

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held December 8, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

M-2022-3028754

v.

The United Telephone Company of
Pennsylvania LLC d/b/a CenturyLink

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a proposed Joint Petition for Approval of Settlement (Settlement), filed on July 18, 2022, by the Commission's Bureau of Investigation and Enforcement (I&E) and The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (CenturyLink or the Company) (collectively, the Parties), with respect to an informal investigation conducted by I&E. Both Parties filed a Statement in Support of the Settlement (Statement in Support). Further, both Parties submit that the proposed Settlement is in the public interest and is consistent with the Commission's Policy

Statement at 52 Pa. Code § 69.1201, *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations— statement of policy* (Policy Statement). See Settlement at ¶¶ 11, 68, *infra*.

For the reasons set forth herein, we shall approve the proposed Settlement, consistent with this Opinion and Order.

I. History of the Proceeding

This matter concerns alleged outages, unreliable service, and general customer service complaints regarding CenturyLink, a rural incumbent local exchange carrier (RLEC) as defined at 66 Pa. C.S. § 3012.¹ Settlement at ¶¶ 7, 10 (citing *Alternative Regulation Plan* at 2, n. 3). Specifically, on or about August 28, 2021, heavy rain and winds from Hurricane Ida caused excessive flooding at a CenturyLink affiliate’s switch, located outside of Philadelphia, Pennsylvania (CenturyLink Affiliate). The flood resulted in damage and destruction to “equipment inside the building and impacted long-distance calling.” Settlement at ¶ 15. CenturyLink asserted that the flood did not impact local calling or a customer’s ability to call 911. CenturyLink completed the necessary repairs to restore long-distance calling for all customers by September 10, 2021. Settlement at ¶ 16.

¹ CenturyLink is a public utility RLEC that provides local exchange service and broadband service in all or parts of twenty-five (25) counties located in central and western Pennsylvania, as set forth in Act 183 and the *Petition for Amended Alternative Regulation and Network Modernization Plan of The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink*, Docket No. P-00981410F1000 (Order entered June 23, 2005) (*Alternative Regulation Plan*). Further, “rural” is defined in Section 3 of the Telecommunications Act of 1996, 47 U.S.C. § 153, and includes all non-Verizon Pennsylvania incumbent local exchange carriers. Settlement at ¶¶ 7, 14 (citing *Alternative Regulation Plan*, Secretarial Letter dated July 12, 2005).

On September 17, 2021, Senator Judy Ward, Senator John DiSanto and Representative Perry Stambaugh sent a letter to the Commission requesting an investigation of the extended service outage and alleged unreliable service reported by CenturyLink's customers (*September 2021 Letter*). Settlement at ¶ 17. On September 27, 2021, in response to the *September 2021 Letter*, the Commission referred the matter to I&E. Subsequently, I&E received the emails of issues and/or complaints received by the legislators. Settlement at ¶¶ 17-18.

On or around November 2021, upon I&E's request, the Commission's Bureau of Consumer Services (BCS) provided informal consumer complaints against CenturyLink related to internet and telephone outages, customer service issues, failure to respond to downed lines, no dial tone, and other service issues. Specifically, BCS provided three (3) complaints for 2019, thirty-one (31) complaints for 2020, and 143 complaints for January 2021 through November 8, 2021. Settlement at ¶ 19.

By letter dated November 12, 2021, I&E sent a data request to CenturyLink (*November 2021 Letter*), notifying the Company that, based on information referred to I&E by the *September 2021 Letter*, I&E had instituted an informal investigation of CenturyLink. I&E limited its data request to CenturyLink's customers in the following counties: (1) Perry; (2) Cumberland; (3) Franklin; and (4) Juniata.² In response to I&E's data request, counsel for CenturyLink twice requested an extension of time to provide

² The Parties noted that the complaints provided by BCS arose from various areas in the Company's service territory and not solely from these counties. Settlement at 5, n. 1; Settlement at ¶ 30. The Parties further noted that manual sorting of information was necessary because the data requests sought detailed information based upon political boundaries, which do not align with telecommunications exchanges and areas served. Settlement at 6, n. 3.

responses.³ The Parties ultimately agreed that CenturyLink's response to I&E's data request was required by January 14, 2022. Consequently, CenturyLink provided timely responses to I&E's data requests. Settlement at ¶¶ 20-24.

