

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

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

**DOCKET UT-210902**

**LUMEN COMPANIES’  
MOTION TO STRIKE PORTIONS OF  
PUBLIC COUNSEL’S RESPONSE IN  
SUPPORT OF STAFF MOTION FOR  
SUMMARY DETERMINATION**

*1* Pursuant to WAC 480-07-375(d), 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, “Lumen Companies”) hereby move to strike or otherwise exclude the portions of Public Counsel’s Response in Support of Staff Motion for Partial Summary Determination (“Response”) that inappropriately attempt to amend Commission Staff’s complaint and expand the scope of this proceeding.

**I. BACKGROUND FACTS AND RELIEF REQUESTED**

*2* On April 6, 2022, the Washington Utilities and Transportation Commission (“Commission”) issued a complaint (“Complaint”) alleging that the Lumen Companies violated WAC 480-120-172(3)(a) for disconnecting service to a total of 923 customers during the period between March 23, 2020 and September 30, 2021, when the Governor’s Proclamation 20-23.2

(“Proclamation”) was in effect. The Commission found probable cause to issue the Complaint based on its staff’s (“Staff”) investigative report (“Investigative Report”).<sup>1</sup> The Investigative Report was the result of several months of investigation from the Commission’s compliance investigations unit, and it followed multiple rounds of data requests and other communications with the Lumen Companies.<sup>2</sup> Staff’s investigation specifically considered 243 customers whose accounts were placed in “suspended” status prior to the effective date of the Proclamation.<sup>3</sup> Staff determined that those disconnections did not violate WAC 480-120-172(3)(a). “Since service for the 243 customers was suspended prior to the prohibited timeframe outlined in the Proclamation, and according to CenturyLink, customers in suspended status are restricted from telecommunication services, staff excludes them from the total number of disconnections during the relevant period.”<sup>4</sup> Therefore, neither Staff’s Investigative Report nor the Commission’s Complaint allege violations based on these 243 disconnections. Further, neither the Investigative Report nor the Complaint allege any violations based on late fees or reconnection fees. A prehearing conference in this proceeding was held on May 23, 2022.<sup>5</sup> Public Counsel attended the prehearing conference and made no mention of additional claims, alleged violations, or the need to amend Commission Staff’s Complaint.<sup>6</sup>

3            On June 16, 2022, Staff filed a Motion for Partial Summary Determination of Lumen’s Liability (“Motion”) for the violations alleged in the Complaint. The Lumen Companies filed a

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<sup>1</sup> See Complaint and Notice of Prehearing Conference at ¶ 40 (April 6, 2022).

<sup>2</sup> See Investigative Report at pp. 5-7 (March 2022).

<sup>3</sup> See *id.*

<sup>4</sup> See Investigative Report at p. 8.

<sup>5</sup> See Order 01 at ¶ 2 (May 24, 2022).

<sup>6</sup> See *id.* at ¶ 3. See also, TR. Vol. 1 (May 23, 2022).

timely opposition to Staff’s Motion and a cross motion for summary determination, and Public Counsel filed a Response to Staff’s Motion. In its Response, Public Counsel requests that the Commission *expand the scope of this proceeding* to seek penalties for (1) the 243 disconnections that Staff determined were outside the relevant time period for this matter, (2) reconnection fees, and (3) late fees.<sup>7</sup> The Lumen Companies request that the Commission strike the portions of Public Counsel’s Response related to these requests, as they improperly circumvent the Commission’s procedural rules for amending a complaint.

4            Specifically, the Lumen Companies request the Commission strike the following portions of Public Counsel’s Response: Paragraphs 2, 6-8, 11, 13-14, 16- 25, and 27.

## II. STATEMENT OF ISSUES

5            The Lumen Companies raise the following issue for the Commission’s determination: Should the Commission strike or otherwise exclude Public Counsel’s attempts to amend Staff’s Complaint through a response to a motion for partial summary determination when doing so violates established procedural rules and abuses due process?

