

**Exh. SP-3
Docket UT-171082
Witness: Susie Paul**

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

**QWEST CORPORATION D/B/A
CENTURYLINK QC,**

Respondent.

DOCKET UT-171082

**EXHIBIT TO
TESTIMONY OF**

Susie Paul

**STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

Narrative of Staff Investigation Report, dated November 2017

April 6, 2018



Investigation Report

Qwest Corporation d/b/a CenturyLink QC

UT-171082

Susie Paul
Compliance Investigations

November 2017

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PURPOSE, SCOPE, AND AUTHORITY

Purpose

The purpose of this staff investigation was to determine whether Qwest Corporation d/b/a CenturyLink QC (CenturyLink or company) complied with Washington law and Utilities and Transportation Commission rules when the company failed to provide a consumer an application for extension of service and failed to allow an extension of service up to 1,000 feet at no charge to the applicant.

Scope

This investigation focuses on CenturyLink's business practices related to residential basic local exchange service as reflected in the data provided by CenturyLink and in a commission-referred consumer complaint.

Authority

Staff undertakes this investigation pursuant to Revised Code of Washington 80.01.040 (General powers and duties of the commission) and 80.04.070 (Inspection of books, papers, and documents), which grants the commission the authority to conduct such an investigation. Staff also conducts this investigation pursuant to the RCW 80.04.380, which authorizes the commission to penalize public service companies for violations of commission rules.

Staff Contact

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EXECUTIVE SUMMARY

A consumer who resides in the Anna Marie Lane subdivision in Vancouver, WA, requested a transfer of telephone service from CenturyLink on Dec. 22, 2016. In response to the request for service, CenturyLink mailed the consumer an order confirmation for service of two telephone lines.¹ On Jan. 4, 2017, a technician employed by CenturyLink went to the consumer's residence to connect service and, after attempting to locate the facilities, told the consumer he could not locate the facilities and would not be able to connect service.

At that point, the consumer again contacted CenturyLink and an engineer was scheduled to go to the residence and subdivision on Jan. 19, 2017, but the appointment was rescheduled for Feb. 1 or 2. The engineer did go to the residence and told the consumer CenturyLink does not have facilities in the subdivision and the consumer would be required to provide a path to his house before service could be connected. The engineer did not provide the consumer with a cost estimate.

On Feb. 3, 2017, the consumer filed an informal complaint with commission staff, claiming CenturyLink failed to provide telephone service. The disposition of the complaint was consumer upheld and on April 14, 2017, CenturyLink received one violation for WAC 480-120-071(3) for failing to provide the consumer an application for extension of service within seven days and one violation of WAC 480-120-017(4) for failing to allow an extension of service up to 1,000 feet at no charge to the consumer.

On April 14, 2017, CenturyLink requested an escalation related to the requirements of WAC 480-120-071(3) and (4) as they apply to extensions of service, and to meet with staff. CenturyLink and the assistant director for Consumer Protection met on April 19, 2017, to discuss line extensions. On May 5, 2017, the assistant director for Consumer Protection notified CenturyLink by letter that the violations stand and that future violations of the WACs may be subject to enforcement action.²

In a further escalation, CenturyLink met with the director of Safety and Consumer Protection on May 22, 2017, to again discuss the company's position on extension of service rules. On June 9, 2017, the director of Safety and Consumer Protection notified CenturyLink by letter that the violations stand and that further violations of the WACs may be subject to enforcement action.³

An investigation into the business practices as it relates to line extension rules established that the company is in violation of commission rules, as follows:

- RCW 80.36.090, Service to be furnished on demand
- WAC 480-120-071(3), Residential basic local exchange service
- WAC 480-129-071(4), Allowances

¹ A copy of the order confirmation is attached as Appendix A.

² A copy of letter to CenturyLink re: response to escalation request, dated May 5, 2017, is attached as Appendix B.

³ A copy of letter to CenturyLink re: response to escalation request, dated June 9, 2017, is attached as Appendix C.

- WAC 480-120-166, Commission-referred complaints
- WAC 480-120-349, Retaining and preserving records and reports

Recommendation

Staff recommends the commission issue a formal complaint against CenturyLink and assess a penalty of up to \$351,000 for 351 violations of commission laws and rules as follows:

- Up to \$1,000 per day for each of the 174 days the company violated RCW 80.36.090 by refusing to provide service on demand.
- Up to \$1,000 for one violation of WAC 480-120-071(3) for failing to provide a customer an application for extension of service within seven days.
- Up to \$1,000 per day for each of the 174 days the company violated WAC 480-120-071(4) by failing to allow an extension of service up to 1,000 feet at no charge to the customer.
- Up to \$1,000 for one violation of WAC 480-120-166, for failing to keep commission-referred complaints for at least two years.
- Up to \$1,000 for one violation of WAC 480-120-349, for failing to keep all records and reports for three years.

BACKGROUND

Company Information

CenturyLink companies include Qwest Corporation, CenturyTel of Washington, CenturyTel of Inter Island, CenturyTel of Cowiche, and United Telephone Company of the Northwest. CenturyLink is a major incumbent local exchange carrier offering telephone, data, and other services in the state of Washington. CenturyLink reported gross intra-state annual revenue of \$363,182,516 for 2016.

Anna Marie Lane Subdivision, Vancouver, WA

The Anna Marie Lane lot subdivision has 12 lots and was developed in 2016 by North Columbia Homes, which is owned by Bryan and Lacy Weed. The property is located between NE Ward Road and NE 78th Street and adjoins separate residential developments in Vancouver, WA.

The homes in Anna Marie Lane and adjoining areas are within CenturyLink's service area. A CenturyLink-owned pedestal that was installed for an adjoining neighborhood prior to the development of Anna Marie Lane is located very near the property of the homeowner requesting service. In response to a data request, CenturyLink provided an infrastructure map (marked confidential) of the Anna Marie Lane subdivision, which shows the close proximity of the pedestal in relationship to the consumer's residence. The homeowner submitted photographs to commission staff that depict the distance between CenturyLink's pedestal and the consumer's residence.⁴

Consumer Complaint CAS-20417-Y7K6M8

This investigation was prompted by a commission-referred consumer complaint that was opened on Feb. 3, 2017.⁵ In the complaint, the consumer reported that he had requested telephone service for his residence and CenturyLink scheduled a service date. When CenturyLink's technician showed up at the residence to connect service, he informed the consumer that he could not find any service facilities and was not able to connect service.

