Lumen's violations. The Commission should hold Lumen accountable by imposing the maximum \$1,000 penalty for each violation for a total penalty of \$923,000.

## II. LUMEN UNLAWFULLY DISCONNECTED CUSTOMERS DURING THE COVID-19 PANDEMIC, HARMING CUSTOMERS BY DENYING THEM ACCESS TO ESSENTIAL TELECOMMUNICATION SERVICES.

3. The COVID-19 pandemic created a health and economic crisis beginning in 2020. Governor Inslee issued Proclamation 20-23.2 in April 2020, prohibiting telecommunication companies, including Lumen, from disconnecting customers for nonpayment. Proclamation 20-

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<sup>1</sup> *Wash. Utils. & Transp. Comm'n v. CenturyLink*, Docket UT-210902, Order 03 (July 29, 2022) (hereinafter Order 03).

23.2 also prohibited telecommunications companies from refusing to reconnect any residential customer who had been disconnected due to nonpayment and from charging reconnection fees or late payment fees.

4. In issuing the Proclamation, Governor Inslee recognized that telecommunication service provided by Commission-regulated companies is an essential service and that access to essential services was in jeopardy during the pandemic. The Proclamation ensured that Washingtonians would have access to essential services even if they were unable to pay. The Proclamation was in effect between March 23, 2020, and September 30, 2021.<sup>2</sup>

5. The Commission held that Lumen “lacked the authority to suspend or disconnect its residential customers for nonpayment” while the Proclamation was in effect, and that Lumen violated WAC 480-120-173(3)(a) when it disconnected or suspended 923 customers between March 23, 2020, and September 30, 2021.<sup>3</sup> These violations are not minor because the 923 disconnected and suspended customers were denied access to essential services during a time of crisis. A strong regulatory response is necessary. Public Counsel’s witness Corey Dahl noted, “Overwhelming evidence supports penalties of \$1,000 per violation.”<sup>4</sup> Dahl further testified, “The serious and harmful nature of the violations in question necessitate the highest penalty.”<sup>5</sup>

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<sup>2</sup> Wash. Office of the Governor, Proclamation 20-23.2 & 20-23.16 (Apr. 17, 2020 & July 2, 2023), <https://www.governor.wa.gov/office-governor/official-actions/proclamations> (enter the proclamation number into the ‘Search Terms’ field, and click on ‘Apply’ to display specific hyperlinks to the cited proclamations).

<sup>3</sup> Order 03 ¶¶ 31, 32.

<sup>4</sup> Cross-Answering Testimony of Corey J. Dahl, CJD-3T at 16:2.

<sup>5</sup> *Id.* at 16:4–5.

### III. MAXIMUM PENALTIES ARE APPROPRIATE IN THIS CASE

6. Under RCW 80.04.380, the Commission may impose a penalty of \$1,000 for each and every violation of statute, rule, and order. The Commission previously concluded “that Lumen is liable for 923 violations of WAC 480-120-172(3)(a).”<sup>6</sup> While WAC 480-120-173(3)(a) allows telecommunications companies to involuntarily disconnect customers when the “company determines the customer has violated a rule, statute, service agreement, filed tariff, or rates, terms and conditions of competitively classified services,” the Governor’s Proclamation expressly prohibited disconnections for nonpayment until that prohibition expired. The Commission correctly held that “whatever basis on which Lumen was authorized to suspend or disconnect those customers was not operative while the [Proclamation] was in effect.”<sup>7</sup> Thus, Lumen violated WAC 480-120-173(3)(a) when it disconnected and suspended customers between March 23, 2020, and September 30, 2021.

#### A. Lumen Failed to Meet Minimum Regulatory Requirements.

7. The Commission issued a policy statement in Docket A-120061 to “articulate to the public the Commission’s policies relating to its enforcement authority.”<sup>8</sup> In its Enforcement Policy, the Commission identified three company obligations. First, the Commission expects all regulated companies to comply with all statutory and regulatory requirements.<sup>9</sup> Second, if the Commission or Staff finds a violation, the Commission expects companies to not only fix the

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<sup>6</sup> Order 03 ¶ 11.

