

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF:

RULEMAKING TO CONSIDER AMENDING,
ADOPTING, AND REPEALING CERTAIN RULES
IN WAC 480-120, TELEPHONE COMPANIES,
RELATING TO THE WASHINGTON
TELEPHONE ASSISTANCE PROGRAM AND
WASHINGTON EXCHANGE CARRIER
ASSOCIATION, AND REPAIR STANDARDS FOR
PLANNED SERVICE INTERRUPTIONS AND
IMPAIRMENTS

DOCKET NO. UT-160196

CENTURYLINK'S SECOND SET
OF COMMENTS ON PROPOSED
RULEMAKING (July 5, 2016)

INTRODUCTION

- 1* CenturyLink hereby submits its second set of comments in this docket in which the Washington Utilities and Transportation Commission (“Commission”) has opened a rulemaking to consider, among other things, the re-adoption of WAC 480-120-440. CenturyLink opposes the reinstatement of WAC 480-120-440, and continues to urge the repeal of WAC 480-120-133.
- 2* In its first set of comments, filed April 4, 2016, CenturyLink pointed out that the rule was not repealed inadvertently. CenturyLink also argued that the rule is not necessary because it is not competitively neutral, and, more importantly, because market forces operate more efficiently than a rule to ensure good service quality.
- 3* The commenters are unanimously opposed to the reinstatement of this rule. Both Frontier and WITA filed comments in opposition to the rule at the same time that CenturyLink did.

4 Nevertheless, shortly after the initial round of comments was filed, Staff issued a matrix and Staff position in this docket stating that Staff rejected the comments in opposition to the rule. Staff stated that there had been a spike in the number of complaints regarding service repair intervals since the rule was repealed. Staff states that this “spike” shows that the rule is necessary.

WAC 480-120-440 IS NOT NECESSARY

Staff’s Rationale and Data Do Not Support Adopting the Rule

5 CenturyLink disagrees with Staff’s contention that there is a spike in complaints necessitating the re-imposition of the rule. As will be described more fully below, two months of increased complaints during some of the worst weather events in recent history do not justify adoption of this rule; the number of complaints overall is still very small and declining; the increased complaints were almost entirely correlated with force majeure events; and, CenturyLink has already been taking proactive steps (driven by competitive pressure), to hire and train additional technicians to shorten repair and installation intervals. CenturyLink’s decision to hire additional technicians is unrelated to the existence or threat of a rule – rather, it is driven by CenturyLink’s understanding of what is necessary to compete effectively.

6 Finally, a rule is not necessary because it does not enhance compliance. The existence of the repair standard in the rule does not facilitate shorter intervals or drive behaviors as not all impediments to clearing all service outages in a 48-hour window are within the control of the company. Stipulating a 100% standard for repair intervals is simply unattainable. As such, it is designed to create violations, not compliance.

7 CenturyLink asked Staff for the data underlying Staff's contention that complaints have spiked since the rule was repealed. The information provided showed the number of out-of-service complaints related to CenturyLink service in the year prior to the repeal of the rule and in the year subsequent to the repeal.

Staff's Data Does Not Show a Correlation Between the Rule and Actual Performance

8 From April of 2014 to April of 2015, which is the one-year period prior to the repeal of the rule, Staff recorded anywhere from zero to 12 complaints per month on repair intervals. In addition, for the first six months following the repeal of the rule, (the rule was repealed effective April 25, 2015), there was no meaningful change in the number of out-of-service complaints recorded by Staff – there were nine total complaints recorded in the 7-month period from April 2015 to October 2015. Any suggestion that CenturyLink was managing its repair business so as to immediately create longer intervals once the rule was repealed is simply unsupported by any data whatsoever. Moreover, for the months of February, March, April, and May of 2016, complaints have returned to historically low levels, consistent with where they were both before and after the repeal of the rule.

Force Majeure Events Caused Longer Repair Intervals, Not the Lack of a Rule

9 So the issue really comes down to three winter months, November and December of 2015, and January of 2016. Out-of-service complaints to the Commission did in fact increase during those months. However, CenturyLink found Staff's data to be inaccurate in several important respects.

