

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Complainant,

v.

CENTURYLINK COMMUNICATIONS
LCC d/b/a LUMEN TECHNOLOGIES
GROUP; QWEST CORPORATION;
CENTURYTEL OF WASHINGTON,
INC.; CENTURYTEL OF INTER
ISLAND, INC.; CENTURYTEL OF
COWICHE, INC.; UNITED
TELEPHONE COMPANY OF THE
NORTHWEST

Respondents.

DOCKET UT-210902

PUBLIC COUNSEL RESPONSE IN
SUPPORT OF STAFF MOTION
FOR PARTIAL SUMMARY
DETERMINATION

1. Pursuant to WAC 480-07-380(2)(c), the Public Counsel Unit of the Washington Attorney General's Office files this response to Staff's Motion for Partial Summary Determination.

I. RELIEF REQUESTED

2. Public Counsel supports Staff's Motion and recommends that the Utilities and Transportation Commission (Commission) grant it. Public Counsel further requests that the Commission identify issues for hearing to include (1) setting an appropriate penalty for 923 disconnection violations, (2) determining liability and penalties for 243 disconnections performed in July 2020, (3) determining liability and penalties for imposing reconnection fees in violation of the Governor's Proclamation, and (4) determining liability and penalties for imposing late fees in violation of the Governor's Proclamation. If the Commission declines to exercise jurisdiction regarding reconnection and late fees, Public Counsel may refer the matter to

the Consumer Protection Division of the Attorney General's Office for action under the Consumer Protection Act, Chapter 19.86 RCW.

II. STATEMENT OF FACTS

3. In April 2020, Governor Inslee issued Proclamation 20-23.2, prohibiting telecommunications companies from disconnecting residential customers from service due to nonpayment. Proclamation 20-23.2 also prohibited telecommunications companies from refusing to reconnect any residential customer who had been disconnected due to nonpayment and from charging reconnection fees or late payment fees. The Proclamation was in effect between March 23, 2020 and September 30, 2021.¹
4. Governor Inslee issued Proclamation 20-23.2 in response to the global COVID-19 pandemic and the resulting economic crisis. He recognized that telecommunication service provided by Commission-regulated companies is an essential service.²
5. The Commission issued a complaint against CenturyLink Communications LLC d/b/a Lumen Technologies Group; Qwest Corporation; CenturyTel of Washington, Inc.; CenturyTel of Inter Island, Inc.; CenturyTel of Cowiche, Inc.; and United Telephone Company of the Northwest (collectively, Respondents) alleging 923 violations of WAC 480-120-172(3)(a) for disconnecting or suspending customers during the disconnection moratorium.
6. During its investigation, Commission Staff requested information from Respondents about the number of customers disconnected from service and the number of customers assessed

¹ Proclamation 20-23.2 and Proclamation 20-23.16 (Attach. A to UTC Staff Investigation Report) (Apr. 17, 2020 and July 2, 2021), <https://www.governor.wa.gov/office-governor/official-actions/proclamations> (enter the proclamation number into the 'Search Terms' field, and click on 'Apply' to display specific hyperlinks to the cited proclamations).

² Proclamation 20-23.2 (Apr. 17, 2020).

late payment fees, disconnection fees, and reconnection fees.³ Respondents stated that they disconnected 423 customers and suspended 743 customers.⁴ Of the 1,166 customers Respondents disconnected or suspended, they suspended 243 customers prior to March 23, 2020.⁵ Respondents disconnected those suspended customers in July 2020, during the disconnection moratorium.⁶ Both disconnected and suspended customers were separated from their service, and the Investigation Report concludes that both suspensions and disconnections violate the Proclamation.⁷

7. Respondents also stated that they do not assess disconnection fees to customers they disconnect, but that they do charge reconnection fees to customers whom they have suspended and reconnected to service prior to disconnecting.⁸ Lastly, Respondents stated that they “inadvertently charged some customers in Washington state late fees for telephone service,” and have refunded customers for those fees.⁹

8. In total, between March 23, 2020 and September 30, 2021, Respondents disconnected or suspended 1,166 customers for nonpayment, charged 1,634 customers reconnection fees, and charged 39,799 customers late fees.¹⁰

III. STATEMENT OF ISSUES

9. The Commission should answer each of these issues in the affirmative:

³ UTC Staff Investigation Report, Attach. C (questions 5 and 6), Attach. E.

⁴ UTC Staff Investigation Report, Attach. F.

⁵ UTC Staff Investigation Report at 8.

⁶ *Id.*

⁷ *Id.*

⁸ UTC Staff Investigation Report, Attach. D.

⁹ UTC Staff Investigation Report, Attach. D.

¹⁰ UTC Staff Investigation Report, Attach. D and F.