The consumer contacted a CenturyLink engineer who went to the residence and also had several telephone conversations with the consumer. According to the consumer, CenturyLink told the consumer that he was responsible for providing a way for the company to run a line to his home.

On Feb. 14, 2017, in the complaint, CenturyLink responded:

This customer is a CenturyLink Retiree. He moved into what we call a no serve housing development. The developer did not wire for phone service for these residents. Our engineer Mark Guz has had extensive conversations with the customer and the developer. The developer was going to run a conduit to an existing pedestal under the street and place a conduit to Mr. Saum's home. The developer was going to contact us, at that point so we could place a buried service wire to bring service to the customer. That is the last communication that we received and have had no contact beyond this point. Once this work is performed, we would be happy to provide the service.

⁴ Copies of the consumer's photographs showing location of the pedestal and residence are attached as Appendix D.

⁵ A copy of informal complaint CAS-20417-Y7K6M8 (duplicate emails are removed) is attached as Appendix E.

On March 28, 2017, commission staff notified the company it was in violation for not allowing for an extension of service within its service territory up to one thousand feet at no charge to the applicant.

On March 28, 2017, CenturyLink responded in part:

We are not obligated to provide service in a development where the developer has refused to sign a PAHD.⁶ The line extension rule does not apply inside a development. That is specified within the rule itself. “Extension of service, as defined in this rule, does not apply to extensions of service to developments or to extensions of service for temporary occupancy or temporary service.”

At this time, if the homeowner will provide a conduit under the street between the pedestal and his home, CenturyLink can provide service. Because the line extension rule does not apply, there is no allowance for the extension and the homeowner is responsible to provide the path. Otherwise, there is an alternative service provider in the development for landline service. Similarly, other homeowners in this development would be required to provide a path to their homes if they wanted service from CenturyLink.

On March 28, 2017, commission staff responded to CenturyLink and noted that WAC 480-120-071(2) defines development in part as land that is divided or proposed to be divided. The applicant does not live on land that is divided or proposed to be divided.

On March 29, 2017, CenturyLink made the following statement:

Our terms and conditions state that if someone lives in a development and, the developer was offered and refused PAHD, we do not have to serve. In this case the *Developer* was offered a PAHD and refused. In these cases, it is our discretion/option to serve or not and, in this case, we choose not to serve unless the customer provides that path to his residence.

On March 29, 2017, commission staff responded that CenturyLink’s terms and conditions are in violation of WAC 480-120-071(4)(a), which states: “A company must allow for an extension of service within its service territory up to one thousand feet at no charge to the applicant. The company may allow for an extension of service for distances over the allowance.” The company was requested to provide information on how it intends to comply with the rule as it applies to this customer.

On April 3, 2017, CenturyLink responded: “We don’t believe the line extension rule applies to this customer. At this juncture, we will take the violation and then appeal.”

On April 14, 2017, Commission staff recorded the following violations against CenturyLink:

- WAC 480-120-071(3) for failing to provide the consumer an application for extension of service within seven days, and
- WAC 480-120-071(4) for failing to allow an extension of service up to 1,000 feet at no charge to the consumer.

⁶ PAHD is the acronym for CenturyLink’s Provisioning Agreement for Housing Development.

CenturyLink was notified the complaint was consumer upheld and the company should move forward with providing service to this customer.

Consumer Complaint First Escalation

On April 17, CenturyLink requested to meet with commission staff to offer the company's perspective, and a meeting was scheduled between CenturyLink staff and the assistant director for Consumer Protection. The meeting was held on April 19, 2017, at the commission's office in Olympia.

CenturyLink staff provided numerous charts and provided the company's interpretation of line extensions. CenturyLink stated:⁷

Requiring 1000' of free line extension to developments where wireline and wireless services are already available from other providers will waste the ILEC's now very limited (and ever shrinking) resources that could be used for economically viable investments, including further deployment of broadband. CenturyLink (sic) and other ILECs must be free to decline (sic) unnecessary uneconomic investment. This is especially important because the revenues available to operate a wireline voice network for people who have no other option continue their rapid decline.

In this letter, CenturyLink provides the definition of RCW 81.36.090, Service to be furnished on demand, which provides, in pertinent part:

Every telecommunications company shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto suitable and proper facilities and connections for telephonic communication and furnish telephone service as demanded.

CenturyLink states that "if another telecommunications company is ready and willing to serve a lot in a development where the ILEC has no facilities, the entitlement to service is being met, and there is no reasonable entitlement to service from a second provider."

On May 5, 2017, Commission staff sent a letter to CenturyLink in response to the escalation:⁸

In the line extension rule, WAC 480-120-071, "development" is defined as "**land** which is divided...for the purpose of disposition into four or more lots, parcels, or units" (emphasis added). Per the plain language of the rule, a development is land, which, arguably, is not the same as an occupied home. Because the customer is asking for service to his home and not to a "development," the line extension rule requires CenturyLink to extend service.

This same letter from commission staff notified the company that the violations recorded for WAC 480-120-071(3) and (4) stand and that future violations of the WACs may be subject to enforcement action, including penalties.

⁷ A copy of letter from CenturyLink, dated both May 11 and April 21, 2017, is attached as Appendix F.

⁸ See Appendix B for May 5, 2017, letter to CenturyLink re: escalation.

