

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

CENTURYTEL OF INTER ISLAND, INC.
D/B/A CENTURLINK

Respondent.

DOCKET UT-132234

STAFF'S MOTION FOR
ENFORCEMENT OF SUSPENDED
PENALTY DUE TO VIOLATION OF A
COMMISSION ORDER

I. INTRODUCTION

1 This docket concerned a complaint by Commission Staff (Staff) of the Washington
Utilities and Transportation Commission (Commission) against CenturyTel of Inter Island
(CenturyLink) arising from a ten-day service outage affecting CenturyLink's customers on
several islands in San Juan County. Staff alleged that the outage, which affected
CenturyLink's customers' access to local, long-distance, and data services, including 911
Emergency Services, violated various subsections of WAC 480-120-412.

2 The parties settled Staff's complaint when CenturyLink committed, among other
things, to an Emergency Communications Plan that requires CenturyLink to timely provide
certain information to Staff, the State E911 Coordinator's Office of the Emergency
Management Division of the Washington Military Department (WMD), Public Service
Access Points (PSAPs), and the general public in the event of any future outage in
Washington.

3 When accepting the settlement, the Commission imposed a \$173,210 penalty for
CenturyLink's regulatory violations, but suspended all but \$50,000 of that penalty. The

Commission provided, however, that it would lift the suspension and require CenturyLink to pay the \$123,210 balance of the penalty if certain triggering events occurred. The Commission has clarified that those triggering events include violations of either WAC 480-120-412 or CenturyLink's Emergency Communications Plans within one year of the Commission's acceptance of those plans.

4 CenturyLink has broken the commitments it made to the Commission. In November 2016, within one year of Commission acceptance of the company's Emergency Communications Plans, an outage deprived approximately 100,000 CenturyLink customers of their access to 911 Emergency Services. Once again, CenturyLink did not timely apprise Staff, WMD, affected PSAPs, or the general public, of the outage, nor did it adequately update Staff, WMD, or the PSAPs as the outage progressed.

5 CenturyLink's conduct violated WAC 480-120-412 and its Emergency Communications Plan. The Commission should lift the suspension of penalties and require CenturyLink to pay the balance of the penalties imposed by Order 03 in this matter.

II. RELIEF REQUESTED

6 Staff asks that the Commission lift the suspension of penalties it previously ordered and require CenturyLink to pay the \$123,210 balance of the penalty imposed by Order 03 in this matter.

III. STATEMENT OF FACTS

A. CenturyLink's San Juan Outage and Staff's Complaint

7 In November 2013, CenturyLink's customers on Orcas, Decatur, and Lopez islands in San Juan County, Washington, began experiencing a widespread service interruption.¹

¹ *Wash. Utils. & Transp. Comm'n v. CenturyLink of Inter Island Inc. d/b/a CenturyLink*, Docket UT-132234, Order 03, at ¶ 3 (Oct. 20, 2015) (Order 03).

The service outage, which lasted ten days, caused “complete and prolonged disruptions” to those customers’ local, long-distance, and data services,² including 911 emergency services.³

8 Staff formally complained against CenturyLink for the outage.⁴ Staff’s complaint alleged four causes of action: (1) violations of WAC 480-120-412(2) based on CenturyLink’s failure to directly notify the Commission of the outage over the course of three days, (2) violations of WAC 480-120-412(3) based on CenturyLink’s failure to provide meaningful periodic status updates, (3) a violation of WAC 480-120-412(5) based on CenturyLink’s failure to implement procedures specific to the outage to disseminate information to the public and public officials, and (4) violations of WAC 480-120-412(5) based on CenturyLink’s failure to adequately communicate with customers during the outage.⁵ Staff recommended a penalty of \$173,210 for the alleged violations.⁶

B. Settlement, and Commission Approval of the Settlement, of Staff’s Complaint

9 Staff, CenturyLink, and the Public Counsel Unit of the Attorney General’s Office subsequently agreed to settle all claims.⁷ The parties’ settlement required CenturyLink to admit certain violations of WAC 480-120-412, pay a \$50,000 penalty, implement equipment monitoring, and make facility improvements to prevent future outages.⁸ The settlement also required CenturyLink to work with other stakeholders to develop two Emergency Communications Plans to ensure quick and widespread dissemination of information about

² *Id.* at ¶ 3.