<sup>7</sup> *Id.* ¶ 12.

<sup>8</sup> *In re Enf’t Pol’y of the Wash. Utils. & Transp. Comm’n*, Docket A-120061 (Jan 7, 2013) (hereinafter Enforcement Policy). Lumen’s predecessor CenturyLink participated in the policy docket, as did Public Counsel. Enforcement Policy, ¶ 3 n.4.

<sup>9</sup> *Id.* ¶ 6.

violation, but also the underlying system or program issues that caused the violation to occur.<sup>10</sup>

Third, the Commission expects all regulated companies to establish and maintain a compliance program to facilitate compliance with regulatory requirements.<sup>11</sup>

8. Importantly, the compliance program is not meant to exist only after violations occur.<sup>12</sup>

Rather, the compliance program is meant to detect and correct violations.<sup>13</sup> Companies are expected to have personnel “whose stated job responsibilities include understanding and implementing Commission statutory and regulatory requirements.”<sup>14</sup> Designated company personnel are responsible for interacting with the Commission on enforcement matters.<sup>15</sup>

9. Public Counsel asked Lumen to describe the personnel and systems in place to meet the expectations expressed in the Enforcement Policy.<sup>16</sup> Lumen asserted that it was “not required or expected to have a formal ‘compliance program’ in place” because a compliance program need only exist *after* violations incur.<sup>17</sup> The Enforcement Policy demonstrates that Lumen’s interpretation of its regulatory obligation is incorrect. The compliance program is to “include systems and programs to detect and correct violations and to report those violations to company management.”<sup>18</sup> Additionally, the Commission is more likely to take action against a company that does not have an active and adequate compliance program, or if a company has not corrected

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<sup>10</sup> *Id.* ¶ 7.

<sup>11</sup> *Id.* ¶ 8.

<sup>12</sup> Dahl, Exh. CJD-3T at 13:13–17.

<sup>13</sup> Enforcement Policy ¶ 8.

<sup>14</sup> *Id.* ¶ 8.

<sup>15</sup> *Id.* ¶ 8.

<sup>16</sup> Dahl, Exh. CJD-3T at 13:17–20; Dahl, Exh. CJD-7 (CenturyLink Response to Public Counsel Data Request No. 9).

<sup>17</sup> Dahl, Exh. CJD-7 at 2.

<sup>18</sup> Enforcement Policy ¶ 8.



previously identified deficiencies of the compliance program.<sup>19</sup> Lumen failed to maintain a compliance program.

10. Lumen also failed to meet expectations that it comply with all statutory and regulatory requirements. Lumen’s witness Peter Gose testified that Lumen operated in 36 states during the pandemic, states had varying requirements, and implementing the varying requirements was challenging.<sup>20</sup> In Docket UT-220397, the Commission rejected Lumen’s argument that pandemic-related personnel shortages relieved the Company of its duty to maintain compliance.<sup>21</sup> Gubernatorial proclamations have the same weight as statutes.<sup>22</sup> Thus, just as Lumen had a duty to comply with statutory and regulatory requirements, Lumen also had a duty to comply with Governor Inslee’s Proclamation.<sup>23</sup> It did not comply.

11. Lumen also did not correct the underlying system or program issues that caused the violations. Indeed, Lumen only offers the systems it had in place during the pandemic in the event of a future event.<sup>24</sup> As Public Counsel witness Dahl notes, “The only means of future compliance the Company offers for a similar event are the processes that ultimately led to the 923 violations at issue in this proceeding. The Commission should have little confidence of a better future outcome.”<sup>25</sup>

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<sup>19</sup> Enforcement Policy ¶ 15, subpart 10.

