

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
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20
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TESTIMONY INDEX	
WITNESS	PAGE
THOMAS ORR	
DIRECT EXAMINATION:	28
QUESTIONS FROM THE COMMISSIONERS	29
<hr/>	
WITNESS PANEL:	
DIRECT EXAMINATION	
Tim Betsch	46
Stacy Hartman	46
Susie Paul	47
Mark Reynolds	45
CROSS EXAMINATION	
Tim Betsch	NONE
Stacy Hartman	60
Susie Paul	61
Mark Reynolds	48
QUESTIONS FROM THE COMMISSIONERS	72
<hr/>	
DAVID BERGMANN	
DIRECT EXAMINATION	105
CROSS EXAMINATION	106
QUESTIONS FROM THE COMMISSIONERS	136, 148
REDIRECT	141
<hr/>	
ORAL STATEMENTS FROM COUNSEL	
MR. BEATTIE	153
MS. ANDERL	157
MS. GAFKEN	162

EXHIBIT INDEX		
EXHIBIT NO.	DESCRIPTION	ADMITTED
CENTURY LINK		
MARK REYNOLDS, TIM BETSCH, STACY HARTMAN		
CTL-1T	Testimony of CenturyLink (Revised October 27, 2015)	24
CTL-2T	Rebuttal Testimony of CenturyLink (December 8, 2015)	24
CTL-3	Mark Reynolds (Cross) CenturyLink's Supplemental Response to Public Counsel Data Request No. 20	24
CTL-4	CenturyLink Major Outage Report - 4/10/14 Next Generation 911 System Outage dated April 24, 2014	24
CTL-5	CenturyLink's Response to Public Counsel Data Request No. 5	24
CTL-6C	CenturyLink's Response to UTC Staff Data Request No. RS-4 with CONFIDENTIAL Attachment B to RS-4d	24
CTL-7C	CenturyLink's Response to Public Counsel Data Request No. 26 with CONFIDENTIAL Attachments PC-26d and PC26f	24
CTL-8	CenturyLink's Response to Public Counsel's Data Request No. 27	24
COMMISSION STAFF		
SUSIE PAUL		
SP-1T	Testimony of Susie Paul (October 13, 2015)	24
SP-2	FCC Consent Decree - CenturyLink	24

EXHIBIT INDEX		
EXHIBIT NO.	DESCRIPTION	ADMITTED
COMMISSION STAFF		
SUSIE PAUL		
SP-3	FCC Consent Decree - Intrado	24
SP-4T	Rebuttal Testimony of Susie Paul	24
SP-5	(Commission Additions) Commission Staff Investigation Report	24
SP-6	Multiparty Settlement Agreement (September 10, 2015)	24
PUBLIC COUNSEL		
DAVID C. BERGMANN		
DCB1-T	Revised Direct Testimony of David C. Bergmann (December 18, 2015)	24
DCB-2	Curriculum Vitae of David C. Bergmann	24
DCB-3	October 2014 FCC Report: "April 2014 Multistate 911 Outage: Cause and Impact"	24
DCB-4	CenturyLink's Response to Public Counsel Data Request No. 7 (1 pg.)	24
DCB-5	CenturyLink's Response to Staff RS-9	24
DCB-6C	CenturyLink's Supplemental CONFIDENTIAL Response to Staff RS-4(d)	24
DCB-7C	CenturyLink's CONFIDENTIAL Response to Staff RS-4(a)	24
DCB-8C	CenturyLink's CONFIDENTIAL Response to Staff RS-53	24

EXHIBIT INDEX			
EXHIBIT NO.	DESCRIPTION	ADMITTED	
	PUBLIC COUNSEL		
	DAVID C. BERGMANN		
DCB-9	CenturyLink's Response to Staff RS-55	24	
DCB-10	CenturyLink's Response to Staff RS-69	24	
DCB-11	CenturyLink's Response to Staff RS-49	24	
DCB-12	CenturyLink's Response to Staff RS-39	24	
DCB-13	CenturyLink's Response to Staff RS-56	24	
DCB-14	CenturyLink's Response to Staff RS-64(c)	24	
DCB-15	CenturyLink's Response to Staff RS-48	24	
DCB-16	CenturyLink's Response to Staff RS-12	24	
DCB-17	CenturyLink's Response to Staff RS-1	24	
DCB-18C	CenturyLink's CONFIDENTIAL Response to Staff RS-3	24	
DCB-19C	CenturyLink's CONFIDENTIAL Response to Public Counsel Data Request No. 13	24	
DCB-20	CenturyLink's Supplemental Response to Staff RS-77	24	
DCB-21	CenturyLink's Response to Staff CP-1	24	
DCB-22	July 17, 2015 Letter of Dow Constantine to CenturyLink and Intrado	24	
DCB-23	(Cross) Public Counsel Response to Staff Data Request No. 3	24	

1	EXHIBIT INDEX		
2	EXHIBIT NO.	DESCRIPTION	ADMITTED
3			
4	PUBLIC COUNSEL		
5	DAVID C. BERGMANN		
6	DCB-24	Public Counsel Response to Staff Data Request No. 3	24
7			
8	DCB-25	Public Counsel Response to Staff Data Request No. 4	24
9	DCB-26	Public Counsel Response to CenturyLink Data Request No. 13	24
10			
11	DCB-27	Public Counsel Response to CenturyLink Data Request No. 15	24
12	DCB-28	Public Counsel Response to CenturyLink Data Request No. 16	24
13			
14	DCB-29	Public Counsel Request to CenturyLink Data Request No. 17	24
15	DCB-30	Public Counsel Response to CenturyLink Data Request No. 18	24
16			
17	DCB-31	Public Counsel Response to CenturyLink Data Request No. 19	24
18	DCB-32	CenturyLink Response to PC-9	24
19	DCB-33C	CenturyLink Response to RS-8	24
20			
21	PUBLIC COUNSEL		
22	THOMAS R. ORR		
23	TRO-1T	Direct Testimony of Thomas R. Orr on behalf of Public Counsel	24
24	TRO-2	Resume of Thomas Orr	24
25			

EXHIBIT INDEX		
EXHIBIT NO.	DESCRIPTION	ADMITTED
PUBLIC COUNSEL		
THOMAS R. ORR		
TRO-3	Power Point on King County 911 and NORCOM	24
TRO-4	April 14, 2014 Email from Marlys Davis to King County PSAPs	24
TRO-5C	CONFIDENTIAL Email from Marlys Davis NORCOM Regarding Failed Calls	24
TRO-6	Emails with Status Updates Received by NORCOM During the Outage	24
TRO-7	April 11, 2014 Email from Marlys Davis to PSAPs	24
TRO-8	April 16, 2014 Email from Marlys Davis to PSAPs	24
TRO-9	April 16, 2014 Email from Kathleen Miller to county PSAPs	24
TRO-10	April 10, 2014 Email from Marlys Davis to King County PSAPs	24
TRO-11	April 18, 2014 Emails regarding Condition 4 routing	24
TRO-12	(Cross) Public Counsel Response to Staff Data Request No. 7	24
PUBLIC COUNSEL		
ALICIA CAPPOLA		
AC-1T	Direct Testimony of Alicia Cappola	24

1 EXHIBIT INDEX

2

3 EXHIBIT NO.	DESCRIPTION	4 ADMITTED
5 PC-1	Public Comments	24

6 BENCH REQUESTS

7

8 NUMBER	DESCRIPTION	PAGE
9 1	Circuit Diversity Report	83
10 2	Number of Communicators on Duty	91

11

12

13

14

15

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1 OLYMPIA, WASHINGTON JANUARY 12, 2016

2 9:15 A.M.

3
4 JUDGE KOPTA: All right. Let's be on the
5 record in Docket UT-140597, captioned Washington Utilities
6 and Transportation Commission vs. CenturyLink. We are here
7 for a hearing on the settlement between the Company and
8 Commission Staff.

9 Before we begin, there are some preliminary
10 matters that we want to take up. I'm Gregory J. Kopta, the
11 administrative law judge who's presiding over this
12 proceeding.

13 The Commissioners will join us momentarily.

14 But for right now, there are three issues
15 that we need to take up. First, the pre-filed testimony and
16 cross-examination exhibits have been compiled into a master
17 exhibit list. As I understand it, the parties are willing
18 to stipulate to the admission of all of those exhibits. Is
19 that correct?

20 MS. ANDERL: Yes, your Honor.

21 MR. BEATTIE: Yes, that's correct.

22 MS. GAFKEN: That's correct.

23 JUDGE KOPTA: I will wait to take appearances
24 until the Commissioners are here. So if I don't take
25 appearances right now, that's the reason.

1 I admit all of the exhibits that are on the
2 exhibit list, and I will read them off briefly.

3 They are Exhibits CTL-1T through CTL-8 with
4 Confidential Exhibits CTL-6C and CTL-7C; also Exhibits SP1-T
5 through SP-6, Exhibits DCB-1T through DCB-33C with
6 Confidential Exhibits DCB-76C, DC-7C, DCB-8C, DCB-18C,
7 DCB-19C, and DCB-33C; then Exhibits TRO-1T through TRO-12
8 and Exhibit AC-1T. All of those exhibits are admitted into
9 the record.

10 There is an additional exhibit. We have
11 received comments from the public, and as per usual, my
12 expectation is that Public Counsel will compile those into
13 an exhibit that you will file subsequent to this hearing; is
14 that correct, Ms. Gafken?

15 MS. GAFKEN: Yes, your Honor. We will
16 coordinate with Commission Staff and coordinate the comments
17 that the Commission has received. Would one week from today
18 be acceptable?

19 JUDGE KOPTA: That will be fine. So we will
20 expect that Exhibit 1 week from today. And I will go ahead
21 and label that as Exhibit PC-1 and will admit that at this
22 point.

23 MS. GAFKEN: Thank you.

24 JUDGE KOPTA: The last thing on the list of
25 preliminary issues is Public Counsel filed a motion for

1 post-hearing briefing. I have received and reviewed that
2 motion and have received responses from the Company and from
3 Staff.

4 And at this point, the Commission believes
5 that it has sufficient information to make a determination
6 without the need for post-hearing briefs. So I deny that
7 motion subject to events that occur at the hearing today.

8 There may be an opportunity for counsel to
9 make any closing statements. That will be up to the
10 Commissioners at the close of the hearing.

11 Ms. Brown?

12 MS. BROWN: This is Sally Brown, attorney
13 general's office.

14 I just want to go on record as saying
15 Commission staff would greatly appreciate an opportunity to
16 give a brief oral statement.

17 JUDGE KOPTA: Well, then, if so, then we are
18 likely to allow that.

19 MS. ANDERL: The Company would echo that.

20 JUDGE KOPTA: All right. Then likely we will
21 have brief closing statements at the conclusion of the
22 witness testimony.

23 MS. GAFKEN: It's unanimous. Public Counsel
24 would also appreciate it.

25 JUDGE KOPTA: Well, I'm surprised, since you

1 made a motion for post-hearing briefing, but we will accept
2 that.

3 I believe that's everything we need to do
4 before the Commissioners join us.

5 MS. ANDERL: Your Honor?

6 JUDGE KOPTA: Yes.

7 MS. ANDERL: In response to your e-mail from
8 yesterday regarding the renumbering of the exhibits, we do
9 have the renumbered 32 and 33. And we're just collating the
10 packets right now, and we'll hand those up to you well in
11 advance of Mr. Bergmann taking the stand for cross.

12 JUDGE KOPTA: All right. Thanks very much.

13 And with that, we will be off the record
14 until 9:30. Thank you.

15 (Recess.)

16 JUDGE KOPTA: All right. Let's be back on
17 the record after the brief break. I'm joined on the bench
18 by Chairman David Danner and Commissioners Philip Jones and
19 Ann Rendahl.

20 We will be taking cross-examination of
21 witnesses. And because one of Public Counsel's witnesses
22 needs to leave this morning, we're taking him first, which
23 is a little out of order, but we want to make sure he has at
24 opportunity to respond to questions.

25 So Ms. Gafken -- well, first let's begin by

1 taking appearances, starting with the Company.

2 MS. ANDERL: Thank you, your Honor.

3 Good morning, Commissioners. My name is Lisa
4 Anderl. I'm an inhouse attorney representing CenturyLink.

5 MS. STOCKMAN: Good morning, Commissioners.

6 My name is Jeanne Stockman. I'm also an inhouse attorney
7 representing CenturyLink.

8 JUDGE KOPTA: And Commission Staff.

9 MR. BEATTIE: Thank you, Judge,
10 Commissioners. Julian Beattie, appearing on behalf of the
11 Commission Staff and joined by co-counsel Senior Assistant
12 Attorney Sally Brown.

13 JUDGE KOPTA: Thank you.

14 And Public Counsel.

15 MS. GAFKEN: Lisa Gafken, Assistant Attorney
16 General appearing on behalf of Public Counsel.

17 And we do appreciate taking Mr. Orr out of
18 order.

19 JUDGE KOPTA: We are glad to do it. Thank
20 you.

21

22 THOMAS ORR, witness herein, having been first duly

23 sworn on oath, was examined and testified

24 as follows:

25

THOMAS ORR

1 JUDGE KOPTA: Ms. Gafken.

2

3 E X A M I N A T I O N

4 BY MS. GAFKEN:

5 Q Good morning. Would you state your name and spell
6 your last name for the record?

7 A My name is Thomas Orr, and my last name is spelled
8 O-R-R.

9 Q And who is your employer?

10 A My employer is Northeast King County Regional
11 Communication Center -- the short form of that is NORCOM --
12 in Bellevue, Washington.

13 Q And what is your position with NORCOM?

14 A Executive director.

15 Q And did you file testimony and exhibits in this
16 docket on behalf of Public Counsel?

17 A Yes, I did.

18 MS. GAFKEN: And Mr. Orr is available for
19 cross-examination.

20 JUDGE KOPTA: All right. I believe the
21 parties have indicated that they don't have any questions.

22 And so we turn to questions from the bench.
23 Commissioner Jones?

24

25

THOMAS ORR

1 QUESTIONS BY THE COMMISSIONERS

2 COMMISSIONER JONES: Good morning, Mr. Orr.

3 THE WITNESS: Good morning.

4 COMMISSIONER JONES: How are you?

5 I have a few questions for you that revolve
6 around the communications and notification procedures that
7 you describe in your testimony a bit, a little bit on the
8 FCC compliance process that both is in the FCC order and
9 that we reference, or the Commission Staff-CenturyLink
10 settlement agreement references.

11 A third area is injuries and fatalities. I
12 just want to confirm something there.

13 And the fourth area is NG911 transition.

14 So the first is on communications and
15 notification. Could you go over again the normal protocol
16 that you expect?

17 I think our rules in the WAC require
18 CenturyLink to notify or call each PSAP, Public Safety
19 Answering Point, after a, quote, major outage. We define a
20 major outage as 30 minutes or more or affecting at least
21 1,000 callers.

22 But in your testimony, you describe a
23 different sort of communication protocol with Ms. Davis and
24 the King County 911 office and on up. So could you go
25 through that again for me?

THOMAS ORR

1 THE WITNESS: Sure. I won't disagree with
2 you that we would like to receive a call immediately from
3 CenturyLink.

4 But in King County, the most common route of
5 communication to the twelve 911 centers in King County is
6 through the County 911 office, the King County 911 office.
7 So our experience has been is that CenturyLink contacts the
8 program director, Marlys Davis, for the King County Program
9 Office, who then e-mails the various -- the 12 different
10 public safety answering points commonly known as 911
11 centers.

12 COMMISSIONER JONES: And Ms. Davis is head of
13 that office, right?

14 THE WITNESS: Yes, she is.

15 COMMISSIONER JONES: So the normal protocol
16 is for you to report something. If you see it on your
17 network or call volumes are going down, you would report it
18 to Ms. Davis, and then Ms. Davis would report it to
19 CenturyLink?

20 THE WITNESS: In King County, yes, that's the
21 way it works.

22 COMMISSIONER JONES: Okay. In your view, is
23 that the most efficient way to go about it, or would you
24 prefer to have a call directly from CenturyLink?

25 THE WITNESS: I think we would prefer the

THOMAS ORR

1 most expedient communication. So if we could cut someone
2 out of the loop, that would be good. I understand that it's
3 sometimes good to communicate to a group, so I won't
4 disagree with that.

5 But in that particular scenario, it was
6 NORCOM that first discovered the outage, and it took a while
7 for that to get back to CenturyLink. And direct
8 communications would have speeded that attention up.

9 COMMISSIONER JONES: So on page 6 of your
10 testimony, on lines 16 through 22, you describe the process
11 where you notice this outage. So tell me about that a
12 little more. How many telecommunicators do you have
13 operating at that time of day, at 12:30 a.m., approximately
14 midnight?

15 THE WITNESS: It does -- we staffed
16 communications based on predicted volume. And at that
17 point, our norm would be around six telecommunicators.

18 But I would actually have to look at our
19 records and tell you how many we had on duty that day.

20 COMMISSIONER JONES: And you might want to do
21 that for the record, please.

22 And then you also have a Mr. Milton, a
23 telecom systems engineer, who is available on call?

24 THE WITNESS: That's correct. He's works
25 during the day, but if he's not there, he's on call.

THOMAS ORR

1 COMMISSIONER JONES: So he's available if
2 somebody were to call at midnight. This happened roughly at
3 midnight, so he was available?

4 THE WITNESS: Yes, he was available to
5 respond to our center, correct.

6 COMMISSIONER JONES: And then you described
7 the process in which you started -- your telecommunicators
8 started noticing a sudden drop in volume, but no call from
9 CenturyLink, no call from the state military office, so you
10 really don't know what's going on. It's confusing, right?

11 THE WITNESS: Correct. It's the same -- I
12 would use the term fog of war. There was just a lot of
13 confusion, a lot of misunderstanding of what was going on,
14 and initially troubleshooting to determine whether the
15 outage was just at NORCOM or wider than NORCOM.

16 COMMISSIONER JONES: And then did the Oregon
17 outage have anything to do with the confusion as well?

18 There was an outage in Oregon state at about
19 the same time, right?

20 THE WITNESS: Yes. Initially we were
21 informed by CenturyLink that we were experiencing an outage
22 due to a technician in Sheridan, Oregon having pulled a
23 network card and causing a cascade effect. And so we were
24 trying to get our heads around that kind of concept because
25 up to that point, we weren't aware that something like that

THOMAS ORR

1 could cascade into our PSAP and cause us to lose 911
2 service.

3 COMMISSIONER JONES: And you said this was a
4 very stressful time for all of your telecommunicators and
5 personnel, right?

6 THE WITNESS: Oh, yes.

7 COMMISSIONER JONES: And then later, when did
8 CenturyLink actually provide -- I think in your testimony
9 you said later. So the information came, I guess, through
10 Ms. Davis of the King County 911 office down to you. So
11 when did you actually receive a copy of all the missed
12 calls, a complete list of all the missed calls to NORCOM?

13 THE WITNESS: Let me just refer to my
14 exhibits here to give you the exact date.

15 COMMISSIONER JONES: If you could refer to
16 one of your --

17 THE WITNESS: I believe the list of calls we
18 received was Monday, April 14, at 6:32 in the evening.

19 COMMISSIONER JONES: Monday, April 14. And
20 the outage occurred on April 10?

21 THE WITNESS: That is correct.

22 COMMISSIONER JONES: So that was four days
23 later?

24 THE WITNESS: Yes.

25 COMMISSIONER JONES: Okay. So I guess my

THOMAS ORR

1 question to you is: Both in the FCC order and in our order,
2 or the proposed settlement agreement, they talk about ASAP,
3 you know, timely notification. If you could put on your
4 crystal ball and wish for timely notification from the
5 carrier here, when that would be?

6 THE WITNESS: Well, seconds count in
7 emergency service. People literally die in seconds:
8 Cardiac arrest, vehicle accident with injuries, pursuit in
9 progress. So for us, our primary goal as a 911 center is a
10 prompt answer to a call for help and a prompt dispatch.

11 So in an ideal world, any outage would be
12 communicated within seconds and resolved within seconds.
13 It's just simply unacceptable to have a situation where
14 we're down for six hours.

15 COMMISSIONER JONES: Right. Did you
16 communicate with your neighboring PSAPs, the 12 other PSAPs
17 in King County and in Snohomish County?

18 THE WITNESS: There were communications going
19 all over the state. We were talking to our partners on the
20 east side of the state. We were talking to our partners in
21 King County. Everybody was -- it was really a mess.
22 Everybody was trying to figure out what was going on.

23 We were getting reports that some of the
24 PSAPs on the east side were talking to CenturyLink and on
25 hold and still not getting information. We were talking to

THOMAS ORR

1 our 911 office. And no one really kind of knew. It was a
2 lot of speculation.

3 I was briefing my board and the media, my
4 employees, on what we knew. And initially we put out there
5 that it was the Oregon situation based on the information we
6 were given.

