

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

DOCKET UT-210902

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

**CENTURYLINK'S
PETITION FOR ADMINISTRATIVE REVIEW**

July 19, 2023

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I. INTRODUCTION

1. Pursuant to WAC 480-07-825 and Initial Order 04, CenturyLink Communications LLC d/b/a Lumen Technologies Group; Qwest Corporation; CenturyTel of Washington, Inc.; CenturyTel of Inter Island, Inc.; CenturyTel of Cowiche, Inc., and United Telephone Company of the Northwest (collectively, “CenturyLink”) hereby petition the Washington Utilities and Transportation Commission (“Commission”) for administrative review of the initial order issued by the presiding officer in this proceeding on June 29, 2023 (“Order 04” or “Initial Order”). The Initial Order imposed the maximum possible penalty against CenturyLink, \$923,000, for discontinuing telecommunications service in violation of WAC 480-120-172(3)(a).
2. The Initial Order erred in concluding that CenturyLink must pay the maximum penalty possible because several factors weighed in favor of leniency or were neutral of any penalty. The Initial Order further erred in declining to suspend all or a portion of the penalty because the violation was a first-time penalty, substantial evidence demonstrated specific actions taken to remedy the violations, and because the actions that gave rise to the penalty are no longer unlawful and emerged out of unprecedented circumstances that are quite unlikely to recur.

II. BACKGROUND

3. CenturyLink unintentionally disconnected or suspended 923 telecommunications customers during the period of Governor Inslee’s moratorium on disconnections issued during the COVID-19 pandemic (“Proclamation”). The liability portion of the proceeding was previously established, and Order 04 was limited to determining the appropriate penalty for the disconnections and suspensions.¹ Commission Staff (“Staff”), Public Counsel, and CenturyLink, the only parties to this case, each evaluated eleven factors from the Commission’s Enforcement Policy Statement issued on January 7, 2013, in Docket A-120061, and the Initial Order applied these factors in determining CenturyLink’s penalty.² CenturyLink does not dispute the factors that

¹ Order 04 at ¶ 4.

² Order 04 at ¶ 9.

were considered, but the Initial Order erred in its evaluation of the factors and its assessment of the maximum penalty possible. As explained below, the Initial Order’s weighing of several factors was flawed and inconsistent with Commission precedent. Further, assessment of the maximum penalty was inappropriate when the Initial Order acknowledged that several factors did not call for a penalty at all. Finally, the Initial Order erred when it denied suspension of the penalty in part or in full.

III. ARGUMENT

A. The Initial Order Erred in Assigning Maximum Penalties When Multiple Factors Were Either Neutral or Weighed in Favor of Leniency.

4. The Commission must grant relief from an initial order when the order reflects an erroneous interpretation or application of the law,³ or when the order is not supported by substantial evidence.⁴ Both circumstances are present here because the Initial Order applied the maximum penalty possible despite multiple findings that called for a reduced or mitigated penalty, and the Initial Order denied suspension of penalties when Commission precedent, long-standing practice, and the public interest calls for suspension of penalties on condition of compliance.

5. The Initial Order acknowledged that several factors were neutral regarding a penalty, and one factor affirmatively called for leniency, yet no leniency was given. The Commission has broad discretion when determining the appropriate penalty for a violation of a Commission rule, and there is no strict formula for assessing an appropriate penalty,⁵ but the Initial Order must be supported by substantial evidence in the record and must conform to prior Commission orders and law. Because the Initial Order’s application of maximum penalties contradicts weighty and voluminous evidence, the analysis in the Initial Order itself, and erroneously applies Commission

³ RCW 34.05.570(3)(d).

⁴ RCW 34.05.570(3)(e).

⁵ Policy Statement at ¶ 21.

law, it should be modified pursuant to WAC 480-07-825(6) and CenturyLink's penalty should be reduced and suspended.

1. The Initial Order Erred in Weighing the Factors for Mitigation of Penalties

a. Factor Two: Intent

6. First, the Initial Order found that CenturyLink's violations were unintentional, but it did not mitigate the penalty for this factor.⁶ The Initial Order stated that the disconnections and suspensions did not rise to the level of intentional violations, disagreeing with Staff's and Public Counsel's argument that CenturyLink intentionally suspended connections.

