

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

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

DOCKET UT-210902

CENTURYLINK'S REPLY BRIEF

May 12, 2023

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I. INTRODUCTION

1. In its Initial Brief, Staff concedes that several factors in the Commission's Enforcement Policy Statement ("Policy Statement") weigh in favor of CenturyLink and call for no penalty, yet Staff nonetheless requests that the Commission issue *the maximum penalty*. On the other hand, in its Opening Brief, Public Counsel digs in its heels and declares that each and every factor in the Policy Statement demands the maximum penalty against CenturyLink. Neither party establishes how penalties will further the Commission's objective in this proceeding. But with substantial evidence and a comprehensive examination of relevant law, CenturyLink has demonstrated why penalties are not appropriate in the unique circumstances presented here. For the reasons described below and in CenturyLink's Opening Brief, the Commission should either decline to assess penalties in this proceeding or assess at most a suspended penalty of \$100 per violation.

II. ARGUMENT

2. The Commission's established objective in any enforcement action is to obtain compliance with applicable law.¹ CenturyLink has produced substantial evidence and analyzed it in light of the Commission's Policy Statement² and applicable precedent, demonstrating that penalties would not further the Commission's objective. The inadvertent, human errors that led to a number of involuntary suspensions and disconnections for non-payment during the effective period of Proclamation 20.23.2 ("Proclamation") were unfortunate and should never have

¹ *Wash. Utils. & Transp. Comm'n. v. CenturyLink*, Docket UT-140597, Order 03, Final Order Approving Settlement Agreement (Feb. 22, 2016) at ¶ 10.

² *In re Enforcement Policy of the Wash. Utils. & Transp. Comm'n*, Docket A-120061, Enforcement Policy of the Wash. Utils. & Transp. Comm'n (Jan. 7, 2013) ("Policy Statement").

occurred. But neither Staff nor Public Counsel establishes why or how penalties will ensure compliance with WAC 480-120-172 in the future.

3. Staff acknowledges that several factors from the Policy Statement are either neutral regarding a penalty or weigh in favor or no penalty. For example, Staff agrees that CenturyLink did not intend to disconnect customers during the Proclamation's effective period,³ CenturyLink was cooperative and responsive,⁴ and CenturyLink corrected all violations before Staff submitted its Investigation Report.⁵ Staff also changed its position regarding CenturyLink's compliance plan. In her prefiled direct testimony, Staff witness Bridget Feeser stated simply, "Staff is not aware of any existing compliance program."⁶ But in its Initial Brief, Staff now acknowledges that CenturyLink has a compliance plan.⁷ But Staff refuses to budge on other factors, even when faced with clear conflicting evidence. It still claims that CenturyLink failed to self-report the violations even though the undisputed evidence shows the moment CenturyLink reported the violations to Staff.⁸ Also, while Staff has conceded several points throughout this proceeding, its ultimate position has not evolved, and Staff persists in demanding the maximum penalty against CenturyLink. Staff's position loses credibility when multiple factors (by Staff's own admission) call for no penalty at all, and others are neutral, at best.

³ See Feeser, Exh. BF-1T at 5:20-21.

⁴ Investigation Report at p. 10 ("Staff found the Company was cooperative and mostly responsive") and Initial Brief of Commission Staff ("Staff's Initial Br.") at ¶ 19 ("Staff concluded that the company was reasonably cooperative and responsive during the investigation.).

⁵ See Investigation Report at 10.

⁶ Feeser, Exh. BF-1T at 7:8-9.

⁷ See Staff's Initial Br. at ¶ 33.

⁸ See Feeser, Exh. BF-2 at 2.

4. Public Counsel, meanwhile, opts for hyperbole over thoughtful analysis. Its arguments either ignore or completely contradict undisputed record evidence. As discussed later, Public Counsel's witness has no telecommunications expertise or experience testifying in penalty proceedings, and Commission should give little, if any, weight to Public Counsel's arguments.

