

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

QWEST CORPORATION d/b/a
CENTURYLINK QC,

Respondent.

DOCKET UT-171082

ORDER 03

FINAL ORDER GRANTING IN
PART AND DENYING IN PART
MOTION FOR SUMMARY
DETERMINATION; DISMISSING
COMPLAINT; ORDERING
RECORD KEEPING

BACKGROUND

- 1 On December 8, 2017, the Washington Utilities and Transportation Commission (Commission) regulatory staff (Staff)¹ filed a complaint against Qwest Corporation d/b/a CenturyLink QC (CenturyLink or Company). The complaint alleges that CenturyLink violated RCW 80.36.090 and WAC 480-120-071 by refusing to extend service within its service territory to a consumer whose residence is less than 1,000 feet from the nearest CenturyLink facilities. The complaint further alleges that the Company violated WAC 480-120-166 and WAC 480-120-349 by failing to retain records on customer complaints and to document the Company's compliance with WAC 480-120-071. CenturyLink filed its answer to the complaint on January 9, 2018, denying all of the allegations.
- 2 On February 13, 2018, the Commission entered Order 01, Prehearing Conference Order, establishing a procedural schedule, including evidentiary hearings on July 23, 2018. Staff filed testimony in support of the complaint on April 6, 2018. The Company and the Public Counsel Unit of the Washington Attorney General's Office (Public Counsel) filed response testimony on June 1, 2018. On July 3, 2018, Staff filed rebuttal testimony, and CenturyLink and Public Counsel filed cross-answering testimony.

¹ In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

- 3 On June 22, 2018, Staff filed a motion for partial summary determination (Motion), contending that the Commission should find as a matter of law that CenturyLink violated WAC 480-120-071. On July 12, 2018, CenturyLink filed its opposition to the Motion, and Public Counsel filed a response in support of Staff’s position.
- 4 On July 17, 2018, the Commission issued a notice vacating the remainder of the procedural schedule and informing the parties that the Commission would resolve the issues raised in the complaint without an evidentiary hearing. Staff and Public Counsel stipulated, and CenturyLink did not object, to admission of all of the prefiled testimony and exhibits in the record with the understanding that the Commission would not resolve any disputed issues of fact. The Commission, therefore, admits these exhibits into the record.
- 5 The principal facts are uncontested. In December 2016, a consumer residing in CenturyLink service territory outside of Vancouver, Washington, requested telecommunications service from the Company. No CenturyLink facilities are installed at his residence. His house is located in a subdivision where the developer did not enter into an agreement with the Company to construct facilities while the land was being developed. The closest CenturyLink facilities are approximately 45 feet from the consumer’s property line. The Company informed the consumer that it could not provide service unless he paid to construct a line to his home.²
- 6 Comcast and wireless service providers offer telecommunications service within the area where the consumer’s house is located.³ The consumer, however, is a CenturyLink retiree, and because his retirement benefits include free service from the Company, he wants service from the Company.⁴ Following discussions with the Company, the consumer filed an informal complaint with the Commission. Staff investigated, concluded that CenturyLink unlawfully refused service, and initiated this formal complaint.⁵

² Paul, Exh. SP-1T at 6:9-13 & 8:3-14; Paul, Exh. SP-3 (Staff Investigation Report Narrative) at 6; Grate, Exh. PEG-1T at 8:13 – 9:8.

³ Grate, Exh. PEG-1T at 9:9-11; Paul, Exh. SP-1T at 9:19-20.

⁴ Paul, Exh. SP-3 (Staff Investigation Report Narrative) at 6; Complaint ¶ 5; CenturyLink Answer to Complaint ¶ 5; See Grate, Exh. PEG-1T at 9:20-21 (“CenturyLink QC determined that the cost of deploying facilities to the applicant’s property exceeds the revenues CenturyLink QC could generate from serving the applicant”).

⁵ *E.g.*, Paul, Exh. SP-3 (Staff Investigation Report Narrative).

- 7 In its Motion, Staff contends that because the consumer’s property is within 1,000 feet of CenturyLink facilities, the Commission’s line extension rule, WAC 480-120-071, requires the Company to extend facilities to the consumer’s house without charge. Public Counsel agrees. CenturyLink counters that the rule expressly does not apply to developments, which is how the Company characterizes the consumer’s property. Staff and Public Counsel, however, construe the term “developments” as used in the rule to mean land that is subject to development, not residences once they have been constructed. CenturyLink also argues that the rule states that it applies only to companies that receive federal universal service funding, and CenturyLink does not receive such support to serve the area where the consumer’s residence is located. Staff and Public Counsel interpret this provision to identify which companies must comply with the rule, not as a restriction on where the rule applies.
- 8 Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents Staff. Lisa Anderl, in house counsel, Seattle, Washington, represents CenturyLink. Lisa W. Gafken, Assistant Attorney General, Seattle, Washington, represents Public Counsel.