7. Throughout this proceeding CenturyLink distinguished between suspensions and disconnections, but the company always intended to suppress both pursuant to the Proclamation.⁷ And its efforts were successful in 96 percent (suspensions) and 98 percent (disconnections) of cases.⁸ Public Counsel argued that CenturyLink intended to both suspend and disconnect customers during the Proclamation period, but Staff argued that only CenturyLink's suspensions were intentional.⁹ The Initial Order, however, disagreed with Staff and Public Counsel and found that CenturyLink attempted to pause *both* suspensions and disconnections during the period of the Proclamation.¹⁰ Accordingly, the Initial Order states that CenturyLink's actions did not rise to the level of intentional violation.¹¹ However, despite the clear conclusion that the violations were not intentional, the Initial Order assigned this factor a neutral weight. "We thus find that this factor

⁶ Order 04 at ¶ 15.

⁷ CenturyLink's Opening Br. at ¶ 21 ("CenturyLink's intention, plans, and processes applied to both suspensions and disconnections.").

⁸ Gose, Exh. PJG-1T at 7:4-18. The Initial Order expressly rejects the relevance of the company's efforts to suppress normal collection activity being largely successful. Order 04 at ¶ 12. To the contrary, the company's overwhelming prevention of disconnections and suspensions (at a time of dramatic personnel shifts and varying requirements across numerous states) should have been treated as weighing in favor of leniency.

⁹ Initial Br. of Staff at ¶ 14; Opening Br. of Public Counsel at ¶ 15.

¹⁰ Order 04 at ¶ 14: "But Lumen's actions in attempting to interrupt suspensions as well as disconnections convinces us that it intended to prevent suspensions of service in Washington."

¹¹ Order 04 at ¶ 15.

does not weigh heavily in either direction.”¹² In arriving at this neutral position, the Initial Order inappropriately considered circumstances that were irrelevant to this factor: “While that does not rise to the level of intentional violation, we are still persuaded that Lumen did not take adequate steps to comply with the Proclamation.”¹³ Whether or not CenturyLink took adequate steps to comply with the Proclamation may be a consideration for another factor, but it in no way supports a finding that Lumen *intended to disconnect or suspend customers*. The Initial Order found in favor of CenturyLink for this factor, clearly deciding that CenturyLink did not willfully or intentionally commit any violation. Yet the Initial Order refuses to give any credit to CenturyLink in this regard and denies CenturyLink any mitigation.

b. Factor Four: Cooperation and Responsiveness

8. Second, the Initial Order found that CenturyLink was cooperative and responsive during the investigation.¹⁴ The Initial Order agreed with Staff and disagreed with Public Counsel, who was not involved in the investigation. “This factor thus weighs in favor of leniency.”¹⁵ Yet the Initial Order granted no leniency and instead applied the maximum penalty, contradicting its own findings.

c. Factor Eight: Likelihood of Recurrence

9. Third, the Initial Order favored CenturyLink and rejected Staff’s and Public Counsel’s argument regarding factor eight.¹⁶ This factor is arguably the most important factor in any penalty proceeding because compliance with the law is the Commission’s ultimate mission in any enforcement action. “The Commission’s main interest in any enforcement action is compliance with the current law and Commission rules.”¹⁷

¹² Order 04 at ¶ 15.

¹³ Order 04 at ¶ 15.

¹⁴ Order 04 at ¶ 20.

¹⁵ Order 04 at ¶ 20.

¹⁶ Order 04 at ¶ 31.

¹⁷ Order 04 at ¶ 31. *See also*, Policy Statement at ¶ 9 and *Wash. Utils. & Transp. Comm’n v. Qwest Corp. d/b/a CenturyLink QC*, Docket UT-140597, Order 03 at ¶ 10 (Feb. 22, 2016).

10. Here, the Initial Order clearly found that the violations are not likely to recur.¹⁸ The Initial Order stated unequivocally that repeat violations are not currently possible because the Proclamation is no longer in effect. “At the same time, however, we cannot ignore that at the current time repeat violations are not possible and that the Commission’s main interest in any enforcement action is compliance with the current law and Commission rules.”¹⁹

11. The Initial Order also acknowledged that contemplating a similar situation in the future, where company errors may be unlawful, is nothing more than a hypothetical exercise, “and cannot be a sound basis for a stringent penalty.”²⁰ Finally, the Initial Order stated, “Further, these violations, though numerous, are first time violations that the Company was not aware of before Staff’s investigation.”²¹ Despite these multiple findings in favor of CenturyLink, the Initial Order weighed this factor neutrally and still imposed the maximum penalty against CenturyLink.