Consumer Complaint Second Escalation

CenturyLink requested a second escalation in the form of a meeting with the director of Safety and Consumer Protection. The meeting took place on May 22, 2017, in Olympia. At this meeting, CenturyLink presented a cover letter and the same charts that were presented to Consumer Protection's assistant director on April 19, 2017.⁹ CenturyLink stated:

This letter address whether WAC 480-120-071(3) and WAC 480-120-071(4) should apply to a lot in a development where CenturyLink has no facilities because the developer of the development declined to enter into a Provisioning Agreement for Housing Development with CenturyLink. In this case there is also another provider offering wireline voice service to lots in the development.

The purpose of this letter is twofold. First, I offer some charted data that explain the recent history of the voice telecommunications marketplace in Washington. Second, I briefly summarize the public policy reasons why the better interpretation of WAC 480-120-071(3) and WAC 4808-120-071(4) is that they do not apply to a lot in a development where the Incumbent Local Exchange Carrier (ILEC) has no facilities because the developer of the development declined to enter into Provisioning Agreement for Housing Development with the ILEC.

On June 9, 2017, commission staff responded to CenturyLink by letter notifying the company of the findings of the escalated complaint review.¹⁰ In part, the letter to CenturyLink stated:

To the extent that your May 22 letter seeks to persuade staff that market changes affecting CenturyLink render WAC 480-120-071 no longer reasonable, the proper forum for such a discussion is a petition for rule exemption filed under WAC 480-120-015. Absent that, if you seek to deny service to customers you are violating state law every time you do so.

...I find that staff have interpreted WAC 480-120-071(3) and WAC 480-120-071(4) as they were intended, and the violations in consumer complaint CAS-20417-Y7K6M8 stand.”

...Please be aware that future violations of these WACs may be subject to enforcement action, including financial penalties.

As of the date of this report, CenturyLink has not provided the consumer an application for extension of service, nor has CenturyLink allowed the consumer an extension of service of up to 1,000 feet at no charge. Other than CenturyLink's initial communication to the consumer that he will have to provide a path for service, the company has failed to communicate with the consumer, although service was requested Dec. 22, 2016.

⁹ A copy of cover letter to commission staff, dated May 22, 2017, is attached as Appendix G. (The letter excludes the attachments and charts that were included in previous letter found in Appendix F.)

¹⁰ See Appendix C for June 9, 2017, letter to CenturyLink re escalation.

INVESTIGATION

Data Request

In order to understand how CenturyLink responds to requests for residential basic local exchange service that require an extension of service, the commission sent CenturyLink a data request requiring the following documents and information for the period of June 16, 2015, through June 15, 2017:¹¹

1. Has the company received requests for residential basic local exchange service from potential customers that it has denied because facilities necessary to provide service: (a) don't exist at the service location; (b) require installation; or (c) require maintenance or upgrades?

If the answer to (a), (b) or (c) is yes, please indicate the respective number of denials per:

- a. CenturyTel Local Exchange Operating company that provides service in Washington (i.e., Qwest Corporation, United Telephone Company of the Northwest, CenturyTel of Washington, CenturyTel of Cowiche, and CenturyTel of Inter Island); and
- b. Telephone Exchange.

For each denial, please provide the name and address of the individual requesting service.

2. Please provide all documents, including applications for extension of service, explanations of the extension of service rules, and cost estimates provided to applicants who requested residential basic local exchange service. With the documents, note the date these were processed and mailed.
3. Please provide a copy of all scripts or written guidance provided to company customer service and sales representatives related to all residential basic local telephone exchange request scenarios, e.g. facilities exist at location and are serviceable, facilities don't exist at location, facilities require installation, etc.

CenturyLink Responses to Data Request

Following are the company's responses to each of the data requests set out above. For the convenience of the reader, each data request has been repeated below before the corresponding response.

Data Request 1:

Has the company received requests for residential basic local exchange service from potential customers that it has denied because facilities necessary to provide service: (a) don't exist at the service location; (b) require installation; or (c) require maintenance or upgrades?

If the answer to (a), (b) or (c) is yes, please indicate the respective number of denials per:

¹¹ A copy of the June 21, 2017 data request is attached as Appendix H.

CenturyTel Local Exchange Operating company that provides service in Washington (i.e. Qwest Corporation, United Telephone Company of the Northwest, CenturyTel of Washington, CenturyTel of Cowiche, and CenturyTel of Inter Island); and Telephone Exchange.

CenturyLink Response - Data Request 1 (July 25, 2017):

CenturyLink has determined that it does not retain records of service denials of this nature in a searchable database. In a development where the developer has not asked or allowed CenturyLink to deploy facilities, CenturyLink attempts to indicate in its own address records that service is not available at the address in that development. Because the line extension rules does not, in CenturyLink's view, pertain to extensions of service in developments, it is possible that other customers have contacted CenturyLink asking for service and have been told that service is not available in a development where the developer has refused to enter into a PAHD (provisioning agreement for housing developments). We are unaware of any instances where this occurred that the customer did not have service available from another provider.¹²

CenturyLink did not provide any information related to the consumer whose complaint prompted this investigation, even though the criteria for the data request should have encompassed this record. In an email dated Oct. 9, 2017, staff asked CenturyLink if it included consumer complaints in its response.

CenturyLink responded by email on Oct. 12, 2017, that “[W]e did not consider consumer complaints in our response for the timeframe of June 16, 2015 through June 15, 2017. We have since reviewed our database of consumer complaints which goes back only to the beginning of 2016.”¹³ WAC 480-120-349, Retaining and preserving records and reports, states, “Companies must keep all records and reports required by these rules or commission order for three years....” It is difficult to determine if records have not been kept because the company reports that no record is kept if it determines that the consumer is requesting service in a “no service area.”

Staff also found a record of an informal complaint, CAS-07460-J1J8H4.¹⁴ The complaint involved a customer who wanted CenturyLink telephone service. CenturyLink assigned the customer a telephone number; however, the customer was told by CenturyLink staff that providing service would not be cost effective to CenturyLink. The customer believes the line extension was about 650 feet. This complaint was referred to commission staff by Congresswoman Beutler, located in Vancouver, Washington. CenturyLink agreed to install at no cost to the customer because it was less than 1,000 feet from the pedestal to the residence, but would only install a copper line.