³ *Id.* at ¶ 4.

⁴ *Id.* at ¶ 10.

⁵ *Id.* at ¶ 10.

⁶ *Id.* at ¶ 10.

⁷ *Id.* at ¶¶ 11, 13.

⁸ *Id.* at ¶¶ 14-21.

outages to CenturyLink's regulators and customers.⁹ The settlement provided that one of these communications plans would address possible outages in San Juan County; the other would address outages statewide.¹⁰

10 In October 2015, the Commission approved, without modification, many of the settlement's provisions in Order 03 in this docket.¹¹ The provisions concerning the proposed penalty of the Emergency Communications plans were not, however, among those approved without modification.¹² Instead, the Commission ordered modifications to the penalty and Emergency Management Plan provision.

11 With regard to the Emergency Communications Plans, the Commission in Order 03 required the parties to craft those plans on an expedited basis and to consult with certain stakeholders during the drafting process.¹³ The Commission provided that it would discuss and either approve or reject the Emergency Communication Plans at an open meeting.¹⁴

12 With regard to the penalty provision, the Commission in Order 03 imposed the full penalty, \$173,210, and then suspended all but \$50,000 of that penalty. The Commission stated that it would either (1) waive the suspended portion in full if CenturyLink complied with WAC 480-120-412 and the Emergency Communications plans for one year after Commission approval of those plans or (2) lift the suspension and require CenturyLink to pay the balance of the penalty if CenturyLink violated WAC 480-120-412 or the Emergency Communications plans within a certain time period.¹⁵

⁹ *Id.* at ¶¶ 16-17.

¹⁰ *Id.* at ¶¶ 16-17.

¹¹ *Id.* at ¶ 28.

¹² *Id.* at ¶ 28.

¹³ *Id.* at ¶¶ 30-32.

¹⁴ *Id.* at ¶¶ 30-32, 49-50, 53.

¹⁵ *Id.* at ¶¶ 33-34, 51, 54-55.

13 CenturyLink sought clarification as to whether the trigger for lifting of the suspension was its committing a violation within one year of acceptance of the Emergency Communication Plans or the Commission’s finding of a violation within one year of approval of the plans. The Commission granted CenturyLink’s petition and clarified that it would lift the suspension if CenturyLink committed a violation within one year of its adoption of the plans.¹⁶

C. CenturyLink’s Emergency Communication Plans

14 CenturyLink filed the two Emergency Communications Plans, dubbed the San Juan County Outage Communication Plan and the Washington State Outage Communication Plan (WSOCP), with the Commission on January 20, 2016.¹⁷ CenturyLink revised those plans on March 1, 2016, and again on April 29, 2016, a day after the open meeting during which the Commission deliberated about approving the plans.¹⁸

15 The Commission approved the Emergency Communications Plans, as amended, with Order 05 in this docket, effective May 2, 2016.¹⁹

16 As approved by the Commission, the WSOCP professes CenturyLink’s “goal” or “objective” of “mak[ing] information about a major outage of telephone service in Washington available to the people who need to know that is as timely and accurate as reasonably possible so that they can plan for and adapt to the effects of the outage.”²⁰ A

¹⁶ *Wash. Utils. & Transp. Comm’n v. CenturyTel of Inter Island, Inc. d/b/a CenturyLink*, Docket UT-132234, Order 04, at ¶ 3-5 (Nov. 17, 2015).

