

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

v.

CENTURYLINK
COMMUNICATIONS, LLC 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

ORDER 05

FINAL ORDER GRANTING
PETITION IN PART; DENYING IN
PART

BACKGROUND

- 1 On April 6, 2022, the Washington Utilities and Transportation Commission (Commission) issued a Complaint and Notice of Prehearing Conference (Complaint) concerning 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 Lumen or Company). The Complaint alleged violations of Washington Administrative Code (WAC) 480-120-172(3)(a) governing involuntary discontinuance of telecommunications service.
- 2 On June 29, 2023, the Commission entered Order 04, Initial Order Imposing \$923,000 Penalty (Order 04). Order 04 found that Lumen involuntarily disconnected or suspended telecommunications service to 923 residential customers from March 23, 2020, through September 30, 2021, in violation of WAC 480-120-172(3)(a). Order 04 imposed the full penalty amount of \$923,000 without suspending a portion.
- 3 On July 19, 2023, Lumen filed a Petition for Administrative Review (Petition). As discussed in further detail below, Lumen argues that the initial order erred in assigning the maximum allowed penalty when multiple factors under the Commission’s

Enforcement Policy were either neutral or weighed in favor of leniency.¹ Lumen argues further that Order 04 erred in denying suspension of the penalty.

4 On July 31, 2023, Commission staff (Staff) and the Public Counsel Unit of the Attorney General’s Office (Public Counsel) each filed a Response to Lumen’s Petition for Review. Staff’s and Public Counsel’s arguments are discussed in detail below.

DISCUSSION

5 We grant Lumen’s Petition in part and deny it in part. We agree that Order 04 should have found that Enforcement Policy Factor 10, the Company’s existing compliance program,² weighed in favor of leniency. We modify Order 04 to mitigate the penalty, we assess a total penalty of \$692,250. However, we otherwise reject the Petition and adopt the remaining findings in Order 04 as our own.

A. The Commission’s reweighing of Enforcement Policy Factor 10.

6 We turn first to Enforcement Policy Factor 10, the Company’s existing compliance program. When weighing this factor, Order 04 found in relevant part:

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. We thus find that this factor does not weigh strongly either way.³

7 Much like the presiding administrative law judge, we find the Company’s testimony credible. Peter J. Gose testified that “lessons learned from the small number of human errors in implementing the manual processes have been reviewed and corrected and the [C]ompany would be even more careful in any future circumstances.”⁴ Gose’s testimony was consistent with the underlying exhibits, which included data request responses on this same issue.⁵ In the event that the Company is faced with a similar proclamation or

¹ See generally Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013) (Enforcement Policy).

² See Enforcement Policy ¶ 15.

³ Order 04 ¶ 36.

⁴ Gose, Exh. PJG-3T at 6:10.

⁵ See Gose, Exh. PJG-4C, and Exh. PJG-5C; Dahl, Exh. CJD-7, Exh. CJD-5C.

prohibition on disconnection in the future, the Company has provided persuasive evidence that it will exercise greater care to avoid improper disconnections.

8 Lumen argues that Order 04 found the Company provided testimony and data request responses on this issue that favored the Company's position, but that Order 04 applied the maximum penalty anyways.⁶ We largely agree with the Company's argument. Because Order 04 found that Gose credibly testified that the Company learned from its errors in disconnecting customers during the Proclamation and that it will be more careful in future circumstances, this finding should have weighed in favor of mitigation primarily through Enforcement Policy Factor 8, the likelihood of recurrence. We clarify, however, that this finding of fact would have less relevance to Enforcement Policy Factor 10, which is concerned with the Company's *existing* compliance program. Enforcement Policy Factor 10 is not concerned with changes made *subsequent to* the violations at issue.

9 Lumen further argues that Order 04 contradicts itself by finding, in paragraph 30, that there was little evidence that the Company would prevent future disconnections.⁷ Order 04 considered Enforcement Policy Factor 8, the likelihood of recurrence,⁸ and found in relevant part:

As to future conduct, the Policy Statement language considers only if the company has changed its practices, which Lumen has not. 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.⁹

10 We have already found in this Order that Company witness Gose provided credible testimony that the Company will exercise greater care to avoid improperly disconnecting customers during any future Proclamations or similar prohibitions. We therefore agree that Enforcement Policy Factor 8 should weigh in favor of mitigation, as the likelihood of recurrent violations is relatively low.