7 COMMISSIONER JONES: We face some of the same
8 issues with electric power outages and natural gas outages,
9 and there is a move in those industries to move toward more
10 automated systems rather than picking up the darn phone
11 call. That's plain old telephone service, right? You pick
12 up the phone and you call somebody. And I know it's
13 confusing, but there's E-mailing; there's automated voice
14 mail links that you can do. I mean, do we just have to rely
15 on good old-fashioned picking up the phone call in a
16 situation like this?

17 THE WITNESS: It reminds me of a general I
18 used to work for who used to ping us if we didn't pick up
19 the phone.

20 I've read the FCC report stem to stern, and I
21 can tell you that I share their concerns. We have become so
22 automated and so dependent on technology that we are now in
23 a position where I think we are even more vulnerable than
24 when 911 was first implemented in the late '60s.

25 So yes, we should pick up the phone and speak

THOMAS ORR

1 to our counterparts. It cuts short a lot of things.

2 E-mails get lost. And with my staff, they
3 know sending me an e-mail isn't enough. If it's something
4 emergent, they've got to call me and get my attention. And
5 if I don't respond, they've got to find another way.

6 COMMISSIONER JONES: So plain old telephone
7 services still matters?

8 THE WITNESS: Yes. I long for the days of
9 the copper lines that didn't need power and could work.

10 COMMISSIONER JONES: Let's talk about Next
11 Generation 911 for a bit. And I think you've been involved
12 in the statewide planning and in King County for the NG911
13 system, have you not?

14 THE WITNESS: Yes.

15 COMMISSIONER JONES: So NORCOM has not fully
16 implemented an NG911 system; is that correct?

17 THE WITNESS: That is correct.

18 COMMISSIONER JONES: So that is still in
19 process.

20 In your studied opinion, is there any link
21 between the technology transition to NG911 and the IP facing
22 systems both on the PSAP side and the network side?

23 Is there any relationship to this particular
24 outage?

25 THE WITNESS: Yes. I believe firmly that,

THOMAS ORR

1 along with the FCC, this has exposed a huge vulnerability in
2 the 911 system.

3 I don't know of anyone that's truly Next
4 Generation 911 at this point. Signals are transmitted
5 analog, converted into digital and then back to analog
6 several times before they get to NORCOM.

7 And like the FCC, I think there needs to be a
8 lot of thought about the risks that we're taking on, and
9 there needs to be significant risk management with respect
10 to when we move to Next Generation 911.

11 The smart phones that we all carry have set
12 an expectation for the consumer out there that our systems
13 can't deliver. And if the consumer -- if my smart phone
14 fails, then I'm inconvenienced. If 911 fails, not to be
15 overdramatic, people can die.

16 COMMISSIONER JONES: And I've had the -- I
17 don't know if it's called the pleasure, but I've had the
18 honor of serving on an FCC commission task force on PSAPs
19 and 911. I think you know that. And we're looking at the
20 architecture of the cybersecurity and the funding of it.
21 It's difficult.

22 The FCC, on a more technical note -- of the
23 settlement agreement; excuse me -- on page 5, in paragraph
24 33, do you have that in front of you, the actual settlement
25 agreement?

THOMAS ORR

1 THE WITNESS: No.

2 COMMISSIONER JONES: Ms. Gafken, could you
3 get the settlement agreement in front of him?

4 JUDGE KOPTA: And for the record, that's
5 Exhibit SP-6.

6 COMMISSIONER JONES: So Mr. Orr, if you could
7 turn to page 5, paragraph 33 of -- the header is Annual
8 Audit. Are you there?

9 THE WITNESS: Yes.

10 COMMISSIONER JONES: So I'd just like your
11 thoughts on this and if you've had a chance to review this
12 FCC order.

13 So what this term in the settlement agreement
14 says is until all Washington PSAPs, including NORCOM, have
15 completed the NG911 transition, these are the obligations of
16 CenturyLink: "Perform a 911 Circuit Diversity Audit as
17 outlined in the FCC's Report and Order in PS Docket 13-75."

18 By the way, that was the order -- I think you're
19 familiar with it, aren't you? After the Hurricane Sandy,
20 the derecho in the East, this was the FCC responding with a
21 series of obligations of the ILECs?

22 THE WITNESS: I'm not that familiar with that
23 particular -- I'm more familiar with the FCC's investigatory
24 report related to the outage.

25 COMMISSIONER JONES: And then Part 2, report

THOMAS ORR

1 the results to staff. And by "staff," that's Commission
2 Staff. That's UTC Staff.

3 So I guess my question to you, you answered
4 it you weren't familiar in detail with the Circuit Diversity
5 Audit. But could you give me your general thoughts on
6 redundancy and resiliency in the PSAP trunks and the system?

7 What are some best practices, both in
8 physical and logical diversity that you would advocate for?

9 THE WITNESS: I would argue that there should
10 not be a single point of failure, or in this case a dual
11 point of failure.

12 The notion that we only found out as a result
13 of this outage that all of Washington State's 911 calls
14 depend on one router in Englewood, Colorado and another
15 router in Miami, frankly, on its face, makes no sense. That
16 is, from a vulnerability analysis, a very easy, basic way to
17 take out 911 service. And I find that frightening.

18 And that that topography is still currently
19 in existence and was planned and implemented is shocking to
20 me. We should have multiple points, multiple access points
21 to the routers.

22 And secondarily, the fact that there was
23 software in those routers that was not up to standards and
24 malfunctioned, and that that did not set off alarms and was
25 only called to the attention of CenturyLink and Intrado by

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1 PSAPs that were affected by the outage is also quite
2 alarming. No pun intended.

3 COMMISSIONER JONES: I take it that was a
4 pun.

5 Okay. Were you aware, once CenturyLink --
6 were you aware, as one PSAP in the state, of something
7 called the PTM counter that Intrado had?

8 THE WITNESS: I attended a briefing by
9 CenturyLink and Intrado where that was explained. So my
10 knowledge comes from what CenturyLink and Intrado explained
11 at the meeting at Camp Murray. It took place several weeks,
12 I believe, after the actual outage, when they're explaining
13 what happened with that particular counter.

14 COMMISSIONER JONES: Okay. And did you or other
15 PSAPs express concerns at the time?

16 THE WITNESS: Oh, yes. That was a very, very
17 long meeting. Many PSAPs stood up and made comments. I
18 myself spoke to the issue of the two routers and being there
19 should be a redesign of the system.

20 COMMISSIONER JONES: Okay. Have you had a
21 chance to review -- I think you said you did -- the order of
22 the FCC adopted on April 6, 2015?

23 THE WITNESS: Yes. I've read that. It's
24 been a long time since then, though.

25 COMMISSIONER JONES: Well, my question is

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1 mainly about the compliance process. It sets forth a
2 compliance plan process, as you know, where CenturyLink has
3 to both develop a process for NG911 based on a variety of
4 risks based on what we call the NIST cybersecurity
5 framework.

6 It also talks about CenturyLink developing
7 and implementing procedures to maintain current contact
8 information, who should receive outage notifications, and
9 it's a whole list of things.

10 THE WITNESS: Yes.

11 COMMISSIONER JONES: So do you think that is
12 a good list of best practices for CenturyLink to adhere to
13 going forward in this state?

14 THE WITNESS: I do. I would thank both this
15 Commission and the FCC for their attention to this. This is
16 a very important public safety matter. And without your
17 attention and the FCC, things will languish.

18 COMMISSIONER JONES: Okay. My final question
19 is on page 10 of your testimony regarding injuries and
20 things. You said throughout the outage the overriding
21 concern of your six personnel in the office was things such
22 as cardiac arrest, injury, motor vehicle accidents, violent
23 crimes were being missed.

24 So are you absolutely sure now that nothing
25 -- I think 648 missed calls were made to King County

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1 totally. That's Ms. Davis's information.

2 How many to NORCOM were missed?

3 THE WITNESS: As far as we know, at least 29,
4 perhaps a few more. But we can document at least 29 from
5 what Ms. Davis provided. I've since seen some other lists,
6 but I would be confident to say at least 29.

7 COMMISSIONER JONES: And are you absolutely
8 sure that there was nothing of the sort that you cited in
9 your testimony that occurred?

10 THE WITNESS: All I can say is that we
11 attempted callbacks to a few numbers that actually worked.
12 Most of the information we received on the missed calls were
13 routing numbers, not the actual numbers that attempted the
14 call. We did attempt callbacks where we could.

15 We didn't receive any reports from citizens
16 that anyone was hurt or was unable to call 911 and
17 subsequent something bad happened. And frankly, we were all
18 breathing a sigh of relief because we dodged a big bullet.

19 COMMISSIONER JONES: What percent of your
20 calls are wireless to NORCOM?

21 THE WITNESS: It is approaching 70 percent
22 right now in terms of wireless versus wire line.

23 COMMISSIONER JONES: VOIP?

24 THE WITNESS: VOIP is a smaller subset of
25 that. I don't recall exactly the number. 20 percent pops

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1 into my head, but I can certainly get back to you on the
2 exact breakdown in percentages.

3 COMMISSIONER JONES: Again, with
4 wireless and a VOIP call, what you're saying is that all you
5 have that your call taker sees on the screen in the PSAP is
6 a routing number; there's no location address that would be
7 provided through a wire line phone through what is called
8 the ALI database, the Automated Location Identifier, right?

9 THE WITNESS: With VOIP we can if the VOIP
10 caller has registered their address with their provider.
11 For example, if they're using a Comcast phone and they've
12 registered their address with Comcast, we will get the
13 address location information as well as the name
14 information.

15 But in this particular instance, the 29 calls
16 that we received information on, they never made it through
17 to our equipment.

18 COMMISSIONER JONES: Right.

19 THE WITNESS: So we didn't have that kind of
20 information on those.

21 COMMISSIONER JONES: But generally with the
22 wireless calls, you will not have the information from the
23 ALI database, right?

24 THE WITNESS: No. And that information is
25 from a wireless provider such as Verizon, AT&T, Sprint, or

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1 TMobile. And that's dependent on them.

2 And with Phase II wireless -- I'm sure you're
3 familiar with that -- that's become quite reliable. And the
4 majority of cell phones now are Phase II capable.

5 COMMISSIONER JONES: So the majority of Phase
6 II wireless, at least for certain carriers, are Phase II in
7 this state?

8 THE WITNESS: Correct. Location information
9 varies greatly with the carriers. We have two carriers that
10 are, you know, upper 90 percent in location accuracy, and
11 two that are well below that in terms of location accuracy.

12 COMMISSIONER JONES: Those are all my
13 questions, Mr. Orr. Thank you.

14 JUDGE KOPTA: Thank you, Commissioner Jones.
15 Anything further from the bench?

16 Ms. Gafken, anything further?

17 MS. GAFKEN: Nothing further. Thank you.

18 JUDGE KOPTA: Thank you, Mr. Orr. We
19 appreciate your testimony.

20 All right. Now we will have a panel of
21 witnesses who support the settlement agreement from the
22 Company and Staff, if we could have those witnesses take
23 their places at the witness table. Why don't you go ahead
24 and remain standing.

25

1 TIM BETSCH, STACY HARTMAN, MARK REYNOLDS AND SUSIE
2 PAUL,

3 Witnesses herein, having been first duly
4 sworn on oath, were examined and testified as
5 follows:

6
7 JUDGE KOPTA: Let's begin with you,
8 Ms. Anderl.

9 MS. ANDERL: Would you like to have the panel
10 introduce themselves?

11 JUDGE KOPTA: That would be a good idea.

12 MS. ANDERL: We have three witnesses from
13 CenturyLink. And I'll start with Mr. Reynolds.

14
15 E X A M I N A T I O N

16 BY MS. ANDERL:

17 **Q Mr. Reynolds, if you would state your name and by**
18 **whom you're employed and your job title, please.**

19 A I'm Mark Reynolds, and I'm employed by
20 CenturyLink. And my job title is Vice President of
21 Government and Regulatory Affairs for our Northwest Region.

22 **Q And how long have you been employed by the**
23 **company?**

24 A 34 years.

25 **Q And you're one of the witnesses who worked to**

1 produce the joint CenturyLink testimony that was filed on
2 direct and rebuttal in this case?

3 A That's correct.

4 MS. ANDERL: Thank you. I'll turn to Ms.
5 Hartman.

6
7 E X A M I N A T I O N

8 BY MS. ANDERL:

9 Q Ms. Hartman, could you state your name and your
10 position with the company, please?

11 A Yes. Stacy Hartman. I'm a director, federal and
12 public policy, with CenturyLink.

13 Q And were you also a witness who participated in
14 the preparation of the direct and rebuttal testimony?

15 A Yes, I was.

16

17 E X A M I N A T I O N

18 BY MS. ANDERL:

19 Q And then Mr. Betsch, would you state your name and
20 your employer?

21 A My name is Tim Betsch. And I'm employed by
22 Intrado as a customer team director.

23 Q And did you also participate in the preparation of
24 the joint testimony?

25 A , I did.

1 MS. ANDERL: Thank you. Your Honor, I'll
2 turn the panel over to Mr. Beattie.

3 JUDGE KOPTA: Mr. Beattie?

4 MR. BEATTIE: Thank you, Judge Kopta.

5

6 E X A M I N A T I O N

7 BY MR. BEATTIE:

8 Q Ms. Paul, would you please state your name and
9 spell your last name for the record.

10 A Yes. Susie Paul, P-A-U-L.

11 Q How are you employed, Ms. Paul?

12 A I'm employed as a compliance investigator with the
13 Washington Utilities and Transportation Commission.

14 Q And as a compliance investigator, did you file
15 pre-filed testimony in this case admitted into the record as
16 Exhibits SP-1T and SP-4T?

17 A I did.

18 Q Do you have any changes to that pre-filed
19 testimony?

20 A No.

21 Q So you affirm that testimony as though you are
22 repeating it here today?

23 A Yes.

24 MR. BEATTIE: Thank you, Ms. Paul.

25 JUDGE KOPTA: All right.

1 Ms. Gafken, I believe you have questions
2 for some of the members of the panel.

3 MS. GAFKEN: I do. And I prepared them
4 for particular witnesses. So I'm going to start with Mr.
5 Reynolds, and work my way down the line.

6 JUDGE KOPTA: As you wish.

7

8 CROSS-EXAMINATION

9 BY MS. GAFKEN:

10 Q **Good morning, Mr. Reynolds.**

11 A Good morning.

12 Q **Would you please turn to Exhibit CLT-1T [sic] and**
13 **go to page 6, lines 7 through 9.**

14 COMMISSIONER JONES: **Page 6?**

15 MS. GAFKEN: Yes.

16 THE WITNESS: Memo to the commission?

17 Q **(By Ms. Gafken) No. This is your testimony**
18 **supporting the settlement, so Exhibit CLT-1T.**

19 JUDGE KOPTA: **And just for the record, that's**
20 **CTL-1T.**

21 MS. GAFKEN: Sorry. I hope I don't do that
22 throughout the hearing.

23 THE WITNESS: Which page was that again?

24 Q **(By Ms. Gafken) Page 6, lines 7 to 9.**

25 A I'm there.

1 Q There you testify that 911 service is an important
2 part of CenturyLink's business in Washington, correct?

3 A That is correct.

4 Q And CenturyLink has responded to the Washington
5 RFP for 911 service in December 2015; is that correct?

6 A That is correct.

7 Q Would you please turn to CenturyLink's rebuttal
8 testimony, Exhibit CLT-2T?

9 JUDGE KOPTA: CTL.

10 Q (By Ms. Gafken) Sorry. Exhibit CTL-2T, page 2.
11 And if you would refer to Footnote Number 1.

12 A Yes, I'm there.

13 Q There you state that CenturyLink agrees that there
14 are 68 PSAPs in Washington, not 127, correct?

15 A That is correct.

16 Q Now the information in the record is a little bit
17 confusing about the number of PSAPs. So I want to walk
18 through some of that with you to get some clarity.

19 CenturyLink and Commission Staff agree that
20 CenturyLink provided untimely notification of the outage to
21 51 Washington PSAPs, correct?

22 A That's correct.

23 Q Would you please turn to Cross Exhibit CTL-4.

24 A Is this the response for RS-4?

25 Q No. Exhibit CTL-4 is your letter to the

1 Commission regarding the major outage report.

2 A Thank you.

3 Q Do you recognize Cross Exhibit CTL-4 as
4 CenturyLink's Major Outage Report, which is a letter from
5 you dated April 24, 2014?

6 A I do.

7 Q And does this letter summarize what CenturyLink
8 knew about the outage as of April 24, 2014?

9 A That's correct.

10 Q In the overview paragraph on page 1, you identify
11 127 Public Safety Answering Points, correct?

12 A Yes.

13 Q And is it true that you obtained the 127 number
14 from Intrado?

15 A We did obtain the 127 from a list of PSAPs that
16 were affected. Unfortunately, that list had many
17 duplications, resulting in the 127 county rather than the
18 actual count that we've just been discussing.

19 Q I believe that list is going to be one of the
20 exhibits. So we'll walk to there in just a moment.

21 A That's correct.

22 Q Would you please turn to Cross Exhibit CTL-5.

23 MS. ANDERL: Your Honor, may I approach the
24 witness? I think he needs a copy of the exhibit list with
25 the renumbered exhibits.

1 JUDGE KOPTA: Yes, you May.

2 THE WITNESS: Thank you. I'm there.

3 Q (By Ms. Gafken) Okay. Mr. Reynolds, do you
4 recognize Cross Exhibit Number CTL-5 as CenturyLink's
5 Response to Public Counsel Data Request Number 5?

6 A I apologize. I'm obviously not marked up right.

7 Q Let me know when you get there.

8 A Is this the response, Attachment B to RS-4d?
9 Would that be another way to identify that?

10 Q No, I think that's going to be Number 6.
11 Number 5 is CenturyLink's Response to Public
12 Counsel Data Request Number 5.

13 A I'm there. Apologize.

14 Q We'll work our way through it.

15 In Cross Exhibit Number CTL-5, Public Counsel asks
16 CenturyLink to identify all Washington PSAPs affected by the
17 outage, correct?

18 A That is correct.

19 Q And in response, CenturyLink refers in its answer
20 -- I'm sorry; refers to its answer in Staff Data Request
21 Number RS-4, correct?

22 A That is correct.

23 Q If you would turn to Cross Exhibit CTL-6C, and
24 that is the Staff Data Request RS-4?

25 A I'm there.

1 Q Okay. Do you recognize cross exhibit CTL-6C as
2 CenturyLink's Response to Staff Data Request RS-4?

3 A I do.

4 Q And in particular, in Cross Exhibit CTL-6C, what
5 appears on the confidential page -- and I'm not asking for
6 the confidential information. But what appears on those
7 pages is CenturyLink's Response to Staff Data Request RS-4,
8 Confidential Attachment B to RS-4, Subsection d, correct?

9 A That is correct.

10 MS. BROWN: Your Honor, I guess I have an
11 objection. The parties stipulated these cross exhibits into
12 the record. So these documents speak for themselves. So I
13 don't know how helpful it is, or perhaps it's not
14 particularly helpful to me, to prod through and identify the
15 responses to Public Counsel's data requests as simply those,
16 responses to Public Counsel data requests.

17 MS. GAFKEN: Your Honor, I know it is a
18 little bit laborious to go through each one and confirm the
19 number.

20 I do at the end have a question for
21 CenturyLink about the numbers.

22 I believe this helps to clarify the record.
23 The number of PSAPs is what it is, and for whatever reason
24 it had been incredibly confusing regarding just how many
25 PSAPs are there. And I think it is important for the record

1 to be clear on that matter.

2 JUDGE KOPTA: I agree. Do you have much more
3 in terms of walking through, or are we getting close to the
4 ultimate question?

5 MS. GAFKEN: We're getting close. There's
6 not a ton. Part of it is just getting to the exhibit. But
7 this should wrap up fairly quickly, and then I'll move on to
8 another --

9 JUDGE KOPTA: Whatever you can do to expedite
10 it. And I agree you don't need to identify and walk us
11 through quite as laboriously as you have been. And I'm not
12 using that as my term.

13 MS. GAFKEN: Well taken.

14 JUDGE KOPTA: The documents have been
15 admitted. So if you could just question about the
16 documents, then that would be most helpful.

17 Q (By Ms. Gafken) Okay. Would you accept subject
18 to check that there are 127 listings in Cross Exhibit
19 CTL-6C?

20 A Yes, there are 127 lines of data.

21 Q And that's what you were referring to earlier,
22 correct?

23 A . As I explained earlier, obviously there are
24 some duplicates. You can just view the confidential data
25 and determine that, you know, there are actually telephone

1 number counts, you know, by PSAP section. And some of those
2 represent multiple counts for one PSAP. If you count them
3 individually, you end up with 127, which is not the number
4 of PSAPs.

