

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against

THE CENTURYLINK COMPANIES – QWEST CORPORATION; CENTURYTEL OF WASHINGTON; CENTURYTEL OF INTERISLAND; CENTURYTEL OF COWICHE; AND UNITED TELEPHONE COMPANY OF THE NORTHWEST

In the amount of \$226,600

Docket No. UT-220397

PETITION FOR COMMISSION REVIEW OF DELEGATED DECISION

**I. INTRODUCTION AND RELIEF REQUESTED**

1 Pursuant to WAC 480-07-904(4), Qwest Corporation; CenturyTel of Washington; CenturyTel of Interisland; CenturyTel of Cowiche; and United Telephone Company of the Northwest (collectively, “CenturyLink”) hereby petition the Commission to review the delegated decision issued by the Executive Director and Secretary on September 30, 2022, denying CenturyLink’s Application for Mitigation of Penalty assessed in the above-captioned docket (“Delegated Decision”). CenturyLink respectfully requests that the Commission exercise its discretion to substantially reduce the \$226,600 penalty as excessive in light of the circumstances described below.

2 The representative for this petition is as follows:

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## II. BACKGROUND FACTS

3 In Order 04 of Docket UT-130477, the Commission approved three settlement agreements and established an alternative form of regulation (“AFOR”) for CenturyLink in light of the sufficiently competitive telecommunications market in Washington. The Commission determined that it was appropriate to reduce its regulatory oversight of CenturyLink in favor of greater reliance on market discipline.<sup>1</sup> Order 04 in Docket UT-130477 (the “AFOR order”) was adopted on January 9, 2014 and spans, with attachments, approximately 50 pages in length. Paragraph 26 of the AFOR states, “the Company has agreed to provide notice to the Commission of any changes to its flat-rated stand-alone residential rates at the same time CenturyLink notifies its customers of the rate change.” In summary, CenturyLink agreed to notify both the Commission and customers of any increases rates.

4 CenturyLink complied with the rate change notifications requirement without fail from the date the AFOR settlements were signed in August 2013. Then, in the spring of 2020, CenturyLink experienced overwhelming personnel reductions that occurred as a direct consequence of the COVID-19 pandemic. CenturyLink’s entire Washington state regulatory team that had managed Commission issues, in some cases for several decades, departed the company in mid-2020. Those functions and responsibilities were transitioned to existing employees who either had no Washington regulatory experience or had not worked on Washington matters for well over a decade. Those employees, including the undersigned, had their responsibilities greatly expanded (covering multiple states and subject matters) as the company faced unprecedented headcount reductions. In addition to such personnel transitions, over one-third (5 of 14) of CenturyLink’s tariff compliance team likewise left the company during 2020. The new team was simply

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<sup>1</sup> AFOR order at ¶ 75.

unaware of CenturyLink's obligation to notify the Commission of customer rate increases and, although it notified the customer of such rate changes, it failed to notify the Commission.

5 Drastic staffing reductions caused by the pandemic were not unique to CenturyLink, but they nevertheless had a dramatic effect on the company's operations. The company did its best to continue to serve the needs of its customers during a time when telecommunications and broadband services were of heightened importance, while still meeting its regulatory obligations. The company was not perfect, and it has acknowledged and apologized for its shortcomings, but it was at all times working in good faith despite being under tremendous pressure in every respect. Despite the mitigating circumstances described above and later in this petition, the Commission assessed the maximum penalty possible for failing to notify the Commission of rate changes, seeking \$100 each for 2,266 per-day violations of the AFOR order. CenturyLink requested mitigation of the penalty, but the Delegated Decision rejected CenturyLink's request in full, disregarding all extenuating considerations.

6 While the company's error was serious, it was not service-affecting. Further, the company obtained no financial benefit by failing to notify the Commission of rate changes.<sup>2</sup> The error was an important oversight, but one that was unintentional and that was corrected immediately upon the company learning of the error in early 2022. Additionally, Washington customers suffered no direct or indirect harm from CenturyLink's unintentional oversight. CenturyLink is regulated as though it were classified as competitive, and the Commission has not intervened in similar rate changes

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<sup>2</sup> As an illustration, the 2021 and 2022 rate increases (those for which notice was not timely given) were no higher or were lower than most earlier rate increases properly noticed to the Commission and for which the Commission took no action. The 2021 rate increases were \$1.00-\$2.00, which the 2022 increases were \$1.00, with the exception of a single exchange (\$3.00). These were on par or lower than the rate increases in 2015 (\$1.60-\$3.00), 2016 (\$1.00-\$2.00), 2017 (\$2.00), 2018 (\$1.50-\$2.00), 2019 (\$2.00) and 2020 (no change-\$2.00).

in the past. The mistake, while regrettable, was neither substantial nor harmful to the public interest. CenturyLink believes that it is important for all utilities, itself included, to comply with the Commission's rules and orders, but asks the Commission to give proper weight to the unique and unprecedented challenges encountered by the company at the time and the absence of harm to the public. A quarter of a million dollar fine is excessively punitive given the circumstances.