¹⁷ *See Wash. Utils. & Transp. Comm’n v. CenturyTel of Inter Island, Inc. d/b/a CenturyLink*, Docket UT-132234, Order 05, at ¶ 6 (May 2, 2016) (Order 05).

¹⁸ *Id.* at ¶¶ 8-10.

¹⁹ *Id.* at ¶¶ 12, 21, 22.

²⁰ *Wash. Utils. & Transp. Comm’n v. CenturyTel of Inter Island, Inc. d/b/a CenturyLink*, Docket UT-132234, January 16, 2016 Compliance Filing, Second Revised Attachment A, at 1 (April 29, 2016) (WSOCP).

major outage under the WSOCP consists of, among other things, “a total loss of 911 service to a public safety answering point or emergency response agency.”²¹

17 Under the plan, certain “communicator[s],” meaning CenturyLink operating units, are “tasked” with providing information about major outages to “one or more target audiences.”²² The WSOCP’s definition of target audience includes the Commission, WMD, affected PSAPs, and the general public,²³ and has specific provisions governing notification to each of those entities.²⁴

18 With regard to the Commission, the WSOCP’s provisions provide that CenturyLink will “communicate[] available pertinent information about major outages” through “distribution of PUC Reports” and to “update[] the reports” about the outage “frequently until the outage is resolved.”²⁵

19 With regard to WMD, the WSOCP provides that CenturyLink will “communicate[] pertinent information about major outages” through “email distribution of PUC Reports.”²⁶ Again, the WSOCP provides that CenturyLink will “update[] the reports frequently until the outage is resolved.”²⁷

20 As concerns the PSAPs, the WSOCP provides that CenturyLink will “communicate[] available pertinent telephone service outage information to potentially affected PSAPs by email notification and, when possible, contact by telephone.”²⁸

²¹ *Id.* at 2-3 (quoting WAC 480-120-21).

²² *Id.* at 1.

²³ *Id.* at 3.

²⁴ *Id.* at 3.

²⁵ *Id.* at 3.

²⁶ *Id.* at 3.

²⁷ *Id.* at 3.

²⁸ *Id.* at 3.

D. CenturyLink’s November 2016 outage

21 On November 6, 2016, a CenturyLink switch located in The Dalles, Oregon, failed at 3:06 a.m., producing an outage.²⁹ Over the course of the outage, Klickitat and Skamania County 911 Emergency Services were repeatedly restored, only to fail again.³⁰ In total, the outage persisted for two days and resulted in the 911-isolation of over 100,000 Washingtonians for various lengths of time.³¹

22 Commission Staff first learned of the outage through an email sent at 8:59 a.m. on November 6, 2016, by WMD.³² The WMD notified Staff that it believed that the outage met the regulatory definition of a major outage because of the failure of 911 Emergency Services in Klickitat and Skamania Counties.³³ Speaking to CenturyLink, WMD stated in the email that “we have not received any notification as required by the agreed-to State-wide Outage Notification Plan. Please remedy this and provide information – scope, initial cause, time to restore, etc.”³⁴

23 Nearly an hour and a half after WMD’s initial email, at 10:38 a.m., Commission Staff notified CenturyLink by email that it had “received verbal and Email Information from WMD but no notice directly from [CenturyLink] to outage notification contact emails or designated staff.”³⁵ Staff asked CenturyLink to “[p]lease update information on this outage and contact the UTC outage email and UTC staff with progress.”³⁶

²⁹ Decl. of Susie Paul in Support of Staff’s Motion for Enforcement of Suspended Penalties Due to Violation of a Commission Order (Paul Decl.) at ¶ 10.

³⁰ See *id.* at ¶ 19.

³¹ *Id.* at ¶ 32.

³² *Id.* at ¶ 12.

³³ Attachment F to Paul Decl.

³⁴ *Id.*

³⁵ Paul Decl. at ¶ 15; Attachment H to Paul Decl.

³⁶ Paul Decl. at ¶ 15; Attachment H to Paul Decl.

