

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

V.

CENTURLINK 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

COMPLAINT

and

NOTICE OF PREHEARING
CONFERENCE

(Set for May 23, 2022, at 1:30 p.m.)

1 The Washington Utilities and Transportation Commission (Commission) on its own motion,
and through its staff (Staff), alleges as follows:

I. PARTIES

2 The Commission is an agency of the state of Washington authorized by statute to regulate
the rates, services, facilities, and practices of public service companies, including
telecommunications companies.

3 CenturyLink Communications LLC d/b/a Lumen Technologies Group (CenturyLink) is a
Delaware corporation operating as a telecommunications company in the state of
Washington.

4 Qwest Corporation is a Colorado corporation operating as a telecommunications company in
the state of Washington. Qwest Corporation is an operating company of CenturyLink.

5 CenturyTel of Washington, Inc.; CenturyTel of Cowiche, Inc., and CenturyTel of Inter
Island, Inc., are Washington corporations operating as telecommunications companies in the
state of Washington. Each is an operating company of CenturyLink.

6 United Telephone Company of the Northwest is an Oregon corporation operating as a
telecommunications company in the state of Washington.

7 This complaint refers to the CenturyLink operating companies named above collectively as
the "Lumen Companies."

II. BACKGROUND

- 8 In April 2020, Governor Inslee issued a proclamation forbidding telecommunications companies from disconnecting service to customers pursuant to the state of emergency he declared arising from the outbreak of the COVID-19 virus. By the terms of the proclamation, the prohibition on disconnections was retroactive to March 23, 2020, and it expired on May 4, 2020.
- 9 The Governor subsequently amended the proclamation forbidding disconnections to extend its duration. The prohibition on disconnections ultimately expired on September 30, 2021.
- 10 As relevant here, the Lumen Companies ceased providing service to customers through two different processes: disconnection and suspension.
- 11 The Lumen Companies use the term “disconnection” to refer to the severing of a customer from Lumen’s network. The account of a disconnected customer is eliminated from the Lumen Companies’ systems and the customer cannot obtain service from the Lumen Companies until the customer pays a reconnection fee and remedies the conditions that resulted in the disconnection.
- 12 While the Governor’s disconnection moratorium was effective, Qwest Corporation disconnected 245 customers; CenturyTel of Inter-Island, Inc. disconnected 19 customers; CenturyTel of Cowiche, Inc. disconnected 2 customers; CenturyTel of Washington, Inc. disconnected 115 customers; and United Telephone Company of the Northwest disconnected 42 customers.
- 13 The Lumen Companies use the term “suspension” to refer to the blocking of services to a customer. A customer who is suspended remains connected to the Lumen Companies’ network, but the customer cannot access services through that network unless and until the customer remedies the conditions that resulted in suspension.
- 14 While the Governor’s disconnection moratorium was effective, Qwest Corporation suspended 190 customers; CenturyTel of Inter-Island, Inc. suspended 43 customers; CenturyTel of Cowiche, Inc. suspended 5 customers; CenturyTel of Washington, Inc. suspended 382 customers; and United Telephone Company of the Northwest suspended 123 customers.
- 15 Before the Governor’s proclamation became effective, the Lumen Companies had already suspended 243 of the customers that they disconnected between March 23, 2020, and September 31, 2021.

III. JURISDICTION

16 The Commission has jurisdiction over the subject matter of this complaint under RCW 80.01.040, RCW 80.01.060, RCW 80.04.110, chapter 80.36 RCW, and chapter 480-120 WAC.

IV. APPLICABLE LAWS AND REGULATIONS

17 State law defines the term “telecommunications company” to include “[e]very corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever . . . owning, operating, or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.”¹

18 As relevant, “[t]elecommunications” means “the transmission of information by wire, radio, optical cable, electromagnetic, or other means.”² “[I]nformation” means “knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.”³

19 Telecommunications companies are public service companies and therefore subject to regulation by the Commission under the public service laws.⁴

20 WAC 480-120-172 governs the discontinuance of service by telecommunications companies. As relevant, it provides that a telecommunications company “may discontinue service after providing proper notice . . . if, and only if” it determines that “the customer has violated a rule, statute, service agreement, filed tariff, or rates, terms and conditions of competitively classified services.”⁵

21 The Commission may “regulate telecommunications companies subject to traditional rate of return, rate base regulation by authorizing an alternative form of regulation [AFOR].” RCW 80.36.135(2). If it does so, “the [C]ommission may determine the manner and extent of any alternative forms of regulation as may in the public interest be appropriate.”⁶

¹ RCW 80.040.010(28).