5 Q We'll get there.

6 Would you please turn to Cross Exhibit CTL 7-C.

7 A I'm there.

8 Q And do you recognize Exhibit CTL-7C as
9 CenturyLink's Response to Public Counsel Data Request Number
10 26?

11 A Yes.

12 Q And in that response, CenturyLink identifies 61
13 Washington PSAPs, correct?

14 I'll refer you to Subsections C and E in the
15 response. And doing the math, that results in 61 PSAPs?

16 A Yes.

17 Q Would you please turn to Exhibit -- Cross Exhibit
18 CTL-8?

19 A I'm there.

20 Q And do you recognize Cross Exhibit CTL-8 as
21 CenturyLink's Response to Public Counsel Data Request 27?

22 A Yes.

23 Q And the document in Exhibit CTL-8 comes from the
24 Washington Military Department, correct?

25 A That is correct.

1 **Q And in that document, are there a total of 68**
2 **PSAPs listed?**

3 A Yes, there are.

4 **Q What does CenturyLink believe is the correct**
5 **number of PSAPs in Washington?**

6 A As the response to PC 27 indicates, we list the
7 number of PSAPs, and we also designate as to whether a PSAP
8 is primary or secondary or a backup.

9 And as you can see there are 68 PSAPs listed.
10 Fifty-five are designated as primary. Thirteen are
11 designated as secondary or backup.

12 We also believe that there are four additional
13 PSAPs that are not currently active, but could potentially
14 serve as a backup. There are naval base PSAPs. So if you
15 were to add four to the 68 number, potentially there are 72
16 depending on whether the naval station PSAPs are active or
17 not.

18 **Q Are those naval station PSAPs the four backup**
19 **PSAPs that is listed in Cross Exhibit CTL-8?**

20 Because the breakdown is 55 primary, nine
21 secondary and four backups. So the four that you just
22 talked about with respect to the ones that are on naval
23 stations, is that included in the 68, or are they really
24 four separate?

25 A They're four separate.

1 Q Okay. In comparing Cross Exhibit CTL-7C and
2 CTL-8C, the difference between the two is seven. Can you
3 explain why there are seven fewer PSAPs listed in Cross
4 Exhibit CTL-7C than are listed in CTL-8?

5 A I cannot. But possibly Ms. Hartman could.

6 Q CenturyLink admits that it violated RCW 80.36.080,
7 WAC 480.120.450 Subsection 1 and WAC 480.120.412 Subsection
8 2, correct?

9 A Yes, I believe we did.

10 Q And CenturyLink accepts per call as the basis for
11 calculating violations of RCW 80.36.080 and WAC 480.120.450
12 Subsection 1, correct?

13 A For purposes of the settlement, yes, we do.

14 Q And CenturyLink is not contesting the Commission's
15 jurisdiction in this case, is it?

16 A No.

17 Q Please turn to Exhibit CTL-2T, which is the
18 rebuttal testimony, and go to page 2.

19 A I'm there.

20 Q Turn your attention to line 16 through 19. And
21 there you testify that the \$2.855 million penalty that
22 CenturyLink has agreed to is substantial and significant,
23 especially in light of the \$16 million FCC penalty, correct?

24 A Yes.

25 Q The FCC and this Commission each has separate

1 independent jurisdiction over CenturyLink, don't they?

2 A Yes.

3 Q And each regulatory body has its own authority to
4 penalize CenturyLink for the April 2014 outage, correct?

5 A Yes.

6 Q So remaining with the rebuttal testimony in
7 Exhibit CTL-RT [sic], would you please turn to page 4 and go
8 to line 7 to 8.

9 A Yes.

10 Q Would you please read the sentence that begins "no
11 one"?

12 A "No one wants to resign themselves to outages as
13 being inevitable, but the reality is that software-based
14 systems simply don't run at 100 percent."

15 Q And Staff characterized the software failure as
16 foreseeable and preventable, correct, the software failure
17 that caused the April 8, 2014 outage?

18 MS. BROWN: Could you identify where?

19 MS. GAFKEN: Sure. In the Staff report on
20 page 28.

21 JUDGE KOPTA: That's Exhibit SP-5.

22 THE WITNESS: Yes, I'm there.

23 Q (By Ms. Gafken) Okay. The Staff report
24 characterizes the software failure that caused the April
25 2014 outage as preventable and foreseeable, correct?

1 A I believe in hindsight, any error is preventable
2 and foreseeable.

3 However, I don't know that I would necessarily
4 agree with the characterization of what transpired in this
5 outage.

6 Q **Are you familiar with the FCC report on the
7 outage?**

8 A To a certain degree. It's been a long time since
9 I read it.

10 Q **Do you recall whether the FCC also described the
11 coding error as being preventable?**

12 A Yes.

13 Q **Would you please turn to page 1 of CenturyLink's
14 rebuttal, Exhibit CTL-2T, line 7 to 8.**

15 A I'm sorry. What was the page number?

16 Q **I'm sorry. Page 1, line 7 to 8?**

17 A I'm sorry. I'm in the wrong section. Yes.

18 Q **There you testified that the April 2014 911 outage
19 was unacceptable, correct?**

20 A That's correct.

21 Q **Is it CenturyLink's position that software
22 glitches are simply a risk that the public must accept with
23 respect to 911 service?**

24 A I believe it's our position that the Next
25 Generation 911 system, being a software-based system, is

1 subject to software-type defects that are that occur in any
2 large, complex software system.

3 We believe that what transpired in April of 2014
4 was unacceptable. And you know, we feel horrible that it
5 happened. We'd like to put it behind us.

6 Both companies have made incredible strides in
7 addressing the issues and addressing both the technical
8 issues and also the communications issues that resulted from
9 that outage. And so it was unacceptable. And we will learn
10 from it and move on.

11 **Q And CenturyLink has addressed the particular**
12 **issue, the particular software glitch --**

13 A Yes.

14 **Q -- that caused the April 2014 outage?**

15 A Yes. On multifaceted levels, we've addressed it.
16 Not just the one glitch, but we've addressed it by
17 essentially doing a systematic review of the entire system
18 at all single points of failure and trying to determine if
19 there's anything else that looks like the counter that
20 failed in the system.

21 And so yes, we take it very seriously.

22 **Q Doesn't CenturyLink have an obligation to foresee**
23 **and prevent software failures, especially failures that**
24 **could take down the entire 911 system when it operates a 911**
25 **system?**

1 A Absolutely. CenturyLink does have a
2 responsibility to insure that its systems are safe and
3 reliable for the public.

4 However, you can't foresee everything. And
5 unfortunately, we did not foresee this.

6 MS. GAFKEN: So at this point those are all
7 the questions that I had for Mr. Reynolds.

8 Do we want to -- do you want me to proceed
9 with all of my questions of the panel at this time?

10 JUDGE KOPTA: I think that would be best,
11 because I believe the Commissioners are going to want to go
12 back and forth among the people on the panel.

13 MS. GAFKEN: Okay.

14
15 CROSS-EXAMINATIONBY MS. GAFKEN:

16 Q **Good morning, Ms. Hartman.**

17 A Good morning.

18 Q **I want to ask you the question that I asked**
19 **Mr. Reynolds about comparing Cross Exhibits CTL-7C and**
20 **CTL-8. There's 68 PSAPs that are listed in Exhibit Number 8**
21 **and then there's 61 that are listed in number 7-C.**

22 **Why is there a difference in the numbers in those**
23 **two exhibits?**

24 A That's a wonderful question. And the answer is
25 there was likely oversight on our end.

1 We are happy to update the filing with the 61 with
2 the remainder of the information.

3 **Q So there should have been 68 --**

4 A Yes.

5 **Q -- in Cross Exhibit CTL-7C?**

6 A Right. I can't keep the numbers straight, so I'll
7 let you say them instead.

8 JUDGE KOPTA: Can you move the
9 microphone a little closer?

10 THE WITNESS: I can. I feel low behind the
11 table.

12 JUDGE KOPTA: You drew the short straw on the
13 chair assignments.

14 MS. GAFKEN: That's my only question for
15 Ms. Hartman.

16 THE WITNESS: Thank you.

17 MS. GAFKEN: I have no questions for Mr.
18 Betsch.

19 Moving on to Ms. Paul.

20

21 CROSS-EXAMINATION

22 BY MS. GAFKEN:

23 **Q Good morning.**

24 A Good morning.

25 **Q From Staff's perspective, is the correct number of**

1 **PSAPs in Washington 68?**

2 A Yes, it is. Initially we saw the discrepancy in
3 the numbers, and we went back to Washington Military
4 Department, who holds the contract for the emergency 911
5 state calls, and they did again confirm that there are 68
6 PSAPs.

7 Q With respect to the number of violations
8 associated with timely -- failing to timely notify PSAPs of
9 the 911 outage, Staff and CenturyLink agree that there are
10 51 violations, correct?

11 A Yes.

12 Q And the Staff Investigation Report noted 51
13 violations associated with failure to timely notify the
14 PSAPs?

15 A Yes.

16 Q One violation is counted for each PSAP that
17 CenturyLink failed to notify; is that correct?

18 A That's correct.

19 Q Are you familiar with the FCC's report entitled
20 "April 2014 Multistate 911 Outage Cause and Impact"?

21 A I am familiar with it.

22 Q And it's Exhibit DCB-3 to Mr. Bergmann's
23 testimony. Do you have a copy of the report with you?

24 A I have a copy of the FCC report and Mr. Bergmann's
25 testimony.

1 Q Would you please turn to page 6 of Exhibit DCB-3?

2 A I don't have the number. Can you tell me --

3 Q Yes. I'll get there. The exhibit page is number

4 6.

5 But the FCC report page found on the bottom of the

6 page is 4.

7 COMMISSIONER RENDAHL: DCB-3?

8 MS. GAFKEN: That's correct.

9 COMMISSIONER JONES: And again, by page 4,

10 you're talking about the bottom?

11 MS. GAFKEN: That's right. Yes. There are

12 two page numbers. The FCC page number is page 4. The

13 exhibit page number is page 6.

14 COMMISSIONER JONES: And the top of the page

15 is the list of the seven states that were affected by --

16 THE WITNESS: I may not have that.

17 MS. GAFKEN: I can provide a copy.

18 THE WITNESS: That would be great. Thank

19 you.

20 What page did you want me on?

21 Q (By Ms. Gafken) Page 6, Exhibit Page Number 6 at

22 the top of the page.

23 A Okay. I'm there.

24 Q Okay. And at the top of the page, as Commissioner

25 Jones noted, there's a chart. Would you turn your attention

1 to that chart?

2 A Okay.

3 Q The FCC lists 52 PSAPs in Washington as affected
4 by the April 2014 911 outage, correct?

5 A Yes.

6 Q And the FCC report is dated October 2014, correct?

7 A Yes, it is.

8 Q Did you consider the FCC's report in your
9 investigation?

10 A No. I did not.

11 Q Would you please turn to Exhibit SP-5, which is
12 the Staff Investigation Report.

13 A Okay.

14 Q And if you would turn to page 21.

15 A Okay.

16 Q At the top of the page, the Staff report states,
17 "Staff was not able to find a single documented report that
18 CenturyLink first notified a PSAP of the outage," correct?

19 A That is correct.

20 Q Should the number of violations in the Staff
21 report be 68 instead of 51?

22 A No. Staff only had documentation of 51 PSAPs that
23 had untimely notification. Staff felt that they could only
24 recommend the penalty for violations that they could
25 actually document.

1 **Q But did Staff have documentation of the**
2 **affirmative?**

3 **So did Staff have documentation of CenturyLink**
4 **informing the remaining PSAPs of the outage?**

5 A Staff relied on information and documentation from
6 the Washington Military Department. They took a survey, if
7 you will. And one of those questions was about timely
8 notification to CenturyLink. And only 51 of those
9 responded. That's what we used for our documentation.

10 **Q By that, do I understand your testimony to be,**
11 **then, that the remaining PSAPs didn't respond to the survey**
12 **from the military department?**

13 A That we were not aware that they responded,
14 correct.

15 **Q Would you please turn to Staff's rebuttal**
16 **testimony, which is Exhibit Number SP-14.**

17 A Okay.

18 **Q Would you please go to page 5, lines 8 through 18.**

19 A Okay.

20 **Q There you testify that two considerations weigh**
21 **against the maximum penalty in this case, correct?**

22 A That is correct.

23 **Q You testified that CenturyLink was generally**
24 **cooperative and that CenturyLink's violations were not**
25 **intentional, correct?**

1 A Yes.

2 Q Do you expect all of the regulated companies to be
3 generally cooperative with Commission Staff?

4 A We certainly do expect that. That is not always
5 what happens.

6 Q Is it Staff's position that CenturyLink's general
7 cooperation and lack of intent are mitigating factors in
8 this case?

9 A There are mitigating factors in this case, but
10 it's not solely what Staff looked at.

11 There are many aspects to recommending the
12 penalty.

13 Q Focusing on CenturyLink's cooperation, you cite
14 that the Staff/CenturyLink settlement is the best evidence
15 of that cooperation; is that correct?

16 A I'm sorry?

17 Q In terms of CenturyLink's cooperation?

18 A Yes.

19 Q You cite the Staff/CenturyLink settlement as the
20 best evidence of that cooperation, correct?

21 A Yes.

22 Q And during the Staff investigation, was Staff
23 required -- Staff was required to resubmit certain discovery
24 questions, and responses were at times incomplete, correct?

25 A Yes, that is correct. There were over 80 data

1 requests sent to the Company, and a lot of data was going
2 back and forth. Some were incomplete. Some were delayed.

3 Q Please turn back to the Staff Investigation
4 Report, Exhibit SP-5. And go to page 28.

5 A I'm there. I'm sorry.

6 Q With respect to whether CenturyLink's actions were
7 intentional, the Staff report notes that even though the
8 actions were not intentional, the software failure was
9 preventable and foreseeable, correct?

10 A That is correct.

11 Q Do you mean the term "preventable and foreseeable"
12 to mean that CenturyLink should have known and kept from
13 happening?

14 A Well, it was a preventable -- it was a preventable
15 violation, yes.

16 Q By "preventable violation," are you talking about
17 the outage itself was preventable, or that the violations
18 were preventable, or both?

19 A The software glitch, if you will, was preventable.

20 Q Also on page 28 of the Staff report, it describes
21 CenturyLink's poor communication with Commission Staff, WMS,
22 PSAPs, and customers as avoidable, correct?

23 A Yes.

24 Q And WMS, just to clarify, that's the military
25 department?

1 A Yes.

2 Q And I believe they've had a change in acronyms?

3 A Now it's WMD, I believe.

4 Q Okay. If you would please turn to the rebuttal
5 testimony, Exhibit SP-4T, and go to page 4, lines 11 through
6 12.

7 A Are you talking about Staff's rebuttal?

8 Q Yes. So Exhibit SP-4T?

9 A I'm there.

10 COMMISSIONER JONES: What page?

11 MS. GAFKEN: 4, lines 11 through 12.

12 Q (By Ms. Gafken) There you state, "In sum,
13 Mr. Bergmann gives the Commission no persuasive reason to
14 trust his analysis over the recommendations of the
15 Commission's own Staff," correct?

16 A That's correct.

17 Q In adjudications before the Commission, Staff
18 functions as an independent party just as every other party,
19 correct?

20 A Yes.

21 Q And the Commission evaluates the positions
22 presented by all parties, correct?

23 A I'm not sure if I understand the question. Can
24 you ask that again?

25 Q Sure. The Commission considers the evidence

1 presented by all the parties; is that correct?

2 A Yes, that's correct.

3 Q You don't dispute that the factors listed in the
4 enforcement policy of the Commission in Docket A-120061 are
5 the appropriate factors to consider when evaluating the
6 appropriate penalty in a complaint case, do you?

7 A No. We use the enforcement factors when we make a
8 determination or recommendation for a penalty.

9 Q Turning back to the rebuttal testimony, Exhibit
10 SP-4T, would you please go to page 3?

11 A I'm there.

12 Q And turn your attention to lines 18 through 19.
13 There you testify that the settling parties
14 settled on the full penalty amount sought by the Staff,
15 correct?

16 A That is correct.

17 Q And the penalty sought by Staff was \$250 per
18 violation, which is one-fourth of the statutory maximum,
19 correct?

20 A Well, I wouldn't -- Staff never once considered
21 that it was one-fourth.

22 There's a lot of things to consider. Staff does
23 not start at the top of the range and work its way down, nor
24 does Staff start from the bottom and work its way up.

25 Staff takes a look at the individual violations,

1 the different types of violations, and they go through the
2 enforcement factors separately, one by one, and make a
3 determination for what the penalty should be.

4 And what matters most is that in the end, the
5 penalty is significant enough to prevent the company from
6 future violations.

7 **Q The penalty sought by Staff in this case is \$250**
8 **per violation, correct?**

9 MR. BEATTIE: Asked and answered.

10 MS. GAFKEN: I don't believe it was answered.

11 JUDGE KOPTA: I will allow it.

12 **Q (By Ms. Gafken) Do I need to repeat the question?**

13 A Please.

14 **Q The penalty sought by Staff was \$250 per**
15 **violation?**

16 A Yes, that's correct.

17 **Q In reaching a settlement with Staff, CenturyLink**
18 **accepted Staff's litigation position, correct?**

19 A They did.

20 **Q Would you please turn to page 3 of Exhibit SP-14,**
21 **lines 14 through 17.**

22 A Are you talking to my rebuttal? I'm sorry.

23 **Q Yes. The rebuttal testimony, Staff's rebuttal**
24 **testimony, Exhibit SP-4T.**

25 A Yes.

1 **Q Page 3, lines 14 through 17?**

2 A I'm there.

3 **Q Would you please read the two sentences that**
4 **appear there, beginning with the proposed amount?**

5 A "The proposed amount, 11.5 million, may be the
6 maximum penalty available under law. But it's not the
7 maximum penalty supported by the facts and circumstances of
8 this case as reflected, analyzed and discussed in Staff's
9 Investigation Report."

10 **Q With regard to your testimony that the maximum**
11 **penalty is not supported in this case, this is your expert**
12 **opinion based on your analysis, correct?**

13 A That is correct.

14 **Q And two experts analyzing the same facts and**
15 **circumstances can come to different conclusions, correct?**

16 A They can come to conclusions.

17 But Staff has collectively many, many years
18 experience in investigations and determining penalties. We
19 went through the enforcement factors that were filed by the
20 Commission in 2013. We were very thoughtful in the penalty.

21 And it is a significant penalty. \$2.8 million
22 sends a message to the Company that we are paying attention
23 and that this is an unacceptable violation.

24 **Q The question of what penalty is supported by**
25 **evidence and should be levied on CenturyLink is the ultimate**

1 **question that the Commissioners must answer in this case,**
2 **correct?**

3 A Correct.

4 MS. GAFKEN: Thank you. I have come to the
5 end of my questions for the panel.

6 JUDGE KOPTA: All right. Thank you,
7 Ms. Gafken.

8 All right. We now have questions from the
9 bench. We'll start with Commissioner Jones.

10 All right. Commissioner Rendahl.

11

12 QUESTIONS FROM THE COMMISSIONERS

13 COMMISSIONER RENDAHL: Good morning. I first
14 have some questions for CenturyLink's witnesses. And if you
15 would all turn to the initial testimony, the CTL-1.

16 And I will leave it to you as to who should
17 answer these questions. It may be Ms. Hartman, but it may
18 be Mr. Reynolds.

19 So the settlement, if you look at CTL-1T,
20 page 10, that's when in this testimony it begins to talk
21 about the technical commitments.

22 And this is just what the parties agreed to
23 needs to happen and what the Company's agreeing to do,
24 correct, Ms. Hartman?

25 MS. HARTMAN: Yes, correct.

1 COMMISSIONER RENDAHL: So there is various
2 reporting that the Company has agreed to provide.

3 And I guess the first question would be about
4 the compliance officer. It says that -- the settlement says
5 that there will be a compliance officer. Who is that
6 compliance officer?

7 Has that been decided at this point?

8 MS. HARTMAN: Yes, it has been decided. His
9 name is Todd Miller, and he's the vice president of our
10 network operations center.

11 COMMISSIONER RENDAHL: And are you the
12 compliance officer for the FCC's consent decree?

13 MS. HARTMAN: No, I'm not. Todd Miller is.

14 COMMISSIONER RENDAHL: Okay. So Todd Miller
15 is the compliance officer.

16 In CTL-1T page 11, if you look at lines 16
17 through 19, this states that until all the Washington PSAPs
18 have completed their transition to NG911, that CenturyLink
19 will submit the transition reports, the IT transition
20 reports, correct?

21 MS. HARTMAN: Yes.

22 COMMISSIONER RENDAHL: And in fact, if you
23 look at -- and I have to find the settlement agreement. I
24 believe that is SP-6. Do you have a copy of the settlement
25 agreement?

