

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

QWEST CORPORATION;
CENTURYTEL OF WASHINGTON;
CENTURYTEL OF INTER ISLAND;
CENTURYTEL OF COWICHE; AND
UNITED TELEPHONE COMPANY OF
THE NORTHWEST

in the amount of \$226,600

DOCKET UT-220397

ORDER 02

DENYING PETITION FOR REVIEW

BACKGROUND

- 1 On January 9, 2014, the Washington Utilities and Transportation Commission entered Order 04, Final Order Approving Settlement Agreements and Establishing Alternative Form of Regulation (Order 04), in Docket UT-130477. Order 04, among other things, requires the CenturyLink Companies Qwest Corporation, CenturyTel of Washington, CenturyTel of Inter Island, CenturyTel of Cowiche, and United Telephone Company of the Northwest (CenturyLink ILECs or Companies)¹ “to provide notice to the Commission ... of any changes to its flat-rated stand-alone residential rates at the same time the Companies notify their customers of the rate change.”²
- 2 On June 1, 2022, the Commission issued a Penalty Assessment against the CenturyLink ILECs in the amount of \$226,600 for 2,266 violations of Order 04. The Penalty Assessment alleges that the Company failed to provide the Commission with notice of two rate changes as required. The Penalty Assessment assessed penalties of \$100 per day, per company, between the dates the two notices should have been filed (January 1, 2021, and January 7, 2022, respectively), and the date they were actually filed (March 22, 2022).

¹ “ILECs” refers to independent Local Exchange Companies as defined in RCW 80.04.010(17) and WAC 480-120-21.

² *In the Matter of the Petition of The CenturyLink Companies – Qwest Corporation; CenturyTel of Washington; CenturyTel of Inter Island; Century-Tel of Cowiche; and United Telephone Company of the Northwest to be Regulated Under an Alternative Form of Regulation Pursuant to RCW 80.36.135, Docket UT-130477, Attachment A to Order 04 ¶10 (Jan. 9, 2014).*

- 3 On June 8, 2022, the Companies filed an application for mitigation (Application), admitting the violations and requesting a decision based solely on the written information provided.
- 4 On September 16, 2022, Commission staff (Staff) filed a response recommending the Commission deny the Companies' Application.
- 5 On September 30, 2022, the Commission entered Order 01, Denying Mitigation (Order 01). Order 01 rejected the Companies' argument that the Commission "stacked" penalties, citing language in RCW 80.04.405 that allows the Commission to assess penalties of \$100 for each violation, and expressly provides that, in the case of an ongoing violation, every day's continuance is considered a separate and distinct violation. The Commission also rejected the Companies' argument that they should have been penalized as one entity, observing that CenturyLink chooses to operate the Companies as individual entities.
- 6 On October 10, 2022, the Companies filed a Petition for Review of Order 01 (Petition). In the Petition, the Companies explain that they experienced overwhelming personnel reductions due to the COVID-19 pandemic, including departures of key staff responsible for notifying the Commission of any change to rates. The Companies further explain that the employees who absorbed this responsibility were unaware of the obligation to provide such notice.
- 7 The Companies contend that they acted in good faith, that the violations were inadvertent, and that customers were neither directly nor indirectly harmed by their error. The Companies request the Commission give weight to the "unique and unprecedented challenges" that led to the violations as well as the absence of harm. Finally, the Companies reiterate the arguments rejected by Order 01 that they should be penalized as one company for one violation and cite two prior Commission orders to support their Petition.
- 8 On October 27, 2022, Staff filed a response opposing the Petition. Staff observes that the Companies are required by Commission order to provide notice to the Commission of any changes to flat-rated stand-alone residential rates at the same time they provide notice to their customers of the rate change. Staff recommends the Commission reject the Companies' arguments that they did not knowingly commit the violations, that the violations did not harm customers, and that the violations were not properly counted. Staff also disagrees with the Companies' assertion that two prior Commission orders create precedent for mitigating the penalty at issue here.

DISCUSSION AND DECISION

- 9 We deny the Companies' Petition and affirm the decision in Order 01 to impose the \$226,000 penalty in full. We address each of the Companies' arguments in turn.
- 10 First, we agree with Staff that personnel shortages due to the COVID-19 pandemic did not relieve the Companies of their obligation to comply with Order 04. The Companies operate in a regulated environment and the Commission should presume they know the requirements of their own AFOR order. Also, as Staff correctly observes, the Companies have actual knowledge of the requirements set out in Order 04, as demonstrated by their history of filing annual rate change notifications from 2014 to 2020.³ Additionally, the Companies filed petitions to extend the AFOR approved by Order 04 in 2020, 2021, and 2022.⁴ It is reasonable to conclude that if the Companies were actively seeking to extend the effect of Order 04, they were also aware of its contents. At a minimum, the Companies should have discovered and corrected the violations when they filed their petition seeking to extend Order 04 in June 2021. Instead, the Companies remained in violation of Order 04 until Commission Staff notified them of their oversight in March 2022.
- 11 Regardless of personnel changes, the Companies are required to have a compliance program in place to ensure they meet the conditions of Order 04. The Commission's Enforcement Policy sets forth the Commission's expectation that companies have a compliance program that includes personnel "whose stated job responsibilities include understanding and implementing Commission statutory and regulatory requirements. The program also should designate personnel responsible for interacting with the Commission on enforcement matters and should also include systems and programs to detect and correct violations and to report those violations to company management."⁵ The Companies did not explain in their Petition whether the violations occurred due to the absence of a compliance program or because the existing program is inadequate. In any event, the Companies' explanation for the violations is based on a violation of the Commission's Enforcement Policy, which weighs against mitigation of the penalty.