12. The Initial Order’s application of maximum penalties despite its findings on this factor is especially problematic considering the presiding officer’s conclusion in a prior telecommunications enforcement action. In Docket UT-190209, the presiding officer found this factor to be determinative for no penalty at all.²² The initial order in that docket determined that assessing penalties when there is no likelihood of recurrence would provide no incentive whatsoever to comply with applicable law. The reasoning that applied then applies here because the issue for this factor is recurrence of the same violation, not the hypothetical, future occurrence of a different (even if similar) violation. Assessing penalties when there is no risk of recurrence, and the likelihood of a similar violation is nothing more than a hypothetical exercise, would be purely punitive. Yet, punishment is not the Commission’s objective, compliance is. As such,

¹⁸ Order 04 at ¶ 31.

¹⁹ Order 04 at ¶ 31.

²⁰ Order 04 at ¶ 31.

²¹ Order 04 at ¶ 31.

²² *Wash. Utils. & Transp. Comm’n v. Qwest Corp. d/b/a CenturyLink QC*, Docket UT-190209, Order 03 at ¶ 30 (June 25, 2020) (initial order).

assessing maximum penalties against CenturyLink when there is admittedly no risk of recurrence contradicts the Commission’s Policy Statement and is clear error.

d. Factor Nine: Past Performance

13. Fourth, the findings in factor nine also refute applying the maximum penalty. Factor nine involves the company’s past performance. While all parties acknowledge previous complaints and investigations of CenturyLink, the Initial Order concluded that the violations in this proceeding are unarguably first-time violations.²³ Also, the violations were different than any prior complaints. “These particular violations differ in nature from the past violations, as they involve a temporary legal requirement that required fast adaptation, rather than statutory or regulatory requirements that the Company had ample opportunity to conform to, and so we find that this factor, while arguing against leniency, carries less weight.”²⁴

14. Again, the Initial Order’s analysis in this factor contradicts its conclusion. The Initial Order appears to agree with CenturyLink that the violations, which “differ in nature from the past violations” are not relevant to this proceeding, yet without explanation or support, the Initial Order turns on its heels and concludes the opposite. “We agree with Staff and Public Counsel that Lumen’s history of compliance violations weighs against the Company.”²⁵ The evidence and Initial Order’s own analysis again weighs in favor of leniency, but it concludes the opposite without support or explanation.

e. Factor Ten: Existing Compliance Program

15. Fifth, regarding the company’s compliance program, the Initial Order again favors CenturyLink’s position.²⁶ CenturyLink provided substantial evidence in the form of several data request responses and pages of testimony regarding its compliance program and lessons learned

²³ Order 04 at ¶ 31.

²⁴ Order 04 at ¶ 33.

²⁵ Order 04 at ¶ 33.

²⁶ Order 04 at ¶ 36.

for the future.²⁷ Both Staff²⁸ and the Initial Order found such testimony credible: “We also find Gose’s testimony credible and accept for now Lumen’s assertion that it has learned from its mistakes and that if the Company’s disconnection procedures are needed again, the Company will not experience the same cracks in its system.”²⁹ Finally, the Initial Order found that any compliance program that addresses the current violations would be moot, so a compliance program in this case is wholly unnecessary.³⁰ Yet, instead of reducing the penalty amount to a mid-way, median, or “neutral” amount, the Initial Order simply glosses over this factor and applies the maximum penalty anyway.

2. The Initial Order’s Findings Contradict Each Other

16. The Initial Order’s findings contradict each other, but nonetheless always lean against mitigation. The findings in paragraph 30 of the Initial Order regarding factor eight’s likelihood of recurrence directly contradict the findings in paragraph 36 regarding a compliance plan. In paragraph 30, the Initial Order states that, regarding future conduct, CenturyLink has not changed its practices. “It still regularly performs disconnections and suspensions and has offered no evidence that it has made sufficient improvements to its program to prevent those disconnections or suspensions in the event that Washington again requires it.” In denying any mitigation, the Initial Order maintains that a hypothetical future Proclamation would lead to a repeat violation of WAC 480-120-173(3)(a).