A. Staff and Public Counsel Ignore Substantial Evidence Demonstrating That Both Disconnections and Suspensions Were Unintentional.

5. Staff's and Public Counsel's claims that CenturyLink intended to suspend its customers, but not disconnect them, defies both logic and substantial, unchallenged evidence. Instead of considering the abundant evidence in the record, Staff and Public Counsel rely solely on one qualifying sentence made after the Proclamation terminated and before this matter was even initiated.

6. In its testimony, CenturyLink explained in detail how the company intended to, and actually did, prevent both suspensions and disconnections during the effective period of the Proclamation. Not only did CenturyLink witness Peter Gose testify as such in this proceeding, but Lisa Anderl stated the same thing directly to the Commissioners at the June 16, 2020 Special Open Meeting.⁹ Further, CenturyLink provided multiple documents supporting the fact that every disconnection and suspension was an accidental, human-caused error that occurred despite CenturyLink's reasonable efforts to prevent both disconnections and suspensions during the effective period of the Proclamation. The billing system scripts containing the computer code were written to and did stop both suspensions and disconnections.¹⁰ There is nothing in the scripts

⁹ See, 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).

¹⁰ See Gose, Exh. PJG-1T at 8:7-8.

or related internal correspondence to distinguish suspensions from disconnections, and the company did in fact suppress both suspensions and disconnections. CenturyLink gave instructions to agents on how to identify and suppress both suspensions and disconnections.¹¹ The scripts *are* those instructions, and other correspondence supplemented those instructions. As CenturyLink’s witness Peter J. Gose explained, “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.”¹² Staff twists this human error and argues that it instead demonstrates an “admission” that CenturyLink’s agents “may have deliberately allowed suspensions.”¹³ A misunderstanding is not intentional. Staff has no basis for this wild conjecture. Alleging sinister motive with no evidence is irresponsible and certainly should not be endorsed by the Commission.

7. Without any evidence to support its claim that the suspensions were deliberate and intentional, Staff relies on an erroneous inference of one sentence from an early data request response that simply noted (accurately) that the Proclamation did not expressly restrict suspensions.¹⁴ CenturyLink’s statement was nothing more than a post-hoc legal opinion made to qualify its data request response during the course of a Commission investigation. CenturyLink never testified to such position and never raised such argument at any time during this proceeding. In fact, in its Cross Motion for Summary Determination in this proceeding,

¹¹ See Gose, Exh. PJG-4C and Exh. PJG-5C. See also, Gose, Exh. PJG-1T at 8:7-15.

¹² Gose, Exh. PJG-1T at 8:11-14.

¹³ Staff’s Initial Br. at ¶ 14, citing Gose, Exh. PJG-1T at 8:12-14.

¹⁴ See Staff’s Initial Br. at ¶ 14. See also, Feeser, Exh. BF-4T at 5:1-3, citing CenturyLink’s statement, “CenturyLink notes that the Governor’s Proclamations did not restrict utilities from suspending customers for non-payment.”

CenturyLink expressly acknowledged that suspensions were appropriately treated the same as disconnections.¹⁵ It is revealing that neither Staff nor Public Counsel cites CenturyLink’s own testimony or actions when arguing about intention; they instead only cite Ms. Feeser’s testimony *about* CenturyLink’s testimony and actions.¹⁶ To be clear, Ms. Feeser’s inference is not evidence. Her reading of an inconsequential qualification to a data request response is simply wrong. CenturyLink’s statement pointing out that the Proclamation did not expressly restrict suspensions neither implies nor confirms that CenturyLink earlier intended to suspend people at will. If CenturyLink had suspended the 25,000 accounts that were otherwise eligible for suspension while preventing disconnections, Staff’s argument would have some merit. Similarly, had CenturyLink intended to “[test] the bounds of the Proclamation” as Public Counsel claims,¹⁷ CenturyLink would not have prevented approximately 24,757 suspensions like it did. CenturyLink intended to prevent both suspensions and disconnections, and it did prevent the vast majority of both suspensions and disconnections. The relatively few suspensions and disconnections that occurred support the fact that they were both accidental and unintentional.