On February 7, 2022, I&E sent a data request to CenturyLink, requesting that CenturyLink review and respond to a list of eighteen email complaints received by the legislature. On March 21, 2022, I&E contacted CenturyLink to address specific complaints received by BCS and to schedule a meeting. Consequently, CenturyLink provided responses to the specific BCS complaints. Settlement at ¶¶ 25-26.

On April 5, 2022, I&E and CenturyLink held a meeting at the Commission.⁴ Subsequently, the Parties entered into settlement discussions. On June 7, 2022, the Parties held a virtual meeting. As a result of successful discussions between the Parties, an agreement between I&E and CenturyLink on an appropriate outcome to the investigation was reached, in accordance with the Commission's policy to promote settlements at 52 Pa. Code § 5.231. Settlement at ¶¶ 11, 27-28.

As previously noted, on July 18, 2022, I&E and CenturyLink filed the instant Settlement. Also, as noted earlier, the Parties to the Settlement in this instance

³ Counsel for CenturyLink requested an extension to provide responses citing, *inter alia*, the pending litigation related to CenturyLink's acquisition by Apollo Global Management, Inc. Settlement at ¶ 21 (citing *Joint Application of The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink; CenturyTel Broadband Services, LLC; Connect Holding LLC; and Lumen Technologies, Inc. for All Approvals of a General Rule of Transfer of Control and Registration of Securities*, Docket Nos. A-2021-3028668; A-2021-3028669 (Final Order entered April 25, 2022) (*2022 CenturyLink Application*)).

⁴ We note that one individual attended the April 5, 2022 meeting, virtually. Settlement at ¶ 27.

have each filed a Statement in Support. *See* Appendix A and B to Settlement, which are Statements of Support filed by I&E and CenturyLink, respectively.⁵

By Order entered September 15, 2022 (*September 2022 Order*), we directed that notice of the Order and the proposed Settlement be published in the *Pennsylvania Bulletin*, to provide an opportunity for interested parties to file comments with the Commission regarding the proposed Settlement within twenty-five days after the date of publication.

On October 1, 2022, the *September 2022 Order*, along with the Settlement and Statements in Support, were published in the *Pennsylvania Bulletin*, 52 Pa.B. 6285 (October 1, 2022). In accordance with the *September 2022 Order*, comments on the proposed Joint Settlement were due on or before October 26, 2022 (*i.e.*, twenty-five days after the *September 2022 Order* was published). No comments were filed.

II. Background

The basis for the instant Settlement resulted from I&E's investigation, which included: (1) the informal complaints provided by BCS; (2) a review of the email complaints received by the legislature; and (3) CenturyLink's responses to I&E's data requests.⁶ Settlement at ¶ 29. In the Settlement, the Parties stipulated that the complaints alleged: (1) a failure to provide reasonable, continuous service; (2) a failure to address or repair the service outage in a reasonable amount of time; (3) issues with customer

⁵ We note that the Settlement also includes supplemental Proposed Ordering Paragraphs. *See* Proposed Ordering Paragraphs at 1-4.

⁶ Regarding complaints described in the Settlement, the Parties noted that the number of these complaints is not indicative of the number of customers who filed complaints. Rather, in their complaint, some customers alleged multiple, different violations. Settlement ¶ 30.

service; (4) a failure to respond to downed wires or poles and/or broken poles in a reasonable time; and (5) outages related to Hurricane Ida.

A. Complaints Received by BCS and the Legislature

1. Failure to Provide Reasonably Continuous Service

In 2020, BCS received five complaints which alleged multiple incidents of service outages or unreliable telephone and/or internet service. Specifically: (1) one customer's history included five reports over a six-month period; (2) one customer's history included three reports over a ten-day period; (3) one customer's history included five complaints in one month; (4) one customer's history included five complaints over a five-month period; and (5) one customer's history included ten complaints over a five-month period. Settlement at ¶ 33.

In 2021, BCS received three complaints which alleged multiple incidents of service outages or unreliable telephone and/or internet service. Specifically: (1) one customer's history included four reports over a three-month period; (2) one customer's history included four reports over a five-month period; and (3) one customer's history included eight reports of service issues over a six-month period. Settlement at ¶ 34.