- 10** Staff recorded the complaint in the month that Staff closed the complaint, not when the out-of-service condition occurred. The sometimes long interval between the date of the event and the date Staff closed the complaint rendered the Staff's representation of outages and complaints inaccurate and misleading as it suggests that complaints were elevated for a number of months. Other inaccuracies included assessing violations for unregulated services, such as inside wire maintenance issues.
- 11** To correct the timing issues, CenturyLink created a chart that recorded complaints based on when the outage occurred. [See Attachment A.] Graphing this more accurate data shows an increase in complaints for November and December of 2015 – months in which the governor declared a state of emergency *three times* due to winter storms, high winds, snow, flooding, downed trees, landslides, and massive power outages. [See Attachment B which includes three Proclamations of Emergency covering extended periods in November and December 2015].
- 12** There were 42 complaints about out-of-service conditions for November, 55 based on outages in December, and 16 based on January 2016 service outages.¹ Many of these complaints were either directly driven by weather events, including the windstorm in the Spokane area around the time of the Thanksgiving holiday and the blizzard affecting much of the state beginning December 18, 2015, or by the increased intervals that resulted from increased repair tickets due to weather, coupled with weather-caused delays traveling to customer premises.

¹ There was another winter storm in January 2016, prompting another Proclamation of Emergency. http://www.governor.wa.gov/sites/default/files/proclamations/proc_16-02.pdf

13 Beginning in February of this year, the number of out-of-service conditions that resulted in complaints essentially returned to normal levels, reflecting improving weather, travel condition and increased staffing by CenturyLink. It is difficult to consider the relatively small number of complaints, under crisis conditions, as constituting a spike that cries out for regulatory oversight. While it is of course a simple matter to create a graph making 55 complaints look like a “spike” relative to a month in which there was one complaint, it is simply inaccurate to characterize the volumes in that way compared to the number of access lines served by CenturyLink and the number of out-of-service repair tickets handled each month.

The Rule is Not a Reasoned Reaction to the Out-of-Service Numbers

14 The number of complaints relative to the number of CenturyLink access lines is minuscule. CenturyLink serves approximately 800,000 access lines in Washington. In a month with 5 complaints, that is a complaint rate of 0.00000625 per access line. Even if you increase that number by a factor of ten, you have not moved the number up past the fifth position to the right of the decimal place. A rule requiring every single out-of-service condition to be repaired within 48 hours is simply not a reasoned or reasonable response to a two month increase in outages that lead to complaints. This is especially true when the perceived “problem” was almost entirely related to extreme weather.

15 Many of the complaints in the “spike” months were the direct result of force majeure type events in November and December of 2015. November windstorms in Spokane knocked down trees, poles and power lines. The extensive damage unavoidably delayed repairs, in some cases for several weeks. Other weather events, including extraordinarily heavy rains and winter storms, including more wind and blizzard conditions, adversely impacted technicians’ travel time, and significantly delayed out-of-service repair in

December as well. CenturyLink experienced an increase in the number of out-of-service tickets coincident with these events. While October of 2015 saw only 1,027 out-of-service tickets, there were 1,212 in November, 1,560 in December, and 1,971 in January.

16 Maintaining the ability to clear all outages in 48 hours after extraordinary events – such as the events that nearly doubled the number of outages in January 2016 over October 2015 – would be possible only if carriers were overstaffed for normal times. A monopoly carrier could recover the cost of overstaffing from captive ratepayers. In a competitive market, overstaffing is not sustainable and a rule that would require it is unreasonable.

17 Even during normal conditions, no carrier can repair all outages in 48 hours. As CenturyLink noted in its first set of comments, the relatively small number of outages, coupled with a significant loss of access lines, means that travel time is longer and technicians cannot perform as many repairs in one shift as they could when every person on the block had landline telephone service from CenturyLink.

18 Moreover, some repairs simply take more than 48 hours to complete. CenturyLink’s installation and repair technicians are highly trained and highly skilled, but they cannot repair every kind of damage to the network. For example, if a technician is dispatched for a repair that requires replacement of a bad section of cable, that repair technician does not generally have the tools or facilities to perform the required construction work. That type of work is contracted out to specialized cable splicers that usually require intervals of more than 48 hours. The absolute standard in the proposed rule does not recognize situations such as this, nor does it recognize other circumstances, of which there are many, that might cause a repair interval to extend beyond 48 hours.

