

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
**PENALTY ASSESSMENT UT-220397**

**PLEASE NOTE:** You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed. I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violation occurred and enclose \$226,600 in payment of the penalty.
2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR  b) I ask for a Commission decision based solely on the information I provide above.

3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below (**if you do not include reasons supporting your application here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR  b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: \_\_\_\_\_ [month/day/year], at \_\_\_\_\_ [city, state]

\_\_\_\_\_  
 Name of Respondent (company) – please print

*Adam Sherr*  
 \_\_\_\_\_  
 Signature of Applicant

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Notice of Penalties Incurred and Due for  
Violations of Commission Order

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

Docket No. UT-220397

APPLICATION FOR MITIGATION  
OF PENALTY

- 1 The five CenturyLink companies listed above (“CenturyLink”) respectfully seek mitigation of the penalty assessed in the Notice of Penalties Incurred and Due for Violations of Commission Order (“Notice”) issued in this docket on June 1, 2022. The Notice assesses a penalty of \$226,600 in connection with CenturyLink’s unintentional failure to submit notices of rate increase pursuant to Order 04 (“AFOR order”) in CenturyLink’s AFOR proceeding, Docket UT-130477. CenturyLink acknowledges and apologizes for its oversight. Based on the unique and difficult circumstances arising out of the global COVID-19 pandemic and the Commission’s penalty enforcement criteria, CenturyLink respectfully believes it would be appropriate for the Commission to eliminate, or at minimum greatly reduce, the assessed penalty.
  
- 2 The AFOR order was adopted on January 9, 2014 and spans, with attachments, approximately 50 pages in length. Paragraph 26 of the AFOR order indicates that “the Company has agreed to provide notice to the Commission of any changes to its flat-rated stand-alone residential rates at the same time CenturyLink notifies its customers of the rate change. The filing will identify the rate to be changed and will include all of the then-current rates of the ILEC operating companies.” Notably, the AFOR order and plan do not afford the Commission any mechanism for preventing rate changes to these de-tariffed services from going into effect.

3 CenturyLink complied with the rate change notifications prior to overwhelming personnel reductions that occurred as a direct consequence of the COVID-19 pandemic. The entire Washington state regulatory team that had managed Commission issues, in some cases for several decades, departed the company in mid-2020. Those functions and responsibilities were transitioned to existing employees who either had no Washington regulatory experience, or had not worked on Washington matters for well over a decade. Those employees, including the undersigned, had their responsibilities greatly expanded as the company faced unprecedented headcount reductions. Despite the language in the AFOR order, the new team was unaware of this notification obligation. In addition, over one-third (5 of 14) of CenturyLink's tariff compliance team likewise left the company during 2020. Drastic staffing reductions were not unique to CenturyLink, but nevertheless had a dramatic effect on the company's operations. The company did its best to continue to serve the needs of its customers during a time when telecommunications and broadband services were of heightened importance, while still meeting its regulatory obligations. The company was not perfect, but it was at all times working in good faith despite being under tremendous pressure in all respects.

4 The company obtained no benefit by failing to notify the Commission of rate changes. Similarly, Washington customers suffered no direct or indirect harm from CenturyLink's unintentional oversight given that the Commission could not intervene in the rate change. The mistake, while regrettable, was neither substantial nor harmful to the public interest. CenturyLink believes that it is important for all utilities, itself included, to comply with the Commission's rules and orders, but asks the Commission to give proper weight to the unique and unprecedented challenges encountered by the company at the time and the absence of harm to the public. A quarter of a million dollar fine is excessively punitive given the circumstances.

5 In addition to the importance of proportionality and context, the Commission should reduce the assessed penalty because it is structured in ways that balloon the number of alleged violations. First, the notice separately penalizes each CenturyLink operating company (five in all) instead of assessing a single company-wide penalty. By doing so, the penalty is 500% of what it would be if the company were penalized as a whole for its failure to file the rate change notifications. In its discretion, the Commission should treat the company as a whole. Second, and more dramatically, by failing to file the required notices in January 2021 and January 2022, CenturyLink unintentionally committed a single violation for each of the two missed notices. CenturyLink had an obligation to provide notice to the Commission “at the same time” it notified its customers of the rate change. That was a singular event for each notice. It did not have an obligation to file the notice the day after or the day after that. By counting each day as a separate violation, the Notice expands 2-10 violations (depending on whether CenturyLink is penalized as a whole or individually for each operating company) to an excessive 2,266 violations.

6 The Commission’s enforcement factors do not support such a large penalty, or any penalty at all. CenturyLink will address those factors where it and the Commission Staff appear to disagree.

7 **How serious or harmful the violation is to the public.** The Notice characterizes the violation as “serious and harmful because, by impairing the Commission’s monitoring of the consumer protection and pricing structure provisions incorporated into the AFOR Plan, the CenturyLink ILECs undermined the Commission’s ability to protect consumers in a timely and meaningful way.” The Notice neither articulates nor quantifies any harm to Washington ratepayers. The company recognizes the Commission’s obligation to protect consumers against certain rate increases, but the AFOR Plan provides no

mechanism for Commission intervention with rate changes. Therefore, the penalty assessment overstates the seriousness and harm of CenturyLink's oversight.

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

9 **The number of violations.** As discussed in ¶5 above, the Notice's calculation of 2,266 violation is greatly overstated. The number of violations was 2 (if CenturyLink viewed as a whole) or 10 (if each CenturyLink operating company treated separately). Especially given the lack of harm to Washington consumers and the chaotic context created by the pandemic, CenturyLink asks the Commission to view this matter with less desire to be punitive.

10 **The number of customers affected.** For the same reasons explained in ¶7, no Washington consumers were affected, directly or indirectly. CenturyLink fully acknowledges its mistake, but asks the Commission in its discretion to reject the

hyperbolic notion that customers were left “unprotected.” That conclusion is premised on the inaccurate claim that the Commission would have, or even could have, intervened to thwart a rate increase. It also ignores the fact that Washington consumers enjoy an incredible number of competitive options. If CenturyLink’s residential customers (all of whom received timely notice from the company) were upset by the 2021 or 2022 rate increases, they had numerous wireline, wireless, cable and satellite alternatives at their disposal. CenturyLink has only 5% of all voice connections in Washington, and certainly does not have market power over any of its customers.

**11 The company’s past performance regarding compliance, violations, and penalties.**

This is the first time the company has failed to give the Commission notice pursuant to paragraph 26 of the AFOR order. The Notice refers to “recent compliance challenges in other areas over the past few years.” The Notice is not specific, but may be referring to alleged violations that are pending and have yet to be ruled upon by the Commission. CenturyLink has denied that it violated Washington law in those pending proceedings, and it would be inappropriate of the Commission to levy large penalties on CenturyLink here on the basis of unresolved allegations in unrelated matters.

**12 The size of the company.** CenturyLink notes that, while the Notice seeks to separately

and equally fine each of the five CenturyLink affiliates, it lumps together the total revenue of the five companies. These companies differ significantly in terms of size, customers and revenues. For instance, CenturyTel of Cowiche had total intrastate regulated revenue of only \$463,224 in 2021. The proposed fine is nearly half that amount.

**13 In conclusion, CenturyLink acknowledges and apologizes for its oversight, but believes the Notice seeks a grossly excessive penalty that is highly disproportionate to the**

company's inadvertent mistake. CenturyLink respectfully requests the Commission eliminate or significantly reduce the penalty assessed on the company.

Submitted this 8<sup>th</sup> day of June 2022.

CENTURYLINK



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