DISCUSSION AND DECISION

- 9 We find no genuine issues of material fact and determine that we can resolve the disputed issues in this docket as a matter of law. We grant in part and deny in part Staff’s Motion regarding WAC 480-120-071, but conclude based on the evidence before us that CenturyLink has not violated RCW 80.36.090, WAC 480-120-071, WAC 480-120-166, or WAC 480-120-349. We nevertheless are troubled by the ambiguity and potential impacts of the Commission’s line extension rule, as well as by the Company’s interpretation and implementation of that rule. Accordingly, we will initiate a rulemaking to consider revising the rule to clarify companies’ obligations and better reflect today’s competitive telecommunications marketplace.

Line Extension

- 10 We begin our discussion with Staff’s Motion. Staff seeks a determination that CenturyLink violated the Commission’s line extension rule, WAC 480-120-071, when it refused service to the consumer who requested it. That “rule applies to local exchange companies receiving federal high-cost universal service support.”⁶ Each such “company must allow for an extension of service within its service territory up to one thousand feet

⁶ WAC 480-120-071(1).

at no charge to the applicant.”⁷ Here, the requesting consumer’s property is 45 feet from the nearest CenturyLink facilities, well within the 1,000 foot threshold required in the rule. According to Staff, therefore, the Company must extend a line to this consumer and provide service to him.

- 11 CenturyLink claims that the rule is inapplicable because it applies only to companies that receive federal universal service funding (USF), and CenturyLink receives no such support to serve the area where the consumer’s property is located. WAC 480-120-071 is not susceptible to this interpretation. We agree with Staff that the language and history of the rule indicate that the USF limitation establishes which *companies* are subject to the rule, not the *locations* where the rule applies. CenturyLink receives federal USF in Washington, and thus the rule governs CenturyLink’s operations throughout its service territory in this state. Accordingly, we grant Staff’s Motion on this issue.
- 12 The Company’s primary argument is that WAC 480-120-071(2) defines “extension of service” to exclude “developments,” *i.e.*, “land which is divided or is proposed to be divided for the purpose of disposition into four or more lots, parcels, or units.” CenturyLink maintains the consumer’s property at issue here is part of a development, and thus the consumer is ineligible for the mandatory line extension the rule requires.
- 13 Staff and Public Counsel disagree. According to those parties, the use of the word “land” in the definition of “development” indicates that the exclusion is limited to the ground on which the housing is built, not the dwelling itself. Once a residence is constructed, they contend, the occupants are in the same position as any other applicant for service.
- 14 We take issue with both interpretations. Excluding a residence permanently from the service extension requirement solely because the building was once part of a housing development is inconsistent with the rule’s purpose to ensure that consumers have access to basic telecommunications service. A homeowner should not necessarily be denied service based on a decision that the developer made, perhaps many years in the past, not to work with the Company to install facilities. If, as CenturyLink argues, “[o]ccupied homes are built, not exclusively, but often, in developments,”⁸ the Company’s interpretation of the development exemption would largely swallow the rule.
- 15 On the other hand, we agree with CenturyLink that all parts of the rule must have meaning. The exemption equalizes bargaining power between companies and developers

⁷ WAC 480-120-071(4).

⁸ CenturyLink Answer to Motion ¶ 25.

and encourages construction of telecommunications infrastructure in a “green field,” *i.e.*, before roads are paved and sidewalks and driveways installed. If a homeowner could obtain a line extension without charge as soon as the house is built, developers would have much less of an incentive to contribute to extending telecommunications infrastructure into their developments. Companies also would incur higher costs to bore under, or cut and restore, concrete or asphalt to install the necessary facilities.

16 This is not the docket in which to establish the parameters of the development exception in WAC 480-120-071. We cannot modify the rule outside of a rulemaking. Rather, we must determine whether CenturyLink violated the rule as written and reasonably interpreted. We cannot say with confidence that WAC 480-120-071 clearly delineates the Company’s obligations with respect to extending service to consumers in developments. Without such clarity, we are not willing to find the Company in violation of the rule under the facts presented here. Accordingly, we deny Staff’s Motion on this issue.