1 MS. HARTMAN: I do.

2 COMMISSIONER RENDAHL: So if you look at page
3 -- starting at page 4 of the settlement agreement,
4 paragraphs 32, 33 and 34 all state basically that until the
5 PSAPs have completed this transition, that CenturyLink will
6 provide these various reports, correct?

7 MS. HARTMAN: Correct.

8 COMMISSIONER RENDAHL: Okay. If you then
9 look at the testimony -- and I think it is your testimony on
10 page 14 of CTL-1T, and this is about the special counter.
11 If you look at lines 9 through 14 on page 14.

12 MS. HARTMAN: I'm there.

13 COMMISSIONER RENDAHL: So this testimony --
14 and I believe this is yours -- is that essentially this
15 issue is now moot because the planned architecture changes
16 will eliminate the counter in January 2016. Has that
17 occurred yet?

18 MS. HARTMAN: It is not complete yet. And it
19 may be best for Mr. Betsch to talk to that.

20 COMMISSIONER RENDAHL: Mr. Betsch, when is
21 that architecture change going to be completed in the
22 system?

23 MR. BETSCH: That actually will be complete
24 next week. There is already an event under way to replace
25 the software, and the software will be replaced a week from

1 today. So the counter at that point will be completely
2 removed from the system.

3 COMMISSIONER RENDAHL: And is this
4 nationwide, or just for Washington state?

5 MR. BETSCH: That's nationwide.

6 COMMISSIONER RENDAHL: So does this take down
7 the system while you have to correct that software fix?

8 MR. BETSCH: No. We will have a scheduled
9 event during a maintenance window. That event -- we have
10 actually, in addition to this standard redundancy that's set
11 up for the system, we actually have two independent systems:
12 One that is available for the software update, one that is
13 running the software that we're using.

14 We update the system that's available for the
15 software update, not affecting traffic.

16 We then allow all calls to shift from
17 Englewood to Miami or vice versa, and then switch to the new
18 software. We then start enabling calls on the new system
19 with the new software, and monitor that to insure that there
20 are no issues.

21 So that's the process that we use for any of
22 the updates to our software that we make.

23 COMMISSIONER RENDAHL: Do you alert
24 CenturyLink or other carriers that you're contracting with
25 that you're conducting this maintenance?

1 MR. BETSCH: Yes, we do, and we have.

2 COMMISSIONER RENDAHL: Going back to this
3 page 14 -- and again, I think this is Ms. Hartman.

4 So this is really more about the obligations
5 under the settlement agreement. Is the implication that
6 because the settlement agreement requires reporting of
7 various maximum numbers -- this is paragraph 32, of SP-6.
8 Sorry to go back and forth.

9 MS. HARTMAN: No worries. Which page? I'm
10 sorry.

11 COMMISSIONER RENDAHL: Page 4 of SP-6,
12 paragraph 32, is the PSAP trunk number PTM reporting.

13 So although this says until all the PSAPs
14 have completed the NG911 transition, CenturyLink will submit
15 the quarterly reports detailing these various details about
16 the counter, the testimony is that these -- this provision
17 is moot due to the architecture changes.

18 So once that is changed over, then there is
19 no need to make any reporting on the threshold counter; is
20 that -- is my understanding correct?

21 MS. HARTMAN: That is correct, yes.

22 COMMISSIONER RENDAHL: But the other two
23 provisions on page 5 of the settlement agreement, paragraphs
24 33 and 34, the threshold counter change won't have any
25 impact on reporting requirements for the transition to NG911

1 requirement for annual audits and the IP transition status
2 reports, correct?

3 MS. HARTMAN: That is correct.

4 COMMISSIONER RENDAHL: I think that's all I
5 have.

6 JUDGE KOPTA: All right. Commissioner
7 Jones?

8 COMMISSIONER JONES: Are we going to take a
9 break?

10 JUDGE KOPTA: I don't think so, since we need
11 to leave at 11:30.

12 COMMISSIONER JONES: Okay.

13 Good morning.

14 MS. BROWN: Is your microphone on?

15 COMMISSIONER JONES: No it's not. Thank you,
16 Counsel. I haven't had enough coffee yet.

17 So Mr. Reynolds, you have the Staff
18 Investigation Report in front of you?

19 MR. REYNOLDS: Yes, I do.

20 COMMISSIONER JONES: Okay. And you have the
21 settlement agreement in front of you.

22 My first question line of questioning is on
23 timely notification to all interested parties.

24 So what's your understanding of the process
25 going forward at a high level?

1 Mr. Reynolds, you're responsible for this
2 state. Is your responsibility just to call PSAPs, the
3 military department, Staff of the UTC, what is it?

4 MR. REYNOLDS: I might defer to Ms. Hartman
5 here in a minute.

6 But generally, it's our obligation to notify
7 all those -- all of the above that you just mentioned in one
8 form other another.

9 We do have an automated outage notification
10 system that provides outage notifications to PSAPs.

11 I believe we also have additional obligations
12 for affected PSAPs in any particular outage.

13 We also communicate with the military
14 department, if not on a minute by minute basis, as soon as
15 we have updates.

16 I'm involved in all those e-mail
17 notifications that take place. Many times it is a back and
18 forth between what we know at the time and, you know, what
19 we learn between the various e-mail notifications. So we do
20 have those obligations.

21 COMMISSIONER JONES: Ms. Hartman, do you have
22 anything to add to that?

23 MS. HARTMAN: So one of the points that you
24 touched on earlier with Mr. Orr was the PSAP notification
25 process and automation.

1 And as a result of this event and others in
2 our network, we have made a significant number of
3 modifications to our PSAP notification process. In essence,
4 what we're required to do under the FCC reporting
5 requirements is within 30 minutes of a potential 911 impact,
6 to notify the PSAPs that are potentially impacted by it.
7 And we need to complete both an e-mail notification as well
8 as a phone call notification to these designated contacts.

9 COMMISSIONER JONES: Okay.

10 MS. HARTMAN: We let them know there is
11 potentially an impact in that notification, and we insure
12 that they have the appropriate contact information at
13 CenturyLink if they have questions, concerns, or otherwise.

14 We also have obligation within two hours to
15 provide a status update with more of the details of the
16 impacts, what we're doing to restore service, anything that
17 would be relevant and helpful to the PSAPs as they're
18 working through the issue as well on their end.

19 We have put some systemization and automation
20 in place to essentially initiate those electronically, both
21 the phone call and the e-mail, so that it's expediting our
22 notification and providing as much information as quickly as
23 possible to those that are potentially impacted.

24 COMMISSIONER JONES: So Ms. Hartman, those
25 are all obligations that you are implementing to the system

1 pursuant to the FCC order DA 15-406?

2 MS. HARTMAN: That is correct.

3 COMMISSIONER JONES: Right. So you are
4 pretty fully, nationwide, pretty far along in that
5 implementation.

6 MS. HARTMAN: Yes, we are.

7 COMMISSIONER JONES: Okay. Mr. Reynolds, so
8 you have the Staff report in front of you. Go to pages 19
9 to 20 please. There's a chart there.

10 MR. REYNOLDS: Yes.

11 COMMISSIONER JONES: So I don't want to drag
12 up the past too much, but this is both about the past and
13 the future.

14 So this is a questionnaire from the military
15 department to the PSAPs about how did you find out about the
16 outage, starting with Adams County: Notified by the Spokane
17 County Sheriff's Office.

18 Island County: Notified by Skagit County.

19 Goes on and on for the 51 PSAPs. In none of
20 these did they learn from CenturyLink, right?

21 MR. REYNOLDS: That is correct.

22 COMMISSIONER JONES: Do you disagree with
23 these findings?

24 MR. REYNOLDS: No, I do not.

25 But it really is the insidious nature of this

1 outage that at least as far as on our network interfacing
2 with our vendor, we had absolutely no idea that there was an
3 outage. And it wasn't until we were into the outage a
4 certain period that we started to discover, mainly from
5 notification from PSAPs. We had no internal knowledge of
6 what was going on until we worked it out with Intrado.

7 And maybe Mr. Betsch would like to add to
8 this, but as soon as we learned, you know, we set up call
9 bridge and worked together with the PSAPs.

10 COMMISSIONER JONES: Right.

11 MR. REYNOLDS: But you're right. We had no
12 knowledge to make those calls. So it was definitely a gap
13 in the system.

14 COMMISSIONER JONES: Okay.

15 MR. REYNOLDS: And that gap, as Ms. Hartman
16 testified, has been corrected.

17 COMMISSIONER JONES: I mean, Mr. Reynolds, we
18 even have one here, Valley Com, notified by relay service
19 from Canada. I mean, I like our friends to the north. We
20 work together on things. But this is, as far as a statewide
21 911 situation, fairly unusual.

22 So Ms. Hartman, a question to you. If an
23 outage happens in the future, let's say irregardless of the
24 PTM counter that Intrado says it's going to fix, but if an
25 outage happens in the future, how would this read, this

1 right-hand column?

2 Would it say something like notified by
3 CenturyLink automated e-mail system or phone call within X
4 minutes, right?

5 MS. HARTMAN: Indeed it should.

6 I will add that between our companies, we
7 have also taken numerous steps to insure that this type of
8 event doesn't occur again. We've improved our
9 communications and processes and insight into what's going
10 on within Intrado's network and insuring more timely
11 notifications. And discussions are occurring that will
12 allow for us, and insure going forward, that we notify in a
13 more timely fashion.

14 Mr. Betsch may want to add a couple of things
15 in addition.

16 COMMISSIONER JONES: Mr. Betsch?

17 MR. BETSCH: Yes. As two companies, we have,
18 as a result of this outage, worked through processes to
19 better connect our companies in the future, from
20 implementing more clear SLA's between our companies
21 regarding the contact time. CenturyLink has a 30-minute
22 notification. We in turn notify CenturyLink prior to that
23 in ten minutes from the point of discovery. And that
24 notification then allows CenturyLink to do their job.

25 In addition to that, we're working together

1 on the implementation of E-bonding of our trouble tickets,
2 E-bonding is just a way of referring to passing the ticket
3 back and forth between the two companies via electronic
4 means. And this is in the midst of being implemented, and
5 should be out and available by February, early February.

6 So what we're hoping to do as a result of
7 those changes is to speed up the process even more.

8 But this initial process change of contacting
9 CenturyLink within ten minutes was put in place just a few
10 months after the outage occurred.

11 COMMISSIONER JONES: Thank you, Mr. Betsch.
12 I will have more questions for you on the NOC alarming and
13 some other issues later.

14 The settlement agreement, both notification
15 and filing of FCC reports refers to the word
16 "simultaneously."

17 Now, if you go to the settlement agreement,
18 paragraph 30 on page 4, Ms. Hartman, Mr. Reynolds, it says
19 CenturyLink will contemporaneously submit to Staff copies of
20 all, quote, compliance reports.

21 So Ms. Hartman, how many of the these -- I
22 mentioned earlier, I think you heard me; on the circuit
23 diversity report is one of those. And the compliance
24 reports under the FCC order in April will be part of this.

25 So could you start with how many such FCC

1 compliance orders do you see being filed with this
2 Commission as well? Are there two or three of those?

3 MS. HARTMAN: We have an annual requirement
4 each year to file a compliance report.

5 COMMISSIONER JONES: Could I -- by
6 contemporaneously, can I interpret this to mean
7 simultaneously?

8 Are you going to file the reports the same
9 day with the FCC and us?

10 MS. HARTMAN: That is our intent, I believe.

11 COMMISSIONER JONES: Okay. If there is any
12 inconsistency in the interpretation of such reports between
13 the FCC Bureau Staff and our Staff, how do you see those
14 being resolved?

15 Let's say a report comes in, whether it's a
16 circuit diversity report or a compliance report pursuant to
17 the FCC order. And whether it's a notification issue, a
18 technical issue, or whatever, if the FCC Staff feels one way
19 and the UTC Staff feels another way?

20 MS. HARTMAN: That's a good question. And I
21 imagine how we'd manage that is we'd hold a discussion.

22 I'm sure from your end we'd coordinate
23 through Mr. Reynolds' office to insure that we understood
24 the questions and the issues.

25 And on the same with the FCC, they'd

1 coordinate back through me.

2 And we'd insure that we understood what the
3 issue is, and if there was a discrepancy or issue of some
4 sort, then we would provide any clarity that's needed to
5 insure that everybody is fully aware of the answers.

6 COMMISSIONER JONES: Okay. Turning to the
7 FCC order, Ms. Hartman and Mr. Reynolds, the compliance
8 process, I want to ask you a few questions on that again.
9 Do you have that in front of you? I think that's Exhibit
10 SP-2.

11 MS. HARTMAN: I am not sure if I do.

12 MS. ANDERL: I'm sorry, your Honor. What is
13 the exhibit reference?

14 COMMISSIONER JONES: It's wherever the FCC
15 order is, DA 15-406. I think it was included with
16 Ms. Paul's testimony, SP-2.

17 MS. HARTMAN: I probably have it there if you
18 could give if me just two seconds.

19 JUDGE KOPTA: Yes, the FCC consent decree for
20 CenturyLink.

21 MS. HARTMAN: I have it.

22 COMMISSIONER JONES: You have it? Turn to
23 page 4 at the bottom, where it talks about the compliance
24 process.

25 JUDGE KOPTA: It's Exhibit SP-2.

1 COMMISSIONER JONES: So could you explain, in
2 B1 this "and identify, protect, detect, respond, recover"?

3 I think you're familiar with that. You were
4 on the CSIA IWG 4 working group on cybersecurity. This is a
5 key fundamental element of risk assessment, correct?

6 MS. HARTMAN: It is.

7 COMMISSIONER JONES: But this is the first
8 time it's been in a 911 order; usually it's a
9 cybersecurity--

10 MS. HARTMAN: Agreed.

11 COMMISSIONER JONES: Right?

12 MS. HARTMAN: This is the very first time
13 I've seen it in that type of context.

14 COMMISSIONER JONES: So tell me how you're
15 going to operationalize this through Mr. Miller and the NOC
16 with Intrado. This is an ecosystem. It's not just
17 CenturyLink.

18 How are you going to operationalize this risk
19 assessment system?

20 MS. HARTMAN: That's a wonderful question.

21 And this particular requirement, from an
22 internal perspective, took us to look through all of our
23 internal processes. We looked at nearly 200 internal
24 documents to insure that they appropriately addressed these
25 provisions for PSAP notification and the FCC's 911

1 reliability requirements.

2 Where there are gaps or issues, we updated
3 them, modified, reposted. We initiated retraining where
4 needed, as well as we updated our very robust compliance
5 training processes, documents and annual training that are
6 associated with that.

7 In addition, we have, as both Mr. Betsch and
8 I have already testified, worked extensively as companies
9 and partners to insure that we are recognizing
10 appropriately, responding, and resolving issues in a more
11 expeditious fashion on a going forward basis.

12 COMMISSIONER JONES: So this process is going
13 to be used for 911 outages for the first time. It has been
14 used for cybersecurity and network security issues in
15 general, right?

16 MS. HARTMAN: It had not been applied, as you
17 noted beforehand. This is the first time it has carried
18 over from that cybersecurity arena.

19 COMMISSIONER JONES: And if you go down to
20 Sub 4 there, it says CenturyLink shall examine the PSAP
21 notification process used by its affiliates.

22 By "affiliates," what do you mean? Is it
23 just Intrado, or are there other affiliates that you have to
24 incorporate into the system?

25 MS. HARTMAN: CenturyLink's affiliate

1 companies. And we've insured across the board that the
2 processes and practices I've talked to have been applied all
3 the way across our --

4 COMMISSIONER JONES: How many affiliates do
5 you have throughout your total system? 25, 30, 40?

6 MS. HARTMAN: Honestly, I don't know that
7 number right offhand. I'm sure we can find out and get back
8 to you.

9 MR. REYNOLDS: I believe in the State of
10 Washington, the number -- we have five operating companies:
11 Inter Island, Cowiche, CenturyTel, United, and then Lacey
12 Qwest.

13 And so we have similar entities in other
14 states.

15 COMMISSIONER JONES: Okay. But Mr. Reynolds,
16 affiliates from that perspective is -- I don't think it's
17 really an important for issue for this state, is it?

18 You've pretty much incorporated those into
19 your NOC, your business practices, billing practices?

20 MR. REYNOLDS: I believe that's correct.

21 MS. HARTMAN: I can confirm that.

22 COMMISSIONER JONES: Okay. And then Sub 5,
23 this affects the person to the left of you, Ms. Hartman, the
24 contractor. So it says CenturyLink shall establish clear
25 operational roles and responsibilities to improve

1 situational awareness and information sharing.

2 So has that been done adequately, or is that
3 still a work in progress?

4 Maybe start at a high level. Mr. Betsch
5 talked about 30 minutes notification for CenturyLink. You
6 brought it down to ten. But that's just one part of the
7 story. And I'm talking about who does what?

8 MS. HARTMAN: That's a great question. And
9 as part of this process, you're right on. We went through
10 extensive discussions looking at our underlying agreements
11 that we have in place to insure that we were uncovering any
12 issues and resolving them appropriately.

13 One of the topics you touched on is the
14 timeliness of notification and communications. We have
15 updated -- and Mr. Betsch noted this a few minutes ago --
16 the SLA's to more clearly outline the roles and
17 responsibilities, who's on point for each portion of the
18 process to insure that we don't have the type of failure
19 that occurred in April 2014 again.

20 COMMISSIONER JONES: Mr. Betsch?

21 MR. BETSCH: In addition, the communication
22 protocols between our two operations centers have been
23 updated. So for example, in the case of the April 2014
24 outage, the communication was a little less clear between
25 the two companies than we would have liked, obviously. And

1 that affected the outage.

2 COMMISSIONER JONES: Right.

3 MR. BETSCH: And the notification.

4 So we went through and developed things like
5 a clear conference bridge for our two operations centers to
6 jointly use in the case of a confusing outage like this one;
7 clarified the escalation paths so that it was clear who
8 would be the escalation point if issues are not occurring --
9 if notification is not occurring in a timely manner;
10 implemented new processes to help speed the communication to
11 the PSAPs by providing additional information from Intrado
12 to CenturyLink to allow them to go through that notification
13 process.

14 And then we meet on a regular basis. We have
15 monthly meetings and even weekly meetings to talk through
16 the connection between our operations centers to help
17 improve over the past month what we have seen as outages or
18 other issues have occurred.

19 COMMISSIONER JONES: Going to the past with
20 you just for a second, in one or two sentences, what was the
21 primary failure of the NOC alarming system and Intrado in
22 the Englewood center?

23 MR. BETSCH: The alarming was at a severity
24 level that was too low. And as a result of that, the
25 operations center didn't recognize the issue as a result of

1 that severity level of the alarm.

2 COMMISSIONER JONES: Were you fully deployed
3 with personnel that evening?

4 Was there a personnel issue?

5 MR. BETSCH: No, there was no personnel
6 issue. We had a fully deployed team.

7 COMMISSIONER JONES: What about the NOC to
8 NOC issue between CenturyLink and Intrado?

9 Wasn't that sort of the communications
10 protocol as well?

11 MR. BETSCH: The communication did occur, not
12 as timely as we would have liked to see.

13 However, the real issue was that the outage
14 itself, because it was a specific software outage with an
15 alarm that was not at an appropriate severity level, meant
16 that our operations center at Intrado and CenturyLink were
17 both confused as to what the cause of the outage was for
18 quite some time.

19 And again, as was previously testified, the
20 issue in Oregon came up and did confuse the entire process
21 of troubleshooting.

22 COMMISSIONER JONES: Some people in military
23 terms call that the fog of war. When you get into battle or
24 something bad happens, there's a lot of fog out there. Is
25 that an apt -- kind of an apt way to say it?

1 MR. BETSCH: Yes.

2 COMMISSIONER JONES: There's a lot of fog
3 around?

4 MR. BETSCH: Yes, it was confusing. It was
5 clearly a confusing time for the operations center.

6 COMMISSIONER JONES: Which I understand.

7 So the PTM, this PSAP trunk member issue, you
8 responded to Commissioner Rendahl. That's going to get
9 fixed next month, you said in two weeks.

10 What was the original reason -- you heard my
11 question to Mr. Orr today. There appeared to be some
12 discussion -- let's put it diplomatically -- between the
13 PSAPs in this state, when Intrado came in, about this PTM
14 threshold counter, right?

15 So are you an engineer by training?

16 MR. BETSCH: I am. I'm an electrical
17 engineer.

18 COMMISSIONER JONES: You're not a software
19 engineer?

20 MR. BETSCH: I'm not.

21 COMMISSIONER JONES: So from a software or a
22 telecom engineering standpoint, what was the reason for
23 putting a counter in on the -- because these are selective
24 routers, right?

25 MR. BETSCH: Right.

1 COMMISSIONER JONES: Going to Englewood and
2 Miami, to your centers. So why put a limit on the calls?

3 MR. BETSCH: The PSAP counter was a way in
4 the software to assign trunk members -- assign calls to a
5 trunk member. So the function of the counter was to provide
6 a number for that call, connecting it to a trunk member and
7 then deliver it to the PSAPs.

