

**Exhibit No. \_\_\_\_ (SP-4T)**  
**Docket UT-140597**  
**Witness: Susie Paul**

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,**

**Complainant,**

**v.**

**QWEST CORPORATION d/b/a  
CENTURLINK QC,**

**Respondent.**

**DOCKET UT-140597**

**REBUTTAL TESTIMONY OF**

**Susie Paul**

**STAFF OF  
WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

**December 8, 2015**

1 I. INTRODUCTION

2  
3 Q. Please state your name and business address.

4 A. My name is Susie Paul. My business address is 1300 S. Evergreen Park Drive S.W.,  
5 P.O. Box 47250, Olympia, WA 98504.

6  
7 Q. Are you the same witness who provided testimony in this proceeding  
8 (Exhibit No. SP-1T) on October 13, 2015, on behalf of Commission Staff?

9 A. Yes.

10  
11 Q. What is the purpose of your current testimony?

12 A. The purpose of this testimony is to reaffirm Staff's support for the September 2015  
13 Multiparty Settlement Agreement (Settlement Agreement) entered into by Staff and  
14 CenturyLink (Settling Parties). This testimony also responds to Public Counsel's  
15 opposition to the Settlement Agreement.

16  
17 Q. Have you reviewed the testimony filed by Public Counsel on October 27, 2015?

18 A. Yes. I reviewed the testimony and supporting exhibits of witnesses David C.  
19 Bergmann, Thomas R. Orr, and Alicia Cappola.

20  
21 Q. Does any of this testimony diminish Staff's support for the Settlement  
22 Agreement?

1 A. No. Staff strongly believes that the Settlement Agreement is consistent with the  
2 public interest, and that it is appropriate for Commission approval.

3  
4 **II. REBUTTAL TO DAVID BERGMANN**

5  
6 **Q. When did Staff first become aware of Mr. Bergmann's involvement in this  
7 docket?**

8 A. Staff first became aware of Mr. Bergmann's involvement when Public Counsel filed  
9 Mr. Bergmann's confidentiality agreement with the Commission on August 18,  
10 2015.

11  
12 **Q. To what extent did Mr. Bergmann participate in Staff's investigation of the  
13 April 2014 outage?**

14 A. To date, Mr. Bergmann has had no communication whatsoever with Staff. He did not  
15 participate in any aspect of Staff's investigation. His analysis consists solely of his  
16 review of Staff's work.

17  
18 **Q. Has Mr. Bergmann ever participated, in any capacity, in an enforcement action  
19 of any kind before the Washington Utilities and Transportation Commission?**

20 A. No. Mr. Bergmann assisted Public Counsel in its preparation of rulemaking  
21 comments in Docket UT-131239 (Universal Service Fund). Mr. Bergmann also acted  
22 as a consultant to Public Counsel and participated in a workshop held by the  
23 Commission in Docket UT-140680 (Telecom Rules Review Rulemaking). However,

1 Mr. Bergmann has never participated, in any capacity, in any enforcement litigation  
2 or investigation before the Commission.

3  
4 **Q. Does Mr. Bergmann dispute any of the stipulated facts contained in the  
5 Settlement Agreement?**

6 A. No, Mr. Bergmann does not dispute any facts. He merely argues that the Settlement  
7 Agreement devalues the importance of the outage at issue. He discounts Staff's long  
8 history of capable and thorough investigative work and established expertise in  
9 arriving at appropriate penalty recommendations in enforcement proceedings.

10  
11 **Q. Mr. Bergmann advocates for a "maximum penalty," which he calculates as  
12 \$11,495,000.<sup>1</sup> What is your reaction to this proposal?**

13 A. The penalty recommended by Mr. Bergmann is excessive, unwarranted, and unduly  
14 punitive. The proposed amount, \$11.5 million, may be the maximum penalty  
15 available under law. But it is not the maximum penalty supported by the facts and  
16 circumstances of this case, as reflected, analyzed, and discussed in Staff's  
17 Investigation Report. Typically, the parties to a settlement agreement compromise  
18 their respective litigation positions. That is not the case here. Here, the Settling  
19 Parties settled on the full penalty sought by Staff at the outset of litigation.

20  
21 **Q. Mr. Bergmann characterizes the Settling Parties' agreed \$2.9 million penalty as  
22 "minimal."<sup>2</sup> Do you agree with this portrayal?**

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<sup>1</sup> Testimony of David C. Bergmann (Oct. 27, 2015), Exh. No. DCB-1T, at 7.

<sup>2</sup> Testimony of David C. Bergmann (Oct. 27, 2015), Exh. No. DCB-1T, at 34.