17 In doing so, however, we do not approve CenturyLink’s current practice of categorically refusing to extend service to any residence that was once part of a housing development. WAC 480-120-071 cannot, and does not, negate the Company’s duty under RCW 80.36.090 to provide service on demand. The rule may not be used as a sword against the Company in this docket, but neither does it shield CenturyLink from its obligations as a regulated telecommunications company. We turn, then, to an examination of the statute.

Obligation to Serve

18 Staff’s Motion focuses on WAC 480-120-071, but the complaint also alleges complementary violations of RCW 80.36.090. That statute provides, in relevant part, “Every telecommunications company shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto suitable and proper facilities and connections for telephonic communication and furnish telephone service as demanded.” Staff contends that the consumer in Vancouver was reasonably entitled to service, primarily in reliance on Staff’s interpretation of WAC 480-120-071, and the Company’s refusal to provide that service violates this statute.

19 Public Counsel supports Staff’s position. In Public Counsel’s view, CenturyLink has longstanding and well-established common carrier obligations as an incumbent local exchange company (ILEC) and carrier of last resort, pursuant to which the Company presumptively must provide service upon request. Public Counsel states that the only grounds on which CenturyLink may refuse an application for service are those listed in WAC 480-120-061, none of which apply in the circumstances presented in this docket.

20 CenturyLink relies on its interpretation of the exemption for extending service to developments in WAC 480-120-071 to dispute Staff's allegations. The Company also maintains that the statute applies to every telecommunications company, not just ILECs, and does not require any company to provide service that is not economically viable. CenturyLink observes that the Commission's standard for reasonable entitlement to service by competitive local exchange companies (CLECs) is to provide service only where the CLEC has facilities in place and could reasonably use those facilities to serve an applicant. Because the Commission effectively treats CenturyLink as a CLEC under the Company's alternative form of regulation (AFOR), CenturyLink argues that it should be subject to the same standard.

21 Again, we do not adopt any party's position. None of the Commission's rules definitively establish the conditions under which an applicant is or is not "reasonably entitled" to telecommunications service. WAC 480-120-071 and WAC 480-120-061 specify some of those conditions, but they are not necessarily the only ones. Nor are carrier of last resort obligations implicated in this docket. This consumer can obtain telecommunications services from other providers and thus CenturyLink is not his only option. We also are not willing to hold in this complaint docket that ILECs have the same obligations as CLECs with respect to construction of facilities, even when the ILEC is regulated under an AFOR. Such issues are much better addressed in a broader proceeding in which all affected stakeholders can participate.

22 We make no new legal or policy determinations in this docket. Rather, we resolve the Complaint by examining the undisputed facts of this case to determine whether CenturyLink refused service to a consumer to which he was reasonably entitled.

23 We recently addressed analogous line extension issues in the context of electric service. In that case, we denied review of an administrative law judge's decision using a fact-based inquiry to determine whether the company or the customers should be financially responsible for the facilities needed to provide service. The factors the judge considered included the nature of the facilities, the economics of constructing the line, and the customer impact.⁹ These factors, in turn, were among those the Commission considered in a petition for waiver of the line extension requirement in former WAC 480-120-071:

- The total direct cost of the extension;

⁹ *In re Petition for an Order Requiring Puget Sound Energy to Fund Replacement of Electric Facilities*, Docket UE-141335, Order 04 Denying Petition for Administrative Review ¶ 23 (Oct. 13, 2015).

- The number of customers to be served;
- The comparative price and capabilities of radio communications service or other alternatives available to customers;
- Technological difficulties and physical barriers presented by the requested extensions;
- The effect on the individuals and communities involved;
- The effect on the public switched network;
- The effect on the company.¹⁰

The Commission explained in that proceeding that its objective is to examine all relevant factors in a particular case to determine whether an applicant is reasonably entitled to service:

[T]his list is non-exclusive and non-mandatory. It is a list of factors likely to be at issue in a line extension, but not all of these factors will be significant in every case, and there may be other factors, not listed, that will be relevant in a particular case. The fundamental task before the Commission is to consider and weigh all relevant factors, in order to determine, under the rule and under RCW 80.36.090, whether an applicant is “reasonably entitled” to service from the local exchange company.¹¹

24 The factors the Commission listed are no longer in the rule, but we find that they provide useful guidance in making the requisite determination in this case. Under the circumstances presented here, we can distill these factors down to two: (1) the impact on the Company and other ratepayers of extending a line to the consumer without charge; and (2) the effect on the consumer of CenturyLink’s refusal to provide service.