10. (1) Whether the Commission should grant Staff’s Motion for Partial Summary Determination when Respondents admit that each operating company operates in Washington as a telecommunications company, that they disconnected or suspended service to 923 customers for nonpayment, and that the disconnections and suspensions resulted in loss of service.
11. (2) Whether the UTC should define issues to be addressed at hearing to include (a) penalties for 923 violations for disconnecting or suspending customers between March 23, 2020 and September 30, 2021; (b) liability and penalties for 243 disconnections occurring in July 2020; (c) liability and penalties for 1,634 reconnection fees charged to customers between March 23, 2020 and September 30, 2021; and (d) liability and penalties for 39,799 late fees charged to customers between March 23, 2020 and September 30, 2021, when Staff’s Investigation Report establishes the facts underlying these issues and Public Counsel intends to present these issues in its testimony.

IV. EVIDENCE RELIED UPON

12. Public Counsel relies upon Staff’s Investigation Report, attached to Staff’s Motion dated June 16, 2022, and Respondents’ Answer and Affirmative Defenses dated April 26, 2022.

V. ARGUMENT

13. The Complaint alleges violations related to only some of the suspensions and disconnections Respondents carried out between March 23, 2020 and September 30, 2021. However, Respondents disconnected an additional 243 customers and imposed unlawful reconnection and late fees on thousands of customers. The Investigation Report demonstrates that Respondents disconnected or suspended 1,166 customers (923 plus 243), imposed reconnection fees on 1,634 customers, and imposed late fees on 39,799 customers. Each instance

of a suspension, disconnection, reconnection fee, and late fee is a separate violation for which the Commission should hold Respondents accountable.

14. The Investigation Report demonstrates that Respondents have had notice regarding all of its suspension, disconnection, and fee violations.¹¹ Public Counsel intends to raise issues related to all disconnection and fee activity the Investigation Report shows Respondents undertook during the moratorium between March 23, 2020 and September 30, 2021. In the alternative, Public Counsel may refer the issue of unlawful fees to the Consumer Protection Division of the Attorney General’s Office for action under the Consumer Protection Act, Chapter 19.86 RCW if the Commission declines to exercise jurisdiction.

A. The Commission should grant Staff’s Motion for Limited Summary Determination, resolving the issue of liability for 923 violations.

15. Respondents admit to all facts necessary to establish that they suspended or disconnected 923 customers from service between March 23, 2020 and September 2021, and that the suspensions and disconnections severed customers from service. As a result, no issues of material fact remain to litigate with respect to these 923 violations. Indeed, Respondents’ admissions establish their liability. The sole remaining issue related to the 923 violations is the level of penalty, which the Commission should reserve for hearing.

B. Respondents’ liability is not limited to 923 violations, but should also include the 243 disconnections that began prior to March 23, 2020, and completed in July 2020.

16. In the Complaint, the Commission states that Respondents “had already suspended 243 of the customers that they disconnected between March 23, 2020 and September 30, 2021.”¹² The

¹¹ UTC Staff Investigation Report at 4, 8, and Attach. A, C, D, E, and F.

¹² Complaint, ¶ 15.

Complaint then identifies 923 violations based on suspensions and disconnections occurring between March 23, 2020 and September 30, 2021, but excludes the 243 customers.¹³

17. Public Counsel disagrees with the Investigation Report’s conclusion that, “Since service for the 243 customers was suspended prior to the prohibited timeframe outlined in the Proclamation, and according to [Respondents], customers in suspended status are restricted from telecommunication service, Staff excludes them from the total number of disconnections during the relevant period.”¹⁴

18. Indeed, excluding these 243 customers, whom Respondents suspended prior to March 23, 2020 and disconnected in July 2020 during the disconnection moratorium, is wholly inconsistent with Proclamation 20-23.2 through 20-23.16. The Proclamation provided no exception for disconnections for which the disconnection process began prior to March 23, 2020. Rather, it clearly states,

[The Governor prohibits] the all energy, *telecommunications*, and water providers in Washington State from conducting the following activities from March 23, 2020, the date Proclamation 20-25 was signed, until May 4, 2020: (1) disconnecting any residential customers from energy, *telecommunications*, or water service due to nonpayment, except at the request of the customer.¹⁵

The Governor’s Proclamation allowed no disconnection for nonpayment during the moratorium, no matter when the process began.

19. Moreover, Proclamation 20-23.2 required telecommunication companies to reconnect any customers it had disconnected prior to the disconnection moratorium. The Proclamation

¹³ Complaint, ¶¶ 35–36.

¹⁴ UTC Staff Investigation Report at 8.