CenturyLink did not provide responsive data to this request. Commission records for two informal complaints show CenturyLink customers are told by the company that they reside in a

¹² A copy of CenturyLink's data request response, dated July 25, 2017, is attached as Appendix I.

¹³ A copy of email re: response to request for consumer complaints, dated Oct. 12, 2017, is attached as Appendix J.

¹⁴ A copy of complaint CAS-07460-J1J8H4 is attached as Appendix K.

“no serve” area and must secure services through another service provider. As such, CenturyLink does not generate or retain records of the requests for service.

Data Request 2:

Please provide all documents, including applications for extension of service, explanations of the extension of service rules, and cost estimates provided to applicants who requested residential basic local exchange service. With the documents, note the date these were processed and mailed.

CenturyLink Response – Data Request 2 (July 25, 2017):

Line extension of less than 1,000 feet do not generate these types of documents, and we do not have any records indicating that line extensions of more than 1,000 feet we received or responded to in the relevant two-year period.

Data Request 3:

Please provide a copy of all scripts or written guidance provided to company customer service and sales representatives related to all residential basic local telephone exchange request scenarios, e.g. facilities exist at location and are serviceable, facilities don't exist at location, facilities require installation, etc.

CenturyLink Response – Data Request 3 (July 18, 2017):

Attached is data we have found that is responsive to the third of the three data requests (copy attached) that you provided me my email July 3.

CenturyLink provided a two-page document titled Construction Charges & Line Extensions and a document with information on Customer Contact Information and Line Extension Charge Order Process.¹⁵

Data Request 4:

Please provide CenturyLink (US West or Qwest) infrastructure in Vancouver, WA, specifically the area within the triangle of NE Ward Road, NE 78th Street, and NE 159th Avenue in the zip code area 98682. Please include switch offices, remote pedestals, communication cable and pole attachments. Please provide in a mapping format with addresses and *locations identified as to type and whether shared or solely owned*.

CenturyLink Response – Data Request 4 (Aug. 21 and 31, 2017):

...The diagram comes directly from the Company's plant records as we maintain and use them. It does not reflect other companies' facilities such as the Comcast facilities that serve Mr. Saum's location. All facilities on the diagrams shown in blue are solely owned

¹⁵ Copies of CenturyLink's written guidance are attached as Appendix L.

by CenturyLink except for the poles. The poles are jointly owned if power or cable TV are present on the pole.

CenturyLink responded to the request for the infrastructure map on Aug. 21, with a map that had numerous markings but did not have a legend to explain what the marking meant. Some of the text was not legible. Commission staff asked for a map that included a legend and was legible. CenturyLink provided the map and legend on Aug. 31, 2017. Some of the text on the map was still not legible.

Data Request 5:

Please provide all communications that have occurred from Jan. 1, 2016, to present between North Columbia Homes, Brian and Lacy Weed, and CenturyLink employees or contractors related to the Anna Marie subdivision, located in Vancouver, WA.

CenturyLink Response – Data Request 5 (Aug. 31, 2017):

CenturyLink does not retain records of oral communications it might have had with the people or entities identified in this request, and does not have any written records of any communications. Typically the land developer, not the individual home builder, is responsible for the deployment of infrastructure and facilities to support telephone service in a development.

CenturyLink Engineer Tyler Wade initiated discussions with the developer of the Anna Marie subdivision in the course of a discussion about another development the same developer was involved in. Dates of these discussions are unknown. At that time the developer was going to have Prairie Electric Inc. place buried service wire to each house in the common trenches and terminate them in CenturyLink's existing pedestals. CenturyLink never received a call from either Prairie Electric or the developer indicating the start or end of the project, nor of their execution of the deployment plan.

Mr. Wade did have multiple conversations with the developer regarding the developer's preliminary commitment to place conduit to allow CenturyLink to place facilities. These conversations occurred in late 2016. Mr. Guz recalls conversations around Mr. Saum's situation in early 2017. Since that time he had taken several calls from Mr. Saum. He was a former coworker and asked Mr. Guz for any assistance that he might provide. Dates and times of the calls were not noted.

Mr. Guz recalls the conversations as follows:

- Mr. Saum desires CTL service at his address which is in a CTL No-serve development.
- My response was that there was no path to his house, and it was incumbent on the developer to have provided this.
- After several calls and discussions around the pertinent facts, Mr. Saum requested the developer call me. He and I discussed the problems, and I gave him the requirements

I had and needed to provide service to Mr. Saum. He agreed to provide these. This was relayed to Mr. Saum in the course of a subsequent call from him.

The developer never implemented the proposed plan.

Staff finds that all involved (CenturyLink, the developers, and the homeowner) were not able to produce any type of documentation to substantiate their claims of who was going to take responsibility to provide service to Mr. Saum.

An email from Prairie Electric refutes CenturyLink's claim that "CenturyLink never received a call from either Prairie Electric or the developer indicating the start or end of the project, nor of their execution of the deployment plan." The email from Prairie Electric with attached utility design was emailed on April 11, 2016, and was sent to five separate CenturyLink employees.¹⁶

Data Request 6:

Please provide all communications, including but not limited to applications of service and transfer of service between Mr. Robert Saum, Jr., and CenturyLink employees or contractors.

CenturyLink Response – Data Request 6 (Sept. 7, 2017):

...The following entry appears in CenturyLink's records for Mr. Saum's account.

010417	ROBERT	AB69508	CCI TRYING TO FORWARD CALLS IN	VQV	BT1	CHK
010417			THE MIDDLE OF A TNF ORDER. CONTACTED MU		BT1	
010417			LTIPLE TEAMS AND WAS NOT ABLE TO GET TH		BT1	
010417			AT DONE. NO CHANGES MADE, CUST DOESN'T		BT1	
010417			HAVE FACILITES AT NEW ADDRESS		BT1	

Following is a explanation of this entry:

- A CenturyLink representative with the identification number "AB69508" took a call from Mr. Saum on January 4, 2017
- "ROBERT" is the name of the customer
- "CCI" means the customer called in
- "VQV" is an identifier for the representative who took the call.
- "BT1" is an internal office code used for administrative tracking.
- "CHK" denotes that the reason the representative made an entry in the account is to check on the account.
- "TNF" stands for "To and From" meaning the transfer of a service from one address to another.
- The notes indicate the representative informed Mr. Saum that CenturyLink had no facilities with which to serve him at his new address.