² RCW 80.04.010(27).

³ *Id.*

⁴ RCW 80.04.010(23); RCW 80.01.040(1) and (3); *see generally* RCW 80.36.005-.855.

⁵ WAC 480-120-172(3)(a).

⁶ *Id.*

- 22 The Lumen Companies operate under an AFOR approved by the Commission in Order 04 in Docket UT-130477.⁷
- 23 The Lumen Companies’ AFOR waives certain regulatory requirements, and they operate under it as if their services are competitively classified.⁸
- 24 The Lumen Companies’ AFOR does not waive WAC 480-120-172.⁹
- 25 On February 29, 2020, Governor Inslee declared a state of emergency affecting all counties in Washington resulting from the emerging COVID-19 pandemic.¹⁰
- 26 Pursuant to RCW 43.06.220(1)(h) and the state of emergency declared on February 29, 2020, the Governor on April 17, 2020, issued Proclamation No. 20-23.2. That proclamation forbade certain public service companies, including telecommunications companies, from disconnecting customers from service.¹¹ As noted by its title, the proclamation was intended to “[p]reserv[e]” customers’ access to “[e]ssential [s]ervices.”¹²
- 27 The Governor made the proclamation forbidding the disconnection of services retroactive such that it became effective March 23, 2020.¹³
- 28 The Governor continuously extended the disconnection moratorium through amendments to Proclamation No. 20-23.2 until its expiration at midnight on September 30, 2021.¹⁴

⁷ See generally *in re Petition of The CenturyLink Companies*, Docket UT-130477. Order 04 (Jan. 9, 2014) (“AFOR Order”).

⁸ *Id.* at 12 ¶ 38.

⁹ See AFOR Order at 5-6 (noting that the Commission retains jurisdiction over “service availability”); see generally *id.*

¹⁰ Proclamation by Governor Jay Inslee, No. 20-05, at 2 (Feb. 29, 2020).

¹¹ Proclamation of Governor Jay Inslee, No. 20-23.2 – *Ratepayer Assistance and Preservation of Essential Services*, at 4 (Apr. 17, 2020).

¹² *Id.* at 1.

¹³ Proclamation by Governor Jay Inslee, No. 20-23.2, *Ratepayer Assistance and Preservation of Essential Services*, at 4 (Apr. 17, 2020).

¹⁴ *E.g.*, Proclamation by Governor Jay Inslee, No. 20-23.16 – *Ratepayer Assistance and Preservation of Essential Services*, at 2, 3 (July 2, 2021).

- 29 The Commission may file a complaint on its own motion setting forth any act or omission by any public service company that violates any law or any order or rule of the Commission.¹⁵
- 30 Any public service company that “violate[s] or fail[s] to comply with any provision of [Title 80], or which fails, omits or neglects to obey, observe or comply with any order[] [or] rule . . . of the commission” is subject to penalties of up to \$1,000 per violation.¹⁶

V. FIRST CAUSE OF ACTION

- 31 The Commission realleges paragraphs 2 through 30, above.
- 32 Telecommunications companies who provide service under contracts rather than tariffs may discontinue service in compliance with a set process.¹⁷ As relevant here, that process requires the telecommunications company to make a finding that a customer has violated “rates, terms and conditions of competitively classified services.”
- 33 The Governor’s prohibition on disconnections rendered inoperative between March 23, 2020, and September 30, 2021, the terms and conditions that would have allowed the Lumen Companies to discontinue service to customers through suspension or disconnection for overdue amounts or late payments.
- 34 Given the inoperability of those terms and conditions, the Lumen Companies could not have made the findings necessary to allow them to discontinue service for non-payment.
- 35 The Lumen Companies nevertheless disconnected service to 180 customers between March 23, 2020, and September 30, 2021, and suspended service to 743 customers during that same period. These numbers do not include those customers whose service the Lumen Companies had suspended before March 23, 2020, and whom the Lumen Companies disconnected between March 23, 2020, and September 30, 2021.
- 36 By improperly discontinuing service to a total of 923 customers between March 23, 2020, and September 30, 2021, the Lumen Companies committed 923 separate violations of WAC 480-120-172(3)(a).

¹⁵ RCW 81.04.110.

¹⁶ RCW 80.04.380.