Further, I&E identified nine complaints received by the legislature which alleged a violation of reasonably continuous telephone and/or internet service with unreasonable interruptions or delay. I&E also identified seventeen complaints received by the legislature which alleged a violation for continuous internet service. The complaints reported that outages lasted for “anywhere from every Friday to eight days to over a month for both internet and telephone services.” Settlement at ¶ 35. The complaints related to internet consistently reported several outages during the day lasting for a variety of time periods. *Id.*

2. Failure to Address or Repair a Service Outage Timely

In 2021, BCS received twenty-two complaints identified by I&E which alleged a failure to address a telephone and/or internet service outage or an unreasonable time provided to repair/address the outage, and the outages lasted from five days to over one month. Further, I&E identified eight complaints received by the legislature which alleged a failure to address a telephone and/or internet service outage or an unreasonable time provided to repair or address the outage, and the outages lasted from eight days to over one month. Settlement at ¶¶ 39-40.

3. Customer Service Issues

In 2020, I&E identified one BCS complaint where the complainant reported no service to CenturyLink on February 14, 2020. According to the complaint, the customer service agent who took the call did not create a ticket and a ticket was not created until the BCS complaint was received by CenturyLink. Settlement at ¶ 42. In 2021, I&E identified approximately thirty-eight service-related complaints filed by BCS, including: (1) unable to speak with a live person;⁷ (2) missed appointments; (3) after reporting a service issue, a ticket was not created; (4) long wait or hold times while calling CenturyLink; and (5) general complaints, such as the customer service agent or supervisor hanging up on the customer. In one April 2021 complaint, a customer explained that an additional DSL [Digital Subscriber Line] line was requested on February 27, 2021, and on four different occasions, CenturyLink cancelled or rescheduled the order. As of the April 2021 complaint, the customer was still waiting for the installation. Settlement at ¶ 43.

⁷ The Parties acknowledged that speaking with a live person is not a regulatory requirement. Settlement at ¶ 43.

Further, I&E identified five complaints received by the legislature which alleged various customer service-related complaints including, but not limited to, long hold times and difficulty reaching a customer service agent. Settlement at ¶ 44.

4. Failure to Timely Respond to Downed Wires/Poles and/or Broken Poles

In 2020 and 2021, I&E identified six complaints and twenty-one complaints, respectively, that alleged downed wires or poles. The complaints which required immediate action included a tree on a wire blocking the entrance to a farm and a downed wire on a customer's garage and camper. Further, some of the complaints noted that downed wires/broken poles were reported to CenturyLink but were not addressed. Settlement at ¶ 48.

I&E identified four complaints received by the legislature which alleged a lack of response by CenturyLink to calls or concerns of downed poles and/or wires, including: (1) one report of a broken pole hanging over a mailbox and driveway of the customer; (2) two reports of poles and wires which have remained damaged for months; and (3) one report that the local fire department "waits for hours" for a response from CenturyLink regarding reported wires and/or poles. Settlement at ¶ 49.

5. Outages Related to Hurricane Ida

As discussed, *supra*, on or about August 28, 2021, the CenturyLink Affiliate sustained flood damage which destroyed equipment inside the building and impacted long-distance calling. Settlement at ¶¶ 15, 50. Although long-distance calling was affected, CenturyLink customers impacted by the resulting outage retained their ability to place local calls and to call 911. By September 10, 2021, CenturyLink completed the necessary repairs to restore long-distance calling for all affected

customers. Therefore, the long-distance calling outage lasted approximately thirteen days. Settlement at ¶¶ 50-51.

As a result of the outage, BCS received approximately forty-two (42) complaints or reports from CenturyLink customers. CenturyLink self-reported that approximately 288,306 customers were affected by the outage and some of the BCS complaints included notes stating that the Company provided a credit to affected customers. Settlement at ¶¶ 52-54. Further, CenturyLink confirmed that any required, automatic credit was given to affected customers “during and after Hurricane Ida (or September and October 2021)” and some customers received courtesy credits. Settlement at ¶ 55.

