

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,**

**Complainant,**

**v.**

**QWEST CORPORATION  
d/b/a CENTURYLINK QC,**

**Respondent.**

**DOCKET UT-190209**

**PREFILED RESPONSE TESTIMONY OF**

**PHILIP E. GRATE**

**CENTURYLINK**

**January 9, 2020**

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1 I. INTRODUCTION

2 **Q. Please state your name, business address and for whom you are testifying.**

3 A. My name is Philip E. Grate. My business address is 1600 - 7th Ave., room 1513,  
4 Seattle, WA 98191. I am testifying on behalf of Qwest Corporation dba CenturyLink  
5 QC (hereinafter "CenturyLink").  
6

7 **Q. Please describe your background and qualifications.**

8 A. I received a Bachelor of Science in Business Administration and a Juris Doctorate from  
9 Indiana University. I am currently an inactive member of the Washington State Bar in  
10 good standing. I began my professional career at what was then one of the Big Eight  
11 accounting firms, Touche Ross & Co., in 1982 and was granted a license as a Certified  
12 Public Accountant. I joined Pacific Northwest Bell (which is now part of CenturyLink)  
13 in 1984 as a tax researcher. I was promoted to tax attorney and then took assignments as  
14 director of accounting standards and director of regulatory finance. I accepted a position  
15 in CenturyLink's Public Policy department in 2013 as director of regulatory and  
16 legislative affairs for Montana. In 2015 I became director of regulatory affairs for  
17 Oregon. In 2016 I became director of regulatory affairs for Washington as well. In  
18 2018 my titled changed to government affairs director and my portfolio was expanded to  
19 include Montana, Alaska and Hawaii. In my capacity as government affairs director I  
20 am responsible for CenturyLink's regulatory matters before the Oregon Public Utility  
21 Commission, the Montana Public Service Commission, the Regulatory Commission of  
22 Alaska, the Hawaii Public Utilities Commission and the Washington Utilities and  
23 Transportation Commission (hereinafter "Commission").

1

2 **Q. Have you given testimony before the Commission?**

3 **A.** Yes. I have testified regarding rate base rate-of-return revenue requirements in Docket  
4 No. UT-970766, on the disposition of the gain from the sale of the Dex yellow pages  
5 business in Docket No. UT-021120, in support of the alternative form of regulation in  
6 Docket No. UT-061625 and in response to Staff's allegations that CenturyLink violated  
7 the state's service on demand statute and the Commission's line extension and reporting  
8 rules in Docket No. UT-171082.

9

10 **Q. What is the purpose of your testimony in this case?**

11 **A.** The purpose of my testimony is to respond to Staff witness Michael Turcott, and his  
12 testimony and recommendations about the incident described in the Staff  
13 Investigative Report (Exhibit MT-2)

14

15 **Q. In general, what is CenturyLink's response to Staff's testimony filed on October**  
16 **25, 2019?**

17 **A.** It is CenturyLink's position that the incident described below and in the testimony of  
18 Randy Mills did not violate WAC 480-120-450(1) or RCW 80.36.080.

19

20

## I. THE INCIDENT

21 **Q. What happened during the incident and how long did it last?**

22 **A.** The incident occurred the morning of July 12, 2017 and lasted two hours and 47  
23 minutes. During the incident, a total of 1,405 Washington calls to 911 were

1 placed. Of those, 222 failed to complete. There were 148 unique callers. 140 callers  
2 were using wireless phones and eight were using landline phones. CenturyLink was  
3 the landline service provider for one of the eight callers. Randy Mills describes the  
4 incident in more detail in his testimony.

5

6 **Q. Can you summarize why these failed calls do not constitute violations of the**  
7 **rule or the statute cited by Staff?**

8 A. Yes. In summary, the rule requires all LECs to deliver 911 calls to the selective  
9 router. The calls in question here were in fact delivered to that point but failed  
10 due to a maintenance issue further into the network. Staff may believe that such a  
11 failure *should* constitute a rule violation. However, if the failure is not within the  
12 scope of the rule then (as is the case here) the rule simply does not apply.