¹⁷ WAC 480-120-172(3)(a).

VIII. REQUEST FOR RELIEF

- 37 Staff requests that the Commission find that the Lumen Companies committed up to 923 separate violations of WAC 480-120-172(3)(a).
- 38 Staff requests that the Commission impose a penalty of up to \$1,000 per violation for each of the up to 923 violations of WAC 480-120-173(3)(a) committed by the Lumen Companies.
- 39 Staff further requests that the Commission order such other or additional relief as is appropriate under the circumstances.

IX. PROBABLE CAUSE

- 40 Based on a review of Staff's investigative report, which documents the violations alleged above, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this Complaint.

VIII. NOTICE OF PREHEARING CONFERENCE

- 41 The Commission will hear this matter under the Administrative Procedure Act (APA), particularly Part IV of RCW 34.05 relating to adjudications. The provisions of the APA that relate to this proceeding include, but are not limited to RCW 34.05.413, RCW 34.05.422, RCW 34.05.431, RCW 34.05.440, RCW 34.05.449, and RCW 34.05.452. The Commission's procedural rules, chapter 480-07 WAC, will apply in this proceeding.
- 42 **THE COMMISSION GIVES NOTICE That it will hold a virtual prehearing conference in this matter at 1:30 p.m. on May 23, 2022. To participate by phone, call (253) 215-8782 and enter the Meeting ID: 814 0100 3662# and Passcode 846209#. To attend via Zoom, please use the following link: [Click to join meeting](#).**
- 43 The purpose of the prehearing conference is to consider requests for intervention, resolve scheduling matters including establishing dates for distributing evidence, identify the issues in the proceeding, and determine other matters to assist the Commission in resolving the matter, as listed in WAC 480-07-430.
- 44 **INTERVENTION:** Persons who wish to intervene should file a petition to intervene in writing at least three business days before the date of the prehearing conference.¹⁸ The Commission will consider oral petitions to intervene during the conference, but strongly prefers written petitions to intervene. Party representatives must file a notice of appearance

¹⁸ WAC 480-07-355(a).

with the Commission no later than the business day before the conference.¹⁹ Parties with more than one representative must identify one individual as the “lead” for purposes of official service. Any party or witness in need of an interpreter or other assistance should fill out the form attached to this notice and return it to the Commission. The Commission will set the time and place for any evidentiary hearings at the prehearing conference, on the record of a later conference or hearing session, or by later written notice.

45 **THE COMMISSION GIVES NOTICE** that any party who fails to attend or participate in the prehearing conference set by this Notice, or any other stage of this proceeding, may be held in default under RCW 34.05.440 and WAC 480-07-450.

46 The names and mailing addresses of all known parties and their known representatives are as follows:

Respondent: CenturyLink Communications LLC d/b/a Lumen
Technologies Group
David Namura, Director State and Local Government Affairs
1600 7th Avenue, 15th Floor
Seattle, WA 98191
(206) 733-8645
david.namura@centurylink.com

Representative Adam Scherr
Assistant General Counsel
1600 7th Avenue, Room 1506
Seattle, WA 98191
(206) 398-2507
adam.sherr@lumen.com

Complainant: Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

Representatives: Jeff Roberson
Office of the Attorney General
P.O. Box 40128
Olympia, WA 98504-7250
(360) 664-1188
jeff.roberson@utc.wa.gov

¹⁹ WAC 480-07-345(2).

47 Administrative Law Judge Rayne Pearson, from the from the Commission's Administrative Law Division, will preside during this proceeding.²⁰

48 The Commission will give parties notice of any other procedural phase of the proceeding in writing or on the record, as appropriate during this proceeding.

DATED at Lacey, Washington, and effective April 6, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA
Administrative Law Judge

Inquiries may be addressed to:

Amanda Maxwell
Executive Director and Secretary
621 Woodland Square Loop S.E.
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

²⁰ Judge Pearson can be reached by email at rayne.pearson@utc.wa.gov or by phone at (360) 664-1136.

NOTICE

Hearings are accessible to persons with disabilities and persons who do not speak English as a first language. If limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

If you need an interpreter, or have other special needs, please provide the information requested below via email to Paige Doyle, paralegal, at paige.doyle@utc.wa.gov:

(PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket: _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired: (Yes) _____ (No) _____

Do you need a certified sign language interpreter:

Visual _____ Tactile _____

Other type of assistance needed: _____