1 A. No. I do not agree. As I testified previously, the Settling Parties' proposed \$2.9  
2 million penalty is an exceptional penalty for an exceptional case. The Settling  
3 Parties' proposal is substantiated by Staff's Investigation Report which, in turn, is  
4 substantiated by Staff's comprehensive, first-hand evaluation of the facts. In contrast,  
5 Mr. Bergmann's proposal is substantiated primarily by his own opinion. As I  
6 previously discussed, Mr. Bergmann performed no independent investigation. He  
7 relies on Staff's investigation and concedes that he "generally agree[s] with Staff's  
8 assessment of the statute and rules violated by CenturyLink."<sup>3</sup> He also has no  
9 experience litigating penalty cases before the Commission (which means he has  
10 never before analyzed or applied the Commission's enforcement policy in Docket A-  
11 120061). In sum, Mr. Bergmann gives the Commission no persuasive reason to trust  
12 his analysis over the recommendations of the Commission's own Staff.

13  
14 **Q. Mr. Bergmann contends that the Settling Parties "fail to explain" how the**  
15 **Commission's enforcement policy in Docket A-120061 supports the proposed**  
16 **\$2.9 million penalty.<sup>4</sup> Is this claim accurate?**

17 A. No. In formulating its penalty recommendation, Staff explicitly considered the  
18 Commission's enforcement policy. Staff's analysis appears on pages 28-30 of its  
19 Investigation Report. Consideration of the Commission's factors directly informed  
20 Staff's penalty recommendation.

21

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<sup>3</sup> Testimony of David C. Bergmann (Oct. 27, 2015), Exh. No. DCB-1T, at 5.

<sup>4</sup> Testimony of David C. Bergmann (Oct. 27, 2015), Exh. No. DCB-1T, at 22.

1 **Q. Do you agree with Mr. Bergmann's conclusion that every one of the**  
2 **Commission's factors supports the maximum penalty in this case?**

3 A. No.

4  
5 **Q. Why not?**

6 A. Mr. Bergmann marches through the enforcement factors and interprets them in a  
7 biased manner. He clearly has a result in mind.

8 In my view, two primary considerations weigh against a maximum penalty in  
9 this case. First, as we noted in the Investigation Report,<sup>5</sup> and as Mr. Bergmann  
10 acknowledges,<sup>6</sup> CenturyLink's violations cannot be characterized as "intentional."  
11 The outage was caused by technological failure. Staff has never alleged that the  
12 outage was in any way maliciously or deliberately caused.

13 Second, CenturyLink has generally cooperated during this investigation. The  
14 best evidence of the parties' cooperation is the Settlement Agreement. In the  
15 Agreement, CenturyLink stipulated to a detailed series of facts, admitted liability  
16 under all three causes of action brought by Staff, agreed to pay a significant penalty  
17 that closely matches the penalty originally recommended by Staff, and agreed to the  
18 majority of Staff's monitoring and compliance recommendations. These  
19 considerations, combined with the remainder of Staff's analysis in the Investigation  
20 Report and Staff's collective experience and judgment in enforcement cases, weigh  
21 against the extreme \$11.5 million penalty advocated by Mr. Bergmann.

22  

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<sup>5</sup> Investigation Report at 28-29.

<sup>6</sup> Testimony of David C. Bergmann (Oct. 27, 2015), Exh. No. DCB-1T, at 24.

1 **Q. Mr. Bergmann compares the Settling Parties’ agreed \$2.9 million penalty to the**  
2 **\$7.8 million penalty imposed by the Commission in Docket UT-033011, which**  
3 **concerned Qwest Corporation’s illegal withholding of interconnection**  
4 **agreements from public review. How do you respond to Mr. Bergmann’s claim**  
5 **that “CenturyLink’s violations here are arguably more severe than Qwest’s**  
6 **regulatory misdeeds, and thus merit a similarly severe, or greater, penalty?”<sup>7</sup>**

7 A. The Qwest docket involved more than “regulatory misdeeds.” Rather, the docket  
8 involved Qwest’s “*willful and intentional* violation of state and federal law.”<sup>8</sup> At  
9 issue was the Commission’s requirement that ILECs and CLECs file interconnection  
10 agreements to prevent anticompetitive behavior. Qwest willfully and intentionally  
11 evaded this requirement. The current case is distinguishable. Staff has never alleged  
12 that CenturyLink willfully or intentionally caused the April 2014 outage.

13  
14 **Q. The Settling Parties agree that CenturyLink provided untimely outage**  
15 **notification to 51 PSAPs, thereby incurring 51 violations of WAC 480-120-**  
16 **412(2). Mr. Bergmann asserts that “there was a violation for each of the 127**  
17 **PSAPs in the state.”<sup>9</sup> Do you agree with Mr. Bergmann?**

18 A. No. There are 55 primary PSAPs, 9 secondary PSAPs, and 4 back-up PSAPs in  
19 Washington state—not 127 as Mr. Bergmann asserts. Staff was only able to  
20 document that 51 PSAPs received untimely outage notification, or no notification,  
21 from CenturyLink. It’s the same as knowing there were potentially 6.9 million

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<sup>7</sup> Testimony of David C. Bergmann (Oct. 27, 2015), Exh. No. DCB-1T, at 29.

<sup>8</sup> *Washington Utilities and Transportation Commission v. Advanced Telecom Group, Inc.*, Docket UT-033011, Order 21 Adopting and Approving Settlement Agreement ¶ 1 (Feb. 28, 2005) (emphasis added).