13

14 The statute is a general statute requiring the company to have adequate and  
15 sufficient facilities. In fact, there is no evidence that the facilities that were  
16 affected by an extraordinarily rare and isolated data glitch during a maintenance  
17 upgrade were anything less than the most modern and adequate and were in fact  
18 being further upgraded at the time. Randy Mills explains in more detail why this  
19 incident should not be a violation.

20

1

II. NO VIOLATION OF WAC 480-120-450(1)

2 **Q. Does WAC 480-120-450 apply to the service CenturyLink was providing?**

3 A. No, it does not. A review of the history of 911 technology will help explain why.

4 There have been basically three kinds of 911 service in Washington. In

5 chronological order they are:

6 1. Basic Universal Emergency Number Service (**Basic 911**)<sup>1</sup> which permits the  
7 public to dial 911 and have the central office serving the calling line route the  
8 call to a Public Safety Answering Point (PSAP). Each PSAP is served by a  
9 single central office. Basic 911 does not provide selective routing.

10 2. Enhanced Universal Emergency Number Service (**E911**)<sup>2</sup> which offers features  
11 such as:

12 a. Selective Routing which is a feature that permits a 911 call to be routed to the  
13 designated primary PSAP based upon the identified telephone number of the  
14 calling party;

15 b. Automatic Number Identification (ANI) which is a feature by which the  
16 calling party's telephone number is forwarded to the E911 customer's  
17 (PSAP's) premises equipment for display;

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<sup>1</sup> Qwest Corporation d/b/a CenturyLink QC Washington Exchange and Network Services Tariff WN U-49 9.1.1.A.

<sup>2</sup> Qwest Corporation d/b/a CenturyLink QC Washington Exchange and Network Services Tariff WN U-49 9.1.1.B.

1 c. Automatic Location Identification (ALI) which is a feature by which the  
2 name and address associated with the calling party's telephone number  
3 (identified by ANI feature) is forwarded to the PSAP for display.<sup>3</sup>

4 E911 service relies on an E911 Control Office/Tandem which is a central office  
5 that provides tandem switching of 911 calls. It controls switching of ANI  
6 information to the PSAP and also provides the Selective Routing feature and  
7 certain maintenance functions for each PSAP.<sup>4</sup>

8 3. Next-generation 911 (**NG911**) which is a service where calls to 911 are delivered  
9 to PSAPs over an Internet Protocol (IP)-enabled Emergency Services  
10 Information Network (ESINet) that bypasses the Public Switched Telephone  
11 Network. NG911's all-IP connection enables selective routing and ANI and  
12 ALI features as well as photos, video, and text messaging not possible with  
13 E911.

14

15 **Q. To what kind of 911 service does WAC 480-120-450 apply?**

16 A. WAC 480-120-450 is entitled "Enhanced 9-1-1 (E911) obligations of local exchange  
17 companies." As its title suggests, WAC 480-120-450 applies to E911. Its  
18 predecessor rule, WAC 480-120-340, applied to Basic 911. The Commission's  
19 General Order No. R-570 promulgated WAC 480-120-450 with an effective date of  
20 July 1, 2003 and repealed WAC 480-120-340 with the same effective date.

21 Although CenturyLink began providing NG911 services under contract with the

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<sup>3</sup> Qwest Corporation d/b/a CenturyLink QC Washington Exchange and Network Services Tariff WN U-49  
9.1.1.B.2.

<sup>4</sup> *Id.*

1 Emergency Management Division of the Washington Military Department in 2009,  
2 the Commission has not promulgated a rule to regulate NG911 service.