7 In addition to the importance of proportionality and context, the Commission should reduce the assessed penalty because it is structured in ways that balloon the number of alleged violations. First, the assessment separately penalizes each CenturyLink operating company (five in all) instead of assessing a single company-wide penalty, which the Commission could have applied in its discretion. By doing so, the penalty is 500 percent of what it would be if the company were penalized as a whole for its unintentional failure to file the rate change notifications. In its discretion, the Commission should treat the company as a whole. Second, and more dramatically, by failing to file the required notices in January 2021 and January 2022, CenturyLink unintentionally committed a single violation for each of the two missed notices. CenturyLink had an obligation to provide notice to the Commission "at the same time" it notified its customers of the rate change. That was a singular event for each notice. It did not have an obligation to file the notice the day after or the day after that. By counting each day as a separate violation, the penalty assessment expands 2-10 violations (depending on whether CenturyLink is penalized as a whole or individually for each operating company) to 2,266 violations. The Commission's enforcement factors do not support such a large penalty, or any penalty at all. CenturyLink will address those factors where it and the Commission Staff appear to disagree.

8     **How serious or harmful the violation is to the public.** The penalty assessment characterizes the violation as “serious and harmful because, by impairing the Commission’s monitoring of the consumer protection and pricing structure provisions incorporated into the AFOR Plan, the CenturyLink ILECs undermined the Commission’s ability to protect consumers in a timely and meaningful way.” The penalty assessment neither articulates nor quantifies any harm to Washington ratepayers. The company recognizes the Commission’s obligation to protect consumers against certain rate increases, but the AFOR Plan provides no mechanism for Commission intervention with rate changes and, as noted above, the Commission has never before taken action with regard to similar or larger rate increases. Therefore, and in light of the fact that customers received the notice of rate change, the penalty assessment overstates the seriousness and harm of CenturyLink’s oversight.

9     **Whether the violation was intentional.** The penalty assessment does not claim these oversights were intentional – as they obviously were not – but attempts to re-frame the factor based on what the company “should have known” due to its past compliance. The penalty assessment dramatically understates the impact of COVID-19 headcount reductions: “While the Companies have experienced staff changes upstream, the CenturyLink ILECs had institutional knowledge of these requirements and are responsible for training their staff accordingly.” There is no doubt that CenturyLink possessed the AFOR order, but it is demonstrably false that it had “institutional knowledge.” All four members of the company’s Washington regulatory team departed in mid-2020. Those employees collectively held many decades of relevant and direct experience with Washington-specific regulatory matters, and it was precisely a lack of institutional knowledge that led directly to this oversight. The penalty assessment seeks to impute knowledge that the new Washington regulatory team simply did not have. The Commission should reject the notion of imputed knowledge or intentionality.

*10*     **The number of violations.** As discussed above, the calculation of 2,266 violation is the most aggressive and punitive calculation of the number of violations. The number of violations was 2 (if CenturyLink viewed as a whole) or 10 (if each CenturyLink operating company treated separately). Especially given the lack of harm to Washington consumers and the isolated event created by the pandemic, CenturyLink asks the Commission to view this matter in a light that is less punitive, and to exercise its discretion to moderate the number of violations and the penalty.

*11*     **The number of customers affected.** For the same reasons explained above, no Washington consumers were affected, directly or indirectly. No service was affected, and no charges were inappropriately applied. CenturyLink fully acknowledges its mistake, but asks the Commission in its discretion to reject the hyperbolic notion that customers were left “unprotected.” That conclusion is premised on the inaccurate claim that the Commission would have intervened to cancel the company’s rate increase. Such conclusion ignores the fact that Washington consumers enjoy an incredible number of competitive options. If CenturyLink’s residential customers (all of whom received timely notice from the company) were disturbed by the 2021 or 2022 rate increases, they had numerous wireline, wireless, cable, and satellite alternatives at their disposal. CenturyLink has only 5 percent of all voice connections in Washington, and certainly does not have market power over any of its customers. The penalty assessment also once again ignores that the Commission never once intervened regarding earlier rate increases.