## III. EVIDENCE RELIED UPON

6            The Lumen Companies rely on Public Counsel’s Response filed on July 6, 2022, in this proceeding and the existing record and documents on file with the Commission in this docket.

## IV. APPLICABLE RULES AND STANDARDS

7            Under the Administrative Procedure Act (“APA”),<sup>8</sup> the Commission must exclude evidence that is inadmissible on statutory or constitutional grounds, and it has discretion to

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<sup>7</sup> See Response at ¶ 2.

<sup>8</sup> The Commission’s authority to exclude evidence stems from the Administrative Procedure Act in RCW Chapter 34.05.

exclude evidence on the basis of irrelevancy, immateriality, or repetition. *See* RCW 34.05.452.

The superior court rules of evidence act as guidelines but are not binding on the presiding officer. *See* RCW 34.05.452; WAC 480-07-495. In addition, under the Commission’s procedural rules, a motion to strike is an evidentiary motion with a handful of formatting requirements, which are complied with here, and a specific response time. *See* WAC 480-07-375.

8 Under the APA, an agency must allow parties an opportunity to respond to a complaint, present evidence and argument, conduct cross-examination, and submit rebuttal evidence. *See* RCW 34.05.437; RCW 34.05.449. While the Commission allows for amendments to pleadings, a party’s request to amend a pleading must be made in the form of a pleading or motion.<sup>9</sup> Importantly, “all grievances to be inquired into must be plainly set forth in the complaint.” *See* RCW 80.04.110; RCW 81.04.110.

## V. ARGUMENT

9 Public Counsel’s Response requests the Commission to expand the scope of issues at hearing to include claims that were not pled in Staff’s Complaint. Public Counsel is effectively asking the Commission to amend another party’s complaint or to adopt some type of peculiar pseudo-complaint to add allegations and seek penalties in this proceeding for alleged violations that were considered and rejected by the complaining party. As explained more fully below, this request ignores procedural rules for how to properly file a motion to amend a complaint and contradicts the properly pled issues before the Commission.

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<sup>9</sup> *See* WAC 480-07-375(2) and WAC 480-07-395(5). *See also*, *WUTC v. Puget Sound Energy*, Docket PG-160924, Order 03 at ¶ 8 (May 5, 2016).

**A. The Commission’s rules establish the procedure for filing or amending complaints, and Public Counsel’s “Response” is a backdoor attempt to circumvent those rules.**

10 The public service statutes allow anyone to file a complaint against a public service company.<sup>10</sup> The Commission’s administrative rules then allow and provide for dispositive, procedural, or evidentiary motions to limit or add to the record in a proceeding.<sup>11</sup> As stated above, parties must file motions separately from any pleading or other communication with the Commission. These established procedures for submitting and amending complaints do not allow or even contemplate the request at hand—to materially expand the number and scope of allegations in another parties’ complaint by way of a response to a motion for partial summary determination. In fact, the rules do not even provide the moving party an opportunity to reply to a response to a motion for partial summary determination. By improperly inserting its request into a response to a motion for summary determination, Public Counsel is effectively asking the Commission to amend Staff’s Complaint on its own motion, a “motion” lacking an opportunity to respond. While the Commission will liberally construe pleadings and motions with a view to effect justice among the parties,<sup>12</sup> Public Counsel’s request was neither a pleading nor a motion, and granting Public Counsel’s request will not effect justice among the parties.

11 This is not the first time Public Counsel has improperly attempted to expand the scope of a complaint. Public Counsel unsuccessfully applied this same strategy when it used its response testimony to request that the Commission add alleged violations to a complaint involving Puget Sound Energy (“PSE”).<sup>13</sup> There, the Commission struck Public Counsel’s inappropriate

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<sup>10</sup> See RCW 80.04.110(1)(a).

<sup>11</sup> See WAC 480-07-375.

<sup>12</sup> See WAC 480-07-395(6).