<sup>20</sup> Response Testimony of Peter Gose, Exh. PJG-1T at 4:16–19.

<sup>21</sup> *In re Penalty Assessment against CenturyLink*, Docket UT-220397, Order 02: Denying Petition for Review (Nov. 17, 2022) (hereinafter “*Penalty Assessment*”).

<sup>22</sup> *See Dzaman v. Gowman*, 18 Wn. App. 2d 469, 478–79, 491 P.3d 1012 (2021) (citing *State v. Zack*, 2 Wn. App. 2d 667, 672 & n.6, 413 P.3d 65 (2018)).

<sup>23</sup> Dahl, Exh. CJD-3T at 4:15–5:3.

<sup>24</sup> Gose, Exh. PJG-1T at 11:1–6.

<sup>25</sup> Dahl, Exh. CJD-3T at 11:19–12:2.

**B. Factors Identified by the Commission in its Enforcement Policy Support Imposing the Maximum Penalty in This Case.**

12. The Enforcement Policy established 11 non-exclusive factors the Commission will consider in determining the level of penalty to be imposed.<sup>26</sup> Those factors are (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; (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 impacted; (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. The Commission maintains discretion in enforcement proceedings to evaluate each action on a case-by-case basis as it regulates in the public interest.<sup>27</sup>

13. Public Counsel evaluated the factors identified in the Enforcement Policy in developing its recommendation.<sup>28</sup> No factor supports mitigation or leniency. Each factor weighs in favor of imposing the maximum statutory penalty on Lumen.

**1. Lumen's violations were very serious and harmful.**

14. The Governor's Proclamation states, "Maintaining provision of utility services during this crisis is an essential tool in sustaining and protecting the health and welfare of our people and

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<sup>26</sup> Enforcement Policy ¶ 15.

<sup>27</sup> *Id.* ¶¶ 4, 21.

<sup>28</sup> Response Testimony of Corey J. Dahl, Exh. CJD-1Tr at 10:8–10.

businesses as a critical part of the overall response to the COVID-19 pandemic.”<sup>29</sup> Both the Governor and the Commission recognized the importance of telecommunications during the pandemic.

Customers relied on telecommunication services to maintain connections to loved ones, school, work, health care providers, and critical social services.<sup>30</sup> Despite the very clear prohibition on disconnections, Lumen discontinued service to 923 customers. Moreover, Lumen maintains that the Commission should not penalize it for its serious violations, or alternatively, that the Commission should dramatically reduce the penalty by 90 percent.<sup>31</sup> Neither result is justified as Lumen’s actions caused tangible harm to its customers. The Commission’s Enforcement Policy provides that the “more serious or harmful violations, the more appropriate penalties or other sanctions may be.”<sup>32</sup> This factor weighs heavily in favor of maximum penalties.

**2. Lumen intentionally denied service to customers for nonpayment during the pandemic.**

15. While Lumen contends that it unintentionally violated the Governor’s Proclamation because it only discontinued service for “an extremely small fraction” of its customers,<sup>33</sup> Lumen carefully considered what it viewed as the Proclamation’s limitations.<sup>34</sup> Lumen’s actions indicate a clear desire to disconnect for nonpayment during the pandemic, and the Company purposefully tested the bounds of the Proclamation.<sup>35</sup> Lumen’s actions were unquestionably intentional with

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<sup>29</sup> Wash. Office of the Governor, Am. Proclamation 20-23.2, *Ratepayer Assistance & Preservation of Essential Services* (2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-23.2%20-%20COVID-19%20Ratepayer%20Assistance.pdf>.

<sup>30</sup> Dahl, Exh. CJD-1Tr at 12:1–10.

<sup>31</sup> Gose, Exh. PJG-1T at 3:10–12.

<sup>32</sup> *Id.* at 12:15–16; Enforcement Policy ¶ 15, subpart 1.