8 I can't say why the limit of 40 million,
9 which is the limit that was created from our software, was
10 set. I'm not clear on why that was set.

11 However, what did happen is that the software
12 was written with the intent that when a software upgrade
13 would occur, the counter would be reset so that we wouldn't
14 reach that limit.

15 Unfortunately, that was the piece of this
16 puzzle that did not go well. The software upgrades that
17 occurred did not reset the counter, that we can tell, during
18 the previous years. And as a result of that, it did reach
19 that limit, which a limit has to be defined in the software
20 code. It's a must.

21 So when the error occurred on April 10, 2014,
22 we changed that limit from 40 million to two billion for
23 each of the COMICS's. And that's monitored on a daily and
24 reported on on a weekly basis, so that not only for the
25 elimination of the counter next week, but since April 10,

1 we've been paying very close attention to that level to
2 insure that no other issues can occur with that counter.

3 COMMISSIONER JONES: And Ms. Hartman, I'd
4 like you to weigh in on this one. But again, not digging
5 too much into the past, but from a network engineering
6 standpoint, there are different ways of distributing calls
7 in any emergency. You could have 50 percent on this trunk,
8 50 percent on this, 30 percent.

9 This appeared to be a fairly arbitrary, at
10 least to my reading, a fairly arbitrary cap that was put on.

11 But there are other ways in which to
12 distribute call traffic from a 911 caller to a PSAP,
13 right?

14 MS. HARTMAN: There are. And I actually
15 think Mr. Betsch is probably the right person to talk
16 through the actions that we've taken in that area to better
17 distribute those calls.

18 COMMISSIONER JONES: But before we go back to
19 Mr. Betsch, have you complied with the circuit diversity
20 order of the FCC?

21 It's in the agreement, right, in the
22 settlement agreement?

23 MS. HARTMAN: We did file our first 50
24 percent of the certification before the October 15 due date
25 last year.

1 COMMISSIONER JONES: Counsel, is that in the
2 record?

3 Can anybody inform me? I wasn't able to find
4 it.

5 JUDGE KOPTA: The order itself is not part of
6 the record.

7 COMMISSIONER JONES: No, I'm talking about
8 the circuit diversity report submitted by CenturyLink.

9 MS. HARTMAN: No, it is not.

10 COMMISSIONER JONES: Could you submit that to
11 me?

12 MS. ANDERL: We'll be submitting that. Will
13 that be Bench Request Number 1?

14 JUDGE KOPTA: Yes.

15 COMMISSIONER JONES: So describe that report
16 a little bit at a high level, Ms. Hartman, in terms of the
17 distribution and redundancy.

18 And if you need to go to Mr. Betsch, you can.
19 But this is --

20 MS. HARTMAN: No, I can --

21 COMMISSIONER JONES: -- your obligation as
22 the local exchange carrier to explain this point, I think.

23 MS. HARTMAN: Give me two seconds. I do have
24 a list of the requirements with me.

25 So the certification requirement that you are

1 speaking to, as I mentioned, has a couple of different time
2 frames associated with it. I'll start with that.

3 We were required to submit the first 50
4 percent of our certification, as I noted, this last October
5 15.

6 And then we're required this year, in 2016,
7 on October 15 to submit the final 100 percent, if you will,
8 the last 50 percent of our certification,

9 And that's an annual requirement going
10 forward after this year. What the FCC has essentially
11 required for us to do is to do a 911 circuit diversity
12 audit. And that audit will -- has us looking at the
13 physical diversity of our 911 circuits.

14 We are also looking at and needing to tag our
15 critical 911 circuits to minimize the risk of
16 reconfiguration.

17 And we also are looking, as part of our
18 circuit diversity audit, to insure that we don't have any
19 single points of failure, specifically between a selective
20 router, the automatic location identification, automatic
21 number identification or ALIANI, as most of us call that
22 database, or the equivalent Next Generation 911 component in
23 the central office that is serving the PSAP.

24 Another component of that certification is
25 the central office backup power. And in that portion, we

1 are looking to insure that all central offices that house
2 911 selective routers have 72 hours worth of backup power at
3 full office load.

4 We also have a second component of that for
5 other PSAPs that are PSAPs serving our central offices, that
6 our PSAPs serving that have to have 24 hours of backup
7 power.

8 And then we have to test and maintain our
9 equipment in accordance with the manufacturer
10 specifications.

11 And if we're not implementing backup power at
12 full office load, we have to essentially describe what we're
13 doing in the alternative to insure or mitigate any risks of
14 failure.

15 And the third component of the certification
16 is around the network monitoring diversity. And in that
17 portion we have to audit our critical network monitoring
18 aggregation points to insure they're physically diverse.

19 We have to audit our critical network
20 monitoring circuits between the aggregation points and the
21 network operations centers, again to insure physical
22 diversity. And where we don't have physical diversity, we
23 need to again explain what we're doing to mitigate and
24 reduce risk associated with that.

25 COMMISSIONER JONES: Ms. Hartman, this is an

1 obligation of CenturyLink, not of Intrado, right?

2 MS. HARTMAN: Actually, I believe that
3 Intrado also filed a certification. But Mr. Betsch could
4 speak to that.

5 COMMISSIONER JONES: Would you amplify on
6 that, please, Mr. Betsch?

7 MR. BETSCH: Yes, we did. For our direct
8 customers that Intrado provides service directly to the
9 PSAP, in that case we did file a similar report.

10 And we will continue to follow up just as Ms.
11 Hartman outlined.

12 COMMISSIONER JONES: Okay. And Staff, have
13 you had a chance to review that circuit diversity report
14 yet? Have you looked at it?

15 MS. PAUL: No, I have not looked at that.

16 COMMISSIONER JONES: So anybody on Staff
17 looked at it?

18 MS. PAUL: I would have to consult with
19 Staff.

20 COMMISSIONER JONES: Okay.

21 MS. HARTMAN: May I make one note?

22 COMMISSIONER JONES: Sure.

23 MS. HARTMAN: I can tell you that those
24 certification reports were confidentially filed and
25 protected by the FCC. And they have not been shared on a

1 more broad perspective because of those protections.

2 COMMISSIONER JONES: Right.

3 MS. HARTMAN: Today.

4 COMMISSIONER JONES: I think there are ways
5 of getting at that, Ms. Hartman. And I --

6 MS. HARTMAN: I don't disagree. And I think
7 we spoke to that, that we would work --

8 COMMISSIONER JONES: Our Staff can, under
9 suitable NDA's or suitable agreements with the FCC Staff,
10 are able to look at what the FCC considers to be
11 confidential.

12 MS. HARTMAN: Absolutely.

13 COMMISSIONER JONES: That's important for our
14 state.

15 On the -- so this is for Mr. Betsch. So the
16 PTM counter issue goes away in couple of weeks; that appears
17 to be what you were saying?

18 MR. BETSCH: Next week.

19 COMMISSIONER JONES: Next week?

20 MR. BETSCH: Yes.

21 COMMISSIONER JONES: So in terms of the IP
22 transition status reports that are required under the
23 settlement agreement, will you be involved in working with
24 CenturyLink as we build out Next Gen 911 in this state?

25 I assume that both of you will be working

1 together to submit these annual reports?

2 MR. BETSCH: Yes. The PSAP directly chooses
3 the time that they would like to convert to an IP-based
4 system --

5 COMMISSIONER JONES: Sure.

6 MR. BETSCH -- through the purchasing of their
7 call handling equipment. So we've recommended that they do
8 that as quickly as possible. However, based upon budget or
9 other factors, they may not transition.

10 So yes, we will be involved in actually
11 implementing the transition as CenturyLink provides us with
12 the request from the PSAP.

13 And we'll also help with the reporting
14 requirements as well.

15 COMMISSIONER JONES: Okay. Those are all my
16 questions. Thank you.

17 JUDGE KOPTA: All right. Thank you.

18 Mr. Chairman?

19 CHAIRMAN DANNER: No questions.

20 JUDGE KOPTA: All right. Just a couple of
21 things. First, for clarity of the record, SLA is service
22 level agreement?

23 MR. BETSCH: That's correct.

24 JUDGE KOPTA: And also, were you present when
25 Mr. Orr was testifying earlier today?

1 MR. BETSCH: Yes, I was.

2 JUDGE KOPTA: He expressed some concerns
3 about there only being two centers, one in Englewood and one
4 in Miami. Has the FCC raised any concerns about the
5 existence of only two centers?

6 MR. BETSCH: No, they have not.

7 And if I may, I'd like to clarify his
8 testimony, if possible.

9 JUDGE KOPTA: Please do.

10 MR. BETSCH: I believe he referred to one
11 router at each of the centers and insinuated that there may
12 not be the required diversity in the system.

13 That's actually not correct. The individual
14 centers, Miami and Englewood, do have two main routers each.
15 And there are multiple paths, multiple diverse paths that
16 are available to each of those emergency call management
17 centers, the ECMC.

18 The issue on April 2014 was not a lack of
19 diversity. There was no lack of diversity. The issue was
20 that the calls, as they attempted to enter the ECMC, because
21 the counter ran out of numbers, could not be assigned to a
22 trunk member. And so those calls sat at the entrance to the
23 ECMC and were unable to process.

24 Because that occurred, we implemented a
25 change to allow the ECMC at the entrance to reroute the

1 calls to the other ECMC. So in this case, Englewood would
2 not accept the calls. We actually implemented a change to
3 allow those calls to be routed to Miami at that point in the
4 network.

5 The ECMC always had the ability to route the
6 calls between Englewood and Miami or vice versa.

7 The issue in this case was the location of
8 the failure. It was not perceived that an issue would occur
9 at that point in the ECMC.

10 So that change was implemented.

11 And in addition to that, we also made a
12 change in December of 2014 that calls entering each of the
13 ECMC's, whether they be Miami or Englewood, would be
14 distributed 50 percent to each one. So whether the
15 originating service provider sends their calls to Miami or
16 they send their calls to Englewood, those calls will be
17 divided into two buckets. One will be sent to Miami to be
18 processed and one will stay within Englewood.

19 And those changes were made as a result of
20 this outage as a way of mitigating future issues that could
21 occur that we do not know about today, just as this issue
22 was something that we had no prior knowledge of regarding
23 this counter, and to enable the system to more effectively
24 reroute the calls.

25 JUDGE KOPTA: All right. Thank you.

1 Appreciate that.

2 Ms. Anderl, do you have any redirect for your
3 witnesses?

4 MS. ANDERL: May I have a moment to confer?

5 JUDGE KOPTA: Yes.

6 MS. GAFKEN: While Ms. Anderl confers, may I
7 ask a question with respect to whether there are bench
8 requests of Mr. Orr?

9 During Commissioner Jones' questioning, he
10 did ask about how many communicators were on duty when the
11 outage began. Would that be a bench request?

12 JUDGE KOPTA: I didn't hear it as being a
13 formally a bench request.

14 But Mr. Jones, is that something you want
15 them to provide for the record?

16 COMMISSIONER JONES: Yes, let's do it.

17 JUDGE KOPTA: That will be Bench Request
18 Number 2.

19 MS. GAFKEN: And there was also a question
20 about point providers. Is that also a bench request, or
21 no?

22 COMMISSIONER JONES: No. At least to me. I
23 don't know where my colleagues are on this.

24 But I think Mr. Orr said on the record that
25 most of the calls, or 70 percent of the calls going into

1 NORCOM are wireless calls.

2 MS. GAFKEN: Thank you.

3 MS. ANDERL: Thank you, your Honor, for
4 giving us a moment. We have no redirect for our three
5 witnesses.

6 JUDGE KOPTA: Thank you, Ms. Anderl.

7 Mr. Beattie, anything for Staff?

8 MR. BEATTIE: Staff has no redirect. Thank
9 you.

10 JUDGE KOPTA: Thank you.

11 The panel is excused. Thank you for your
12 testimony. We appreciate you being here today. That
13 concludes the witnesses from CenturyLink and Staff.

14 For Public Counsel, I believe you have one
15 other witness who is scheduled to answer questions on
16 cross-examination.

17 MS. GAFKEN: Yes. And Mr. Bergmann is here
18 and we can impanel him.

19 JUDGE KOPTA: Yes, call him up.

20 MS. ANDERL: Your Honor, while that's
21 happening, may we have a few minutes off the record?

22 JUDGE KOPTA: Do you need a break for five
23 minutes? We need to break at 11:30.

24 MS. ANDERL: That's right. Okay. Then let's
25 proceed.

DAVID C. BERGMANN

1 JUDGE KOPTA: All right.

2
3 DAVID C. BERGMANN, witness herein, having been first
4 duly sworn on oath, was examined
5 and testified as follows:

6
7 JUDGE KOPTA: Ms. Gafken.

8
9 E X A M I N A T I O N

10 BY MS. GAFKEN:

11 Q Good morning, Mr. Bergmann. Would you please
12 state your name for the record and spell your last name.

13 A David Bergmann, B-E-R-G-M-A-N-N.

14 Q And who is your employer?

15 A I am a self-employed consultant.

16 Q And what's the name of your consulting firm?

17 A Telecom Policy Consulting for Consumers.

18 Q Did you file testimony and exhibits in this docket
19 on behalf of Public Counsel?

20 A Yes, I did.

21 MS. GAFKEN: Mr. Bergmann is available for
22 cross-examination.

23 JUDGE KOPTA: All right. Ms. Anderl?

24 MS. ANDERL: Thank you, your Honor.

25

DAVID C. BERGMANN

CROSS-EXAMINATION

BY MS. ANDERL:

Q Good morning, Mr. Bergmann. How are you?

A Good morning.

Q I have a few background questions for you, and then maybe we'll get into some things that are more specific with regard to your testimony.

Have you ever been employed by a telecommunications company?

A No, I have not.

Q Have you ever been employed by a software company?

A No, I have not.

Q Are you a telecommunications engineer?

A No. I am not.

Q Are you a software engineer?

A No, I am not.

Q And you've not testified previously under oath in an administrative proceeding?

A No, I have not.

Q You've never designed a 911 system?

A No, I have not.

Q And you've never worked on a 911 system?

A No, I have not.

Q And you've never installed a 911 system?

A No, I have not.

DAVID C. BERGMANN

1 Q Or performed maintenance on a 911 system?

2 A No, I have not.

3 Q Do you understand the difference between Basic 911
4 and E911?

5 A At a pretty high level, yes.

6 Q And the difference between E911 and what we're
7 calling NG911?

8 A At a high level, yes.

9 Q And that understanding would come from your prior
10 work for the State of Ohio?

11 A That would come from my prior work for the State
12 of Ohio.

13 And I've worked subsequent to that as an
14 independent consultant.

15 Q And for the State of Ohio, you were Public
16 Counsel?

17 A I was a member of the staff of the Ohio Consumers'
18 Counsel, yes.

19 Q How big was that staff?

20 A It varied over the 30-some years that I was there.
21 We had -- let me see -- as many as 18 attorneys and probably
22 as few as 13 attorneys during that time.

23 And we had technical staff and administrative
24 staff as well.

25 Q And was there a position that was the Office of

DAVID C. BERGMANN

1 **Public Counsel or Consumer Counsel, the head of that office?**

2 A Yes. There is the Consumers' Counsel of the State
3 of Ohio.

4 Q **And was that ever you?**

5 A No.

6 Q **So you worked as an attorney in that office?**

7 A Yes.

8 Q **Have you ever participated in responding to a**
9 **request for proposals or request for bid to perform 911**
10 **service?**

11 A No.

12 Q **In preparing for your testimony filing in October**
13 **and your testimony here today, you reviewed the Staff**
14 **report?**

15 A Yes, I did.

16 Q **And you reviewed the FCC consent degrees?**

17 A Yes, I did.

18 Q **And the Homeland Security report?**

19 A Yes, I did.

20 Q **And did you review all of the discovery in this**
21 **matter?**

22 A Yes, I did.

23 Q **The informal questions from Staff to the Company?**

24 A I'm sorry?

25 Q **The informal questions from Staff to the Company**

DAVID C. BERGMANN

1 **that were propounded before the complaint?**

2 A If it was in writing, I reviewed it.

3 If those requests were not in writing, I did not
4 review them.

5 Q Okay. Are you aware that the Company and -- being
6 CenturyLink and Intrado, met with Commission Staff on more
7 than one occasion to discuss the technical details around
8 the outage?

9 A I believe I saw that those had occurred, yes.

10 Q Did you attend any of those meetings?

11 A No, I did not.

12 Q When were you retained by Public Counsel?

13 A Sometime around the middle of 2015. I'd have to
14 look at my contract to see the exact date.

15 Q Okay. If your contract said August, it would be
16 August?

17 A Yes.

18 Q And what -- describe for me what Public Counsel
19 retained you to do.

20 A I was retained to review the information about the
21 outage and assess whether there were penalties appropriate.

22 Then once the Staff -- the settlement was filed, I
23 reviewed that settlement to determine what was an
24 appropriate response.

25 Q At the time that you were retained, did Public

DAVID C. BERGMANN

1 **Counsel indicate to you that it was Public Counsel's view**
2 **that this was a maximum penalty case?**

3 A I think there was some indication of that.

4 But my investigation was independent. And so if I
5 had not -- did not believe that this was a maximum penalty
6 case, I would not testify to that effect.

7 Q Now, for your research specific to Washington, you
8 looked at Commission rulings in complaint cases against
9 CenturyLink; is that correct?

10 A I looked at a few of them, yes.

11 Q Yes. You looked at the case regarding the unfiled
12 agreements?

13 A Yes.

14 Q With the \$7 million or so penalty?

15 A Yes.

16 Q And you looked at the case involving allegations
17 of violations of various billing rules and other matters?

18 A Yes.

19 Q And you looked at the San Juan Islands case?

20 A Yes.

21 Q Can you think of any others that you reviewed that
22 had to do with CenturyLink or its predecessor companies?

23 A As described in my testimony. So those are the
24 ones that I reviewed.

25 Q You did not analyze Commission rulings in other

DAVID C. BERGMANN

1 enforcement actions against companies other than
2 CenturyLink, did you?

3 A No, I did not.

4 Q Mr. Bergmann, do you have a copy of the exhibits
5 that CenturyLink provided to be used in your
6 cross-examination?

7 A I believe I do.

8 Q Let me know when you get there.

9 A Well, which number?

10 Q Well, do you have the packet?

11 A I believe I do, yes.

12 Q Okay. Mr. Bergmann, can you turn to Exhibit
13 that's marked for cross-examination as DCB-26?

14 A I am sorry. I do not seem to have those with me.

15 MS. ANDERL: Ms. Gafken, I have an extra
16 packet?

17 THE WITNESS: Sorry. I left it in my chair.

18 MS. ANDERL: No problem.

19 THE WITNESS: Now, what was the number again
20 please?

21 Q (By Ms. Anderl) DCB-26. It's actually Public
22 Counsel's response to CenturyLink Data Request Number 13.

23 A I'm there.

24 Q Did you participate in the preparation of this
25 data request response?

DAVID C. BERGMANN

1 A No, I did not.

2 Q Okay. Did you conduct any independent research
3 that would disclose to you any cases that the Washington
4 Commission had decided in which penalties were assessed on a
5 per call basis?

6 MS. GAFKEN: Objection. Relevance. The
7 settling parties have agreed that per call is an appropriate
8 basis for penalties in this case.

9 JUDGE KOPTA: I'll allow it. Overruled.

10 THE WITNESS: Could you repeat the question,
11 please.

12 Q (By Ms. Anderl) Did you conduct any independent
13 research that would disclose to you whether there were any
14 Washington Commission cases in which the Commission had
15 determined that it was appropriate to assess penalties on a
16 per call basis?

17 A No, I did not.

18 Q So you don't know whether there are such cases or
19 there are not?

20 A I do not know that.

21 As my testimony indicates, this particular
22 situation of a 911 outage is one where the per call is
23 particularly appropriate.

24 Q You indicated as part of your direct testimony in
25 an exhibit marked as DCB-6C --

DAVID C. BERGMANN

1 A I'm sorry. What was the number again?

2 Q DCB-6C. It's the 121-page document with the list
3 of all of the failed calls.

4 A Yes.

5 Q Are you familiar with that document?

6 A It's been a while since I looked at it in detail,
7 yes.

8 Q With regard to the telephone numbers that are
9 displayed on that document, did you undertake to research
10 any of those telephone numbers to determine the extent to
11 which PSAPs might have been making test calls from their
12 non-emergency numbers to 911?

13 A No, I did not.

14 Q Would you accept, subject to your check, that
15 there are calls on that list from PSAP non-emergency numbers
16 to 911 in the form of test calls likely to determine whether
17 911 was working?