8. The frailty of Staff’s and Public Counsel’s arguments regarding intent is made more apparent by Public Counsel’s reliance on hyperbole. Throughout its Opening Brief, Public

¹⁵ “While the Lumen Companies believe [suspensions and disconnections] are distinct steps in the collections process, the company will not dispute that such suspensions can be treated as ‘disconnection’s’ for purpose of this motion.” Lumen Companies’ (1) Opposition to Staff’s Motion for Partial Summary Determination and (2) Cross Motion for Summary Determination at note 2 (July 6, 2022).

¹⁶ *See, e.g.*, Staff’s Initial Br. at ¶ 14, citing Feeser, Exh. BF-1T for the statement “Lumen then ‘repeatedly’ told Staff that the Governor’s prohibition did not prevent it from suspending customers.” *See also*, Opening Brief of Public Counsel (“Public Counsel’s Opening Br.”) at ¶ 15, citing Staff’s Investigation Report as support for the statement, “During Staff’s investigation, Lumen “repeatedly stated’ that it believed it could suspend service to customers.”

¹⁷ Public Counsel’s Opening Br. at ¶ 15.

Counsel resorts to broad claims of bad behavior that are inappropriate and have no basis in fact. For example, Public Counsel claims that CenturyLink actively attempted to evade the Proclamation.¹⁸ It implies that Mr. Gose’s testimony about the challenges of implementing varying requirements over 36 states was some sort of attempt to elude the duty to comply with the Proclamation.¹⁹ Also, Public Counsel states, “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.”²⁰ Public Counsel accuses CenturyLink of either purposely blowing off an order from the Governor or nefariously deciding as a company to actively defy it. Public Counsel offers no evidentiary support for its bombastic rhetoric.

9. The disconnections and suspensions were accidents, resulting from human error. CenturyLink had reasonable processes in place to halt them, but some admittedly and unfortunately slipped through the cracks. Also, CenturyLink does not request that the Commission dramatically “reduce the penalty by 90 percent,” because no penalty has been assessed. Public Counsel paints a skewed picture of CenturyLink, stating that “Each factor weighs in favor of imposing the maximum statutory penalty on Lumen.”²¹ Even the complainant does not believe this, because Staff admits that several factors weigh in favor of no penalty.²²

¹⁸ Public Counsel’s Opening Br. at ¶ 17.

¹⁹ See Public Counsel’s Opening Br. at ¶ 10.

²⁰ Public Counsel’s Opening Br. at ¶ 14.

²¹ Public Counsel’s Opening Br. at ¶ 13.

²² See, e.g., Investigative Report at p. 10, Factor 2: (“CenturyLink claims that the disconnections were unintentional, which Staff finds credible in the absence of evidence demonstrating otherwise.”); Factor 4: (“Staff found the Company was cooperative and mostly responsive”); Factor 5: (“CenturyLink has

B. CenturyLink Corrected its Errors, and Public Counsel's Suggestions are Just Unwarranted Criticisms.

10. Public Counsel's unreasonable position is also reflected in its arguments regarding corrective action. CenturyLink notified disconnected customers and offered to reconnect them free of charge.²³ This satisfied Staff, which found that CenturyLink had corrected the violations before its Investigation Report was filed.²⁴ Public Counsel nonetheless argues that CenturyLink should have done more, repeating its bizarre claim that the company should have reconnected customers without their knowledge or approval.²⁵ As stated in CenturyLink's Opening Brief, Public Counsel's suggestion is that CenturyLink should have engaged in slamming, in violation of federal law. Public Counsel also argues that CenturyLink's notice was not sufficiently contrite,²⁶ and affected customers probably did not understand the notice.²⁷ The record evidence, however, supports Staff's conclusion that CenturyLink took sufficient corrective action before this proceeding even began. Only a small percentage of affected customers chose to be reconnected after they were notified, and Public Counsel does not assert (let alone establish) that a differently-worded notice would have enticed more customers to reconnect. Public Counsel can point to no customer complaint or even a customer inquiry regarding the suspensions or disconnections. Public Counsel provides no support for its allegations that any customers were harmed, confused, or unsatisfied with CenturyLink's corrective action. Public Counsel simply