⁶ Petition ¶ 15.

⁷ *Id.* ¶ 16.

⁸ *See* Enforcement Policy ¶ 15.

⁹ Order 04 ¶ 30.

- 11 Given these findings, the Company’s Petition is granted in part. Enforcement Policy Factor 8 weighs in favor of mitigation, and we exercise our discretion to reduce the penalty amount in light of this finding. The Commission accordingly mitigates the maximum allowable penalty of \$923,000, resulting in a total penalty of \$692,250.
- 12 We have considered Staff’s and Public Counsel’s arguments in favor of maintaining the maximum allowable penalty but generally find them unpersuasive. For example, Staff argues in its Response that the Company “repeatedly testified that it would do nothing different in any future case where disconnections were prohibited.”¹⁰ But this is not an accurate summary of the Company’s testimony. In the paragraph cited by Staff, Gose explained that “[s]hould a future event require similar safeguards against disconnections for non-payment under extraordinary circumstances, the underlying data querying and manual processes to CenturyLink billing and provisioning systems remain available and could more swiftly be implemented.”¹¹ Gose further explained that “lessons learned from the small number of human errors in implementing the manual processes have been duly noted and would be corrected for in any future circumstance.”¹² Gose emphasized this point further in rebuttal testimony, stating that the Company would be “even more careful in any future circumstances.”¹³ This testimony supports our decision to mitigate the penalty in light of Enforcement Policy Factor 8. Although there are no bright line rules as to exactly how the Enforcement Policy Factors must be weighed, we exercise our discretion in this instance to mitigate the assessed penalty.
- 13 Staff and Public Counsel also argue that Order 04 only credited Lumen’s testimony regarding its compliance program to give the Company the benefit of the doubt and to weigh Enforcement Policy Factor 10 neutrally.¹⁴ We disagree. As discussed above, we agree with Order 04 that Gose credibly testified that the Company learned from its mistakes and would not experience the same “cracks in its system” in the event of a future proclamation. Although the presiding administrative law judge may have qualified this finding and asserted that the Company’s testimony was only found credible “for now,”¹⁵ in our judgement this finding deserved greater weight in the ultimate decision of

¹⁰ Staff’s Response ¶ 38 (citing Gose, Exh. PJG-1T at 9:13-20).

¹¹ Gose, Exh. PJG-1T at 9:14-17.

¹² *Id.* at 9:18-20.

¹³ Gose, Exh. PJG-3T at 6:10.

¹⁴ Staff’s Response ¶ 52; Public Counsel’s Response ¶ 17.

¹⁵ Order 04 ¶ 36.

whether to mitigate the penalty in terms of Enforcement Policy Factor 8, the likelihood of recurrence. Testimony regarding post-violation changes was less relevant to Factor 10, which is concerned with the Company's existing compliance program.

B. The Commission finds no reason to disturb the remaining findings in Order 04 and adopts those findings as its own.

14 We have also considered Lumen's arguments that the penalty should either be significantly mitigated or fully suspended.¹⁶ However, we have carefully reviewed the record and Order 04, and we adopt a number of findings from Order 04 as our own. These include the findings that (1) the violations were serious and harmful to the public;¹⁷ (2) that the Company was, at a minimum, negligent in resuming disconnections in Washington state;¹⁸ (3) that the Company did not self-report the violations;¹⁹ (4) that Lumen was cooperative and responsive to the investigation;²⁰ (5) that the Company did not adequately correct the violations;²¹ (6) that the number of violations weighs heavily in favor of stern enforcement;²² (7) that the number of customers affected weighs heavily in favor of stern enforcement;²³ (8) that the Company's past performance weighs against leniency but carries less weight overall;²⁴ (9) that the Company's lack of a compliance program does not weigh strongly either way; and (10) that the size of the Company weighs in favor of a significant penalty.²⁵ Much as Order 04 concluded, the majority of these findings weighed in favor of a significant penalty. We do not find reason to disturb these findings on review.

15 As Public Counsel observes, Lumen does not refute Order 04's findings regarding the serious nature of these violations, whether the Company self-reported the violations, the

¹⁶ *E.g.*, Lumen's Petition ¶ 18.

¹⁷ Order 04 ¶ 11.

¹⁸ *Id.* ¶ 15.