<sup>33</sup> Cross-Answering Testimony of Peter Gose, Exh. PJG-3T at 3:6–8 and 4:22–5:1.

<sup>34</sup> Dahl, Exh. CJD-1Tr at 13:4–12.

<sup>35</sup> Dahl, Exh. CJD-3T at 5:16–6:3.

respect to the 743 customers who were suspended between March 23, 2023, and September 30, 2021. During Staff’s investigation, Lumen “repeatedly stated” that it believed it could suspend service to customers.<sup>36</sup> This belief was unfounded.<sup>37</sup>

16. With respect to 180 customers who were disconnected, Lumen disconnected customers every month between July 2020 and August 2021, despite Lumen’s public statements that it would keep customers connected to critical telecommunications services.<sup>38</sup> Lumen established a manual process through which suspensions and disconnections occurred during the pandemic.<sup>39</sup> Lumen’s efforts to avoid disconnections failed for these 180 customers, who were intentionally disconnected through the manual process.<sup>40</sup>

17. Both suspended and disconnected customers were not able to access vital telecommunications services.<sup>41</sup> “Based on the Company’s public statements to the Commission, admission to disconnections and suspensions, and continued claims that suspension are not violations of the Proclamation, it is difficult to argue the violations were unknowingly committed.”<sup>42</sup> Lumen was aware of the Proclamation, repeatedly committed that it would comply, actively attempted to evade the Proclamation through suspensions, converted automated disconnections to a manual process, and failed to cease all disconnections. Lumen’s violations were intentional, and this factor weighs heavily in favor of imposing maximum penalties.

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<sup>36</sup> Staff Investigation Report at 10.

<sup>37</sup> Order 03 ¶ 12.

<sup>38</sup> Staff Investigation Report at 6; Dahl, Exh. CJD-1Tr at 14:10–11 and 14:13–16:3.

<sup>39</sup> Dahl, Exh. CJD-3T at 6:3–4; Gose, Exh. PJG-1T at 8:8–9.

<sup>40</sup> Dahl, Exh. CJD-3T at 6:3–6.

<sup>41</sup> Dahl, Exh. CJD-1Tr at 14:3–12.

<sup>42</sup> *Id.* at 16:8–11 (internal quotation marks omitted).

**3. Lumen did not self-report the violations.**

18. Lumen did not self-report the violations, which were uncovered through Staff’s compliance work in Docket U-200281.<sup>43</sup> While the Commission may consider being more lenient with a company who self-reports violations,<sup>44</sup> such leniency has no basis here because there is no self-reporting.

**4. Lumen exhibited minimal cooperation and often failed to provide Staff with timely responses during its investigation.**

19. Staff requested information from Lumen about its compliance with Governor Inslee’s Proclamation, disconnection activity, and past due accounts through data requests sent to the Company on July 21, 2021.<sup>45</sup> Staff’s data requests were straightforward and clear, and Staff requested a response by August 4, 2021.<sup>46</sup> Lumen responded on October 12, 2021.<sup>47</sup> Similarly, Lumen was five days late in providing supplemental responses later in the proceeding.<sup>48</sup> While Lumen ultimately provided information during Staff’s investigation, it was minimally cooperative. This factor weighs in favor of imposing the maximum penalty.

**5. Lumen did not promptly correct violations or remedy the impact.**

20. Lumen offered no evidence of correcting the violations related to customers who were suspended during the effective period of the Governor’s Proclamation.<sup>49</sup> For these customers,

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<sup>43</sup> Dahl, Exh. CJD-1 Tr at 17:1–3.

<sup>44</sup> Enforcement Policy ¶ 15, subpart 3.

<sup>45</sup> Dahl, Exh. CJD-1 Tr at 17:2–5; Staff Investigation Report at 5.

<sup>46</sup> Staff Investigation Report, Attach. C.

<sup>47</sup> Staff Investigation Report at 5.

<sup>48</sup> Dahl, Exh. CJD-1 Tr at 18:2–3.