3

4 **Q. What state agency determines the kind of statewide 911 service used in**  
5 **Washington?**

6 A. The Washington Military Department (MIL) receives funding for statewide 911  
7 service and bears responsibility for determining what kind of 911 service the state  
8 uses. MIL contracts with the provider of statewide 911 service. The contract  
9 specifies the types of service to be provided and the terms and conditions under  
10 which service is to be provided.

11

12 **Q. Is the Commission a party to the 911 contract?**

13 A. No.

14

15 **Q. Even if WAC 480-120-450(1) applied to NG911, does it apply to the statewide**  
16 **911 services that are the subject of Staff's complaint?**

17 A. WAC 480-120-450(1) does not apply to the statewide provider of 911 services under  
18 contract with MIL. Instead, WAC 480-120-450(1) applies to all local exchange  
19 companies (LECs) in the state and places responsibility on the LEC for delivering  
20 the call. It requires all LECs to provide enhanced 9-1-1 (E911) services which it  
21 defines as follows:

22 (a) For single line service, **the ability for customers to dial 911 with the**  
23 **call and caller's ELIN transmitted to the E911 selective router serving the**  
24 **location associated with the ERL for that line;**



1 (b) For multiline customers, **the ability for customers to dial 911 with**  
2 common signal protocols available which permit **the call and caller's ELIN to be**  
3 **transmitted to the E911 selective router serving the location associated with the**  
4 **ERL for that line;**

5 (c) For pay phones served by pay phone access lines (PALs) **the ability for**  
6 **customers to dial 911 with the call and the ELIN transmitted to the E911**  
7 **selective router serving the location of the ERL for that line.** The ELIN must be  
8 that of the pay phone. (emphasis in bold added)  
9

10 **Q. What does this mean with regard to the 222 failed calls that are at issue in this**  
11 **complaint?**

12 A. Of the 222 failed calls to 911, all were transmitted to the NG911 selective router  
13 serving the location associated with the ERL for that line. Ten were transmitted by  
14 LECs and 212 by wireless carriers. CenturyLink was the LEC on only one of those  
15 222 calls. The rule requires 911 calls to be delivered to the E911 selective router.  
16 All 222 calls reached the NG911 selective router. The failure occurred in West's  
17 911 call routing system downstream of the NG911 selective router. But that failure  
18 did not violate WAC 480-120-450(1) because WAC 480-120-450(1) does not  
19 prescribe standards applicable to 911 call routing and database management services  
20 downstream of the NG911 selective router.

21  
22 **Q. Was the absence of rules for call routing and data management services**  
23 **brought to the attention of the Commission during the rulemaking for WAC**  
24 **480-120-450?**

25 A. Yes. The Commission promulgated WAC 480-120-450 in Rulemaking Docket No.  
26 UT-990146. In January of 2002, the Washington Military Department Emergency

1 Management Division filed the comments of Robert Oenning in Docket No. UT-  
2 990146. Mr. Oenning wrote:

3 Consideration should be given to organizing the provisions to even further  
4 clarify the distinctions of what are responsibilities for all LECs and the  
5 distinct responsibilities for those LECs who provide E911 call routing and  
6 data management services.

7 No changes were made to the original draft of the rule to address Mr. Oenning's  
8 recommendation and WAC 480-120-450 does not address the responsibilities for  
9 those LECs who provide E911 call routing and data management services, let those  
10 who provide alone NG911 service.

11

12 **III. NO VIOLATION OF RCW 80.36.080**

13 **Q. Can you please address Staff's contention that RCW 80.36.080 was violated?**

14 A. It is CenturyLink's position that the maintenance issue that resulted in the failed 911  
15 calls did not violate RCW 80.36.080.

16 Staff's complaint asserts:  
17

18  
19 CenturyLink failed on at least 222 occasions to render prompt, expeditious,  
20 and efficient service, to keep its facilities, instrumentalities, and equipment in  
21 good condition and repair, and/or to ensure that its appliances,  
22 instrumentalities, and services were modern, adequate, sufficient, and  
23 efficient.

