

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

QWEST CORPORATION D/B/A
CENTURLINK QC,

Respondent.

DOCKET UT-171082

RULEMAKING TO CONSIDER
POSSIBLE CHANGES TO RULES IN
CHAPTER 480-120 WAC, RELATING TO
SERVICE OBLIGATIONS OF
TELEPHONE COMPANIES

DOCKET UT-180831

STAFF RESPONSE IN OPPOSITION
TO CENTURYLINK REQUEST TO
STOP TRACKING SERVICE
DENIALS

I. INTRODUCTION

1 Staff of the Washington Utilities and Transportation Commission (Commission), as an independent party in Docket UT-171082, files this response pursuant to WAC 480-07-870(3) and WAC 480-07-370(4) to the petition of Qwest Corp. d/b/a CenturyLink QC (CenturyLink or Company) filed January 31, 2019, to stop tracking service denials. CenturyLink's petition was filed in Docket UT-171082 and Docket UT-180831, and this response is being filed in both dockets as well.

II. BACKGROUND

2 In December of 2017, the Commission initiated an enforcement proceeding against CenturyLink that involved interpretation of the Commission's extension of service rule, WAC 480-120-071. The enforcement proceeding stemmed from CenturyLink's refusal to extend facilities to a consumer who lived in a residence that originally had been constructed

as part of a development. CenturyLink declined to provide service, relying on an exception in the extension of service rule for service to developments. The Commission's complaint set forth the problems associated with the CenturyLink's interpretation of the extension of service rule and with the Company's policy of not retaining records pertaining to requests for service that it denied based on a lack of facilities. The proceeding concluded with the Commission's Order 03, entered August 23, 2018. In Order 03, the Commission ordered CenturyLink to track service denials pending completion of a rulemaking concerning the Commission's extension of service rule:

Effective on the date of this order and pending completion of a rulemaking to consider revisions to WAC 480-120-071, Qwest Corporation d/b/a CenturyLink QC must keep a record of all requests for local exchange service the Company denies on the basis of lack of facilities to provide the requested service.

Order 03, Ordering Clause 3, p. 12, ¶ 53.

3 In the same order, the Commission addressed dispute resolution concerning further service denials related to lack of facilities:

Pending completion of a rulemaking to consider revisions to WAC 480-120-071, the Commission will resolve any disputes that arise from Qwest Corporation d/b/a CenturyLink QC's denial of requests for local exchange service due to lack of facilities based on the factual circumstances of each case.

Order 03, Ordering Clause 5, p. 12, ¶ 55.

4 By letter dated October 1, 2018, the Commission directed all registered telecommunications companies, in order to assist the Commission in a planned rulemaking proceeding concerning extension of service, to track requests for local exchange service that the company denies where the denial is based on the lack of facilities to provide the requested service. The notice further provided that the Commission anticipates that the retention period will expire at the conclusion of the rulemaking proceeding and, in the

absence of further communication regarding the retention period, the three-year retention period of WAC 480-120-349 would apply.

5 The Commission opened a rulemaking proceeding on October 22, 2018, in Docket UT-180831. In the Preproposal Statement of Inquiry, the Commission described the subject of possible rulemaking as “[l]ocal exchange telecommunications carriers’ obligation to construct facilities and provide service on request pursuant to RCW 80.36.090;” and in answer to why rules on this subject may be needed and what they might accomplish, the Commission explained, “The rules governing telecommunication companies, chapter 480-120 WAC, in particular WAC 480-120-071, need to be clarified regarding obligations of local exchange companies to construct facilities and otherwise provide basic local telecommunications service on consumer request.”

6 CenturyLink filed a letter on January 31, 2019, in both Docket UT-171082 and Docket UT-180831 requesting that the Commission terminate CenturyLink’s obligation to track service denials as of the end of this month.

7 On February 13, 2019, Public Counsel filed a response opposing CenturyLink’s request.

III. DISCUSSION

8 All carriers, and not just CenturyLink, are currently required to track service denials based on a lack of facilities pending completion of the rulemaking proceeding in Docket UT-180831. Commission Staff (Staff) intends to use the information that carriers are tracking to inform the path that the Commission takes in the rulemaking proceeding and, potentially, to develop new rule language. The data set will not be complete if it does not encompass all carriers, and especially CenturyLink, the largest incumbent

telecommunications carrier in the state. In short, CenturyLink's request is premature and would frustrate the efficacy of the data collection for the rulemaking.

9 CenturyLink complains that its process for tracking these service denials is time-consuming and burdensome, but Staff believes that this should not excuse the Company from compliance with Order 03. The convenience of the company is not the primary concern; rather, the tracking serves the purpose of assisting the Commission in formulating an appropriate rule. Moreover, the Commission has not ordered CenturyLink to perform this tracking forever. Instead, the tracking is intended to be coterminous with the rulemaking and is expected to be terminated either when the rulemaking has been completed or in three years. Finally, it will be difficult for the Commission to resolve disputes that arise from CenturyLink's denial of requests for local exchange service due to lack of facilities, as referenced in Ordering Clause 5 of Order 03, if CenturyLink has not been retaining these records.

10 Public Counsel also opposes CenturyLink's request, pointing out in its response filed February 13, 2019, that the information CenturyLink must track is "critical to obtaining transparency around service denials for lack of facilities." Staff agrees with this point and with the remainder of Public Counsel's response.

11 CenturyLink's "request" is actually a petition to amend Order 03 and reopen the record in Docket UT-171082 to receive additional evidence. (It is worth noting that CenturyLink's letter is not sworn testimony.) Either of these requests must meet the requirements of a petition for rehearing. Under WAC 480-07-875, a petition for amendment of an order must comply with the requirements in WAC 480-07-870 for a petition for rehearing, and pursuant to WAC 480-07-830(2) a party seeking to reopen the record and

present additional evidence after the commission has entered a final order must submit a petition for rehearing.

12 Pursuant to WAC 480-07-870, a petition for rehearing must set forth sufficient grounds for rehearing and must include substantial evidence or an offer of proof in support of the requested relief. Sufficient grounds for rehearing consist of the following:

- (a) Changed conditions since the commission entered the order;
- (b) Harm to the petitioner resulting from the order that the commission did not consider or anticipate when it entered the order;
- (c) An effect of the order that the commission or the petitioner did not contemplate or intend; or
- (d) Any good and sufficient cause that the commission did not consider or determine in the order.

WAC 480-07-870(1). If six months have not yet elapsed since the effective date of a final order with which the company is in compliance, the Commission will determine whether to accept the petition and, if so, the proceedings the Commission will undertake to consider the petition. WAC 480-07-870(4).

13 CenturyLink has not described any changed conditions in its petition. Furthermore, CenturyLink's assessment that the process it is using for tracking service denials is time-consuming and burdensome does not constitute a harm, an effect, or a cause of the order that the Commission did not anticipate or intend. It is to be expected that tracking an additional item may inconvenience a company. It is up to the company, however, to develop a process that meets its own needs. It defies belief that a company would complain that the processes the company itself has developed are too burdensome and time-consuming and expect relief from the Commission.

14 Not even six months have elapsed since the effective date of Order 03. Accordingly, the Commission must determine whether it will accept the petition. Because CenturyLink's

petition is premature, not well founded, and contrary to the purposes of the rulemaking, the Commission should reject the petition and deny CenturyLink's request to stop tracking service denials.

DATED February 20, 2019.

Respectfully submitted,

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