¹⁶ A copy of email from Prairie Electric, dated April 11, 2016, is attached as Appendix M.

Other than what is provided in the response immediately above, CenturyLink does not have records of communications between its employees and Mr. Saum. Mr. Saum is a retiree from the company and spoke with at least one of his former colleagues about service to his new address. CenturyLink engineer Mark Guz recalls that Mr. Saum called him about the lack of facilities to his new address but does not have notes of the conversation or a recollection of the date of the conversation.

Staff finds CenturyLink was, at the very least, aware that there were no CenturyLink facilities at Mr. Saum's residence on Jan. 4, 2017. Mr. Saum was not provided an application of service in seven days as required by WAC 480-120-071(3). CenturyLink received a violation for this WAC on April 14, 2017. The violation was escalated and found to stand on May 5 and June 9, 2017.

Findings

Most of CenturyLink's responses to commission staff were submitted timely; however, staff considers many of the responses incomplete and inadequate. An example is staff's request for the company's infrastructure map of the consumer's subdivision. CenturyLink submitted the map without a legend and most of the text on the map was not legible. The consumer's property related to this investigation was not correctly identified on the map.

As part of the data request, CenturyLink was asked for scripts or written guidance provided to company customer service and sales representatives related to all residential basic local telephone exchange request scenarios. The company submitted two documents (see Appendix L), but did not identify the documents or who in the organization uses them.

CenturyLink did not submit Qwest Exchange and Network Services Catalog No. 2, Section 4.4.C, as part of the data request response, although CenturyLink's complaint handler referred to this specific section of the company's catalog as follows:

Developer Non-Participation. If a Developer/Builder does not enter into a PAHD, the Company, at its option, may accept requests for service from Individual customers in the subdivision/development area as provided for in Section 4.2.2.

CenturyLink further stated: "This has been CenturyLink's policy and approach for many years (this PAHD provision has been in place since 2008), and CenturyLink does not serve in developments where the developer has not signed a PAHD for the provision of service to the housing development. CenturyLink had further reviewed this approach with telecom Staff, and they were in concurrence with this approach, especially when the customers had alternative service providers available." CenturyLink did not provide any documentation that telecommunications staff concurred with CenturyLink's approach.

On Aug. 3, 2017, commission staff requested and received 4.4.C Qwest Exchange and Network Services Catalog No. 2.

On Oct. 12, staff asked CenturyLink about a discrepancy in the charts provided to the assistant director of Consumer Protection and the director of Safety and Consumer Protection. The discrepancy was the amount of revenue reflected as reported to the commission in the charts, versus the revenue actually reported to the commission in the company's annual report. Instead

of responding to the question about the discrepancy, CenturyLink sent 66 pages of 47 CFR Ch. 1, Part 32 – Uniform System of Accounts for Telecommunications Companies.

Also on Oct. 12, CenturyLink responded by email to staff’s question related to whether the company considered consumer complaints when responding to the data request. CenturyLink’s email stated: “We did not consider consumer complaints in our response for the timeframe of June 16, 2015 through June 15, 2017. We have since reviewed our database of consumer complaints which goes back only to the beginning of 2016.”

WAC 480-120-349, Retaining and preserving records and reports states, “Companies must keep all records and reports required by these rules or commission order for three years....” It is difficult to determine if records have not been kept because the company reports that no record is kept if it determines that the consumer is requesting service in a “no service area.”

Recommendations

Staff recommends a penalty of up to \$1,000 for one violation of WAC 480-120-349 for failing to keep all records and reports for three years.

Staff recommends a penalty of up to \$1,000 for one violation of WAC 480-120-166 for failing to keep commission-referred complaints for at least two years.

Staff considers the violations of RCW 80.04.380, for incomplete data request responses, as technical assistance. The delays and insufficient responses were a nuisance and required more follow-up than should be necessary for a data request. If future violations are found, staff may recommend penalties or take other enforcement action.

SERVICE TO BE FURNISHED ON DEMAND

CenturyLink was requested to provide service to a private residence by the consumer on Dec. 22, 2016.

RCW 80.36.090, Service to be furnished on demand states in pertinent part:

Every telecommunications company shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto suitable and proper facilities and connections for telephonic communication and furnish telephone service as demanded.

In CenturyLink's letter to Bridgit Feeser and Pat Hazzard related to the escalations, Mr. Grate states:

The word "reasonably" is important here. Our point is that if another telecommunications company is ready and willing to serve a lot in a development where the ILEC has no facilities, the entitlement to service is being met, and there is no reasonable entitlement to service from a second provider. This interpretation of "reasonably entitled" is more economically sound than an interpretation that assumes ILECs (which are now a very small part of the voice ecosystem) must provide a 1000' of free line extension to any customer anywhere in their service territory even when another telecommunications provider is already serving there.¹⁷

CenturyLink's viewpoint is countered by General Order R-551 (Docket UT-073014) adopted as a result of a rulemaking hearing held on Aug. 14, 2008. In the rulemaking, the Industry Coalition proposed that the following language be incorporated into the revised rule:

A company may seek a waiver of the requirement to extend service under this rule pursuant to WAC 480-120-015. In making its determination whether to grant such a waiver, the Commission may take into consideration the existence of an alternative service provider that is an Eligible Telecommunications Carrier ("ETC") for the location where an extension of service is requested.

The commission rejected the proposed language and stated that a company may seek a waiver under WAC 480-120-015 whenever it thinks it appropriate and the commission may consider any pertinent information, including the existence of an ETC alternative....