25 Impact on the Company. CenturyLink facilities are only 45 feet from the consumer’s property, but that distance is almost exclusively across a paved road and sidewalk. The utility lines in that area are underground, which would require CenturyLink to install conduit under the road and up to the consumer’s home. The Company estimated the cost of deploying the necessary facilities at \$1,670 or \$3,000 depending on the work

¹⁰ *In re Petition of Verizon Northwest Inc. for Waiver of WAC 480-120-071(2)(a)*, Docket UT-011439, Twelfth Supp. Order ¶ 16 (April 23, 2003).

¹¹ *Id.* ¶ 17.

required,¹² which would exceed the revenues CenturyLink would generate from serving the consumer.¹³ The Company or other ratepayers thus would be responsible for paying those costs.

26 Effect on the Consumer. Comcast offers landline telecommunications service in the area where the consumer lives, and wireless providers also serve that area. The consumer, therefore, has access to telecommunications service. He merely does not have the option of obtaining CenturyLink service unless he pays for the line extension.

27 Both of these factors weigh in favor of CenturyLink. The Company would be unable to recover the costs of the requested line extension through the consumer's monthly rates, leaving the Company and its other customers responsible for those costs. The consumer need not rely on CenturyLink for telecommunications but can obtain such service from several other providers that have already constructed the necessary facilities. Based on the facts of this case, we conclude that the Company's decision not to construct the line extension at no charge to this consumer did not deprive him of telecommunications facilities and service to which he was reasonably entitled. CenturyLink did not violate RCW 80.36.090.

Recordkeeping and Retention

28 The Complaint alleges that CenturyLink failed to comply with two Commission rules governing recordkeeping and retention requirements. The first is WAC 480-120-166, which in relevant part requires companies to retain a record of all complaints concerning service or rates for at least two years. Staff alleges that CenturyLink does not keep these records for the required time period based on a statement the Company made during Staff's investigation and difficulties Staff had in obtaining this information.¹⁴ CenturyLink disputes these allegations, claiming that it retains these records as required and Staff misinterpreted the Company's statement and responses to inquiries during the investigation.¹⁵

29 We share Staff's concerns with its inability to obtain information from CenturyLink. A record retention system that does not retrieve requested documents undermines the utility of the requirement that the Company maintain those records. We nevertheless do not find

¹² Paul, Exh. SP-3 (Narrative from Staff Investigation Report) at 22.

¹³ Grate, Exh. PEG-1T at 9:20-21.

¹⁴ Paul, Exh. SP-1T at 24:8 – 25:3.

¹⁵ Grate, Exh. PEG-1T at 30:1-20.

that CenturyLink's failure to produce all requested records rises to the level of a violation of WAC 480-120-166. The evidence demonstrates only that the Company's search did not produce all documents that were responsive to Staff's request, not that the Company did not retain those records. We require CenturyLink to work with Staff to identify and remedy any deficiencies in the Company's search and retrieval processes so that the Commission can reliably obtain the records it seeks.

30 The second recordkeeping rule is WAC 480-120-349, which obligates companies to keep all records and reports required by the telecommunications rules or Commission orders for three years. Staff contends that CenturyLink violated this rule by failing to keep records related to its compliance with the line extension rule.¹⁶ CenturyLink responds that the rule is inapplicable because no Commission rule or order requires the Company to retain records of service denials for consumers who reside in developments without a Provisioning Agreement for Housing Developments (PAHD), an agreement between the developer and CenturyLink to construct facilities in the development.¹⁷

31 WAC 480-120-349 establishes a default retention schedule for records companies must maintain pursuant to other rules or Commission orders. We agree with CenturyLink that no Commission rule or order requires the Company to retain records on its denial of consumer requests for service based on a lack of facilities. The lack of any such requirement in WAC 480-120-071 may be another area in which that rule as drafted does not fully accomplish its intended purpose. But we cannot find CenturyLink in violation of an obligation that perhaps should be codified but currently is not.