17. However, in paragraph 36, the Initial Order arrives at the opposite conclusion about CenturyLink’s future compliance with WAC 480-120-173(3)(a). There, the Initial Order expressly references the testimony of CenturyLink’s witness Peter Gose, in which he discussed improvements CenturyLink has made, including correcting errors in implementing manual

²⁷ See, Dahl, Exh. CJD-7, Exh. CJD-5C. See also, Gose, Exh. PJG-1T at 8:16-9:20 and 13:3-6; see also, Gose, Exh. PJG-3T at 5:10-7:5; Exh. PJG-4C, and Exh. PJG-5C.

²⁸ Initial Br. of Staff at ¶ 33.

²⁹ Order 04 at ¶ 36.

³⁰ Order 04 at ¶ 36.

processes and recording lessons learned for future compliance. As did Staff,³¹ the Initial Order found CenturyLink's testimony credible, accepting that CenturyLink's operations would ensure future compliance in the event of a similar Proclamation. "We also find Gose's testimony credible and accept for now Lumen's assertion that it has learned from its mistakes and that if the Company's disconnection procedures are needed again, the Company will not experience the same cracks in its system."³² But even then, the Initial Order refused to mitigate the penalty at all. CenturyLink's operations are sufficient to prevent a future violation of WAC 480-120-173(3)(a) when discussing the company's compliance plan, but those same exact operations are insufficient to prevent a future violation of WAC 480-120-173(3)(a) when discussing the likelihood of recurrence in the context of a hypothetical restriction that does not currently exist. This is erroneous. The Initial Order acknowledged CenturyLink's improvements on one hand, where they were deemed nondeterminative, and questioned them on the other, where they would have been determinative.

3. It is Error to Find Multiple Mitigating Factors but Provide no Mitigation

18. In summary, the Initial Order found that the violations were not intentional, CenturyLink cooperated and was responsive during the investigation, CenturyLink learned from its mistakes and does not need a compliance program for these specific violations, and the violations were first-time violations that will not recur. All these factors and findings weigh in favor of a significant reduction in the penalty and full suspension, as discussed below. It is simply wrong to grant and acknowledge mitigating factors yet apply zero mitigation.

19. These mitigating factors are also the most important, considering the Commission's ultimate objective — compliance with the law. Conversely, the factors that the Initial Order relied on most heavily for a maximum penalty are factors that have the least influence on compliance.

³¹ Order 04 at ¶ 34: "Staff states that it is not aware of any existing compliance program but allows that the testimony of Lumen's witness regarding its existing compliance program is credible."

³² Order 04 at ¶ 36.

The Initial Order relied on factors such as the size of the company, number of violations, number of customers, and seriousness of the violations for its finding of maximum penalties. While certainly relevant considerations in determining an appropriate penalty, these are all factors that the company has the least control over and have the most tenuous connection with future compliance. The maximum penalty here does not further the Commission's mission when the Initial Order itself found that the most relevant factors fall in CenturyLink's favor and call for a mitigated or suspended penalty.

4. The Initial Order's Conclusion on Factor Five is not Supported by Substantial Evidence

20. One of the factors the Initial Order relied on for maximum penalties was factor five, whether CenturyLink promptly corrected the violations and remedied the impacts.³³ The Initial Order's conclusion of factor five is not supported by substantial evidence and should be reviewed and reversed.

21. Staff's investigation concluded that CenturyLink had corrected all violations.³⁴ CenturyLink provided extensive evidence demonstrating the efforts and actions the company took to both comply with the Proclamation and remedy the impacts once the violations were discovered, including sending a letter to affected customers,³⁵ offering reconnections at no charge,³⁶ and refunding other fees.³⁷ Staff conceded that CenturyLink's attempts to remedy the disconnections fixed some, but not all the disconnections.³⁸ Staff also recognized that CenturyLink corrected issues related to the Proclamation, such as refunding fees, and suggested that both factors four and five indicated some mitigation might be appropriate.³⁹ Staff did not

³³ Order 04 at ¶ 24.

³⁴ "CenturyLink has corrected the violations noted in this report." Investigation Report at p. 10 (March 2022).

³⁵ Dahl, Exh. CJD-6.

³⁶ Dahl, Exh. CJD-6; Gose, Exh. PJG-1T at 9:3-8.

³⁷ Gose, Exh. PJG-1T at 9:3-8.