<sup>49</sup> *Id.* at 18:6–15; Dahl, Exh. CJD-3T at 9:6–10:12.

their service was not restored, and the serious impact of being denied access to critical service during the height of the pandemic has not been remedied.

21. Lumen’s witness Peter Gose testified that Lumen reached out to disconnected customers, resulting in only 10 to 15 percent of customers contacted being reconnected to services.<sup>50</sup> The Company sent 535 letters to Washington residential customers who had been disconnected during the effective period of the Governor’s Proclamation.<sup>51</sup> Instead of proactively reconnecting disconnected and suspended customers, Lumen contacted a subset of impacted customers and required customer action to be reconnected.<sup>52</sup> Specifically, customers were asked to contact Lumen by phone to be reconnected. As Dahl testified, “This is both burdensome and absurd given that affected customers were disconnected from telephone services.”<sup>53</sup>

22. Moreover, Lumen failed to explain to customers that they were improperly disconnected in violation of the Governor’s Proclamation. Lumen states, “We recently determined your CenturyLink service was disconnected between March 2020 and September 2021.”<sup>54</sup> While Lumen identified the effective period of the Governor’s Proclamation, it is unreasonable to assume that customers experiencing the stress of the global pandemic and being disconnected from vital services would understand the reference.

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<sup>50</sup> Gose, Exh. PJG-1T at 9:3–6.

<sup>51</sup> Dahl, Exh. CJD-3T at 9:16–19; Dahl, Exh. CJD-6 at 1 (CenturyLink Response to Public Counsel Data Request No. 3). It is unclear why the number of letters exceeds the total number of customers disconnected during this period. While only 180 disconnections are subject to the Complaint, Lumen disconnected a total of 423 customers. Dahl, Exh. CJD-1Tr at 5:13–14; Staff Investigation Report at 8.

<sup>52</sup> Dahl, Exh. CJD-3T at 10:6–9.

<sup>53</sup> *Id.* at 10:9–10.

<sup>54</sup> Dahl, Exh. CJD-6 at 3 (CenturyLink Response to Public Counsel Data Request No. 3).

23. Lumen includes stock language of “We would love the opportunity to win you back” and “Thank you for choosing CenturyLink – we value your business” in its letter.<sup>55</sup> Neither of these sentiments adequately explain the situation. Both imply that discontinuance of service was due to customer choice rather than Lumen’s unlawful behavior.

24. Lumen’s customer outreach was inadequate and only occurred after Staff initiated its investigation that lead to this complaint case.<sup>56</sup> Lumen failed to promptly correct the violations and remedy the impacts. As a result, this factor weighs in favor of imposing maximum penalties.

**6. Lumen committed 923 violations, impacting 923 customers.**

25. Lumen improperly discontinued service to 923 customers in violation of the Governor’s Proclamation and WAC 480-120-173(3)(a). Dahl testified, “Each violation represents a customer who was deprived of essential services during the COVID-19 pandemic, in direct violation of the Governor’s Proclamation.”<sup>57</sup> He also noted that these violations were not isolated or rare occurrences.<sup>58</sup> Negatively impacting nearly 1,000 customers during the recent pandemic and economic crisis is significant and serious.

26. Lumen attempts to minimize the impact to customers by asserting that only a small number of disconnections and suspensions occurred and projects that 96 percent of suspensions and 98 percent of disconnections were prevented.<sup>59</sup> These projections are wholly unsupported by workpapers or analysis and should be rejected.<sup>60</sup>

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<sup>55</sup> *Id.*

<sup>56</sup> Dahl, Exh. CJD-3T at 9:14–16.

<sup>57</sup> Dahl, Exh. CJD-1Tr at 19:1–3.

<sup>58</sup> *Id.* at 19:4–6.

<sup>59</sup> Dahl, Exh. CJD-3T at 6:14–19; Gose, Exh. PJG-1T at 7:1–3, 7:12–13, & 8:9–11.