corrected the violations noted in this report"). Staff was neutral on Factors 9 and 10, omitting them from the factors that warrant a significant penalty. *See* Feeser, Exh. BF-1T at 8:15-20. *See also*, Staff's Initial Br. at ¶ 33, ("Lumen credibly argues it has a compliance program.").

²³ *See* Dahl, Exh. CJD-6.

²⁴ *See* Investigative Report at p. 10.

²⁵ *See* Public Counsel's Opening Br. at ¶ 21.

²⁶ Yet, also somehow too full of "sentiments". *See* Public Counsel's Opening Br. at ¶ 23.

²⁷ *See* Public Counsel's Opening Br. at ¶ 22.

brainstorms things CenturyLink could have done (whether or not they are legal or reasonable) and lists them “in favor of imposing maximum penalties.”²⁸ Public Counsel’s position has no support in law or Commission practice, and it should be rejected.

C. Public Counsel Continues to Defy Order 03 by Raising Improper Arguments.

11. Public Counsel ignores an order in this proceeding when it calls for imposing maximum penalties based on its allegations of late payment and reconnection fees.²⁹ Claims related to late payment and reconnection fees were not alleged in the complaint, and the Commission unequivocally rejected Public Counsel’s earlier attempt to raise them in this proceeding. The presiding officer ruled that such claims are outside the parameters of this docket and clearly stated, “the Commission will not consider them here.”³⁰ Public Counsel boldly and repeatedly defies the presiding officer and alleges that CenturyLink charged nearly 40,000 customers unlawful late payment fees and 1,600 customers unlawful reconnection fees.³¹ Further, Public Counsel relies on these unfounded accusations in arguing in favor of imposing maximum penalties against CenturyLink. These arguments should be rejected, and the Commission should call Public Counsel to task for repeatedly defying Order 03.

D. Staff and Public Counsel Misconstrue Factor 8, the Likelihood of Recurrence.

12. Staff’s argument in its Initial Brief regarding Factor 8, the likelihood of recurrence, is flawed because it is based on a fundamental misinterpretation of Factor 8 and it misconstrues the *Qwest* case that thoroughly addressed this Factor. First, Staff and Public Counsel presume that in

²⁸ See Public Counsel’s Opening Br. at ¶ 24.

²⁹ See Public Counsel’s Opening Br. at ¶ 27.

³⁰ Order 03 at ¶ 20 (July 29, 2022).

³¹ See Public Counsel’s Opening Br. at ¶ 27.

every case involving a violation, a company must change its practices to demonstrate that a *similar* violation will not occur.³² This is incorrect. The Commission’s policy is unambiguous, and Factor 8 applies to recurrence of the violation, not occurrence of a similar violation. The violation in this proceeding is extremely unlikely to recur because the prohibition against disconnections and suspensions is no longer in effect, and there is no reason to believe a similar state of emergency will occur and trigger the same restrictions. There is nothing CenturyLink can do to make a violation for unauthorized discontinuation of service less likely to occur in the future because CenturyLink is now fully authorized to discontinue such service. Staff’s and Public Counsel’s argument presupposes that the Governor will issue an identical Proclamation due to a hypothetical public emergency. While it is possible that this could occur, such is not in the vicinity of “likely.”