*12*     **The company’s past performance regarding compliance, violations, and penalties.** This is the first time the company has failed to give the Commission notice pursuant to paragraph 26 of the AFOR order. The notice of penalty assessment refers to “recent compliance challenges in other areas over the past few years.” The notice is not specific, but may be referring to alleged violations that are pending and some of which have yet to be ruled upon by the Commission. CenturyLink has denied that it violated Washington

law in those pending proceedings, and it would be inappropriate of the Commission to levy large penalties on CenturyLink here on the basis of unresolved allegations in unrelated matters.

13 **The size of the company.** CenturyLink notes that, while the penalty assessment seeks to separately and equally fine each of the five CenturyLink affiliates, it lumps together the total revenue of the five companies. These companies differ significantly in terms of size, customers, and revenues. For instance, CenturyTel of Cowiche had total intrastate regulated revenue of only \$463,224 in 2021. The proposed fine is nearly half that amount. As explained for fully below, the Delegated Decision overemphasized certain factors while disregarding any mitigating factors. The extenuating circumstances are significant, and the Commission should reconsider the Delegated Decision and substantially reduce CenturyLink's assessed penalty.

### **III. AUTHORITY AND SUPPORT**

#### **A. THE COMMISSION HAS SUBSTANTIAL DISCRETION TO MITIGATE CENTURYLINK'S PENALTY**

14 The Commission may remit or mitigate any penalty or discontinue any prosecution to recover the same upon such terms as it shall deem proper. The Commission also has authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper. RCW 80.04.405. Accordingly, the Commission is not only authorized to review the Delegated Decision and reduce the penalty, but mitigation is also appropriate where the facts support it, as they do here.

#### **B. THE DELEGATED DECISION DISREGARDS RELEVANT FACTORS THAT MERIT MITIGATION**

15 The Commission has considered similar consumer rules violations in the past and has found it appropriate to reduce the maximum penalty both before imposing a penalty, and after, when mitigating circumstances are more closely considered. In *Wash. Utilities and*

*Trans. Comm'n. v. Waste Management of Wash., Inc.*, Docket TG-091127, Initial Order Granting, in part, Mitigation of Penalty Assessment (Jan. 26, 2010), the company erroneously billed consumers for surcharges and did not realize its error until a customer complained and Commission Staff notified the company. While such case was determined upon initial order and is therefore not precedential, the case provides valuable examples of mitigating circumstances that warrant a significant reduction in penalties.<sup>3</sup> In *Waste Management*, the Commission recognized that the error was an isolated incident, the company took steps to rectify the problem after it became aware of it, the overcharges were not service-affecting, and the company took measures to ensure the errors would not be repeated. Accordingly, the Commission reduced the penalty by 75 percent. This case includes the same mitigating factors, and more.

16 However, in this case, the Commission has applied the maximum possible penalty without consideration of any of the similar mitigating circumstances, resulting in a disproportionate fine that inappropriately punishes CenturyLink for an understandable, if not excusable, error. The error in this case represents an isolated, one-time event resulting from massive personnel turnover stemming from the global pandemic. The error was non-service affecting, and it was corrected immediately upon the company learning of the mistake. Further, the company has educated the appropriate personnel to ensure future compliance.

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<sup>3</sup> Other cases support mitigation for similar reasons. *See, e.g., In the Matter of the Penalty Assessment Against CORDIA COMMUNICATIONS CORP., in the Amount of \$2,700*, Docket No. 090440 (Consolidated), and *In the Matter of the Penalty Assessment Against NORTHSTAR TELECOM, INC., in the Amount of \$18,000*, Docket No. UT-090441 (Consolidated), Order 02, entered June 19, 2009.



#### IV. CONCLUSION

17 For the reasons set forth above, CenturyLink respectfully requests review of the Delegated Decision. The maximum penalty in this case is highly disproportionate to the company's inadvertent mistake and is inconsistent with the manner the Commission has applied penalties in similar circumstances. CenturyLink has acknowledged, corrected, and apologized for its error, and the company respectfully requests substantial mitigation of the \$226,600 penalty.

RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of October 2022.

CENTURYLINK



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