³ Consistent with the requirements of Order 04, the Companies' filed rate change notifications with the Commission on February 28, 2014; April 1, 2015; March 28, 2016; April 27, 2017; April 18, 2018; and April 1, 2019; and June 26, 2020.

⁴ The Companies filed Petitions in Docket UT-130477 on June 5, 2020; June 15, 2021; and June 6, 2022.

⁵ *In the Matter of the Enforcement Policy of the Washington Utilities and Transportation Commission*, Docket A-120061, ¶ 8 (Jan. 7, 2013).

- 12 Second, we find the Companies' argument that customers were not harmed by the violations unpersuasive. The conditions imposed by Order 04, including the obligation to provide notice to the Commission of any rate increase, benefit customers by providing Commission oversight of the Companies' operations. In fact, Order 04 specifically approved a "shift in regulation from traditional economic restraints applied to monopoly providers, to more targeted oversight to prevent anticompetitive conduct and assure continued public safety, service quality, and consumer protection."⁶ To that end, the Settlement Agreement approved by Order 04 requires the Companies to notify the Commission of any rate changes at the same time customers are notified. Failing to provide such notification obstructs the Commission's ability to regulate in the public interest by preventing the Commission from monitoring the Companies' rates.
- 13 We also reject the Companies' argument that consumers were not harmed because the Commission has not previously intervened in a rate change. As Staff observes, the Commission could have terminated or suspended the AFOR in light of the economic circumstances created by the COVID-19 pandemic but was ultimately deprived of any opportunity to evaluate the impact of the rate changes. To the best of the Commission's knowledge, the rates implemented in 2020 remained in effect throughout the pandemic. Accordingly, we agree with Staff that the penalty is warranted to deter the Company from interfering with the Commission's regulatory functions going forward.
- 14 Third, we reject the Companies' argument that the Commission improperly calculated the number of violations. Order 01 properly concluded that the Companies' duty to notify the Commission began the day that their customers were notified of the increase in rates and continued until the day the Commission was notified. We also reject the Companies' argument that they should be considered "as a whole" for the purpose of penalty calculation. As Staff observes, the penalty appropriately reflects the legal reality that CenturyLink chose to structure the ILECs as separate entities. Each entity therefore had an obligation to notify the Commission of the rate changes at the same time customers were notified, and that obligation continued each day until the Companies notified the Commission of those changes.
- 15 Fourth, we agree with Staff that the Companies' argument related to the proportionality of the penalty incorrectly compares the total penalty to the revenues of each ILEC. An appropriate comparison would consider one-fifth of the total penalty, or \$45,200, in proportion to each entity's revenue. The Companies, however, offer no such comparison or argument.

⁶ Docket UT-130477, Order 04 ¶ 42.

- 16 Finally, we agree with Staff that the prior Commission orders the Companies cite in their Petition are not comparable to the facts at issue here and thus provide no basis for mitigating the penalty. Staff correctly observes that both orders are non-precedential, and that both were entered before the Commission issued its Enforcement Policy.
- 17 The Companies' own compliance history, however, is more relevant to this point. On October 20, 2015, the Commission entered an order approving a settlement agreement between CenturyTel of Inter Island and Commission Staff that assessed a \$173,210 penalty for failing to notify the Commission and other agencies of a 911 outage that occurred in the San Juan Islands.⁷ Although the settlement agreement adopted by that order suspended a \$123,210 portion of the penalty subject to several conditions, the suspended penalty was ultimately imposed by subsequent order because CenturyLink failed to notify Commission Staff and other agencies of a 911 outage in Klickitat and Skamania Counties.⁸ Accordingly, the Companies' failure to provide required notice to the Commission is not an isolated incident, which also weighs against any mitigation of the penalty.
- 18 For the reasons discussed above, the Commission affirms the findings and conclusions set forth in Order 01 and upholds the penalty assessment in full.

ORDER

THE COMMISSION ORDERS THAT:

- 19 (1) CenturyLink Companies Qwest Corporation, CenturyTel of Washington, CenturyTel of Inter Island, CenturyTel of Cowiche, and United Telephone Company of the Northwest's request for mitigation is DENIED.

⁷ See *Washington Utilities and Transportation Commission v. CenturyTel of Inter Island, Inc., d/b/a CenturyLink*, Docket UT-132234, Order 03 (Oct. 15, 2020).

⁸ Docket UT-132234, Order 06 (June 1, 2017).

- 20 (2) CenturyLink Companies Qwest Corporation, CenturyTel of Washington, CenturyTel of Inter Island, CenturyTel of Cowiche, and United Telephone Company of the Northwest is assessed a penalty of \$226,600.

DATED at Lacey, Washington, and effective November 17, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

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 81.04.200 and WAC 480-07-870.