13. Consider the human error that led to the violation: if a CenturyLink agent performed the exact same “error” today, it would not be a violation. There would be no recurrence. Therefore, any changes to CenturyLink’s operations would be pointless. Public Counsel understands this, even as it calls for maximum penalties for this Factor, because Public Counsel states in the beginning of its Opening Brief that the Proclamation prohibited the company from exercising its rights only “until that prohibition expired.”³³ That prohibition expired on September 30, 2021.

14. *WUTC v. Qwest*³⁴ is directly on point in this analysis, but Staff misconstrues the decision in several important ways. First, Staff points out that CenturyLink still provides the relevant

³² See Staff’s Initial Br. at ¶¶ 28 and 30; see also Public Counsel’s Opening Br. at ¶¶ 28 and 31.

³³ Public Counsel’s Opening Br. at ¶ 6.

³⁴ *Wash. Utils. & Transp. Comm’n. v. Qwest Corp., d/b/a CenturyLink QC*, Docket UT-190209, Order 03 (Initial Order Dismissing Complaint) (June 25, 2020).

service, where Qwest had discontinued its 9-1-1 service.³⁵ Rather than demonstrating a likelihood of recurrence, however, Staff's distinction makes CenturyLink's point that the company's conduct would not cause a recurrence of the violation. Yes, CenturyLink does still provide service, and because the Proclamation expired, now CenturyLink is authorized to disconnect and suspend accounts for nonpayment pursuant to WAC 480-120-172. Such disconnections and suspensions are no longer violations at all, so they cannot be "repeat violations" under the Policy Statement.³⁶ It is impossible to incentivize compliance with a prohibition that does not exist, and the *Qwest* order recognized this.

15. Staff's second flaw is when Staff incorrectly states, "The ALJ, however, declined to impose penalties there as a punitive measure because the conduct at issue was not unlawful."³⁷ Staff misreads the *Qwest* order, which states: "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."³⁸ Judge Kopta could not have been clearer, nor could his analysis have been sounder. Even if a company's conduct is an unlawful violation of Commission rule, it is not in the Commission's or the public interest to assess penalties against the company if that violation is not likely to recur.

16. Finally, both Staff and Public Counsel cling to the incorrect notion that the Commission requires compliance with hypothetical future proclamations, orders, regulations, or statutes that have yet to be enacted. Of course, a company must comply with existing orders, laws, and

³⁵ See Staff's Initial Br. at ¶ 28.

³⁶ Policy Statement at p. 9.

³⁷ Staff's Initial Br. at ¶ 29.

³⁸ Docket UT-190209, Order 03 at ¶ 30 (Initial Order).

regulations, but that is not what Staff and Public Counsel demand. They ask the Commission to issue maximum penalties against CenturyLink because they believe CenturyLink might not comply with future laws that have yet to be written.³⁹ They are not calling for a penalty for CenturyLink's current operations, which comply with WAC 480-120-172. Nor can they reasonably assert that CenturyLink is likely to violate WAC 480-120-172 for unauthorized disconnections or suspensions, because CenturyLink has full authority under WAC 480-120-172 to disconnect or suspend accounts for non-payment. They do not even suggest that CenturyLink has inadequate management or oversight systems in place to comply with WAC 480-120-172. What they are suggesting is that the Commission assess maximum penalties against CenturyLink now because it might violate WAC 480-120-172 if the Governor or Commission takes away CenturyLink's authority under WAC 480-120-172 for some presently-unknown reason, sometime in the future.⁴⁰ As incredible as this sounds, it is not a new argument, and the Commission has been forced to reject it before.⁴¹

17. Staff next argues that a penalty would be a good idea to act as a deterrent for other companies.⁴² But what exactly is Staff requesting deterrence from? In the case Staff cites, the Commission considered a deterrence effect to comply with the State's existing anti-discrimination laws.⁴³ But Staff requests the Commission penalize CenturyLink to act as a deterrence effect

³⁹ Public Counsel appears to slightly soften its position, now referring to these future laws as "changing circumstances". See Public Counsel's Opening Br. at ¶ 31, reframing the Cross-Answering Testimony of Corey Dahl, Exh. CJD-3T at 11:12-19.