B. Alleged Violations

If this matter had been fully litigated, I&E was prepared to present evidence and legal arguments to demonstrate that CenturyLink committed the following alleged violations, reprinted verbatim below:

- a) The customer complaints allege that CenturyLink failed to provide reasonably continuous service, noting multiple incidents of service outages or unreliable service. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 63.24 and 66 Pa. C.S. § 1501 (multiple counts).
- b) The customer complaints alleged that CenturyLink failed to address service outages or provide repair in a reasonable time. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 63.24, 52 Pa. Code § 63.57 and 66 Pa. C.S. § 1501 (multiple counts).
- c) The customer complaints allege that CenturyLink failed to provide reasonable and adequate customer

service to its customers, including a failure to meet commitments related to service issues/outages. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 63.57 and 66 Pa. C.S. § 1501 (multiple counts).

- d) The customer complaints allege that CenturyLink failed to respond to downed wires/poles and/or broke poles in a reasonable time. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 63.23, the National Electrical Safety Code, Part 214A, Appendix F, and 66 Pa. C.S. § 1501 (multiple counts).

Settlement at ¶ 56.

Regarding the circumstances surrounding the outages caused by Hurricane Ida, I&E did not find a violation. I&E explained that the damage sustained by CenturyLink facilities and the necessary time to address the damage indicate that the Company's actions and response, which resulted in a thirteen-day outage for long-distance calling, were reasonable. Moreover, CenturyLink confirmed that applicable refunds/credits, including courtesy credits, were provided to customers affected by the outage. Therefore, because of the unusual and unprecedented repair to the facilities, I&E did not find a violation related to the outage occurring from August 28, 2021 to September 10, 2021. Settlement at ¶ 57.

If this matter had been fully litigated, CenturyLink intended to deny and refute each of the alleged violations of the Public Utility Code (Code), the Commission's Regulations and Orders, as well as to raise defenses to each allegation and defend against the same at hearing. Moreover, CenturyLink would have disputed I&E's position that the Code, including Section 1501, and the Commission's Regulations governing telephone service quality standards, including the regulations at Chapter 63, impose service quality requirements upon internet services provided by CenturyLink. Settlement at ¶¶ 58-59.

III. Terms of the Settlement

The Parties state that the purpose of the Settlement is to terminate I&E's informal investigation and settle this matter completely without litigation. Further, the Parties note that they recognize that this is a disputed matter and that resolving the disputed issues prior to the initiation of any formal enforcement proceeding can be beneficial given the inherent unpredictability of the outcome of a contested proceeding. Moreover, the Parties agree that adopting the Settlement will remove the possibility of any appeal from the Commission, thereby avoiding the additional time and expense that might be incurred in such an appeal. Furthermore, the Parties acknowledge that approval of this Settlement is in the public interest and consistent with the Commission's Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission Regulations, pursuant to 52 Pa. Code § 69.1201. Settlement at ¶¶ 60, 68-70.

The conditions of the Settlement are reprinted verbatim below:

61. CenturyLink shall pay a cumulative civil penalty of Forty-Five Thousand Dollars (\$45,000.00).
62. The civil penalty shall not be tax deductible or passed-through as an additional charge to CenturyLink's customers in Pennsylvania.
63. In addition to the civil penalty, CenturyLink agrees to complete the following remedial measures:⁸
 - A. CenturyLink implemented a Quality Assurance Program ("QA Program") in January 2022 which provides CenturyLink the ability to analyze, audit, manage, and address customer repair service calls. CenturyLink will continue

⁸ The Parties note that CenturyLink made a fiber build commitment in the [2022 *CenturyLink Application*].

to implement the QA Program and shall modify the QA Program, as needed, to follow-up and audit customer service calls to ensure that repair tickets, as applicable, are created to address customer complaints. CenturyLink agrees to continue to utilize the QA Program, and/or to utilize other measures, programs, or systems, to audit and modify processes related to customer interfacing functions (e.g. call wait times, trouble tickets, etc.). In addition, as CenturyLink continues to modify its dispatch processes (e.g., the time between ticket being created and technician visit), CenturyLink will include in the summary report submitted at Remedial Measure B(ii) below an update of total Company responsiveness to voice out-of-service trouble tickets.⁹

- B. CenturyLink will meet with BCS by December 31, 2022 and again in 2023, as needed or requested by BCS, to review and address informal customer complaints received by BCS regarding repair tickets for Commission regulated voice services. In addition, CenturyLink will provide status reports to I&E of the following:
- i. A summary of the Company's meetings with BCS provided within fifteen (15) days of the meeting; and
 - ii. As to Perry, Cumberland, Franklin, and Juniata Counties, a summary of any preventative measures or additional facility buildouts, if any, undertaken by CenturyLink. Portions of the status report to I&E may be marked as confidential to the extent it contains

⁹ The Parties note that CenturyLink also implemented a call-back feature in December 2021 to provide customers [an] option when contacting CenturyLink for a repair. CenturyLink and I&E believe the QA Program and the call-back feature will address many of the complaints and concerns raised in this investigation.

specific information regarding customers or Company facilities.