³⁸ Initial Br. of Staff at ¶ 20.

³⁹ Feeser, Exh. BF-1T at 8:21-23.

recommend a penalty for this factor.⁴⁰ Public Counsel, however, argued that factor five weighed in favor of a heavy penalty because CenturyLink should have automatically reconnected all disconnected customers.⁴¹ CenturyLink responded that such reconnections were prohibited by federal law, which requires customer verification before any change in telephone service.⁴²

22. The Initial Order determined that the legality of any hypothetical reconnection is outside the scope of this proceeding, then proceeded to rule in favor of Public Counsel anyway.⁴³ The Initial Order pointed to no evidence supporting Public Counsel's position over Staff's or CenturyLink's. Instead, the Initial Order admittedly relied on speculation⁴⁴ about the impact of any disconnection, stating that the impact "remains unaddressed."⁴⁵ The impact was addressed, however, when CenturyLink refunded fees and reconnected those customers who requested reconnection. The evidence documenting such actions is uncontested.

23. The Initial Order then wonders why *more* customers did not accept CenturyLink's offer to reconnect, supposing that it could have been that customers were forced to scramble for other permanent telecommunications options.⁴⁶ There is absolutely no evidence to support such a finding, and no party proposed such a hypothesis. There is no customer statement, comment, or complaint in the record.⁴⁷ There is, however, evidence that CenturyLink reached out to affected customers, refunded fees, and reconnected those customers who wanted reconnection.

24. Additionally, the Initial Order erroneously rejected Staff's findings in favor of Public Counsel's when this Commission has determined that Staff is the superior authority on the

⁴⁰ Feeser, Exh. BF-1T at 6:20-21, Initial Br. of Staff at ¶ 20.

⁴¹ Order 04 at ¶ 22. *See also*, Opening Br. of Public Counsel at ¶ 21.

⁴² CenturyLink's Opening Br. at ¶¶ 32-33.

⁴³ Order 04 at ¶ 22.

⁴⁴ "The affected customers were without telephone service during a critical period, and we can only speculate about the economic and personal impact that may have caused." Order 04 at ¶ 23.

⁴⁵ Order 04 at ¶ 23.

⁴⁶ Order 04 at ¶ 23.

⁴⁷ CenturyLink's Reply Br. at ¶ 7.

Commission's enforcement factors.⁴⁸ So, the Initial Order ignored Staff's investigative conclusion that CenturyLink corrected all violations, rejected evidence that demonstrated how CenturyLink remedied the impacts, and (based only on its own speculation) found that this factor called for the maximum penalty. This finding is not supported by substantial evidence and should be reversed.

B. The Initial Order Erred in Denying Suspension of the Penalty.

25. The Initial Order declined to suspend the penalty, even for a partial amount, but the Initial Order's reasoning and analysis regarding suspension are insufficient and erroneous. The first factor in determining whether to suspend a portion of the penalty is whether it is a first-time penalty.⁴⁹ The Initial Order unequivocally determined that this is a first-time violation, supporting suspension, but the Initial Order then deviates from the facts and departs from long-standing Commission practice, ultimately rejecting an outcome that is in the public interest.⁵⁰

26. After determining that the first factor supports suspension, the Initial Order considers the next factor, whether the company has taken specific actions to remedy the violations and avoid the same or similar violations in the future. Here, the Initial Order overlooks evidence establishing remediation while concurrently declaring the factor irremediable.⁵¹ The Initial Order pointed out that the violations were irremediable, implying that there is nothing the company did or could have done to remedy the violations and satisfy this factor. Yet evidence from multiple parties contradicts such a conclusion.

27. CenturyLink reached out to those affected to offer free reconnections, and it did in fact reconnect those customers who responded.⁵² CenturyLink refunded any fees inappropriately billed.⁵³ The company documented and archived specific lessons learned regarding the

⁴⁸ *Wash. Utils. & Transp. Comm'n. v. Puget Sound Energy*, Docket PG-160924, Order 04 at ¶ 21 (June 19, 2017).

⁴⁹ Policy Statement at ¶ 20.

⁵⁰ Order 04 at ¶ 42.

⁵¹ Order 04 at ¶ 42.

⁵² Dahl, Exh. CJD-6; Gose, Exh. PJG-1T at 9:3-8.