Rulemaking

32 While not germane to our determination here, we are sympathetic to CenturyLink's concerns that WAC 480-120-071 may not reflect the current competitive environment for telecommunications services. As we discuss above, the rule's requirement of line extensions up to 1,000 feet with exemptions for developments may not be the best way to ensure that consumers have access to telecommunications services while maintaining ILECs' financial viability. Accordingly, we will initiate a rulemaking in a separate docket to consider revising the line extension rule to clarify companies' responsibilities, as well as to better tailor those obligations to today's telecommunications marketplace.

¹⁶ Paul, Exh. SP-1T at 23:3 – 24:4.

¹⁷ Grate, Exh. PEG-1T at 29:11-21.

33 To accomplish that goal, however, the Commission will need more information. Effective on the date of this order and pending completion of that rulemaking, therefore, CenturyLink must keep a record of all requests for local exchange service the Company denies on the basis of lack of facilities. The Commission will also request that information from other carriers. Such documentation will enable Staff and the Commission to assess the circumstances under and extent to which consumers are unable to obtain service from CenturyLink or other carriers in their service territory. The Commission will resolve any disputes that arise from such denials during that time based on the factual circumstances of each case.

FINDINGS OF FACT

- 34 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including telecommunications companies.
- 35 (2) CenturyLink is a public service company regulated by the Commission, providing service as a telecommunications company.
- 36 (3) In December 2016, a consumer residing in CenturyLink service territory outside of Vancouver, Washington, requested telecommunications service from the Company. No CenturyLink facilities are installed at his residence.
- 37 (4) The consumer's house is located in a subdivision where the developer did not enter into an agreement with the Company to construct facilities while the land was being developed. The closest CenturyLink facilities are approximately 45 feet from the consumer's property line.
- 38 (5) The cost CenturyLink would incur to deploy the facilities necessary to provide telecommunications service to the consumer would exceed the revenues the Company would generate from serving the consumer.
- 39 (6) The Company informed the consumer that it would not provide service unless the consumer paid to construct a line to his home.
- 40 (7) Comcast and wireless service providers offer telecommunications service within the area where the consumer's house is located.

- 41 (8) CenturyLink's search of its records did not produce all documents that were responsive to Staff's request for information during its investigation of the Company's practices.

CONCLUSIONS OF LAW

- 42 (1) The Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 43 (2) WAC 480-120-071 does not clearly define a company's obligation to provide a line extension to a dwelling that has been constructed in a housing development.
- 44 (3) In the absence of a clear requirement to provide a line extension to a dwelling that has been constructed in a housing development, the Commission cannot conclude that CenturyLink violated WAC 480-120-071 by refusing the Vancouver consumer's request for a line extension without charge.
- 45 (4) Based on the undisputed record evidence, CenturyLink did not violate RCW 80.36.090 by refusing to provide telecommunications service to the Vancouver consumer.
- 46 (5) The record evidence is insufficient to prove that CenturyLink does not retain records of customer complaints for two years as required under WAC 480-120-166.
- 47 (6) No rule or Commission order required CenturyLink to maintain records of the Company's denial of service requests on the grounds of lack of facilities, and thus the Company did not violate WAC 480-120-349 by not retaining such records.
- 48 (7) The Commission should initiate a rulemaking to consider revisions to WAC 480-120-071 to clarify companies' responsibilities to provide requested service and to better tailor those obligations to the current telecommunications marketplace.
- 49 (8) The Commission should require CenturyLink to keep a record of all requests for local exchange service the Company denies on the basis of lack of facilities.

ORDER

50 THE COMMISSION ORDERS:

- 51 (1) The Commission grants in part and denies in part Staff's Motion for Partial
Summary Determination.
- 52 (2) The Commission dismisses the complaint against Qwest Corporation d/b/a
CenturyLink QC.
- 53 (3) Effective on the date of this order and pending completion of a rulemaking to
consider revisions to WAC 480-120-071, Qwest Corporation d/b/a CenturyLink
QC must keep a record of all requests for local exchange service the Company
denies on the basis of lack of facilities to provide the requested service.
- 54 (4) Qwest Corporation d/b/a CenturyLink QC must work with Staff to identify and
remedy any deficiencies in the Company's records search and retrieval processes
so that the Commission can reliably obtain the records Commission rules and
orders require the Company to maintain.
- 55 (5) Pending completion of a rulemaking to consider revisions to WAC 480-120-071,
the Commission will resolve any disputes that arise from Qwest Corporation d/b/a
CenturyLink QC's denial of requests for local exchange service due to lack of
facilities based on the factual circumstances of each case.

Dated at Olympia, Washington, and effective August 23, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.