<sup>60</sup> Dahl, Exh. CJD-3T at 71–5; Dahl, Exh. CJD-4 at 1 (CenturyLink Response to Public Counsel Data Request No. 1, subpart e).

27. Additionally, Lumen’s unlawful actions were not limited to disconnections and suspensions. Placed in greater context, is it clear that Lumen did not prioritize customer wellbeing during the pandemic. In addition to the 923 customers who experience unlawful discontinuance of service, nearly 40,000 customers were charged unlawful late payment fees and another 1,600 customers were charged unlawful reconnection fees.<sup>61</sup> The late payment and reconnection fees are outside the scope of this proceeding in terms of being assessed penalties for these actions; however, they illustrate Lumen’s pervasive non-compliance with the Governor’s Proclamation. They further demonstrate that the suspensions and disconnections subject to this complaint were not isolated occurrences. This factor weighs heavily in favor of imposing maximum penalties.

**7. Lumen has not demonstrated that it has practices in place to decrease the likelihood of recurrence.**

28. Lumen, like all regulated companies, is responsible for meeting all of Washington’s regulatory mandates.<sup>62</sup> Lumen failed to meet its responsibility because it did not have the proper systems and adequate processes in place. These particular violations occurred during a global health crisis, making the impact greater than under normal circumstances. Staff noted that it was not aware of any steps taken by Lumen to prevent similar future violations.<sup>63</sup> Likewise, Public Counsel is not aware of any practices Lumen has in place to decrease the likelihood of recurrence.

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<sup>61</sup> Dahl, Exh. CJD-1 Tr at 27:5–16; Staff Investigation Report, Attach. D.

<sup>62</sup> Enforcement Policy ¶ 6; *Penalty Assessment* ¶¶ 10 & 11.

<sup>63</sup> Direct Response Testimony of Bridget Feeser, Exh. BF-1T at 7:8–9.



29. Indeed, Public Counsel is concerned that Lumen does not appear to specify Washington’s requirements in its operations. Lumen testified that it “ran several custom scripts” that were designed to identify suspensions and disconnections, so they could be manually removed from the disconnection queue.<sup>64</sup> When Public Counsel requested information about the instructions provided to Lumen’s staff, the Company provided one brief document relating to the custom scripts.<sup>65</sup> The document fails to mention Washington’s requirements.
30. Dahl testified that the document does not “impress upon its staff the importance of keeping customers connected pursuant to Governor Inslee’s Proclamation.”<sup>66</sup> Lumen failed to provide adequate evidence that it trained employees responsible for completing the automated and manual processes related to disconnections.<sup>67</sup> Customers were left vulnerable to involuntary disconnection for nonpayment during the pandemic, despite Governor Inslee’s very clear prohibition against such practices.
31. Whether Lumen may face the exact situation it faced during the COVID-19 pandemic is not the issue with respect to recurrence. Rather, the recurrence at question is whether the Company is able to meet its regulatory obligations under changing circumstances.<sup>68</sup> Lumen would approach future compliance obligations with the same processes that ultimately lead to nearly 1,000 customers being unlawfully disconnected.<sup>69</sup> The Commission, Public Counsel, and

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<sup>64</sup> Dahl, Exh. CJD-3T at 8:3–5; Gose, Exh. PJG-1T at 8:7–9.

<sup>65</sup> Dahl, Exh. CJD-3T at 8:8–13; Dahl, Exh. CJD-5C (CenturyLink Response to Public Counsel Data Request No. 2, subpart d).

<sup>66</sup> Dahl, Exh. CJD-3T at 8:13–15; *See* Dahl, Exh. CJD-5C (CenturyLink Response to Public Counsel Data Request No. 2 with Confidential Attachment PC-2C).

<sup>67</sup> Dahl, Exh. CJD-3T at 8:15–9:1.