<sup>13</sup> *WUTC v. Puget Sound Energy*, Docket PG-160924, Order 03 (May 5, 2016).

testimony, stating, “[a] party’s request to amend a pleading must be in the form of a petition or motion signed and submitted by counsel (or party representative if the party is not represented by an attorney)[.]”<sup>14</sup> The Commission “reject[ed] Public Counsel’s argument that it can provide a factual basis for additional violations and rely on Commission discretion to amend the complaint and impose additional penalties.”<sup>15</sup> Moreover, the Commission found Public Counsel’s request untimely since its response testimony was submitted several months after the Commission issued the complaint.<sup>16</sup>

12           Here, Public Counsel’s actions are even more brazen. The requested alleged violations regarding an additional 243 disconnections were expressly considered and excluded from the Complaint because Staff determined, after its investigation, that the 243 disconnections were made prior to the prohibition period in the Proclamation. So not only does Public Counsel (which raised these issues for the first time three months after the Complaint was filed) not have a factual basis for claiming such alleged violations, but the facts affirmatively refute such allegations. Similarly, Staff considered and rejected including late fees or reconnection fees in its Complaint.<sup>17</sup> Again, Staff performed an investigation—not Public Counsel—and Staff decided against filing such claims. Therefore, the Commission has not found probable cause for any alleged violation regarding the 243 disconnections, late fees, or reconnection fees.

13           Further, while Public Counsel’s proposed amendments come earlier in this proceeding than its attempt in the PSE case, the procedural posture of this case means the Lumen Companies

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<sup>14</sup> *Id.* at ¶ 8 (quoting WAC 480-07-395(5)).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *See* Attach. D to Investigative Report at pp. 2-3.

have no opportunity to defend themselves against entirely new claims. Public Counsel had notice of any suspensions, disconnections, late fees, and reconnection fees by no later than April 6, 2022, because these were all explained in Attachment D to Staff’s Investigative Report. Public Counsel did not file its own complaint, made no attempt or request to amend Staff’s Complaint, and made no mention of these potential claims at the prehearing conference. Instead, Public Counsel waited three months and now requests that the Commission simply consider these additional claims “at hearing”. Procedurally, Public Counsel’s request is unworkable. Unlike response testimony in PSE’s case, a response to a motion for partial summary determination does not allow for reply or rebuttal. Both Staff and the Lumen Companies agree that this complaint should be resolved on summary determination, and the Commission has been called on to dispose of the paramount issue in this case – liability – without any further testimony or hearing. But allowing Public Counsel’s request to remain in the record would mean that regardless of the how the Commission rules on the cross motions, new issues have emerged that now must be addressed. Public Counsel’s attempted use of a dispositive motion response to broaden the scope of the proceeding in ways they failed to pursue at or before the prehearing conference violates the procedural rules and forces the parties to address claims that were never actually made.

**B. Public Counsel’s issues may not be considered because they are outside the scope of Staff’s Complaint.**

14 Staff’s Complaint in Docket UT-210902 is the document establishing the basis and scope of the issues in this proceeding. The Commission may not consider grievances that are not “plainly set forth in the complaint.”<sup>18</sup> Therefore, Public Counsel’s suggestion that the

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<sup>18</sup> RCW 80.04.110(2).

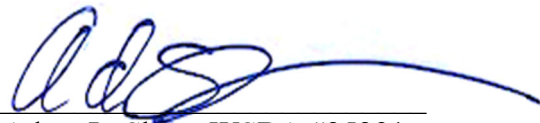
Commission simply address its additional grievances at hearing is not only procedurally improper, it is prohibited by Washington law.

## VI. CONCLUSION

15 For the reasons stated above, the Commission should strike or otherwise exclude the portions of Public Counsel's Response that attempt to add alleged violations to the Complaint, the Commission should reject Public Counsel's attempt to circumvent the Commission's procedural rules and Washington law.

Respectfully Submitted this 18th day of July, 2022.

**CENTURYLINK COMMUNICATIONS, LLC**



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