⁴⁰ Staff's Initial Br. at ¶ 28 ("And the Governor could very well declare another state of emergency and issue an order like Proclamation 20-23.2, which would govern Lumen's provision of that service.").

⁴¹ See Docket UT-140597, Order 03 at ¶¶ 24-25.

⁴² Staff's Initial Br. at ¶ 30.

⁴³ See *Wash. Utils. & Transp. Comm'n v. Advanced Telecom Group, Inc.*, Docket UT-033011, Order 21 at ¶ 100 (Feb. 28, 2005).

against violations of a future state of emergency or another similar event.⁴⁴ In other words, Staff recommends deterring other companies from disobeying restrictions that currently do not exist. The Commission has never demanded compliance with hypothetical rules or laws, and neither Staff nor Public Counsel have provided any authority supporting such an absurd conclusion. If a law were to be passed, or an order issued, or a state of emergency declared, CenturyLink would do what any reasonable regulated entity would do: it would review the new requirements and implement measures that are reasonable under the circumstances to minimize and preclude service disruptions and violations of such requirements.⁴⁵ That is exactly what it did in this case, and that is exactly what the Commission demands: “In other words, we require regulated companies to implement measures that are reasonable under the circumstances to minimize service disruptions and other violations of Commission requirements.”⁴⁶

E. CenturyLink’s Compliance Program is Adequate and Sufficient.

18. Regarding Factor 10, compliance program, Staff states, “Lumen credibly argues that it has a compliance program.”⁴⁷ Staff specifically references Mr. Gose’s testimony regarding the “numerous programs and processes to comply with a vast number of rules and regulations in the states in which it the company conducts operations.”⁴⁸ Mr. Gose also testified that “if a future event requiring similar safeguards against disconnections for non-payment were to occur, the necessary processes for conducting data queries and the procedures needed to analyze the data

⁴⁴ Staff’s Initial Br. at ¶ 30.

⁴⁵ Gose, Exh. PJG-1T at 13:3-6.

⁴⁶ Docket UT-140597, Order 03 at ¶ 25.

⁴⁷ Staff’s Initial Br. at ¶ 33.

⁴⁸ See Staff’s Initial Br. at ¶ 33, citing Gose, Exh. PJG-1T at 6:18-7:5.

extracted from the CenturyLink billing and provisioning systems have been established and can quickly be inserted back into a production environment.”⁴⁹

19. CenturyLink’s systems and processes satisfy the Commission’s enforcement policy and are sufficient for Staff, but Public Counsel declares, “Lumen does not maintain a compliance program.”⁵⁰ Public Counsel’s testimony and arguments should be given little, if any, weight. CenturyLink provided several pages of testimony over multiple rounds describing in detail the steps the company implemented to comply with the Proclamation. CenturyLink provided Public Counsel over 100 pages of computer script and related instructions substantiating the efforts the company described in testimony. In response to data requests, CenturyLink provided Public Counsel detailed clarification on CenturyLink’s automated and manual steps employed by the company to comply with the Proclamation. CenturyLink testified that these processes could be easily re-installed if necessary to comply with a future emergency proclamation. Further, CenturyLink testified that it has learned valuable lessons to improve upon such processes in the event a future emergency occurs. Still, Public Counsel disregards the substantial evidence of an

⁴⁹ Gose, Exh. PJG-1T at 11:2-6. CenturyLink notes that there is some ambiguity surrounding this Factor. Is it focused on the prior existence of a compliance program to remedy alleged violations, or is it focused on a subsequent compliance program to avoid future violations of an existing requirement or restriction? Given the unique circumstances here – that the Proclamation that the Commission ruled had the effect of stripping CenturyLink of the authority to involuntarily terminate service is no longer in effect – this Factor is particularly unclear. Regardless of how the Commission parses this Factor in this case, CenturyLink meets the Commission’s expectations. During the effective period of the Proclamation, CenturyLink took extensive actions to comply with it (although human fallibility led to some failures). Once CenturyLink became aware of the errors (after the Proclamation had terminated), it took appropriate remedial steps. And lastly, CenturyLink has (as Mr. Gose describes) additional processes in place should a similar restriction arise in the future. Which of these, alone or together, constitute a “compliance program” under the Policy Statement is not entirely clear to CenturyLink, but the Commission should rest assured that CenturyLink is prepared to minimize and prevent future service disruptions.