<sup>68</sup> *See id.* at 11:12–19.

<sup>69</sup> *Id.* at 11:19–12:2.

Washingtonians should have little confidence that similar violations will not occur in the future.

This factor weighs in favor of imposing the maximum penalty.

**8. Lumen’s past performance strongly supports a strong regulatory response in this case.**

32. Lumen has a history of significant compliance issues.<sup>70</sup> Since 2013, Lumen has been subject to nine Commission compliance actions.<sup>71</sup> The Commission has brought multiple actions against Lumen for 911 compliance issues,<sup>72</sup> failure to extend service to a customer within 1,000 feet of the nearest Lumen facilities (dismissed),<sup>73</sup> improperly billing customers a city tax,<sup>74</sup> failure to complete line locate services within two days of receiving a request from an excavation company,<sup>75</sup> and failure to notify the Commission of residential rate changes.<sup>76</sup>

33. Dahl testified, “This is not the first, or even second, complaint against [Lumen] for violations. [Lumen] has significant past and current compliance issues.”<sup>77</sup> Lumen has established a pattern of compliance issues, requiring a strong response to the current violations.<sup>78</sup> This factor weighs heavily in favor of maximum penalties.

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<sup>70</sup> Dahl, Exh. CJD-1Tr at 20:11–12.

<sup>71</sup> *Id.* at 24:13–14.

<sup>72</sup> *Wash. Utils. & Transp. Comm’n v. CenturyLink of Inter Island*, Docket UT-132234, Order 03: Final Order Accepting and Adopting Settlement Agreement with Conditions, ¶ 33 (Oct. 20, 2015); *Wash. Utils. & Transp. Comm’n v. CenturyTel of Inter Island*, Docket UT-132234, Order 06: Imposing Suspended Penalties, ¶ 1 (June 1, 2017); *Wash. Utils. & Transp. Comm’n v. Qwest Corp.*, Docket UT-140597, Order 03: Final Order Approving Settlement Agreement (Feb. 22, 2016); *Wash. Utils. & Transp. Comm’n v. CenturyLink Communications, LLC*, Docket UT-181051 (Pending).

<sup>73</sup> *Wash. Utils. & Transp. Comm’n v. Quest Corp.*, Docket UT-171082, Order 03: Final Order (Aug. 23, 2018).

<sup>74</sup> Staff Letter to Amanda Maxwell, *In re CenturyLink City Tax Investigation*, Docket UT-200982 (2021).

<sup>75</sup> *In re Penalty Assessment against CenturyLink*, Docket D-210811, Order 01: Denying Mitigation (Dec. 30, 2021).

<sup>76</sup> *In re Penalty Assessment against CenturyLink*, Docket UT-220397, Order 01: Denying Mitigation (Sept. 30, 2022).

<sup>77</sup> Dahl, Exh. CJD-1Tr at 20:11–12.

<sup>78</sup> The Commission noted the repeated nature of Lumen’s noncompliance in Docket UT-220237. “Accordingly, the Companies’ failure to provide required notice to the Commission is not an isolated incident, which also weighs against any mitigation of the penalty.” *Penalty Assessment*, ¶ 17.

**9. Lumen does not maintain a compliance program.**

34. Lumen incorrectly believes that compliance programs are only necessary after violations occur to prevent future similar violations.<sup>79</sup> Lumen unreasonably misunderstands the need for and expectation of maintaining a compliance program. Lumen fails to understand that a compliance program is meant to be proactive, and its function is to ensure that the Company meets its regulatory obligations and to detect and correct any deficiencies. This misunderstanding fundamentally impacts Lumen’s execution of its regulatory obligations. Lumen and its predecessor companies have decades of regulatory experience as an incumbent local exchange carrier in Washington, and it is unreasonable to conclude that Lumen would be so confused about its obligations.