¹⁹ *Id.* ¶ 16.

²⁰ *Id.* ¶ 20.

²¹ *Id.* ¶ 24.

²² *Id.* ¶ 26.

²³ *Id.* ¶ 28.

²⁴ *Id.* ¶ 33.

²⁵ *Id.* ¶ 39.

number of violations, the number of customers impacted, and the size of the Company.²⁶ Each of these factors weigh in favor of assessing a significant penalty. The Company challenges Order 04 on other issues, such as whether it promptly corrected the violations and remedied the impacts.²⁷ But we agree with Order 04 that for 85 to 90 percent of the affected customers no correction was provided, and for the minority of customers who accepted reconnection, the impacts of their disconnection remain unaddressed.²⁸

16 The Company also argues that a statewide proclamation prohibiting disconnections is unlikely to recur.²⁹ But we do not agree that the temporary nature of the Proclamation should justify entirely mitigating the penalty or suspending a significant portion of it. The Enforcement Policy recognizes that “[t]he Commission retains discretion to apply and adapt its enforcement efforts in individual cases to implement its overall duty under the public service laws to regulate in the public interest.”³⁰ While it appears unlikely that the Governor will issue a similar proclamation in the near future, the public interest still justifies the imposition of a significant penalty. As Staff argues, Lumen should not be given free license to ignore the law simply because the Proclamation is unlikely to recur.³¹ Public Counsel similarly argues that suspending the penalty would have little utility and would likely allow the Company to escape a penalty without any effort.³² We largely agree with Staff’s and Public Counsel’s arguments on this issue. The Commission has not excused public service companies from their compliance obligations during the pandemic.³³ Public service companies were also required to comply with emergency proclamations. The Company is not entitled to wipe the slate clean after negligently disconnecting 923 customers from an essential service in violation of the Governor’s Proclamation, merely because that Proclamation represented an emergency measure that may not recur in the near future.

²⁶ Public Counsel’s Response ¶ 18.

²⁷ *E.g.*, Petition ¶ 20.

²⁸ *See* Order 04 ¶ 23.

²⁹ *Id.* ¶¶ 10, 12.

³⁰ Enforcement Policy ¶ 4.

³¹ Staff’s Response ¶ 40.

³² Public Counsel’s Response ¶ 22.

³³ *In re Penalty Assessment against Qwest Corp.*, Docket UT-220397, Order 02, 2 ¶ 6, 3 ¶¶ 10-11 (Nov. 17, 2022).

17 We similarly adopt Order 04’s finding that the bulk of the factors from the Enforcement Policy weigh against suspending the penalty.³⁴ After considering all of the evidence and arguments from counsel, we agree with Staff’s conclusion that “suspension makes little sense and the Commission can best incent compliance with the law through the deterrent effect of a serious penalty for Lumen’s serious violations, as the ALJ determined.”³⁵

FINDINGS AND CONCLUSIONS

18 (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.

19 (2) 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 are public service companies regulated by the Commission, providing service as telecommunications companies.

20 (3) Lumen involuntarily disconnected or suspended telecommunications service to 923 residential customers from March 23, 2020, through September 30, 2021, in violation of WAC 480-120-172(3)(a).

21 (4) The Company provided credible testimony that it would take additional care in the face of any future prohibition on disconnections and that the likelihood of recurrence is relatively low.

22 (5) Enforcement Policy Factor 8, the likelihood of recurrence, weighs in favor of mitigation.

23 (6) The Commission otherwise adopts the findings of Order 04 as to the remaining Enforcement Policy factors as its own.

24 (7) The Commission should deny the Company’s request to suspend all or part of the penalty.

³⁴ Order 04 ¶ 42.

³⁵ Staff’s Response ¶ 55.

- 25 (8) The Commission should mitigate the total assessed penalty of \$923,000 for 923 violations of WAC 480-120-172(3)(a), resulting in a total penalty assessment of \$692,250.

ORDER

THE COMMISSION ORDERS that

- 26 (1) 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's Petition is GRANTED in part and DENIED in part.
- 27 (2) The Commission assesses a \$692,250 penalty against 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 for 923 violations of WAC 480-120-172(3)(a). The penalty is due and payable within 10 days of the effective date of this Order.

Dated at Lacey, Washington, and effective October 23, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

MILTON H. DOUMIT, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. 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 and WAC 480-07-870.