18 A Yes, I would accept that subject to check.

19 MS. ANDERL: Your Honor, that was that for
20 that.

21 And my next area is kind of a more protracted
22 line of questioning on one exhibit. And so I think maybe
23 now, although it is a couple of minutes before the appointed
24 hour, might be a good time to break if that's all right with
25 you.

DAVID C. BERGMANN

1 JUDGE KOPTA: We appreciate your awareness
2 and I agree with you. So we will take our recess at this
3 point and reconvene at approximately 1:30. We are off the
4 record.

5 (Luncheon Recess.)

6 JUDGE KOPTA: Good afternoon. Let's be back
7 on the record and resume the cross-examination of
8 Mr. Bergmann by Ms. Anderl.

9 MS. ANDERL: Thank you, your Honor.

10 CROSS-EXAMINATION (CONTINUING)

11 BY MS. ANDERL:

12 Q Mr. Bergmann, could you turn next to Exhibit --
13 I'm going to ask you some questions about Exhibit DCB-29.
14 It is Public Counsel's response do CenturyLink Data Request
15 Number 17.

16 A I'm there.

17 Q And this data request -- well, just describe
18 briefly for us what we asked you for here and what you
19 provided.

20 A The Company asked for my blogs.

21 And we provided them with the blogs and links to
22 what's in the blogs.

23 Q And you post articles and points of view on your
24 blog?

25 A Yes.

DAVID C. BERGMANN

1 Q How do you decide what interests you post about?

2 A I'm sorry, but I think it's just what I find
3 interesting and what I have time to post.

4 Q Okay. So would it be fair to say that you don't
5 generally write about issues that don't interest you?

6 A That's true.

7 Q And these areas of interest, would you say that
8 those are also areas of expertise?

9 A Pretty much, yes.

10 Q In some cases, for sure?

11 A Yes.

12 Q Now on your blog -- this was interesting to me --
13 you say, "I have a political point of view and I'm not
14 afraid to use it."

15 A I believe that's for the general curmudgeon. But
16 I've never put anything on. But that that's true.

17 Q Yes. It is true that you said that, although
18 maybe you haven't had a point of view since you haven't
19 posted under that topic?

20 A I haven't had time to post.

21 Q What is your political point of view?

22 A My political point of view is that customers,
23 consumers, deserve protection. And that's pretty much
24 regardless of the level of competition there might be in the
25 telecommunications industry.

DAVID C. BERGMANN

1 Q Now we just talked about the topic -- the heading
2 on your blog entitled The General Curmudgeon. And you
3 indicated there had not been any posts?

4 A That's correct.

5 Q Why did you entitle a section of your blog The
6 General Curmudgeon?

7 MS. GAFKEN: Objection. Relevance.

8 JUDGE KOPTA: I guess I'm having a hard time
9 figuring out what the point is, Ms. Anderl.

10 MS. ANDERL: Well the Public Counsel is
11 asking the Commission to accept Mr. Bergmann's view as an
12 expert. And I feel it's important to explore and illuminate
13 his point of view and what grounds him. It provides
14 relevant context.

15 JUDGE KOPTA: Well, I'm going to sustain the
16 objection. I think we're getting a little far afield from
17 the issues we have to resolve in this case.

18 Q (By Ms. Anderl) Mr. Bergmann, on the second page
19 of the data request response, I'm going to ask you a little
20 bit about the Quick Takes?

21 A Yes.

22 Q The most recent post under Quick Takes is USTA
23 III; is that right?

24 A Yes.

25 Q Does that post address 911 issues?

DAVID C. BERGMANN

1 A No.

2 Q Does that post address penalties related to 911
3 service?

4 A No.

5 Q The next one, the next post is entitled "Alexicon
6 on cost models for rural carriers"?

7 A Yes.

8 Q Does that post address 911 issues?

9 A No.

10 Q Does that post address penalties related to 911
11 service?

12 A No.

13 Q The next article in line is entitled "The guy in
14 Forbes got it partly right." Do you see that?

15 A Yes.

16 Q Does that blog post address 911 issues

17 JUDGE KOPTA: Ms. Anderl, I think we can read
18 the exhibit and it speaks for itself. I don't know that
19 it's much beneficial to go through each one and ask the same
20 set of questions.

21 MS. ANDERL: I was wondering when or if you
22 would weary of this line.

23 JUDGE KOPTA: You found out.

24 Q (By Ms. Anderl) Mr. Bergmann, are there any posts
25 that address 911 service?

DAVID C. BERGMANN

1 A Not specifically, no.

2 Q And that would be either in the Quick Takes or Not
3 So Quick Takes?

4 A Not specifically, no.

5 Q Okay. Mr. Bergmann, in terms of the penalty
6 recommendation that you made, what is the purpose of the
7 penalty in your view?

8 A The purpose of the penalty is to send a clear
9 message to CenturyLink to insure the continued functionality
10 of 911 here in the State of Washington.

11 Q Is your penalty recommendation of 11 and a half
12 million dollars based upon the fact that this is the maximum
13 that can be assessed under the statutes, or is it based on
14 an analysis conducted by you that led you to conclude that
15 11 and a half million was the right amount?

16 A I think pretty much the \$11.5 million is based on
17 that {pwingt} statute tore maximum, yes.

18 Q What if the commission had fining authority up to
19 per violation making the maximum penalty 115 million! Would
20 you still say this is a maximum penalty case?

21 A I think I'd have to go back and look at it in more
22 detail.

23 Q Okay. I'm going to ask you some questions about
24 your testimony, so Exhibit DCB-1T.

25 A Yes.

DAVID C. BERGMANN

1 Q And I want you to take a look at page 17, lines 6
2 and 7.

3 A I'm there.

4 Q Okay. Now you cite the rule regarding that
5 requires each local exchange company to provide 911
6 services; is that right?

7 A Yes.

8 Q So if CenturyLink is the sole provider of 911
9 service in the state, do you have a view as to how other
10 local exchange companies in this state would comply with
11 that rule?

12 A I believe my view on that would be that other
13 local exchange companies are required to provide 911, and
14 CenturyLink is the sole provider that those companies use in
15 the State of Washington.

16 Q But they wouldn't have any independent
17 responsibility or reliability for a failure of 911 service?

18 A I haven't really thought about that.

19 Because CenturyLink has the contract with the
20 military department, I believe it is, for the entire State
21 of Washington, I believe that would absolve the other
22 companies of liability.

23 Q And would your view as to the appropriate penalty
24 amount be different if the outage had been caused by the act
25 of a third party not -- neither CenturyLink nor its vendor?

DAVID C. BERGMANN

1 A I believe so.

2 Q So you don't think that obligation to provide 911
3 service is something that would result in a strict liability
4 for any type of on outage?

5 A No, I do not.

6 Q Okay.

7 A It was the magnitude and extent of the outage that
8 created the need for a penalty here.

9 Q Take a look at your -- well, I have a question
10 about your testimony, but probably more likely you would
11 want to look potentially at Mr. Betsch's testimony as well.

12 Do you have a copy of his testimony or the
13 CenturyLink joint testimony?

14 A Yes, I do. Could you give me a specific page or
15 something?

16 Q Yes. I was just about to do that here. Well, I
17 was. Okay. CTL-1T, starting at page 7, line 22?

18 A I'm there.

19 Q You see there that starts with a bullet pointed
20 list?

21 A Mm-hm.

22 Q With regard to the first item in Mr. Betsch's
23 testimony there -- and just to give some background, this is
24 a list of what Intrado or Intrado and CenturyLink together
25 have done as a result of the outage to insure that there

DAVID C. BERGMANN

1 wouldn't be a recurrence; is that right?

2 A That is Mr. Betsch's testimony, yes.

3 Q Okay. And I want to ask you, the Company, and
4 Companies working together, created a more -- created more
5 actionable alarm text for each place in the software code
6 where an alarm could be generated. Do you see that?

7 A I see that statement, yes.

8 Q And you don't have any reason to believe that that
9 didn't happen, do you?

10 A No.

11 Q What would your penalty recommendation be in this
12 case if that item had not been done?

13 A Any corrective action that had been taken does not
14 go back to the original problems that caused the outage. So
15 obviously, that might well be a separate violation, for
16 instance. If that corrective action had not been taken, it
17 would certainly be of grave concern, I'm sure, to this
18 Commission.

19 Q But it wouldn't affect your penalty
20 recommendation?

21 A No, it would not.

22 I'm sorry. Strike that.

23 Q Okay. And having learned my lesson from the
24 previous line of cross-examination, I no longer intend to
25 ask you about each bullet point.

DAVID C. BERGMANN

1 But given the general answer that you gave
2 earlier, which was actually pretty clear, so thank you for
3 that, may I safely assume that your answer would be the same
4 if I were to ask you if each of those other bullet point
5 items had not been done, would that have affected your
6 penalty recommendation?

7 A I do not believe so, no.

8 Q And so the converse is also true; the fact that
9 these bullet point items were done did not, in your view,
10 become a mitigating factor from further penalty?

11 A No, it did not.

12 Q And in your view, the number of calls that failed
13 is the way we should measure the violations in this case?

14 A I believe that is the appropriate way to measure
15 the violations of that particular rule, yes.

16 Q And if the outage had lasted twice as long, but
17 had the same number of failed calls, would that -- is that
18 something you thought about, or thinking about it now, can
19 you comment on that?

20 A Well, one thing that is noted in the testimony is
21 that despite the fact that this outage took place on two
22 consecutive calendar days, we have -- you know, Public
23 Counsel did not recommend that those be counted as separate
24 violations.

25 If the outage had occurred -- or substantially

DAVID C. BERGMANN

1 longer than six hours, that might factor into a further
2 recommendation.

3 **Q Well, when you're counting the number of calls,**
4 **how many days doesn't matter, does it?**

5 A It does matter in that there would probably have
6 been additional calls.

7 But in terms of whether this Commission should
8 impose a penalty for the duration of the outage, I think
9 that would be the consideration; so that rather than the
10 approximately 10,000 violations that are involved here, it
11 might well be 20,000 if the outage lasted longer.

12 **Q But that would still be based on the number of**
13 **calls in your view because you think that a longer outage**
14 **would have produced more calls?**

15 A Again, for violation of that particular rule, the
16 number of calls -- of that particular rule for this duration
17 of an outage, the number of calls is appropriate.

18 If the outage had been longer -- if it had been
19 longer, then that would be an additional consideration in
20 determining the number of violations on a per occasion
21 basis.

22 **Q Could you turn to your testimony DCB-1T, page 21?**

23 A I'm there.

24 **Q All right. On the second half of that page, you**
25 **begin to discuss the Commission's enforcement policy in**

DAVID C. BERGMANN

1 Docket A-120061. Do you see that?

2 A Yes, I do.

3 Q Now, you quote from the Staff report at lines 18
4 through 21.

5 A Yes.

6 Q Do you base your analysis in this section of your
7 testimony on the factors as enumerated in the Staff report,
8 or did you look at the actual enforcement policy?

9 A I'm sorry. I don't quite understand the question.

10 Q Have you read the Commission's enforcement policy?

11 A I read that order, yes.

12 Q Okay.

13 A Quite a while ago.

14 Q But since you were retained?

15 A Yes.

16 Q Okay. So sometime between August and now?

17 A Yes.

18 Q And probably between August and when you wrote
19 your testimony?

20 A Yes.

21 Q But not subsequent to that?

22 A I don't believe so.

23 MS. ANDERL: Your Honor, we had originally
24 requested that that document be marked as an exhibit for
25 cross-examination, and the Commission advised that you would

DAVID C. BERGMANN

1 take official notice of it. I do have some questions for
2 the witness about it.

3 JUDGE KOPTA: We have copies on the bench,
4 and so you may ask questions about that document, yes. And
5 we do take official notice of the Commission's policy.

6 MS. ANDERL: Thank you.

7 Q (By Ms. Anderl) Mr. Bergmann, do you have your
8 copy of that at this point, or would you like --

9 A I believe that was what was -- has been marked as
10 Exhibit DCB-32?

11 A It was, and then they took that number away from
12 it because it's not really an exhibit. But if that's what
13 you've got, you can use it.

14 A Okay. I have the copy in front of me.

15 Q Okay. Great. If only I had mine. Actually, I
16 think I do have mine because I still have one of the
17 original packets as well. Yes, I do.

18 Mr. Bergmann, turn in that document to page 7, if
19 you would.

20 A Yes.

21 Q And can you read the heading under Subsection C?

22 A "Factors the Commission will consider in
23 determining the type of enforcement action to take or the
24 level of penalties to be imposed."

25 Q So would that suggest to you that not every single

DAVID C. BERGMANN

1 **one of these factors is related to the level of penalty?**

2 A It would suggest to me that these nine factors are
3 related both to the type of enforcement action to take or
4 the level of penalty to be imposed.

5 Q Now looking at Factor 2, which is on page 8, the
6 question is whether the violation is intentional?

7 A I see that, yes.

8 Q Is it your contention here that the Company had
9 previously ignored Staff's previous technical assistance on
10 911 issues?

11 A No, that the not my testimony.

12 Q Is it your testimony that the Company had
13 committed previous violations of either the statute or the
14 911 rule that is cited in this complaint?

15 A I do not believe so.

16 Q Do you believe that the Company was hiding or
17 obscuring facts in the investigation?

18 A I think that it probably falls under the heading
19 of whether the company was cooperative and responsive.

20 Q We'll talk about that when we get to that heading,
21 then. Thank you.

22 Do you believe that there's clear evidence to show
23 that the Company knew of and failed to correct the violation
24 before it happened?

25 A I do not believe I've seen any. I do not -- I do

DAVID C. BERGMANN

1 not know if there is any.

2 But -- I'm sorry. The fact the Company has agreed
3 to these penalties and agreed to these violations seems to
4 me to indicate that there is some problem here.

5 Q And you understand, because you're a lawyer, that
6 the Company agreed to those violations for purposes of the
7 settlement agreement with Staff?

8 A Yes. As my testimony indicated, I am a lawyer. I
9 am not admitted to the practice of law in Washington state.

10 Q That's okay. We have plenty of those here
11 already.

12 Now you made me laugh and I lost my place. Under
13 -- well, so just to follow up on that, though, if it were
14 Public Counsel's position that \$2.85 million was an
15 appropriate settlement amount, then, we wouldn't be here in
16 this type of a proceeding, right?

17 We would have a full settlement. We wouldn't need
18 to talk about whether a party had admitted violations for
19 purposes of settlement or just kind of admitted violations
20 full stop?

21 A I would imagine that if Public Counsel's position
22 were as you described, that Public Counsel would not have
23 filed this testimony.

24 Q Look at Factor Number 3 back on page 8, there's a
25 question to be considered in terms of enforcement actions

DAVID C. BERGMANN

1 whether the Company reported -- self-reported violations.

2 A I see that.

3 Q And you're aware, aren't you, that the Company did
4 in fact report the outage to the Commission?

5 A Yes.

6 Q Let's just skip over the cooperative and
7 responsive, because I have a longer set of questions for you
8 on that. So we will get there.

9 But let's get back and look at Factor Number 5.
10 Once service was restored, once 911 service was restored and
11 calls began completing, in your view the violations would
12 have corrected then at that point, yes?

13 A Please ask the question again.

14 Q So once the Company had restored service and 911
15 calls began to complete again, would it be correct that 911
16 -- that the violations were corrected at that point?

17 A I would think that the examination of the root
18 cause of the violations would be a major part of correcting
19 the violations such that merely -- I'm sorry.

20 Merely re-establishing 911 service would not meet
21 that criterion.

22 Q What else would be required?

23 A In large part, what the CenturyLink panel
24 described today, the corrective actions that were taken to
25 fix the particular problem that caused this particular 911

DAVID C. BERGMANN

1 outage.

2 Q Okay. Great. Thank you.

3 Now, turning to page 9 of the enforcement policy,
4 we reach numeral 6, the number of violations?

5 A I see that.

6 Q And it says there the more violations the
7 Commission finds, the more likely it is to take an
8 enforcement action; is that right?

9 A Yes.

10 Q Does it say anything under Number 6 at all about
11 whether the number of violations should factor in to how
12 high you go on the sliding scale of the penalty from zero to
13 1,000?

14 A You're correct that it does not say anything in
15 that item about the number of violations increasing or
16 decreasing the amount of the penalty.

17 However, in this instance, there was a number of
18 violations for all of the people of the State of Washington.
19 You can't get much bigger than that here in this state.

20 Q And in fact leading, into what you just said is
21 moving on to number 7, which says the number of customers
22 affected. And it says the more customers affected by a
23 violation, the more likely the Commission will take
24 enforcement action; is that right?

25 A I see that, yes.

DAVID C. BERGMANN

1 Q Does it say there anywhere that that factor should
2 be used as guidance in determining the dollar amount of
3 penalty on the sliding scale from zero to a thousand?

4 A You're correct that it does not say anything there
5 about what -- setting the penalty.

6 Q Okay. Now looking at Factor Number 8, which is
7 the likelihood of recurrence, and in your testimony you
8 address that at page 28 -- 27 and 28, but I'm on page 28,
9 looking at lines 4, 5 and 6.

10 You say the risk of a recurrence and danger to the
11 public is high, and for that reason this factor weighs in
12 favor of an increased penalty. Do you see that?

13 A Yes, I see that.

14 Q Now, in the factor in the policy statement, it
15 says if the Company has not changed its practices...
16 Commission would be more likely to take an enforcement
17 action. Do you see that?

18 A I see that.

19 Q Okay. And now, based on the testimony from the
20 panel today, in fact the Companies have changed their
21 practices, haven't they?

22 A With regard to this specific issue that caused
23 this specific outage, yes.

24 Q And did you hear the testimony about the counter
25 being incremented up to the level of two billion dollars --

DAVID C. BERGMANN

1 a two billion number?

2 A Yes, I did.

3 Q And did you hear that testimony also about the
4 prospect of a counter being eliminated due to an
5 architecture change a week from today?

6 A Yes, I did.

7 Q So is it your testimony that the likelihood of
8 recurrence of an outage of the nature that was experienced
9 in April 2014 is high?

10 A Given the source of the problem, whether we call
11 it a software glitch or a systemic problem with the
12 architecture of the system, I believe that the probability
13 of a recurrence is high enough to demand the maximum
14 penalty.

15 Q When you say "recurrence," you mean just some
16 outage caused by whatever?

17 A An outage of this extent caused by whatever, yes.

18 Q And again, in this Number 8, the likelihood of
19 recurrence, even if we were to agree with you that there is
20 a high likelihood of recurrence, which I don't think we had
21 heard the witnesses from our Company say, does it say
22 anywhere in that that that factor should be considered in
23 terms of the dollar amount of the penalty or does it simply
24 say there that it is to be considered as to whether the
25 Commission takes an enforcement action?

DAVID C. BERGMANN

1 A It does not say -- refer to the specific amount of
2 the penalty, no.

3 **Q Now regarding a compliance program, did you ask**
4 **the Company if it had a compliance program in place?**

5 A No, I did not.

6 **Q The last factor there is the size of the company.**
7 **To what extent does the size of CenturyLink**
8 **influence your penalty recommendation?**

9 A The size of the company and the fact that the
10 company provides 911 service for the entire State of
11 Washington heightens the concerns about the violation that
12 led to this outage.

13 **Q If a smaller company were to win the same contract**
14 **to provide 911 service, would the fact that it was a smaller**
15 **company influence a penalty recommendation for a similar**
16 **outage?**

17 A I think we would have to see if that happened and
18 then look at the circumstances of that. I'm not -- do not
19 feel able to speculate about that at this point, especially
20 because as I understand, CenturyLink has submitted a
21 response to the RFP to continue.

22 **Q Do you know if other companies have bid?**

23 A No I do not.

24 **Q There is a factor that we skipped over, and I**
25 **don't want to skip over it. And that is whether the Company**

DAVID C. BERGMANN

1 was cooperative and responsive with the Commission Staff in
2 the investigation. Do you recall that?

3 A Yes.

4 Q And on Exhibit -- or on the Commission's policy
5 statement, it's on page 8. And it's Factor Number 4. And
6 in your testimony, I believe you indicated that in your view
7 that the Company was insufficiently responsive to have that
8 operate as a mitigating factor; is that right?

9 A Yes.

10 Q Do you know how many data requests the Company
11 responded to from the Commission Staff?

12 A I believe there are quite a number of them, but my
13 understanding is that the Company's responses were not
14 always complete. That's what my testimony says.

15 Q And are you aware that in some cases, the Company
16 and Commission Staff had discussions, possibly oral
17 discussions that filled in the blanks on some of these
18 incomplete responses?

19 A I would not be surprised to find out that that had
20 occurred.

21 Q And there's one -- there's kind of one data
22 request response that you call out as a glaring example of
23 lack of cooperation, and that's in your Footnote 89. Are
24 you there with me?

25 A Yes, I'm there.

DAVID C. BERGMANN

1 Q Okay. And the Commission Staff asked the Company
2 how many customers were affected in the State of Washington;
3 is that right?