24 At 11:20 a.m., roughly an hour after Staff emailed CenturyLink, Staff received an email from a CenturyLink employee informing Staff that CenturyLink was investigating the cause of the outage and “why there was a lack of notification.”³⁷ Nearly three hours after that email, at 2:02 p.m., another CenturyLink employee emailed Staff and stated that the company “[was] investigating why no formal notification has been sent out.”³⁸

25 WMD and the affected PSAPs repeatedly expressed dissatisfaction with the information provided by CenturyLink during the outage.³⁹ At one point, Skamania County 911 personnel wrote that “[w]e are still completely down and Klickitat is partially down. Last word I received was at 1:29 a.m. telling me that the cause is an equipment failure . . . No eta to restoral. I will say I find this extremely unacceptable . . . if not ridiculous.”⁴⁰ As the WMD put it when later emailing CenturyLink,

[y]ou have failed completely to provide your customers, the PSAPs and the two states [Washington and Oregon] information on what has happened and what is being done. You have failed to meet the conditions of the communications plan agreed to by yourselves, the State of Washington and the UTC. You have placed lives in danger!⁴¹

26 CenturyLink finally filed a PUC outage report with the Commission at 7:27 a.m. on November 7, 2017, roughly 28 hours after the outage began.⁴² CenturyLink notified the public through traditional media outlets with a press release at 3:14 p.m. that same day.⁴³

27 CenturyLink acknowledged the deficiencies in its communications with Staff, WMD, and the PSAPs in an email sent at 9:54 a.m. on November 7, 2016. In the email, a CenturyLink employee stated:

³⁷ Paul Decl. at ¶ 16; Attachment I to Paul Decl.

³⁸ Paul Decl. at ¶ 17; Attachment J to Paul Decl.

³⁹ *E.g.*, Paul Decl. at ¶¶ 18, 19, 23, 29; Attachments F, K, L, P, U to Paul Decl.

⁴⁰ Paul Decl. at ¶ 23; Attachment P to Paul Decl.

⁴¹ Paul Decl. at ¶ 29; Attachment U to Paul Decl.

⁴² Paul Decl. at ¶ 24; Attachment Q to Paul Decl.

⁴³ *See* Paul Decl. at ¶ 28.

All – My apologies on behalf of CenturyLink for the lack of detailed information this continuing outage/issue. We have had a difficult time getting all of the information needed to provide accurate information and status. A fiber terminal out of [T]he Dalles Central Office has been in and out of service for the last 36 hours and is now down hard. The operations folks are working diligently to move all affected services to a new shelf/mux which is taking several hours to accomplish. West reports no misses on 911 calls that were attempted. I will do a much better job at sending updates today as I receive them.⁴⁴

III. STATEMENT OF ISSUES

28 Whether the Commission should enter an order lifting the suspension of penalties imposed in Order 03 in this matter and require CenturyLink to pay the balance of the penalty: \$123,210.

IV. EVIDENCE RELIED UPON

29 Staff relies on the Declaration of Susie Paul in Support of Staff’s Motion for Enforcement of Suspended Penalty Due to Violation of a Commission Order, attached hereto, and the records on file in Docket UT-132234.

V. ARGUMENT

30 In Order 03, the Commission announced that it would suspend a portion of the penalty assessed against CenturyLink, but that it would lift that suspension should it find that CenturyLink “has violated WAC 480-120-412 or the details of the emergency communications plan during the year following Commission approval of the Emergency Communciations Plans.”⁴⁵

⁴⁴ *Id.* at ¶ 26; Attachment S to Paul Decl.

⁴⁵ *Wash. Utils. & Transp. Comm’n v. CenturyTel of Inter Island, Inc. d/b/a CenturyLink*, Docket UT-132234, Order 03, at ¶ 55 (Oct. 20, 2015).; *see also id.* at ¶34, 51.