24 Staff's complaint does not identify any CenturyLink facilities or equipment not in  
25 good condition and repair. For that matter, Staff's complaint does not identify any  
26 facilities not in good condition and repair. Nor does the Complaint offer any

1 evidence that CenturyLink's or West's appliances, instrumentalities or service were  
2 not modern or efficient.

3  
4 The adequacy and sufficiency of CenturyLink's statewide 911 service was  
5 established by the contract between CenturyLink and the Washington State Military  
6 Department (MIL). So too were the remedies available to MIL for any failure to  
7 meet the standards specified in the contract. Staff's complaint would have the  
8 Commission act as the contract's invisible third party imposing its own, unwritten  
9 standards for adequacy, sufficiency and remedies.

10  
11 Finally, under Staff's interpretation of RCW 80.36.080, any single, failed call by any  
12 LEC could be considered a failure to render prompt, expeditious, and efficient  
13 service punishable by a \$1,000 fine. This is an unduly punitive interpretation of that  
14 statute, and is contrary to other explicit statutory language

15

16 **Q. What statutory language are you referring to?**

17 A. I am referring to the specific statute regarding monetary penalties, RCW 80.04.380.

18 That statute provides:

19 Penalties—Violations by public service companies.

20 Every public service company, and all officers, agents and employees  
21 of any public service company, shall obey, observe and comply with every  
22 order, rule, direction or requirement made by the commission under authority  
23 of this title, so long as the same shall be and remain in force. Any public  
24 service company which shall violate or fail to comply with any provision of  
25 this title, or which fails, omits or neglects to obey, observe or comply with  
26 any order, rule, or any direction, demand or requirement of the commission,  
27 **shall be subject to a penalty of not to exceed the sum of one thousand**

1                    **dollars for each and every offense.** Every violation of any such order,  
2                    direction or requirement of this title shall be a separate and distinct offense,  
3                    and **in case of a continuing violation every day's continuance thereof shall**  
4                    **be and be deemed to be a separate and distinct offense.** (emphasis in bold  
5                    added)  
6

7    **Q.    If CenturyLink had violated the statute and rule as Staff alleges, would Staff's**  
8                    **assertion that each was violated 222 times be correct?**

9    A.    No. Even had there been a violation of the rule or statute (which there was not),  
10                    there would have been, at most, one violation, not 222. Neither the rule nor statute  
11                    applies to individual calls. The per-call standard is Staff's invention that serves to  
12                    greatly inflate the number of alleged violations. **If**, in fact, the maintenance error  
13                    were a violation of the statute, then it could constitute only one violation. And if the  
14                    one failed call where CenturyLink was the LEC were a violation of WAC 480-120-  
15                    450(1) (which it is not) then that single call could constitute only one violation.

16

17                    **IV.    CONCLUSION**

18    **Q.    Please summarize CenturyLink's view of Staff's complaint.**

19    A.    The complaint simply does not provide any basis upon which \$222,000 worth of  
20                    penalties can be assessed. First, the complaint is about NG911 service which is an  
21                    Internet Protocol (IP) service riding the Internet and for which the Commission has  
22                    no rule. Second, the complaint asserts violation of a rule that does not apply to the  
23                    facts. Third, the complaint asserts 222 violations of the statute but with absolutely no  
24                    explanation of facts that would support that claim. Lastly, the complaint incorrectly

1 inflates the number of violations to 222 when the maximum possible number of  
2 violations is one each of the statute and rule.

3  
4 Ironically, the incident occurred only because West was engaged in *upgrading its*  
5 *facilities and service*. And now CenturyLink no longer has the contract for statewide  
6 NG911 service. So, it is unclear why—at this point in time and under the current  
7 circumstances—Staff would file a deeply flawed complaint in an attempt to extract a  
8 steep fine from the now past provider of statewide NG911 service.

9

10 **Q. Does this conclude your testimony?**

11 A. Yes.