⁵³ Gose, Exh. PJG-1T at 9:3-8.

disconnections to prevent similar circumstances in the future.⁵⁴ CenturyLink also implemented both automated and manual steps that are available and can quickly be implemented in the future, if necessary.⁵⁵ Whether there was more CenturyLink could have done is not the question for this factor – the question is whether specific actions were taken. They absolutely were, despite the Initial Order’s finding that the violations were irremediable.

28. The next two factors, specific compliance plans and a follow-up investigation, are less relevant because, as the Initial Order found, the risk of recurrence is zero. “***[W]e cannot ignore that at the current time repeat violations are not possible and that the Commission’s main interest in any enforcement action is compliance with the current law and Commission rules.”⁵⁶ The Initial Order found factor four “less relevant”, but these factors both support suspension. While a specific compliance program and follow-up investigation are unnecessary because, as the Initial Order states, the actions that gave rise to the violations are no longer unlawful,⁵⁷ suspension of the penalty will nevertheless incentivize CenturyLink to ensure its specific actions are implemented effectively to avoid similar circumstances that could result in a future violation of WAC 480-120-172(3)(a). According to the Initial Order’s analysis of factor eight, such a violation is possible, but according to its analysis of factor ten, the company’s compliance plan and lessons learned will help ensure that if the company’s disconnections procedures are needed again, it will not experience the same cracks in the system.

29. For the final factor, whether other circumstances exist that weigh in favor of suspension, the Initial Order stated that CenturyLink has not presented any convincing circumstances that would support suspension.⁵⁸ But CenturyLink presented convincing circumstances that the effects of COVID-19 on its own staff support full suspension of penalties. CenturyLink provided

⁵⁴ Gose, Exh. PJG-1T at 13:3-6.

⁵⁵ Dahl, Exh. CJD-7 and Exh. CJD-5C; Gose, Exh. PJG-4C and Exh. PJG-5C. *See also*, CenturyLink’s Reply Br. at ¶ 19.

⁵⁶ Order 04 at ¶ 31.

⁵⁷ Order 04 at note 20.

⁵⁸ Order 04 at ¶ 42.

numerous examples of how it was dealing with impacts from the pandemic during the period of the Proclamation. As Public Counsel put it, “the COVID-19 pandemic was extraordinary in its breadth and scope...”⁵⁹ CenturyLink’s billing and provisioning personnel were experiencing enormous workloads across 36 states under circumstances never previously encountered.⁶⁰ CenturyLink’s Public Policy and Regulatory Compliance department experienced meaningful staff changes, including the departure of all four state regulatory and legal employees assigned to Washington.⁶¹ Additionally, the company experienced a significant decline in collections personnel during 2020, a year which also presented very large and unexpected increases in customer call volumes.⁶² Finally, other staff reductions and transfers occurred that were unrelated to COVID-19 but that impacted the number of staff during the period of the Proclamation.⁶³ COVID-19 and other circumstances unquestionably impacted CenturyLink’s operations such that the penalties, if not fully mitigated, should be fully suspended.

30. Finally, and most importantly, the Initial Order’s decision to reject suspension should be reversed because it incorrectly interpreted and applied the Commission’s mission in enforcement actions. The Initial Order claimed that suspending CenturyLink’s penalty would mean that the company would “escape a penalty entirely” and this, the Initial Order found, “would be at odds with the intent of the Policy Statement.”⁶⁴ On the contrary, if the penalty is suspended and CenturyLink does not commit further infractions that lead to imposition of the suspended penalty, then the mission of the Commission’s enforcement policy has been accomplished. That means no future violation has occurred. That is a good thing. The Commission fully explained this when Public Counsel argued against suspending a large penalty in *Wash. Utils. and Transp. Comm’n. v. Puget Sound Energy*:

⁵⁹ Dahl, Exh. CJD-9X.

⁶⁰ Gose, Exh. PJG-1T at 12:17-20.

⁶¹ Gose, Exh. PJG-7XC.

⁶² Gose, Exh. PJG-7XC.

⁶³ Gose, Exh. PJG-7XC.

⁶⁴ Order 04 at ¶ 40.