⁵⁰ Public Counsel’s Opening Br. at ¶ 34.

adequate and effective compliance plan in favor of the pithier platitude, “If everyone is responsible for everything, the practical result is that no one is responsible.”⁵¹

20. Public Counsel either ignored CenturyLink’s testimony, exhibits, and data request responses, or did not understand them. For example, Public Counsel claims that CenturyLink currently operates in 36 states, but this is not true.⁵² The reference in Mr. Gose’s direct testimony that Public Counsel cites states that CenturyLink had ILEC operations in 36 states during the period of the Proclamation.⁵³ In response to Public Counsel’s data request, CenturyLink explained that it sold ILEC operations in 20 states in 2022: “Finally, CenturyLink notes that the divestiture of ILEC companies and services in 20 states to Brightspeed (which transaction closed in 2022) led to staff reductions/transfers, including in departments identified above and in this data request response.”⁵⁴ Whether Public Counsel purposefully misstated CenturyLink’s operations to imply that CenturyLink is incapable of complying with Commission rules, or whether Public Counsel simply did not understand Mr. Gose’s testimony or data request response, the effect is the same: Public Counsel is wrong that CenturyLink does not have an adequate and sufficient compliance plan. Mr. Gose provided substantial evidence, including computer scripts, related instructions, management, staffing, and operations information, and pages of testimony explaining its manual and automated processes that make up CenturyLink’s compliance plan.

21. Yet rather than accepting or even refuting such evidence, Public Counsel pretends it does not exist and concludes that CenturyLink just does not understand. CenturyLink, Public Counsel

⁵¹ Public Counsel’s Opening Br. at ¶ 35.

⁵² *See id.* (“Lumen operates in 36 states”).

⁵³ *See id.*; *see also* Gose, Exh. PJG-1T at 4:16-19.

⁵⁴ Gose, Exh. PJG-7XC.

states, “misunderstands the need for and expectation of maintaining a compliance program,” and “fails to understand” a proactive compliance plan, and is “confused about its obligations” and, “This misunderstanding fundamentally impacts Lumen’s execution of its regulatory obligations.”⁵⁵ It is bizarre to claim that CenturyLink does not understand its regulatory obligations or the system processes necessary to comply with such obligations. CenturyLink’s witness, Peter Gose, is a telecommunications expert. He is the Director of State and Local Government Affairs for Lumen Technologies, Inc., where he is responsible for incumbent and competitive local exchange carrier regulatory matters in 18 states, Puerto Rico, and the United States Virgin Islands.⁵⁶ He has 32 years of direct and relevant experience in the communications industry, including managing the company’s state regulatory compliance efforts.⁵⁷ He has also provided a ten-page *curriculum vitae* listing 38 separate telecommunications proceedings, both state and federal, in which he has participated or testified.⁵⁸

22. To the contrary, Public Counsel’s witness has participated in administrative cost proceedings but has no technical expertise in telecommunications services.⁵⁹ He has never testified in a penalty proceeding.⁶⁰ He has no formal telecommunications education or any experience working for a telecommunications company.⁶¹ He was not involved in any way in Staff’s investigation. He has called for violating federal and state slamming laws as a remedy for mistakenly disconnecting customers. He submits that CenturyLink should have just had a training

⁵⁵ Public Counsel’s Opening Br. at ¶ 34.

⁵⁶ See Gose, Exh. PJG-1T at 1:5-10.