Findings

Staff finds that CenturyLink did not provide telephone service as requested by the consumer on Dec. 22, 2016, nor did CenturyLink contact or provide the consumer with telephone service when the complaint investigator found the company to be in violation of the rules and issued violations on April 14, 2017. Further, the complaint was escalated not once, but twice, with commission staff.

On May 5, 2017, staff notified CenturyLink that the violations stand and that future violations of these WACs may be subject to enforcement action, including financial penalties.

¹⁷ See Appendix F for letter from CenturyLink to commission staff.

On June 9, 2017, staff again notified CenturyLink that the violations stand and that future violations of these WACs may be subject to enforcement action, including financial penalties.

Staff finds that CenturyLink failed to seek a waiver for a line of extension that it deemed unreasonable and instead made its own determination of what is “reasonable.” As a consequence, CenturyLink has denied a consumer the opportunity of service.

Recommendation

Staff recommends a penalty of up to \$174,000 for 174 violations of RCW 80.36.090 for failing to furnish service on demand. The penalty is calculated as \$1,000 per day from one day after the final complaint escalation, or June 10, 2017, until Nov. 30, 2017.

APPLICATION FOR EXTENSION OF SERVICE

WAC 480-120-071, Extension of Service, defines “applicant” as any person applying to a telecommunications company for new residential basic local exchange service. On Dec. 22, 2016, the consumer requested a transfer of service. The consumer had CenturyLink service and wanted to continue service in his newly built residence in the Anna Marie Lane subdivision in Vancouver, WA.

A date of service was scheduled for early January 2017, and a technician showed up for the service connect but was unable to locate any facilities. The homeowner pointed out the pedestal across the street, which is owned by CenturyLink and was installed prior to this subdivision’s development for an adjoining subdivision. The consumer was told by CenturyLink that service could not be connected until the consumer provided a path for service at his expense.

At that point, a CenturyLink engineer was contacted and scheduled to go to the residence and subdivision on Jan. 19, 2017, but the appointment was rescheduled for Feb. 1 or 2. The engineer went to the residence and told the consumer CenturyLink does not have facilities in the subdivision and the consumer would be required to provide facilities to his house before service could be connected. The engineer did not provide the consumer with a cost estimate.

On Feb. 3, 2017, an informal consumer complaint was filed with commission staff, claiming CenturyLink failed to provide telephone service. The disposition of the complaint was consumer upheld and on April 14, 2017, CenturyLink received one violation for WAC 480-120-071(3) for failing to provide the consumer an application for extension of service within seven days and one violation of WAC 480-120-017(4) for failing to allow an extension of service up to 1,000 feet at no charge to the consumer.

On April 14, 2017, CenturyLink requested an escalation related to the requirements of WAC 480-120-071(3) and (4) as they apply to extension of service, and to meet with staff. CenturyLink and commission staff met on May 5, 2017 to discuss line extensions. The assistant director for Consumer Protection notified CenturyLink by letter that the violations stand and that future violations of the WACs may be subject to enforcement action.¹⁸

CenturyLink met with the Director of Safety and Consumer Protection on May 22, 2017, in a further escalation by CenturyLink’s to again discuss the company’s position on extension of service rules. On June 9, 2017, The Director of Safety and Consumer Protection notified CenturyLink by letter that the violations stand and that further violations of the WACs may be subject to enforcement action.¹⁹

¹⁸ See Attachment B for a copy of staff’s response to CenturyLink’s request for escalation, dated May 5, 2017.

¹⁹ See Attachment C for a copy of staff’s response to CenturyLink’s request for escalation, dated June 9, 2017.

On Feb. 14, 2017, in the complaint, CenturyLink staff responded:

This customer is a CenturyLink Retiree. He moved into what we call a no serve housing development. The developer did not wire for phone service for these residents. Our engineer Mark Guz has had extensive conversations with the customer and the developer. The developer was going to run a conduit to an existing pedestal under the street and place a conduit to Mr. Saum's home. The developer was going to contact us, at that point so we could place a buried service wire to bring service to the customer. That is the last communication that we received and have had no contact beyond this point. Once this work is performed, we would be happy to provide the service.

Staff spoke with both Bryon and Lacy Weed, the developers of the property. Both stated to staff that CenturyLink was notified when the trenches were ready to drop wire. This statement corroborates an April 11, 2016, email from Prairie Electric, which is the company for this development that notified and provided the various utilities with the utility design for the subdivision.²⁰ The email shows five different CenturyLink employees were sent the utility design.

The developers also stated that CenturyLink wanted them to pay "a lot of money" to drop the lines, but they would not agree to the fees CenturyLink wanted to charge. CenturyLink claims that the developers refused to sign the PAHD, but neither the developers nor Comcast were able to produce a copy of the contract. Both the developers and CenturyLink state that most of the business between them are done through telephone calls.

Findings

Staff finds that CenturyLink is in violation of WAC 480-120-071(3) for failing to provide the consumer an application for extension of service within seven days, and, in fact, has yet to provide the consumer with an application for extension of service.

Recommendation

Staff recommends a penalty of up to \$1,000 for one violation of WAC 480-120-071(3) for failing to provide the consumer with an application for an extension of service within seven days.

²⁰ See Appendix L for a copy of email from Prairie Electric, dated April 11, 2016.

EXTENSION OF SERVICE UP TO 1,000 FEET

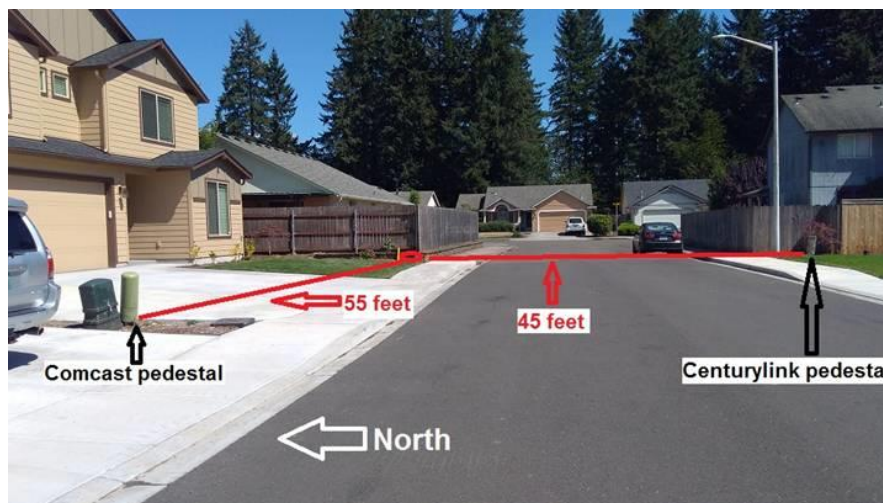
As a local exchange company receiving federal high cost universal service support, the rules require the company to extend service to applicants. WAC 480-120-071 defines applicant as “...any person applying to a telecommunications company for new residential basic local exchange service.”