<sup>9</sup> Testimony of David C. Bergmann (Oct. 27, 2015), Exh. No. DCB-1T, at 21.

1 residents in Washington state affected by this statewide outage, but Staff could only  
2 document 5,684 failed calls. Mr. Bergmann asserts, without any proof, that all  
3 Washington PSAPs were untimely notified. This assertion, of course, is speculative.  
4 Staff's analysis is the only one with an evidentiary basis.  
5

6 **Q. Mr. Bergmann argues that violations under Causes of Action 1 and 2**  
7 **(RCW 80.36.080 and WAC 480-120-450(1)) should be counted on a "per-call**  
8 **basis."<sup>10</sup> Do you agree with Mr. Bergmann?**

9 A. This is a non-issue. Our Settlement Agreement counts violations on a per-call basis,  
10 so Mr. Bergmann is doing nothing more than agreeing with the Settling Parties.  
11

12 **Q. Mr. Bergmann suggests that the penalty imposed by the Commission should be**  
13 **"commensurate" with the \$16 million penalty imposed by the Federal**  
14 **Communications Commission in April 2015. What is your response?**

15 A. Staff's Investigation Report, which included Staff's penalty recommendation, was  
16 issued on December 2, 2014, well before the FCC imposed its penalty on April 6,  
17 2015. I would also note that the Commission's enforcement policy, on which Mr.  
18 Bergmann relies so heavily, does not include, among its list of factors to be  
19 considered, penalties imposed by other governmental agencies.  
20

21 **Q. Is there anything further you would like to say regarding Mr. Bergmann's**  
22 **testimony?**

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<sup>10</sup> Testimony of David C. Bergmann (Oct. 27, 2015), Exh. No. DCB-1T, at 19.



1 A. Only that Staff remains unapologetic for having arrived at a full settlement with the  
2 Company. All would agree that 911 is a critical service. The dispute with Mr.  
3 Bergman centers only on the penalty amount, and Staff considers Mr. Bergmann's  
4 proposal on that issue to be extreme and unduly punitive. Staff asks that the  
5 Commission adopt the Settlement Agreement in its entirety.

6  
7 **III. REBUTTAL TO THOMAS ORR**

8  
9 **Q. The Settling Parties stipulated that the 911 outage ended at 6:06 a.m. on April**  
10 **10, 2014. Mr. Orr states that "reports of 911 calls failing continued through to**  
11 **at least 1634 hours (4:34 p.m.)."<sup>11</sup> How do you explain this difference?**

12 A. I am not aware of reports of 911 calls continuing to fail as of 4:34 p.m. on April 10,  
13 2014. The Settling Parties have stipulated that "the outage lasted until 6:06 a.m. PDT  
14 on April 10, 2014."<sup>12</sup>

15  
16 **IV. REBUTTAL TO ALICIA CAPPOLA**

17  
18 **Q. Ms. Cappola testifies, "It is scary to need 911 and not be able to get through."<sup>13</sup>**  
19 **She also recalls feeling terrified and helpless when faced with an intruder in her**  
20 **home. How do you respond?**

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<sup>11</sup> Testimony of Thomas R. Orr (Oct. 27, 2015), Exh. No. TRO-1T, at 8.

<sup>12</sup> *Washington Utilities and Transportation Commission v. Qwest Corporation d/b/a CenturyLink QC*, Docket UT-140597, Multiparty Settlement Agreement (Sept. 10, 2015), at 2.

<sup>13</sup> Testimony of Alicia Cappola (Oct. 27, 2015), Exh. No. AC-1T, at 2.

1 A. Staff agrees that Ms. Cappola's situation was terrifying. Staff considered this fact  
2 and also considered that every failed call to 911 represented someone in dire need of  
3 assistance who did not receive it. Each of us can imagine the terror of trying to get  
4 emergency help for ourselves, or for our loved ones, and not being able to get that  
5 help. Ms. Cappola experienced that terror. Because of her experience, and the  
6 experiences of all other individuals who attempted to get help and did not receive it,  
7 Staff recommended an exceptionally large and significant penalty.

8  
9 **Q. Were you familiar with Ms. Cappola's story before reviewing her written**  
10 **testimony in this docket?**

11 A. Yes. Staff initiated contact with Ms. Cappola by email on July 22, 2014, and  
12 conducted a telephone interview with her on July 23, 2014. During this interview,  
13 Ms. Cappola relayed her numerous attempts to reach 911 when threatened by an  
14 intruder. Staff ultimately had numerous contacts with Ms. Cappola during the  
15 investigation and she was instrumental in helping Staff to understand the outage's  
16 impacts—particularly on callers using wireless telephones. Staff factored Ms.  
17 Cappola's frightening experience in its penalty recommendation.

18  
19 **V. CONCLUSION**

20  
21 **Q. What should the Commission do with the Settlement Agreement?**

22 A. Staff recommends that the Commission approve and adopt the Settlement Agreement  
23 without modification.