4 A Yes.

5 Q And CenturyLink's response to that was all
6 customers?

7 A Yes.

8 Q And CenturyLink, in response to some requests for
9 clarification or supplementation, later provided a customer
10 count for its own subscribers; is that right?

11 A I believe that's the case, yes.

12 Q Okay. But that is in fact not the total number of
13 the customers that were affected?

14 A That is correct.

15 Q And didn't you say earlier that all of the
16 customers in the state were affected?

17 A Yes.

18 Q And is it your testimony that CenturyLink should
19 have been able to provide to the Commission Staff in
20 response to that data request the number of customers who
21 subscribe to Frontier service who were affected?

22 A I believe CenturyLink should have been more
23 forthcoming in describing the number of customers affected,
24 whether Frontier, CenturyLink, or any of the other ILECs in
25 the State of Washington.

DAVID C. BERGMANN

1 Q Or AT&T Wireless?

2 A Yes.

3 Q Or Verizon Wireless?

4 A Yes.

5 Q And you think that CenturyLink should have known
6 those numbers?

7 A Should have been able to come up with a closer
8 approximation of those numbers than "all."

9 Q But "all" is not inaccurate, is it?

10 A It is technically correct, yes.

11 Q And having read the Commission's policy statement
12 on enforcement, you're aware, are you not, that the
13 Commission in the last paragraph reserves to its discretion
14 its ability to determine on a case-by-case basis the
15 appropriate enforcement action, and that these guidelines
16 are not in fact binding rules?

17 A That is correct. I base most of my discussion of
18 the policy on the Staff's description of the policy as set
19 forth in the Staff agreement.

20 MS. ANDERL: Your Honor, may I have a minute
21 to review my notes?

22 JUDGE KOPTA: You may.

23 MS. ANDERL: Your Honor, thank you for that
24 moment. I don't have any more questions

25 JUDGE KOPTA: All right. Thank you, Ms.

DAVID C. BERGMANN

1 Anderl.

2 Staff indicated that it had no questions, so we'll
3 come to questions from the bench. Commissioner Jones?

4

5 QUESTIONS FROM THE COMMISSIONERS

6 COMMISSIONER JONES: Mr. Bergmann, welcome to
7 Olympia.

8 THE WITNESS: Thank you, Mr. Commissioner.

9 COMMISSIONER JONES: I'm sorry your alma
10 mater lost to Alabama in the national championship.

11 THE WITNESS: Well, at this point, your
12 Honor, I have three alma maters, so one of them or more is
13 going to lose every time.

14 COMMISSIONER JONES: And Mr. Bergmann, for
15 the record, you were chairman of the NASUCA
16 Telecommunications Committee for how many years?

17 COMMISSIONER JONES: Nine years.

18 THE WITNESS: Nine years. Okay.

19 Could you turn to page 37 in your DCB-1T. I
20 have a few questions. This is the summing up of your
21 assessment of the multiparty agreement.

22 THE WITNESS: Yes, sir. I'm there.

23 COMMISSIONER JONES: So in lines 3 through 9,
24 I wanted to get away from the penalty amount and the number
25 occurrences, the number of violations, and get to the terms

DAVID C. BERGMANN

1 of the settlement agreement, which you've had a chance to
2 review, haven't you?

3 THE WITNESS: Correct.

4 COMMISSIONER JONES: And you heard some of my
5 questioning of Ms. Hartman and Mr. Reynolds this morning on
6 things, whether it be in the FCC compliance plan or the UTC.

7 Did you hear anything this morning that would
8 alter your description of the nonmonetary portions of the
9 settlement agreement?

10 THE WITNESS: No.

11 COMMISSIONER JONES: Okay. And even on the
12 point on line 12, so you would still stick by that position
13 where you state, "The certainty added by the settlement
14 agreement provisions is minimal because of the potential of
15 recurrence," and you just had -- I listened to your exchange
16 with Ms. Anderl.

17 So you still think that the certainty added
18 by what Intrado and CenturyLink have committed to from a
19 technology standpoint and a notification process is, quote,
20 minimal?

21 THE WITNESS: Yes. I think it is still
22 minimal when taken all as a package, which is of course the
23 way that the settlement needs to be looked at.

24 COMMISSIONER JONES: So you're urging us, the
25 Commissioners, to look at the totality of the circumstances

DAVID C. BERGMANN

1 in this case, as you just went through the nine principles
2 in the enforcement policy, and look at all of those and come
3 up with -- or at least assess it from that perspective?

4 THE WITNESS: Yes.

5 COMMISSIONER JONES: Okay. Regarding the
6 notification process itself or the FCC consent decree,
7 you've had a chance to review that, haven't you?

8 THE WITNESS: Not lately, your Honor.

9 COMMISSIONER JONES: Okay. Then I will not
10 go there.

11 Other alternatives that could be considered,
12 as you just discussed with Ms. Anderl, are per caller; not
13 per call, but per caller. Could you go through why again
14 you don't think the per caller method of those 5,684 calls
15 -- why would that not be appropriate?

16 The way I read your testimony is you cite
17 that the data was not reliable and perhaps some of the
18 pseudo-ANI information, especially from wireless carriers,
19 is unreliable. Is that basically a good summation?

20 THE WITNESS: I think so, yes.

21 COMMISSIONER JONES: Is there any other
22 approach that we could look at besides per call and per
23 caller?

24 THE WITNESS: Not trying to dodge the
25 question, but the per call issue has been described as a

DAVID C. BERGMANN

1 nonissue here.

2 But that being said, I think the per call
3 issue, rather than the per caller issue, understates the
4 gravity of the violation for each consumer who made those
5 calls. Every time those calls were made, as Public
6 Counsel's consumer witness indicated, was a grave -- of
7 grave concern to that consumer.

8 So trying to subdivide that emergency into 37
9 calls rather than only as being from one caller, I really
10 think would not recognize the gravity of the situation.

11 COMMISSIONER JONES: And by "gravity of the
12 situation," are you talking about injuries, death, horrible
13 or frightening things that could happen to the caller?

14 THE WITNESS: There is that possibility.

15 But it's the emotional strain that not being
16 able to get through to 911 causes for the caller. So I'm
17 sure that every time each of those 37 calls were made -- I'm
18 sorry; I cannot recall her name at this point, but the
19 Public Counsel witness -- each one of those calls was an
20 immense strain on that woman.

21 COMMISSIONER JONES: Okay. And so that is --
22 and then you also cite to the -- and I think the FCC report
23 listed the potential number of the population of the State
24 of Washington, and that we have 7 million people and that 7
25 million people potentially could have been impacted, right?

DAVID C. BERGMANN

1 THE WITNESS: Yes.

2 COMMISSIONER JONES: Is that factor pretty
3 high in your consideration in arguing for the maximum as
4 well, at 1,000?

5 THE WITNESS: It certainly does not mitigate
6 in any sense.

7 But the fact the entire population of the
8 State of Washington was affected does, to me, argue for a
9 more substantial penalty than a less substantial penalty.

10 COMMISSIONER JONES: In your calculation, the
11 FCC penalty, the enforcement action that CenturyLink has
12 already paid and agreed to in the consent decree was 16
13 million, right?

14 THE WITNESS: Correct.

15 COMMISSIONER JONES: And should that be a
16 factor?

17 I think you cite in your testimony 70
18 percent. I think your calculation is roughly 70 percent of
19 that. Should that be a factor for the State of Washington?

20 THE WITNESS: I put it in my testimony
21 because I thought the Commission would want to take that
22 into consideration, yes.

23 COMMISSIONER JONES: But it's not in our
24 specific principles or any of those nine policies, correct,
25 in our enforcement policy?

DAVID C. BERGMANN

1 THE WITNESS: It really fits into the
2 gravity, the total number of violations factor.

3 COMMISSIONER JONES: Okay. That specific
4 one.

5 Okay. Thank you for coming and thank you for
6 your testimony.

7 JUDGE KOPTA: Anything further from the
8 bench?

9 Redirect?

10 MS. GAFKEN: I do have some redirect.

11 JUDGE KOPTA: Okay. You may proceed.
12

13 REDIRECT EXAMINATION

14 BY MS. GAFKEN.

15 Q Mr. Bergmann, you were asked a number of questions
16 about your area of expertise and your experience. Do you
17 recall those questions?

18 A Yes.

19 Q How long did you work in the field or have you
20 worked in the field of telecom regulation?

21 A Well, I started work at the Ohio Consumers'
22 Counsel in 1982.

23 From 1992 to my retirement and continuing in my
24 consultancy, I have specialized in telecommunications. I do
25 recall that there was one instance, a major electric

DAVID C. BERGMANN

1 restructuring case in the late '90s, early 2000's where they
2 needed lawyers so bad that they assigned me to one of the
3 restructuring cases. But other than that, my concentration
4 was on telecommunications.

5 **Q And before you focused solely on**
6 **telecommunications, or almost solely, what did you do at the**
7 **Ohio Consumers' Counsel?**

8 A I started in 1982 as the consumer services
9 attorney dealing with individual consumer complaints,
10 helping to see how company actions might or might not have
11 complied with the law and the rules.

12 After that, I moved over to the rate side.

13 And then I spent six years as legal director of
14 the Ohio Consumers' Counsel, which is basically the office's
15 chief attorney. And so in that respect, I dealt with all of
16 the issues involving residential consumers of electric, gas,
17 telephone, and water service that the Ohio Consumers'
18 Counsel served.

19 **Q Were you retained in this case to be an expert**
20 **regarding 911 infrastructure or engineering?**

21 A No.

22 **Q What were you retained for?**

23 A I was retained in order to bring a perspective to
24 the issue of assessment of penalties for the violations that
25 the Staff found and that Company has subsequently admitted

DAVID C. BERGMANN

1 to for purposes of settlement.

2 Q You were asked a number of questions about what
3 you reviewed or didn't review. Do you recall those
4 questions?

5 A Yes.

6 Q Would you please describe what you did -- let me
7 ask this question first: Did you receive data requests from
8 -- and the answers to these data requests from Staff PC-1
9 through 7 and Staff RS-1 through 8?

10 A Yes, I believe so

11 Q Did you receive the data requests and the
12 responses to Public Counsel Data Requests 1 through 27?

13 A Yes.

14 Q Did you receive the data requests from CenturyLink
15 and the responses that were provided to those CenturyLink
16 Data Requests 1 through 19?

17 A Yes.

18 Q And then Staff asked Data Requests 1 through 7.
19 Did you receive a copy of those along with the
20 responses?

21 A Yes.

22 Q Did you review the data requests and responses
23 that were provided to you?

24 MS. ANDERL: Objection, your Honor. This has
25 been covered on cross, and the questions are duplicative.

DAVID C. BERGMANN

1 JUDGE KOPTA: Ms. Gafken?

2 MS. GAFKEN: Mr. Bergmann was asked a number
3 of questions of what he reviewed and considered.

4 It was unclear from the line of questioning
5 Ms. Anderl asked him if he had reviewed informal questions.
6 And I don't believe that he understood that question. So
7 his answer to that wasn't necessarily clear for the record.

8 JUDGE KOPTA: I didn't think that it lacked
9 clarity. So I don't think we need to continue down this
10 line.

11 MS. GAFKEN: I'll move on.

12 Q (By Ms. Gafken) Mr. Bergmann, you were asked a
13 question about whether your proposed penalty amount was
14 based on it being the maximum penalty or based on any
15 analysis. Did you do any analysis to come to the penalty
16 recommendation?

17 A I did not do any calculation of the penalty
18 amount.

19 Given my evaluations of the Commission factors as
20 described in the Staff report, I determined that the --
21 these warranted a penalty at least as great as the statutory
22 maximum. And it did not seem to me to make any sense to
23 recommend a penalty greater than that.

24 Q Greater than the statutory maximum.?

25 A Yes. It did not make sense to me to recommend

DAVID C. BERGMANN

1 something that was beyond the power of this Commission to
2 order.

3 Q You were asked about the liability of other LECs
4 under WAC 480.120.450 Subsection 1, which is the obligation
5 to provide 911 service. Do you recall that line of
6 questioning?

7 A Yes.

8 Q Did any other LEC have control or affect the cause
9 or cure of this 911 outage?

10 A No.

11 Q You were also asked a question regarding whether
12 an outage was caused by a third party vs. an outage that was
13 caused by CenturyLink and/or Intrado. Do you recall those
14 questions?

15 A Yes.

16 Q If the outage in this case had been caused by a
17 third party, so something independent and outside of
18 CenturyLink, would that have been considered a mitigating
19 circumstance?

20 A I believe that would -- I would have considered
21 that a mitigating circumstance. But that was not the
22 situation here.

23 Q You were also asked questions about the fixes that
24 CenturyLink and Intrado had implemented and testified to
25 this morning. Do you recall that line of questioning?

DAVID C. BERGMANN

1 A Yes.

2 Q You also testified that you didn't consider that
3 to be a mitigating factor, correct?

4 A I didn't.

5 Q Why is that?

6 A The fact of the violations, the fact that there
7 was a fix for the specific cause of these violations does
8 not, to me, mitigate the fact of the violations.

9 Q You were asked whether CenturyLink reported the
10 outage. Do you recall that?

11 A I do recall that, yes.

12 Q Do you recall your critique of CenturyLink's
13 reporting of the outage?

14 A Yes. It's in my testimony.

15 Q What was your critique?

16 A That the reporting was late and basically
17 incomplete and not necessarily accurate.

18 Q You were asked whether you asked the Company about
19 any compliance program that it might have. Do you recall
20 that?

21 A Yes.

22 Q What did you base your testimony on with respect
23 to the compliance program and the Company's lack of one?

24 A As I indicated in my testimony -- and I'm trying
25 to locate where -- Staff did not find a compliance program.

DAVID C. BERGMANN

1 Q So you based your testimony in DCB-1T on the fact
2 that Staff found no compliance program?

3 A Correct.

4 Q You were asked a number of questions about
5 CenturyLink's cooperation. Do you recall those questions?

6 A Yes.

7 Q And in the Staff report, CenturyLink's cooperation
8 was described as generally cooperative. Do you recall that?

9 A Yes.

10 Q What is your criticism with respect to
11 CenturyLink's cooperation?

12 A As I indicate in my testimony -- I do believe the
13 statement by Staff was "generally responsive," rather than
14 "cooperative."

15 But again, as I say in my testimony, in this sort
16 of situation involving a statewide outage of 911 service,
17 the level of cooperation and responsiveness to be expected
18 by this Commission from a utility should be -- the bar
19 should be set especially high.

20 MS. GAFKEN: Okay. I have no further
21 redirect.

22 JUDGE KOPTA: Thank you. Do we have some
23 additional followup?

24 CHAIRMAN DANNER: Is that all right?

25 JUDGE KOPTA: Yes.

DAVID C. BERGMANN

1 QUESTIONS FROM THE COMMISSIONERS

2

3 CHAIRMAN DANNER: Good afternoon. Thank you
4 for being here.

5 So I'm looking at your -- it's marked as
6 Exhibit 31, which is a data request in which it's stated
7 that you are not testifying as an expert regarding the
8 technical aspects of the operation of 911 -- NG911. Do you
9 recall that? Do you have that?

10 THE WITNESS: Yes.

11 CHAIRMAN DANNER: All right. And for
12 technical aspects, it says you rely on the options of other
13 experts, such as those of Commission Staff and the FCC.

14 Are there other experts that you're relying
15 on?

16 When you say "such as," that seems
17 illustrative. I was just wondering if there were others
18 that you relied on?

19 THE WITNESS: Not specifically, although I
20 would note that I did review Mr. Orr's testimony before
21 appearing here today.

22 CHAIRMAN DANNER: Okay. So you're not
23 testifying as an expert on technical aspects of 911 or
24 NG911.

25 Are you here today as an expert on penalties?

DAVID C. BERGMANN

1 THE WITNESS: I believe my testimony reflects
2 my experience with regard to public utility regulation in
3 general and with regard to the need for public -- for
4 penalties as a means of enforcement.

5 CHAIRMAN DANNER: So you're not claiming any
6 kind of expertise or credential on penalties itself or
7 anything like that. But you basically have a long
8 experience here in the consumer advocates office and in your
9 professional career, and you're basically offering your
10 judgment based on that experience; is that correct?

11 THE WITNESS: Yes.

12 CHAIRMAN DANNER: And you agree that the
13 settlements and penalties are often a matter of judgment?

14 THE WITNESS: Yes.

15 CHAIRMAN DANNER: And so this is your
16 judgment compared with the judgment of other parties in this
17 case?

18 THE WITNESS: Yes.

19 CHAIRMAN DANNER: And in your long
20 experience, have you seen instances where there have been
21 maximum penalties imposed where the parties on whom the
22 penalties are imposed have had repeat violations later?

23 THE WITNESS: I'm sorry. Just if I may
24 restate your question, you're asking whether I have seen
25 instances of repeat violations where the maximum penalty has

DAVID C. BERGMANN

1 been imposed?

2 CHAIRMAN DANNER: Yes.

3 THE WITNESS: I do not recall any specific
4 examples, no.

5 CHAIRMAN DANNER: Okay. Sometimes -- let me
6 ask -- there's kind of a number of options. I just want to
7 see, are you aware of any times where there have been
8 maximum penalties imposed where the parties did not repeat
9 violations?

10 THE WITNESS: I am not aware at this point of
11 any specific such instances.

12 However, I believe that in general, economic
13 principles would indicate that imposition of a greater
14 penalty would make it less likely that there would be
15 recurrence.

16 CHAIRMAN DANNER: But in your experience, it
17 doesn't sound like you've actually known of instances where
18 a maximum penalty has been imposed because you don't -- what
19 you said is you're not sure, where there's been a maximum
20 penalty, if it has led to recidivism or not led to
21 recidivism. So I'm taking it you've not been involved when
22 maximum penalties have been imposed before?

23 THE WITNESS: I have not been involved, nor
24 am I currently aware of any such instances.

25 CHAIRMAN DANNER: Are you aware of instances

DAVID C. BERGMANN

1 where less than maximum penalties have been imposed and the
2 parties have not had repeat violations?

3 THE WITNESS: I am not aware of any specific
4 instances.

5 CHAIRMAN DANNER: Are you aware that there
6 are such instances?

7 THE WITNESS: I would be very -- I would be
8 very doubtful that there were not such instances.

9 CHAIRMAN DANNER: And then finally, would you
10 be aware of instances where less than a maximum penalty was
11 imposed and parties have had repeat violations?

12 THE WITNESS: I would be fairly certain that
13 that has occurred.

14 But again, I am not able to cite any specific
15 instances.

16 CHAIRMAN DANNER: Okay. So --

17 THE WITNESS: Although -- I'm sorry --

18 CHAIRMAN DANNER: So basically, whether
19 there's a repeat violation or not isn't based just on
20 whether the maximum penalty was imposed, because you can
21 have a repeat violation in a maximum penalty situation and
22 in a less than maximum penalty situation, just like you can
23 have non-recidivism in a maximum penalty situation and a not
24 maximum penalty situation; is that correct?

25 THE WITNESS: I think you're correct that

DAVID C. BERGMANN

1 that is not the only factor involved.

2 CHAIRMAN DANNER: Okay. So again, you have
3 to look at the facts of each -- the circumstances around
4 each situation and apply your best informed judgment; is
5 that correct?

6 THE WITNESS: Yes.

7 CHAIRMAN DANNER: Okay. Thank you. That's
8 all I have.

9 JUDGE KOPTA: Anything further,
10 Ms. Gafken?

11 MS. GAFKEN: Nothing further.

12 JUDGE KOPTA: All right. Thank you,
13 Mr. Bergmann. We appreciate you coming.

14 And as I understand it, that concludes the
15 witness portion of the proceeding.

16 As we discussed first thing this morning, the
17 Commission will provide the counsel a brief opportunity for
18 oral statement, but we will do that after a ten-minute
19 break.

20 (Recess.)

21 JUDGE KOPTA: Then let's be on the record
22 after our brief recess. We will now hear oral statements
23 from counsel.

24 I left you off the record with the decision
25 of who is going to go first. And last I heard, it will be

ORAL STATEMENTS

1 Public Counsel; is that correct?

2 MR. BEATTIE: Judge Kopta, with the
3 Commission's permission, Staff would like to go first,
4 followed by the Company and lastly Public Counsel.

5 JUDGE KOPTA: That's fine. We will give ten
6 minutes per attorney. And we don't anticipate any replies,
7 so this is your opportunity.

8 Mr. Beattie, the floor is yours.

9

10 ORAL STATEMENT OF MR. BEATTIE

11 MR. BEATTIE: Thank you, Judge, members of
12 the Commission. Thank you for being here today.

13 Public Counsel says this is an exceptional
14 case. And in a few moments, opposing counsel will repeat
15 that narrative. It says that 911 is a vital service and
16 that a six-hour outage is simply unacceptable.

17 There's no dispute here. We agree
18 completely. This case is exceptional. And that is why
19 Staff demanded such a large and meaningful penalty in this
20 docket.