A letter from CenturyLink dated May 22, 2017, (see Appendix G) states that “ongoing access line and revenue loss is why it is important to shield CenturyLink from unnecessary line extension costs to lots in developments where other providers stand ready and willing to provide wireline service.”

CenturyLink provided statistics on “how highly effective competition has eroded legacy Qwest’s (CenturyLink QC) Washington revenues over the past 11 years. CenturyLink QC’s 2016 Washington revenues are half a billion dollars less than its 2005 revenues and just 38% of the revenues generated in 2005.”

Although revenue is a major component of CenturyLink’s argument as to why the company should not be required to extend service up to 1,000 feet without cost to the customer, it has no bearing on the fact that the company is in violation of WAC 480-120-071(4) for failing to allow an extension of service up to 1,000 feet at no charge to the customer.

The photograph below was submitted to staff by the consumer requesting a service connection and shows the close proximity from CenturyLink’s pedestal to the consumer’s residence:



In the complaint, CenturyLink stated, “Our terms and conditions state that if someone lives in a development and, the developer was offered and refused PAHD, we do not have to serve. In this case, the Developer was offered a PAHD and refused. In these cases, it is our discretion/option to serve or not and, in this case, we choose not to serve unless the customer provides that path to his residence.”

The above statement indicates that there are terms and conditions related to service and line extensions that are followed by CenturyLink staff; however, in the June 21, 2017, data request,

CenturyLink was asked to provide “a copy of all scripts or written guidance provided to company customer service and sales representatives related to all residential basic local telephone exchange request scenarios....” These terms and conditions were not submitted to commission staff until Aug. 3, 2017, when staff again requested the company submit scripts or written guidance provided to company customer service and sales representatives related to all residential basic local telephone exchange requests.

While working the complaint, staff repeatedly asked CenturyLink what the cost estimate was for an extension of service to the consumer. On April 6, 2017, CenturyLink responded:

The cost estimate is a range. The reason is because there is an opportunity, based on other jobs in the area that, we would need to bore through some cobble which would increase the cost. The projected/perspective costs do not include installation or permit. The permit cost would be approximately \$125.00. Installation would vary based on what is needed at the time of installation.

Job cost: \$1670.00 if no cobble to \$3000 should boring through cobble be necessary.

This cost estimate seems to have been created at the request of commission staff. As of the date of this report, the consumer has not received a cost estimate from CenturyLink.

Findings

Staff finds that CenturyLink is in violation of WAC 480-120-071(4) for failing to provide an extension of service up to 1,000 feet at no charge to the customer.

Recommendation

Staff recommends a penalty of up to \$174,000 for 174 violations of WAC 480-120-071(4) for failing to allow an extension of service up to 1,000 feet at no charge to the customer. The penalty is calculated as \$1,000 per day from one day after the final complaint escalation, or June 10, 2017, until Nov. 30, 2017.

RECOMMENDATIONS

Staff typically recommends the commission assess a “per violation” penalty against a regulated company when the violations result in serious consumer harm; for repeat violations after a company receives technical assistance from staff; or for intentional violations of laws or rules enforced by the commission.

The commission has the authority to assess penalties of up to \$1,000 per violation, per day, following a formal complaint and hearing.²¹ Here staff recommends penalties of up to \$1,000 for each of the 351 violations documented in this investigation report. Staff’s recommendation is based on a number of factors, as discussed below.²²

1. **How serious or harmful the violation is to the public.**

Staff finds that CenturyLink circumvents the rules of providing consumers with an application for extension of service, and allowing an extension of service up to 1,000 feet at no charge to the consumer, by simply telling the consumer that they reside in a “no serve” area. Staff believes these to be serious violations of the rules and consumers’ trust. CenturyLink is aware that an application for extension of service must be made within seven days of request and that an extension of service up to 1,000 feet must be allowed at no charge to the consumer. CenturyLink is also aware that WAC 480-120-015 is in place for the company to request an exemption. Staff is not able to determine how many consumers have been impacted because CenturyLink has not provided any records of denials of service. The company does admit that it does not keep records if the consumer requesting service is in a “no serve” area.

CenturyLink is provided an opportunity by developers to “drop lines” for future service to customers during a property development phase. CenturyLink claims it is company policy to require developers to enter into a provisioning agreement for housing development before dropping lines. If the developer does not agree to the cost, CenturyLink will not perform the work.

Although this practice of requiring an agreement between the company and the developer seems to be common with CenturyLink, staff finds that CenturyLink declines to drop lines because it believes the return on the investment is not economically advantageous. Staff interviewed Mr. Bryon Bocker, the developer for Applewood, a 25 lot subdivision in Vancouver, WA. The developer stated that CenturyLink did not drop lines in the subdivision because “the cost of coming in versus the opportunity for revenue isn’t worth it to CenturyLink financially and that they were opting out.” The developer stated there was no discussion about entering into an agreement; just the discussion about CenturyLink opting out for financial reasons.

²¹ See RCW 80.04.380.

²² See Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission, ¶ 15 (Jan. 7, 2013) (Enforcement Policy.)