35. Public Counsel inquired about Lumen’s regulatory staff to gain a better understanding of how the Company approaches compliance in Washington.<sup>80</sup> Specifically, Public Counsel asked about company-wide regulatory staff, staff assigned to Washington-specific compliance activities, and an explanation if there are not employees assigned to Washington-specific activities.<sup>81</sup> Lumen states, “Company employees who work on compliance matters are generally assigned by subject matter and not by state, and thus it is fair to estimate that most (if not all) of these individuals address compliance matters relevant to Washington.”<sup>82</sup> Lumen operates in 36

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<sup>79</sup> Dahl, Exh. CJD-3T at 12:8–14:3; Dahl, Exh. CJD-7 (CenturyLink Response to Public Counsel Data Request No. 9).

<sup>80</sup> Cross Exhibit for Peter Gose, Exh. PJG-6XC (CenturyLink Response to Public Counsel Data Request No. 8).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

states.<sup>83</sup> If everyone is responsible for everything, the practical result is that no one is responsible.<sup>84</sup>

36. The number of employees assigned to regulatory compliance is also telling. Initially, Lumen presented data from 2018, 2019, 2020, and 2021. The headcount in those years showed little change.<sup>85</sup> Lumen later provided data for 2016, 2017, 2022, and 2023.<sup>86</sup> The headcounts were higher in 2016 and 2017, declined and were fairly steady from 2018 through 2021, and declined further in 2022 and 2023.<sup>87</sup>

37. Lumen has neither an active nor adequate compliance program in place.<sup>88</sup> As such, this factor supports imposing maximum penalties for Lumen's violations.

**10. Lumen is a large telecommunications company in Washington.**

38. In 2021, Lumen reported total Washington operating revenue of \$262,954,027.<sup>89</sup> The maximum penalty in this case represents 0.35 percent of Washington revenues.<sup>90</sup> Lumen is a large, multi-state company that has decades of regulatory experience in Washington and elsewhere. Imposing the maximum penalty would not be overly burdensome to Lumen, nor would it be disproportionate to its overall revenue.<sup>91</sup> This factor weighs in favor of imposing a penalty of \$923,000.

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<sup>83</sup> Gose, Exh. PJG-1T at 4:16–19.

<sup>84</sup> Albert Bandura, *Selective Activation and Disengagement of Moral Control*, 46 J. Social Issues 27–46 (1990).

<sup>85</sup> Gose, Exh. PJG-6XC (CenturyLink Response to Public Counsel Data Request No. 8).

<sup>86</sup> Gose, Exh. PJG-7XC (CenturyLink Response to Public Counsel Data Request No. 10).

<sup>87</sup> *Id.* Lumen provided the organizational charts from 2021 and 2023 in Cross Exhibit PJG-8XC (CenturyLink Response to Public Counsel Data Request No. 11).

<sup>88</sup> Enforcement Policy ¶ 15; Dahl, Exh. CJD-1Tr at 25:15–26:8; Dahl, Exh. CJD-3T at 12:10–14:3.

<sup>89</sup> Dahl, Exh. CJD-1Tr at 26:15–16; Feeser, Exh. BF-1T at 7:22–23.

<sup>90</sup> Dahl, Exh. CJD-1Tr at 26:15–17.

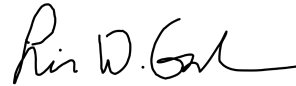
<sup>91</sup> *Id.* at 26:17–27:2.

#### IV. CONCLUSION

39. Lumen disconnected or suspended 923 Washingtonians during the COVID-19 pandemic while Governor Inslee's disconnection moratorium was in place. The purpose of the disconnection moratorium was to keep people connected to vital and essential services, including telecommunication services, during a time of unprecedented crisis. Nine hundred, twenty-three households were unlawfully denied access to their telecommunication services. Leniency has no place in the regulatory response to Lumen's violations. The Commission should impose the maximum statutory penalty of \$923,000.

DATED this 21st day of April, 2023.

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