This shows a profound misunderstanding of the concept of a suspended penalty. The *intent* is that PSE never pay this money. The Commission values compliance with its safety regulations much more highly than receipt of penalty monies. Even for a company the size of PSE, \$1.25 million dollars is a significant sum. We agree with Staff and PSE that suspending that portion of the penalty and giving the Company the opportunity to avoid paying it gives PSE a greater incentive to timely comply with safety requirements than imposing the full penalty and relying solely on “the Company’s self-interest to follow through with its commitment.” The Commission’s Enforcement Policy contemplates suspending penalty amounts under just such circumstances.⁶⁵

In refusing to suspend the penalty, the Initial Order misapplied the touchstone of the Commission’s enforcement action. There is no question that this first-time violation is not likely to recur, and that CenturyLink has taken specific actions to prevent future violations of WAC 480-120-172(3)(a). Suspension would incentivize the company to ensure compliance more than payment of any penalty would. As stated in *Puget Sound Energy*, the Commission values compliance more highly than payments. This is exactly when suspension is warranted.

31. The Commission has long recognized the public interest in suspending penalties on the condition of compliance, suspending penalties in virtually every industry it regulates,⁶⁶ upon settlements,⁶⁷ and after full adjudications.⁶⁸ The Commission has reconsidered orders in order to

⁶⁵ *Wash. Utils. & Transp. Comm’n. v. Puget Sound Energy*, Docket PG-160924, Order 04 at ¶ 25 (June 19, 2017) (internal citations omitted, emphasis in original).

⁶⁶ See, e.g., *Wash. Utils. & Transp. Comm’n. v. JFS Transp. Inc., d/b/a Coast Movers, In the Matter of Determining the Proper Carrier Classification of, & Complaint for Penalties Against: JFS Transp. Inc., d/b/a Coast Movers*, Dockets TV-180315 and TV-200861 (consolidated), Order 06 (Apr. 30, 2021) (ordering suspended penalties in a transportation docket); *In the Matter of A Penalty Assessment Against Bethel Water Co., Inc.*, Docket UW-150782, Order 01 (July 10, 2015) (delegated order imposing and suspending penalties against water company); *Wash. Utils. & Transp. Comm’n. v. Cascade Nat. Gas Corp.*, Docket UG-150120 Order 03 (Mar. 30, 2017) (approving settlement applying suspended penalty against natural gas company); *In the Matter of Determining the Proper Carrier Classification of, & Complaint for Penalties Against: David Theodore Kuntz, d/b/a DK Dumpers*, Docket TG-190969, Order 03 (Nov. 30, 2020) (initial order imposing suspended penalty against solid waste company); *In the Matter of A Penalty Assessment Against Primus Telecommunications, Inc.*, Order 01 (Dec. 7, 2012) (delegated order partially suspending penalty against telecommunications company).

⁶⁷ See, e.g., *Wash. Utils. & Transp. Comm’n. v. Cascade Nat. Gas Corp.*, Docket PG-150120, Order 03 (Mar. 20, 2017).

⁶⁸ See, e.g., *In the Matter of Determining the Proper Carrier Classification of: AMX-A Moving Experience, Inc.*, Docket TV-100342, Order 04 (Dec. 21, 2010).

suspended penalties, as CenturyLink seeks here.⁶⁹ Refusing to suspend even a portion of CenturyLink’s penalty in this case is a clear departure from Commission precedent, long-standing practice, and the public interest.

32. Accordingly, CenturyLink requests that the Commission reduce the penalty issued in Order 04 and suspend the penalty amount. CenturyLink respectfully proposes that the Commission suspend the entirety of the reduced penalty for three years (at which point it is eliminated altogether) unless and until CenturyLink, during the suspension period, unlawfully disconnects or suspends a local exchange customer in Washington in violation of a statewide emergency proclamation preventing such collection activities.

IV. CONCLUSION

33. For the reasons stated above, CenturyLink respectfully requests the Commission review and reverse the Initial Order’s application of maximum penalties. CenturyLink seeks a reduction in the maximum penalty and suspension of any such penalty amount.

Respectfully Submitted this 19th day of July, 2023.

CENTURYLINK COMMUNICATIONS, LLC



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⁶⁹ See, e.g., *Everett Airporter Servs. Enterprises, Inc., v. San Juan Airlines, Inc., d/b/a Shuttle Express*, Docket TC-910789, 1993 WL 13811941 (Mar. 23, 1993) (“The Commission reconsiders its decision and reaffirms the final order, but suspends the assessed penalty on condition respondent seeks amendment of its permit regarding authority it has acquired, and is free of similar violations for two years.”).