2. Whether the violation is intentional.

Staff finds that the violations are intentional and ongoing. WACs 480-120-071(3) and (4) are very specific and require the company to provide the customer with an application for extension of service within seven days and to allow an extension of service up to 1,000 feet at no charge to the customer. Staff finds that the company failed to follow the rules and failed to follow procedures in place to request an exemption from the commission.

3. Whether the company self-reported the violation.

CenturyLink did not self-report these violations. The violations were found when a consumer filed an informal complaint. CenturyLink also failed to notify the consumer that he has the right to contact the commission.

4. Whether the company was cooperative and responsive.

The company was fairly cooperative; however, many of the responses to data requests were inadequate or incomplete. Numerous extensions were requested and CenturyLink had been instructed to provide a reason for all extensions. At times, CenturyLink requested frivolous extensions, e.g., one extension was requested because an employee of CenturyLink was not returning Mr. Grate's telephone calls.

An example of an inadequate response occurred when CenturyLink was requested to produce an infrastructure map of a specific area. The map submitted by the company was not legible and had various markings without a legend to explain what was being sent. It is difficult to determine whether this was intentional or an oversight.

5. Whether the company promptly corrected the violations and remedied the impacts.

As of the date of this report, the consumer has not been contacted by CenturyLink. The consumer has not received an application for extension of service, a cost estimate, or an extension up to 1,000 feet. This consumer has not been served by CenturyLink.

6. The number of violations and the number of customers affected.

This investigation was based on a single complaint. Staff found two other complaints against CenturyLink for refusal of service. Staff is concerned that CenturyLink admits that it does not keep records of consumers who call for service but are, in CenturyLink's view, in a "no serve" area. Based on this admission, staff believes that CenturyLink's customers are not provided service upon demand.

7. The likelihood of recurrence.

Staff is aware that CenturyLink continues to refuse to provide an extension of service to consumers residing in its service area.

On Oct. 3, 2017, a consumer filed informal complaint CAS-21842-B6V9L3. CenturyLink denied an application for extension of service and a cost estimate for basic local exchange service for the customer.

On Nov. 1, CenturyLink responded to commission staff:

CenturyLink understands the Staff's position and is aware of the informal violations previously assessed. CenturyLink respectfully disagrees with Staff's interpretation and reiterates its interpretation of the rule here. WAC 480-120-071(2) states that the rule regarding extensions of service does not apply to applications for extensions of service in developments. The requested extension of service is in a development, so CenturyLink is under no obligation to respond to individual applications for service in this development, either while the builder agreement is pending, or afterward if the builder declines to participate. The denial of service is further based on CenturyLink's terms and conditions of service which have been in place for nearly 10 years. Those terms provide that when a developer does not enter into a PAHD agreement with CenturyLink to allow CenturyLink to economically place facilities, then CenturyLink is not obligated to accept individual applications for service. This is consistent with the line extension rule. CenturyLink has detailed its rationale in various correspondence in response to the Robert Saum complaint. In short, both of these developments have an alternative provider of service available, the builder has declined to enter into (or has not yet agreed to) a PAHD agreement, and CenturyLink thus believes it is not obligated to provide duplicative facilities for which it will have no reasonable opportunity to recover its costs.

8. The company's past performance regarding compliance, violations and penalties.

In August 2008, staff reviewed 212 commission-referred consumer complaints filed against Qwest (now CenturyLink) between Jan. 1 and June 30, 2008, to determine Qwest's compliance with rules and laws enforced by the commission. Staff found that Qwest violated 11 consumer protection laws and rules. Staff provided Qwest with a copy of the investigation report and met with company representatives to discuss the findings and provide technical assistance.

Staff performed a follow-up investigation in March 2010, using 102 consumer complaints filed against Qwest between March 1 and June 30, 2009. Despite the company's assurance of future compliance and the ongoing technical assistance provided through the commission's consumer complaint process, staff found violations of 10 statutes and rules. Staff recommended the commission issue a formal complaint against Qwest for 69 violations of laws and rules enforced by the commission, and recommended a penalty of \$69,000.

In March 2014, staff performed a subsequent investigation reviewing 144 consumer complaints filed against Qwest and CenturyLink from Sept. 1, 2011, to Aug. 31, 2012. Staff found several repeat violations, and recommended the commission issue a formal complaint against the company and impose penalties of up to \$313,000.

In August 2014, staff released its investigation report on CenturyLink's November 2013 voice and data outage in the San Juan Islands. Staff recommended the commission assess more than \$170,000 in penalties.

In February 2016, a Final Order Approving Settlement Agreement was filed in connection with a staff investigation due to the unavailability of 911 service for six hours on April 9-10, 2014. CenturyLink was assessed a penalty of \$2,854,750.

In June 2017, the commission imposed a \$123,210 suspended penalty against CenturyLink due to insufficient notification of major outages, in direct violation of the company's approved Emergency Communication Plans.

9. The company's existing compliance program.

In May 2016, the commission issued an order approving the San Jan County Outage Communications Plan and Washington State Outages Communications Plan. Other than the communications plans, staff is not aware of any existing compliance program.

10. The size of the company.

CenturyLink filed a gross intra-state annual revenue of \$363,182,516 for 2016.

Staff Recommendations

Staff recommends the commission issue a formal complaint against CenturyLink and assess a penalty of up to \$351,000 for 351 violations of commission laws and rules as follows:

- Up to \$1,000 per day for each of the 174 days the company was in violation of RCW 80.36.090, for refusing to provide service on demand;
- Up to \$1,000 for one violation of WAC 480-120-071(3) for failing to provide a customer an application for extension of service within seven days; and
- Up to \$1,000 per day for each of the 174 days the company was in violation of WAC 480-120-071(4) for failing to allow an extension of service up to 1,000 feet at no charge to the customer.
- Up to \$1,000 for one violation of WAC 480-120-166, for failing to keep commission-referred complaints for at least two years.
- Up to \$1,000 for violation of WAC 480-120-349, Retaining and preserving records and reports.

Additionally, Staff recommends that CenturyLink closely review this report and the violations cited herein, which constitute technical assistance. Future violations may result in additional enforcement action, including escalated penalties.