⁵⁷ See Gose, Exh. PJG-1T at 1:5-3:2.

⁵⁸ See Gose, Exh. PJG-2.

⁵⁹ See Dahl, Exh. CJD-1Tr at 1:11-2:5.

⁶⁰ See Dahl, Exh. CJD-2.

⁶¹ See Dahl, Exh. CJD-1Tr at 1:11-2:5.

session or a message “reminding” employees of the importance of the Proclamation. He is not qualified to review or testify on CenturyLink’s operations or its compliance plans.

23. The Commission has previously assigned less weight to witnesses with no specialized knowledge or expertise in penalty assessments or the specific subject matter of the docket. In *WUTC v. PSE*, the Commission gave little weight to Public Counsel’s witness, stating:

[Public Counsel’s witness], however, has no training or experience in determining the appropriate penalties for violations of law or in the safe operation of a gas system. Nor did he demonstrate an understanding of the range of, and rationale for, various enforcement alternatives to ensure that companies correct violations and minimize future safety issues. He has no familiarity with PSE’s system and processes beyond the information provided in this docket and did not review prior Commission penalty assessments other than those involving PSE.⁶²

24. The Commission similarly rejected Public Counsel’s recommendation to impose a maximum penalty based on its witness’s lack of knowledge of CenturyLink’s services and the Commission’s penalty assessment proceedings in *WUTC v. CenturyLink*. There, the Commission found that Public Counsel’s witness “demonstrated less familiarity with 911 services and Commission enforcement policies than found in other testimony and record evidence in this proceeding.”⁶³ Here, as in both above-referenced proceedings, the Commission should apply little weight to Public Counsel’s testimony and instead should rely on Mr. Gose’s decades of experience and extensive knowledge of CenturyLink’s systems and processes. Staff, which has more knowledge and experience in analyzing this Factor, finds CenturyLink’s compliance plan “credible” and does not recommend penalties based on this Factor. The Commission should defer

⁶² *Wash. Utils. & Transp. Comm’n. v. Puget Sound Energy*, Docket PG-160924, Order 04 Approving Settlement Agreement at ¶ 19 (June 19, 2017).

⁶³ Docket UT-140597, Order 03 at ¶ 13.

to the more knowledgeable witnesses, as it has in past proceedings, and decline to impose maximum penalties.

III. CONCLUSION

25. For the reasons stated above, the appropriate penalty in this proceeding is either no penalty or a suspended penalty⁶⁴ of \$100 per violation. Staff and Public Counsel request maximum penalties while ignoring several factors under the Commission's Policy Statement that call for no penalty. Staff and Public Counsel request maximum penalties to deter companies when no deterrence is called for or even possible. Staff and Public Counsel demand perfection and prevention of any human error in CenturyLink's operations, but the Commission has never demanded perfection in a company's operations. The Commission should exercise its discretion and decline to penalize CenturyLink because no penalty amount is appropriate under these unique circumstances, and no penalty amount will further the Commission's objective of ensuring compliance with the law.

⁶⁴ For instance, the Commission could suspend the penalty conditioned upon CenturyLink not again violating WAC 480-120-172 under circumstances similar to this case in the next two years. To the extent Staff and Public Counsel are sincere in their concerns about the need to deter CenturyLink from violating a hypothetical future Proclamation or similar restriction, a suspended penalty would tie the penalty to exactly the circumstance they ask the Commission to protect against.

Respectfully Submitted this 12th day of May, 2023.

CENTURYLINK COMMUNICATIONS, LLC

PERKINS COIE LLP



Adam L. Sherr, WSBA #25291
Assistant General Counsel
1600 - 7th Ave., Room 1506
Seattle, WA 98191
206 398 2507
adam.sherr@lumen.com



Donna L. Barnett, WSBA #36794
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
425 635 1400
dbarnett@perkinscoie.com

Attorneys for CenturyLink Communications, LLC
d/b/a Lumen Technologies Group