¹⁵ Proclamation 20-23.2 (Apr. 17, 2020) (emphasis added) (Proclamation 20-23.2 was extended through September 30, 2021, in Proclamation 20-23.16).

prohibited companies from “refusing to reconnect any residential customer who has been disconnected due to nonpayment.”¹⁶ As a result, Respondents not only were unlawful in disconnecting the 243 customers, but they had an obligation to reconnect those customers and resume service.

20. In this docket, the Commission should consider whether Respondents are liable for the 243 disconnections, and if so, what penalty to impose. The Commission should reserve these issues for hearing.

C. The UTC should hold Respondents accountable for imposing fees in violation of the Governor’s Proclamation.

21. The Governor’s Proclamation found that “preserving and maintaining essential utility services to vulnerable populations during [the COVID-19 crisis] supports the fundamental public purpose of protecting public health and welfare.”¹⁷ The Governor prohibited telecommunications companies charging late payment or reconnection fees.

22. Triers of fact interpret gubernatorial proclamations in the same way they do statutes.¹⁸ The primary goal of interpretation is determining and giving effect to the drafter’s intent.¹⁹ “When possible, the court derives legislative intent solely from the plain language enacted by the legislature considering the text of the provision in question, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole.”²⁰

¹⁶ Proclamation 20-23.2 (Apr. 17, 2020).

¹⁷ Proclamation 20-23.2 (Apr. 17, 2020).

¹⁸ *Dzaman v. Gowman*, 18 Wn. App. 2d 469, 478–79, 491 P.3d 1012 (2021) (citing *State v. Zack*, 2 Wash. App. 2d 667, 672 n.6, 413 P.3d 65 (2018)).

¹⁹ *Wright v. Lyft, Inc.*, 189 Wn.2d 718, 722, 406 P.3d 1149 (2017).

²⁰ *Gray v. Sutell & Assocs.*, 181 Wn.2d 329, 339, 334 P.3d 14 (2014).

23. While the Commission does not currently regulate Respondents as to rates, it does regulate the terms and conditions under which they provide service.²¹ Just as the Proclamation rendered service disconnections unlawful, it also rendered reconnection fees and late fees unlawful. Respondents could not lawfully engage in the act of imposing such fees during the term of the Proclamation.
24. The Alternative Form of Regulation (AFOR) governing Respondents’ operations treats the companies as competitively classified.²² This allows Respondents to operate with minimal regulation.²³ Even so, competitively classified companies remain Commission-regulated regarding terms and conditions of service, service quality, and consumer protection.²⁴ The Proclamation changed what telecommunication companies could lawfully do while it was in effect. While the Commission does not regulate the *amount* of Respondents’ fees, it may enforce the Governor’s Proclamation for the *act* of charging unlawful fees. The Commission’s enforcement of the Proclamation is consistent with its regulation of telecommunication companies and the Governor’s intent to protect Washingtonians during the public health crisis.
25. In this docket, the Commission should consider whether Respondents are liable for assessing unlawful fees, and if so, what penalty it should impose on Respondents. The Commission should reserve these issues for hearing. In the alternative, if the Commission declines to exercise jurisdiction, Public Counsel may refer the issue of fees to the Consumer

²¹ *In re: Petition of The CenturyLink Companies to be Regulated Under an Alternative Form of Regulation Pursuant to RCW 80.36.135*, Docket UT-120477, Order 04 ¶ 45 (Jan. 9, 2014) (hereinafter “AFOR Order 04”).

²² AFOR Order 04.

²³ See RCW 80.36.332.

²⁴ AFOR Order 04 ¶ 45.

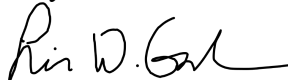
Protection Division of the Attorney General's Office for action under the Consumer Protection Act, Chapter 19.86 RCW.

VI. CONCLUSION

26. The Commission should grant Staff's Motion for Partial Summary Determination, which seeks to establish liability for 923 suspensions and disconnections occurring between March 23, 2020 and September 30, 2022. Respondents have admitted key facts necessary to establish liability, eliminating any question of fact on that issue. The sole remaining issue related to Respondent's 923 suspension and disconnections is assessing an appropriate penalty.
27. This matter presents three additional issues that require resolution relating to Respondents' liability and penalties for violations of the Governor's Proclamation, including 243 disconnections occurring in July 2020; 1,634 disconnection fees assessed between March 23, 2020 and September 30, 2021; and 39,799 late fees assessed between March 23, 2020 and September 30, 2021. In addition to granting Staff's Motion, the Commission should identify these questions, along with the level of penalty for the 923 disconnection and suspension violations, as issues to be resolved at hearing in this docket. However, if the Commission declines jurisdiction over unlawful fees, it should state that, and Public Counsel may refer the matter to the Consumer Protection Division of the Attorney General's Office.

DATED this 6th day of July 2022.

ROBERT W. FERGUSON
Attorney General

/s/ 

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