- C. During the remainder of calendar year 2022 and in year 2023, CenturyLink will meet with legislative representatives in the portions of the four counties (Perry, Cumberland, Franklin, and Juniata) served by CenturyLink to review potential CenturyLink customer issues. Finally, if applicable, CenturyLink will provide updated Company contact information to legislative representatives serving areas within CenturyLink's service territory. CenturyLink also will provide any update of progress regarding facility buildouts in applicable legislative districts.
- D. CenturyLink's downed pole protocols and practices will be circulated within internal company operations and customer care groups and will continue to be incorporated into trainings of employees involved with these groups. CenturyLink also will regularly circulate, within the communities served by CenturyLink, Public Service Announcements (PSAs) providing the general public with information to report downed poles, downed wires, or other damaged CenturyLink facilities. CenturyLink will review and revise, as needed, its internal processes regarding miscellaneous trouble tickets that are associated with downed poles, downed wires, and damaged CenturyLink facilities to reasonably ensure that the trouble tickets are responded to within a reasonable time.
- E. CenturyLink will complete outreach and education efforts, no longer than sixty (60) calendar days after a Commission order approving this settlement, relative to organizations or groups which commonly report downed wires and/or poles to ensure that those organizations or groups have the latest contact

information to report downed wires and/or poles. The organizations or groups include but are not limited to local fire departments, local police departments, 911 call centers, and local municipalities.

- F. CenturyLink agrees that it will begin implementing the foregoing Remedial Measures upon the filing the Joint Petition for Settlement with the Commission. The foregoing Remedial Measures will remain effective through and until December 31, 2023. This provision shall not be construed as limiting continuation of Remedial Measure beyond the effective date should CenturyLink determine.

*See Settlement at ¶¶ 61-63.*¹⁰

The Parties request that the Commission issue an Order approving the Settlement without modification but note that if the terms of the Settlement are “substantively” modified by a Commission Secretarial Letter or Order, the Parties agree that any Party may withdraw from the Settlement. Settlement at ¶¶ 66-67. The Parties indicate that the consequence of any Party withdrawing from the Settlement is that all issues associated with the requested relief presented in the proceeding will be fully litigated unless otherwise stipulated by the Parties, and all obligations of the Parties to each other will cease. Further, if a Party withdraws from the Settlement, the Parties jointly agree that nothing in the Settlement shall be construed as an admission against, or as prejudice to, any position which any Party might adopt during litigation of this case. Settlement at ¶ 67.

¹⁰ Regarding the Settlement term that CenturyLink shall pay a civil penalty of \$45,000, we note that the Parties’ Proposed Ordering Paragraph No. 2 states that the Company shall pay the entirety of the civil penalty amount “within sixty (60) days of the date this Order becomes final.” Proposed Ordering Paragraphs at ¶ 2; Settlement at ¶ 61.

The Parties acknowledge that the Settlement consists of “the entire agreement” between I&E and CenturyLink regarding the matters addressed within the Settlement. Settlement at ¶ 71. Further, the Parties acknowledge that the Settlement represents a complete settlement of I&E’s investigation of CenturyLink’s alleged violations related to “the time period up to and including November 12, 2021,” and satisfies I&E’s investigation of the matters discussed within.¹¹ *Id.* Moreover, the Settlement represents a compromise of positions and does not constitute a finding of culpability or an admission concerning the alleged violations of the Code and the Commission’s Regulations. Finally, the Parties present the Settlement without prejudice to any position that I&E or CenturyLink may advance in the future on the merits of the issues in any future proceeding, except to the extent necessary to effectuate the terms and conditions of the Settlement. Settlement at ¶¶ 71-72.