21 As always, Staff welcomes Public Counsel's
22 scrutiny of the proposed settlement on behalf of Washington
23 consumers. But Staff cannot agree with Public Counsel's
24 flawed analysis of the penalty amount.

25 The Public Counsel's star witness is not

ORAL STATEMENTS

1 objective. Mr. Bergmann says he's dispassionate. And that
2 is no doubt his good faith belief, but everybody can see
3 that he starts at the top and ends at the top.

4 He purports to walk through the Commission's
5 enforcement policy, but it is clear that his conclusion is
6 preordained.

7 And as we all heard just minutes ago, he
8 admitted right here in this room that he performed, quote,
9 no calculation when formulating his penalty recommendation.

10 He admitted that he is not an expert when it
11 comes to penalty amounts.

12 And in this litigation, he previously
13 admitted that he performed no independent investigation
14 before writing his testimony.

15 In essence, he comes into this proceeding on
16 the coattails of Staff, which was the party that performed
17 the investigation in this matter.

18 Commission Staff views enforcement
19 differently than Mr. Bergmann. Even when pursuing extremely
20 serious violations with unprecedented facts, Staff does not
21 assume that the Commission will impose the maximum penalty
22 authorized by statute.

23 This Commission Staff knows that the proper
24 procedure is to evaluate each case on the merits and ask
25 what total penalty will best promote the public interest in

ORAL STATEMENTS

1 a way that is also favorable to the Company. Yes, the
2 penalty amount must be within the range authorized by the
3 legislature, but it is misguided to fixate, as Public
4 Counsel does, on where within that range the penalty lands.

5 It is true that Staff has recommended \$250
6 per violation in this case.

7 But in our view, it is misleading to state
8 that Staff seeks a 25 percent penalty or 25 percent of the
9 maximum. Staff is not seeking 25 percent of the maximum.
10 It's not seeking 50 percent or any percentage. It is
11 seeking a \$2.8 million penalty, which is an amount Staff
12 considers to be reasonable and meaningful under the
13 circumstances of this case.

14 And for Staff, a major consideration in this
15 case is culpability.

16 The software error that took down our state's
17 911 system was preventable, but it was not intentional. in
18 our view it was is embarrassing and, frankly, disturbing,
19 but it was not intentional.

20 Now I don't mean to wax philosophical here,
21 but the testimony presented by the parties does require the
22 Commission to consider theories of justice. In the absence
23 of intentional misconduct, most would agree that the primary
24 purpose of punishment is deterrence, not retribution.

25 Public Counsel acknowledges that the

ORAL STATEMENTS

1 Company's mistake in this case was not intentional, and yet
2 still it demands from this Commission maximum retribution.

3 In Staff's view, that's problematic. The
4 harshest penalty should be reserved for willful misconduct.
5 Staff believes that a \$2.8 million penalty is appropriately
6 punitive, which is to say proportional to CenturyLink's
7 culpability in this case.

8 Staff acknowledges the absence of willful
9 conduct and believes that \$2.8 million still clearly signals
10 to the Company that it will suffer painful consequences for
11 failing to recognize architecture flaws or to respond
12 inappropriately to future outages. And based on the witness
13 panel this morning, we feel confident that the company heard
14 that message.

15 Before I finish, I would like to offer one
16 more observation about the settlement agreement that is
17 before the Commission for consideration.

18 The issue that was presented by the parties
19 in testimony largely revolved around penalty amount. But
20 Staff's settlement is about more than just dollars. Staff's
21 settlement also includes ongoing compliance requirements, a
22 full set of stipulated facts, and full admissions of
23 liability.

24 Public Counsel is happy to accept these
25 elements of the settlement as given, but gives the settling

ORAL STATEMENTS

1 parties no credit for negotiating them. That's regrettable,
2 because those elements are important.

3 In closing, Staff's position in this case is
4 that the settlement as a whole is an appropriate resolution
5 to an unprecedented, preventable outage. We respectfully
6 would submit that Public Counsel brings nothing new to the
7 table, and thus fails to diminish Staff's support for this
8 hard fought settlement. And therefore, we would ask this
9 Commission to approve the settlement in full. Thank you
10 very much.

11 JUDGE KOPTA: Thank you, Mr. Beattie.

12 Ms. Anderl?

ORAL STATEMENT OF MS. ANDERL

14 MS. ANDERL: Thank you. Lisa Anderl on
15 behalf of CenturyLink.
16

17 I of course agree with everything that Mr.
18 Beattie said, and it was indeed very well said.

19 We have some other points that we would like
20 to make as well in support of the settlement agreement, and
21 perhaps in some ways more overall.

22 I am grateful to be able to do closing
23 statements to the Commission. You rarely allow this, and
24 I'm happy to be able to do that.

25 I am troubled to the extent that perhaps

ORAL STATEMENTS

1 these closing statements have been triggered by the Attorney
2 General's press releases over the last several days.
3 Releases were issued on Thursday of last week and yesterday.
4 I'm troubled by the nature of those releases and their
5 timing, as they did not really coincide with any newsworthy
6 event and seemed to be directed at influencing the outcome
7 in this hearing. Indeed, yesterday's release was explicitly
8 directed at the Commission, telling the Commission how to
9 rule in this case.

10 Having practiced before the Commission for 20
11 years and having worked for the State of Washington prior to
12 that, I'm acutely aware of how important it is that the
13 integrity of the hearing process be maintained.

14 The State of Washington has laws and this
15 Commission has rules regarding and directed at and
16 permitting ex parte contacts. These laws and rules are in
17 place to protect and prevent parties from attempting to have
18 any undue or improper influence on the outcome of a case.
19 They're in place to protect both the public and the parties,
20 and to main the integrity of the hearing process and to
21 insure that the Commission's decision-making process is
22 above reproach, which of course we have always found to be
23 above the case.

24 Actions that violate the letter or spirit of
25 these requirements must be guarded against. And the press

ORAL STATEMENTS

1 releases should be rebuked, and any violations of laws or
2 rules should be dealt with appropriately.

3 With regard to the merits of the case, we
4 believe that the Commission Staff has made excellent points
5 in their criticism of Public Counsel's case and in support
6 of the settlement agreement and the Staff investigation.

7 Public Counsel's analysis does not
8 significantly guide the Commission in any way toward
9 reaching a decision in this case.

10 We do not believe that Public Counsel's
11 expert is qualified as an expert in any subject relevant to
12 the assessment of 911 penalties or the analysis or
13 evaluation of the settlement agreement in this case.

14 Public Counsel began and ended its analysis
15 at the conclusion that the penalties should be \$11.5
16 million. The recommendation of the maximum penalty does not
17 take into account the Company's excellent track record on
18 911 service prior to and subsequent to the outage. It does
19 not take into account the Company's cooperation with the
20 investigation, which we believe is significant. And it does
21 not take into account the lack of willful or intentional
22 conduct, and further does not take into account the
23 significant process improvements instituted subsequent to
24 the outage. It is our view that those are all relevant
25 factors to consider in determining the amount of the penalty

ORAL STATEMENTS

1 to assess. We believe that Public Counsel's witness gave
2 those factors no credence, and therefore does not provide a
3 solid foundation on which the Commission could adopt Public
4 Counsel's recommendations.

5 As you heard today in the hearing, 911
6 service is extremely important to the Company. CenturyLink
7 has bid on or submitted a response to the RFP to continue to
8 provide 911 service in the State of Washington.

9 The Company has repeatedly, at many levels
10 and many venues, expressed its remorse and outrage over the
11 outage, and we recognize that such outages are not
12 acceptable going forward.

13 We recognize also that 911 is a critical
14 public safety service. And we take these obligations very
15 seriously, evidenced, I think in many ways, but most
16 recently by the detailed information that Mr. Reynolds,
17 Ms. Hartman and Mr. Betsch were able to provide to you about
18 the significant strides that the Companies have made
19 designed to prevent recurrence and to improve both technical
20 processes and communications going forward.

21 Third, there are literally dozens of people
22 and hundreds of hours of effort, hundreds of documents,
23 thousands of pages of process and compliance that go into
24 provision of 911 service. These improvements to existing
25 processes and the changes that have been instituted since

ORAL STATEMENTS

1 the outage will improve communication, response time and
2 overall operational efficiency of the 911 system.

3 That said, and in that context, the
4 settlement is in the public interest and should be adopted
5 by the Commission as the full resolution of the disputed
6 issues in this case. It resolves potentially complex legal
7 and factual issues without the additional risks and time
8 associated with fully litigated case.

9 The settlement is the result of an extremely
10 thorough investigation by Staff: 30 pages on a standalone
11 basis single spaced; supported by, as noted, many, many,
12 many data requests with subparts delving in deeply to both
13 the process, the technical aspects, the architecture, and
14 the plans going forward on what happens with 911 in this
15 state.

16 You have an excellent investigative Staff.
17 They did a very thorough job. The Commission should rely on
18 their considered recommendation.

19 Further, and finally, the settlement amount
20 is unprecedented. The \$2.8 million is the highest penalty
21 ever assessed or agreed to in a case where there is no
22 willful wrongdoing. The parties agreed that this amount is
23 appropriately punitive, and the Company has accepted it
24 without seeking mitigation, also unprecedented in the
25 context of a settlement.

ORAL STATEMENTS

1 Under the circumstances presented to you
2 today, we strongly believe the settlement represents the
3 best and the correct resolution of this case. Thank you.

4 JUDGE KOPTA: Thank you, Ms. Anderl.

5 Ms. Gafken?

ORAL STATEMENT OF MS. GAFKEN

6
7
8 MS. GAFKEN: Chairman, Commissioners, Judge,
9 I'm going to start my statements in a place where I wasn't
10 going to start them, but there has been an accusation
11 issued. So I'll briefly address that, and then I'll move
12 into my prepared statements.

13 The Attorney General's Office views this as
14 an important case, a case that the public has the right to
15 know about and a right to know that they can comment about
16 the case. The public also has the right to be aware that
17 there's a substantial difference among the parties with
18 respect to the recommendation. I don't believe that there
19 was any wrongdoing that occurred, despite the accusation.

20 JUDGE KOPTA: Ms. Gafken, what was the
21 purpose of issuing those two press releases right before the
22 hearing?

23 MS. GAFKEN: As I mentioned, the Attorney
24 General's Office viewed this case to be an important case,
25 one that the public had the right to know about.

ORAL STATEMENTS

1 JUDGE KOPTA: I'm not aware that Public
2 Counsel has done that previously. Can you give me another
3 instance in which you've issued two press releases right
4 before the hearing in a Commission proceeding?

5 MS. GAFKEN: I don't know of an example, but
6 I don't want to spend my time with respect to the press
7 piece. The Commission can always contact Mr. Lavalee at the
8 AG's office and discuss the matter further. But because
9 Ms. Anderl started there, I just want to --

10 JUDGE KOPTA: I'm just investigating the
11 extent to which the Attorney General was trying to influence
12 this Commission through the media as opposed to the
13 adjudication. Can you give me some assurance that that was
14 not in fact what was going on?

15 MS. GAFKEN: That was not what was going on.

16 JUDGE KOPTA: What was going on?

17 MS. GAFKEN: Informing the public about the
18 hearing and also the availability of the opportunity to
19 comment.

20 JUDGE KOPTA: So we can expect Public Counsel
21 to be doing the same thing in future proceedings?

22 MS. GAFKEN: That I can't comment on.

23 But Mr. Lavallee would be the appropriate
24 person to talk to about that.

25 CHAIRMAN DANNER: Let's move on.

ORAL STATEMENTS

1 MS. GAFKEN: Thank you.

2 This is an exceptional case, one that
3 deserves an exceptional response. Public Counsel believes
4 that an exceptional response in this case would be a maximum
5 penalty levied by the Commission on CenturyLink. This
6 exceptional case deserves a much higher, stronger regulatory
7 response than what's provided in the settlement agreement.

8 Washington experienced a six-hour statewide
9 911 outage. Access to public safety resources, police, fire
10 and medical by dialing 911 was almost nonexistent. The
11 PSAPs were left to their own defenses, and they were worried
12 that people were being harmed because PSAPs could not send
13 help.

14 Public Counsel witness Thomas Orr testified
15 throughout the outage, the overriding concern was that key
16 calls such as cardiac arrest, injury, motor vehicle
17 accidents, and violent crimes were being missed. NORCOM
18 believes that we were incredibly fortunate that no one was
19 injured or killed as a result of the outage.

20 Mr. Orr also testified about the confusing
21 and contradictory nature of the information that they were
22 receiving from CenturyLink through the King County 911
23 offices that the County has structured. But the information
24 from CenturyLink during the outage was confusing and
25 contradictory. It took several hours to confirm the outage,

ORAL STATEMENTS

1 and then the information about the outage was incorrect.

2 It wasn't until several days later that
3 CenturyLink reported to the PSAPs the true cause of the
4 outage.

5 The full impact of the outage may never be
6 known. But as Staff witness Susie Paul observed,
7 CenturyLink's outage negatively impacted the health, safety,
8 or welfare of each Washington resident. Loss of life was
9 certainly a possibility during the outage.

10 And Public Counsel witness Alicia Cappola
11 represents one example of a caller's experience during the
12 outage.

13 This was not an outage that was caused by a
14 natural disaster or something outside of CenturyLink's
15 control, but rather it was a sunny day outage caused by a
16 preventable software glitch.

17 CenturyLink witness Mark Reynolds seems so
18 imply that we must accept software glitches in the 911
19 system. Mr. Reynolds states that software-based systems
20 simply do not run at 100 percent.

21 However, the FCC report regarding the April
22 2014 outage found in Exhibit DCB-3 states, "The introduction
23 of NG911 and IP-based technologies will require industry as
24 well as state, local, tribal, and territorial governments
25 and Commissions to move aggressively to insure that

ORAL STATEMENTS

1 technology enabled optimization does not introduce
2 unacceptable risks that threaten imperiling 911 reliability
3 and resiliency."

4 The six-hour multistate outage that we
5 experienced in April of 2014, for which Washington bore the
6 lion's share of the impact, is an unacceptable risk.
7 Mr. Orr characterizes the outage as unprecedented.

8 CenturyLink has accepted that a penalty is
9 warranted in this outage. But Mr. Reynolds also testified
10 that he doesn't totally agree with Staff's characterization
11 that it was preventable. This mindset needs to change.

12 The goal of penalties is not simply to punish
13 CenturyLink, but rather also to convey that the Company must
14 accept accountability in what the FCC calls the transitional
15 environment, the transition to an IP-based 911 system.

16 Penalties also must convey to the Company
17 that it must detect foreseeable software glitches and fix
18 them before a widespread outage occurs.

19 Redundancy must be insured. If the software
20 glitches truly are going to happen, there must be redundancy
21 as a backstop. Contrary to Mr. Betsch's testimony today,
22 the FCC has been concerned about redundancy. And in the FCC
23 report they state, "While market forces may drive decisions
24 to lower operating costs, market forces alone may be
25 insufficient to prevent catastrophic impacts checked from

ORAL STATEMENTS

1 unchecked aggregation of functions into one or two locations
2 across multiple state boundaries."

3 Liability in this case has been established.
4 CenturyLink has admitted to violations through the
5 settlement agreement.

6 There is one slight factual issue that refers
7 back to the count of PSAPs. I think that has been cleared
8 up. Public Counsel accepts the number of 68 PSAP in the
9 state of Washington. We know how many there are based on
10 the Washington Military Department.

11 But CenturyLink admits to 51 violations.
12 There's no evidence in the record that CenturyLink
13 adequately communicated to the remaining 17 PSAPs.

14 The Staff report says there's no evidence
15 that CenturyLink communicated first with any PSAP in the
16 State of Washington. CenturyLink has not demonstrated, by
17 providing any evidence, that they did communicate with the
18 remaining 17 PSAPs. They didn't present that evidence in
19 their testimony supporting settlement and they didn't
20 present that evidence in the rebuttal testimony.

21 Violations for failure to timely notify PSAPs
22 of the outage for each PSAP in Washington is justified based
23 on the record in this case. And a maximum penalty based on
24 that failure is appropriate.

25 The Commission [sic] recommends that the

ORAL STATEMENTS

1 Commission find a total of 11,436 violations. And that --
2 the way we get to that number is 5,684 per violation of each
3 RCW 80.360.080 and WAC 480.120.450 Subsection 1. And that
4 is as agreed to by Commission Staff and the Company under
5 their settlement agreement.

6 The rest of the violations are the 68
7 violation for of WAC 480.120.412 Subsection 2 for failure to
8 notify the PSAPs in a timely manner.

9 Once the Commission determines the number of
10 violations, the bigger issue in this case is the penalty
11 amount. That's what we're arguing about primarily in this
12 case.

13 Under RCW 80.04.380, the penalty statute, the
14 Commission has broad discretion, from zero to 1,000 per
15 violation. The Commission in this case is presented with
16 two recommendation. One is 25 percent of the maximum or
17 \$250 per violation. The other is the maximum penalty.

18 CenturyLink is here today arguing against the
19 higher penalty. CenturyLink accepted without protest the
20 Staff's litigation position. By settling, CenturyLink is
21 seeking to limit its exposure to 25 percent of the statutory
22 maximum.

23 The public, however, must be assured that
24 CenturyLink will do the right thing going forward with
25 respect to its 911 system. Public Counsel is asking the

ORAL STATEMENTS

1 Commission to exercise its discretion and to increase the
2 penalty above the settlement amount.

3 In a case that presents no mitigating
4 factors, increasing the penalty above 25 percent and perhaps
5 up to the statutory maximum is justified.

6 Not only were the violations serious in this
7 case, but the likelihood of recurrence is concerning to
8 Public Counsel. Now we may not see a recurrence of the 911
9 outage based on the threshold counter, because it does
10 appear that the Company has addressed that particular
11 failure in their system. However, as we heard, software
12 systems don't run at 100 percent, and there could be other
13 software glitches in the system. CenturyLink must have
14 accountability during this transitional environment.

15 The harm that was caused by this outage was
16 simply too great. There was harm not only to the
17 compromised safety of each and every Washingtonian during
18 the outage, but also to the public trust in the 911 system.
19 Can we trust that 911 is going to work when we pick up the
20 phone to call 911? We should be able to.

21 There's also the actual harm to the callers
22 who did not get through. We may never know the extent of
23 that harm, but we do know that that harm existed.

24 25 percent is simply not enough. The
25 Commission is not bound by any one party's recommendation.

ORAL STATEMENTS

1 The Commission has discretion to impose the full penalty
2 under the law in this case. Indeed, it is in the public
3 interest to hold CenturyLink accountable to the fullest
4 extent of the law.

5 The FCC recognizes that the regulatory
6 enforcement powers could be exercised to safeguard
7 reliability of end to end 911 service.

8 Severe penalties in this case would restore
9 public trust in the system. A strong penalty would serve as
10 a deterrent to the Company. It would incentivize
11 CenturyLink to diagnose and check its system before these
12 errors occur. They would provide an incentive to create a
13 culture of compliance for CenturyLink.

14 The Commission has sent strong messages to
15 companies before in their penalty cases. I'm only here to
16 discuss one case in these arguments because we do have
17 limited time. But the Commission has imposed a \$7.8 million
18 penalty on Qwest in Docket UT-033011, and that is the
19 interconnection agreements case. In that case there was an
20 intentional and fraudulent failure to timely file
21 interconnection agreements with the Commission.

22 In this case, while we don't have an
23 intentional action by the Company to make 911 fail, what we
24 do have is a preventable outage that the Company should have
25 prevented prior to its occurrence. The Company should have

ORAL STATEMENTS

1 known and should have prevented the outage.

2 In this case, the risk of harm is far
3 greater. Risk of life and property damage is a pretty large
4 risk of harm.

5 In the interconnection agreements case, the
6 risk of harm is damage to prices in the market, which is
7 certainly serious. But it's not the risk of life. The
8 Commission sent a strong message in the interconnection
9 agreements case and it should send a strong message in this
10 case.

11 In conclusion, Public Counsel requests that
12 the Commission modify the multiparty settlement agreement to
13 increase the penalty to an amount commensurate with the
14 serious nature of this case, and up to the maximum penalty.

15 Public Counsel also recommends that the
16 Commission impose the regulatory reporting requirements and
17 the requirement of the compliance officer. Thank you.

18 JUDGE KOPTA: Thank you, Ms. Gafken.

19 That concludes our proceeding.

20 The Commission will take this matter under
21 advisement, and we'll issue an order in due course.

22 Thank you. We're adjourned.

23 (Whereupon, the proceedings were
24 concluded at 3:17 p.m.)

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ORAL STATEMENTS

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CERTIFICATE OF REPORTER)
STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I, Elizabeth Patterson Harvey, a Certified Court Reporter and Registered Professional Reporter within and for the State of Washington, do hereby certify that the foregoing proceedings were taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

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