31 WSOCP and WAC 480-120-412 applied to the November 2016 outage in Klickitat and Skamania Counties.⁴⁶ The outage was a major outage as that term is defined in both the WSOCP and WAC 480-120-021: the failure of CenturyLink’s switch in The Dalles resulted in the total loss of service to two PSAPs, those serving Skamania and Klickitat Counties. Accordingly, the outage triggered CenturyLink’s obligations under both the WSOCP and WAC 480-120-412.

32 CenturyLink violated the WSOCP by failing to timely provide the PUC Report about the outage in The Dalles to Staff and WMD. The Commission approved the WSOCP to require CenturyLink to provide “timely and accurate” information about outages to certain stakeholders, including Staff, WMD, and affected PSAPs.⁴⁷ The WSOCP, to effectuate that purpose, requires CenturyLink to distribute an outage’s PUC Report to Staff and WMD, and to updates those reports frequently until resolution of the outage. CenturyLink did not provide the PUC Report for this outage in a timely fashion: it first produced the PUC Report to Staff 17 hours after its employees last told Staff that the company was looking into why it had not provided the report, 20 hours after Staff emailed CenturyLink asking for the report, and 28 hours after the outage began. This cannot be what the Commission considered timely notification when it approved the WSOCP.

33 CenturyLink violated the WSOCP provisions requiring communication with PSAPs affected by an outage. The WSOCP provides that CenturyLink should provide “available

⁴⁶ WAC 480-120-412 governs major telecommunications outages. It provides, in relevant part that “(2) When a company receives notice of or detects a major outage, it must notify the commission and any PSAP serving the affected area as soon as possible” and “(3) When a major outage affects any emergency response facility, a company must notify immediately the county E911 coordinator and the state emergency management authorities and provide periodic updates on the status of the outage.” WAC 480-120-412.

⁴⁷ WSOCP at 1.

pertinent” information about outages to affected PSAPs.⁴⁸ CenturyLink did not communicate adequately with Klickitat and Skamania Counties. Information from the company was, in fact, so scarce that Skamania County’s E911 Coordinator referred to CenturyLink’s communications as “extremely unacceptable . . . if not ridiculous.”⁴⁹ CenturyLink admitted its deficiencies in communicating with Staff, WMD, and the PSAPs during the outage.

34 CenturyLink also violated WAC 480-120-412(2) and (3) with its insufficient notice and communications with Staff, WMD, and the affected PSAPs. The former provision required CenturyLink to notify the Commission “as soon as possible” after receiving notice of, or detecting, a major outage.⁵⁰ The latter provision required CenturyLink to “notify” the PSAP and WMD “immediately” and provide “periodic updates on the status of the outage.”⁵¹ As discussed above, CenturyLink failed to notify the Commission about the outage “as soon as possible,” and the PSAPs and WMD found CenturyLink’s notice and updates woefully inadequate, characterizing them as a complete failure and “ridiculous.”⁵² Again, CenturyLink has admitted it failed to adequately communication with Staff, WMD, and the PSAPs during the outage.

35 The November 2016 outage occurred within one year of Commission approval of the WSOCP.

36 The Commission suspended a portion of the penalty imposed in this matter to encourage compliance with WAC 480-120-412 and the WSOCP. As CenturyLink has failed

⁴⁸ *Id.* at 3.

⁴⁹ Paul Decl. at ¶ 23; Attachment P to Paul Decl.

⁵⁰ WAC 480-120-412(2).

⁵¹ WAC 480-120-412(3).

⁵² Paul Decl. at ¶ 23; Attachment P to Paul Decl.

to live up to its regulatory responsibilities and the commitments it made in the WSOCP, the Commission must attempt to encourage compliance through other means: it must lift the suspension of penalties ordered in this docket and require CenturyLink to pay the full penalty. Once again, CenturyLink's conduct placed people's lives at risk. It must face consequences for its actions.

DATED May 5, 2017.

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