The Rule Will Not Alter Behaviors – Competitive Pressure Has Already Done So

- 19** A rule such as the one proposed cannot prevent force majeure events, nor can it create shorter repair intervals when workload dramatically increases due to these events. This is especially true given the amount of time it takes to add technicians when workload spikes unexpectedly. CenturyLink had already begun addressing technician staffing issues in approximately May of 2015.
- 20** As CenturyLink previously described, competitive pressure has driven behaviors – CenturyLink has hired and trained new technicians, with that effort beginning in May of 2015 in response to CenturyLink’s own internal monitoring of installation and repair intervals which identified that staffing needed to be augmented to provide shorter intervals and better customer service.
- 21** In fact, in 2015 CenturyLink hired 70 new technicians who can do installation and repair, and in 2016 year-to-date has hired 87 more technicians, bringing the work force to 515 in the state of Washington. Unfortunately, training intervals are long due to the complex nature of the network, and many of the 2015 new hires were not fully available to assist during the winter outages.
- 22** These additions to CenturyLink’s work force were not driven by the existence or threat of a rule, but rather were driven by competitive pressure. Competitive threats to CenturyLink’s business drove CenturyLink to expand its workforce and reduce its repair intervals all without a 48 hour rule in place. As can be seen from the total number of complaints, the level is now consistent with where it was before the rule was repealed. Century link’s staffing decisions were not driven by the existence or nonexistence of the 48 hour repair interval. Rather, they were driven by the need to provide good customer service and remain competitive.

The Rule will Not Enhance Compliance or Change Behaviors

- 23** It would seem reasonable that the Commission consider, in adopting a new rule, whether the rule is necessary, and whether it will enhance compliance. This rule meets neither criteria.
- 24** The rule is not necessary. If it were, other states and other utilities would have a similar rule. No other state in CenturyLink's serving area has a rule like the proposed rule. Nor do CenturyLink's cable, VoIP, or wireless competitors labor under such a rule. Competition provides the necessary incentive for all providers to restore service as quickly as reasonably possible. Washington's gas and electric utilities are also not subject to a similar rule. Finally, the rule is not necessary because WAC 480-120-411(1) requires repairs to be performed "promptly" a term that can and should take into account all of the surrounding circumstances.
- 25** The rule will not enhance compliance because 100% compliance is simply unattainable. Holding carriers to an unrealistically absolute 48-hour standard is unreasonable, as discussed above.
- 26** The ability of CenturyLink to exclude force majeure events from the denominator in the 100% calculation is not a meaningful exception. Further, not all force majeure events rise to the level of a formal declaration but have a significant effect on the ability of the technician to arrive, assess and repair service issues. CenturyLink has 515 repair technicians. The exclusions of certain jobs based on force majeure must be manually coded for each job. The technician, likely focused on his or her next trouble ticket, may or may not accurately code the job to the force majeure code. Or, the technician may not realize that a customer's outage was due to a third party or uncontrollable weather event. Or, and even more likely, during force majeure conditions in one part of the state,

technicians may be shifted to help the impacted area – this could cause delays in restoring service in areas that were not directly affected by the storm, so those jobs would not be excluded, even though they were legitimately delayed by the effects of an event that happened elsewhere.

- 27** In short, a 100% standard virtually guarantees no company will be able to comply in every circumstance. No other state in CenturyLink’s service territory imposes such an unattainable standard, and it would be entirely regressive to re-impose that standard now, in a highly competitive market that should continue to become less regulated, not more regulated.
- 28** Finally, and ironically, ever since the repeal of WAC 480-120-440, Staff has been citing violations of WAC 480-120-411(1), which requires repairs to be performed “promptly.” Staff interprets “promptly” to mean two business days in all circumstances, with no force majeure exceptions, no cable-cut exceptions, no washed-out-road exceptions, etc. CenturyLink disagrees that that is the appropriate interpretation of the word “promptly”, which would seem to vary depending on circumstances. Nevertheless, it appears as though a rule is already in place – one which allows for consideration of the circumstances surrounding the repair interval, and one which should be sufficient for a fair enforcement approach.
- 29** For the reasons stated herein, a rigid 48-hour mean-time-to-repair requirement in a rule serves no purpose, and artificially regulates behavior that should be and is actually driven by market forces.

WAC 480-120-133 Should be Repealed

30 For the reasons stated in CenturyLink’s opening comments, WAC 480-120-133 (a rule governing business office and repair center response time) should be repealed as out-dated and unnecessary. Staff opposes any change to the rule on the basis that it is outside the scope of the rulemaking. That is not a basis to reject the proposed change to the WAC, as this rulemaking could be re-noticed if necessary to include this rule. No substantive opposition to the repeal of this rule has been voiced, and it is clear that the rule does not reflect current technology or business needs.

CONCLUSION

The Commission should reject the request to reinstate WAC 480-120-440, and should repeal WAC 480-120-133 for the reasons stated in CenturyLink’s opening comments, or should re-notice this rulemaking to expand the scope of the rulemaking if necessary, and then repeal that rule.

Submitted this 5th day of July 2016.

CENTURYLINK

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