IV. Discussion

Initially, we note that any issue or argument that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. *Pa. PUC, et al. v. City of Lancaster - Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011). Rather, the benchmark for

¹¹ As discussed, *supra*, I&E sent the *November 2021 Letter* notifying the Company that I&E had instituted an informal investigation of CenturyLink. Settlement at ¶¶ 20, 71.

determining the acceptability of the proposed Settlement is whether the proposed terms and conditions are in the public interest. *Id.* (citing *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Order entered April 1, 1996); *Pa. PUC v. C.S. Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991)).

Pursuant to the Commission's Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004). Based on our review of the Settlement terms and conditions, we find that the Settlement is in the public interest.

Consistent with the Commission's policy to promote settlements, we have promulgated a Policy Statement at 52 Pa. Code § 69.1201, which sets forth ten factors that we may consider in evaluating whether a civil penalty for violating a Commission Order, Regulation, or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of a proposed settlement agreement is in the public interest. The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest." *Id.* The Policy Statement sets forth the guidelines we use when determining whether, and to what extent, a civil penalty is warranted. In this case, application of these guidelines supports approval of the Settlement.

The first factor we may consider is whether the conduct at issue is of a serious nature. 52 Pa. Code § 69.1201(c)(1). "When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher

penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.” *Id.*

The alleged violations against CenturyLink involve the Company’s failure to: (1) provide reasonable, continuous service; (2) address or repair the service outage in a reasonable amount of time; (3) provide reasonable and adequate customer service, including a failure to meet commitments related to service issues or outages; and (4) respond to downed wires or poles and/or broken poles in a reasonable time.¹² Both I&E and CenturyLink acknowledged that the conduct in this matter was not of a serious nature and did not constitute willful fraud or misrepresentation. I&E Statement in Support at 9-10; CenturyLink Statement in Support at 3. Consequently, I&E asserted that the less serious nature of such conduct was considered in determining the amount of the civil penalty in the Settlement. I&E Statement in Support at 10. We agree with the Parties that the Company’s conduct here was not of a serious nature that could be constituted as willful fraud or misrepresentation. Therefore, we are of the opinion that the nature of the conduct here warrants in favor of a lower penalty.

The second factor is whether the resulting consequences of the conduct are of a serious nature. 52 Pa. Code § 69.1201(c)(2). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.* Here, both I&E and CenturyLink noted that no personal injury or property damage resulted from the alleged violations; however, I&E submitted that CenturyLink’s alleged conduct should be deemed serious.¹³ I&E Statement in Support at 10; CenturyLink Statement in Support at 4. I&E explained that the alleged

¹² As discussed, *supra*, I&E did not find a violation relating to the outages caused by Hurricane Ida. Settlement at ¶ 57.

¹³ I&E noted that there is no evidence that any property damage which occurred from a downed pole and/or wire was a direct result of CenturyLink’s conduct. I&E Statement of Support at 10.

actions resulted in customers having unreliable access to telephone and internet services for prolonged periods, which could impact the customer's access to education, medical or emergency services, work, and/or personal communications and interactions. I&E Statement in Support at 10. Although nobody was injured and property was not damaged, we agree with I&E that the Company's customers could have been impacted by the absence of reliable and continuous service over an extended period, thereby impacting a customer's access to, *inter alia*, medical and emergency services. Accordingly, we agree with I&E that serious consequences resulted from the alleged conduct.

The third factor is “[w]hether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.” 52 Pa. Code § 69.1201(c)(3). The third factor pertains to litigated cases only. *Id.* Because this proceeding was settled prior to the filing of a complaint by I&E, this factor is not applicable to this Settlement.

The fourth factor is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered. 52 Pa. Code § 69.1201(c)(4). In this case, I&E submitted that CenturyLink has made efforts to ensure that similar conduct does not reoccur in the future. I&E noted that, to address the various complaints related to customer service and repairs, CenturyLink implemented a new QA [Quality Assurance] Program in January 2022 and a call-back option in December 2021. Further, I&E noted that, pursuant to the *2022 CenturyLink Application*, the Company has committed to addressing the reliable service complaints by completing a fiber buildout. I&E Statement in Support at 11. Moreover, CenturyLink noted that, to properly ticket customer issues, the

Company has agreed to implementing additional internal and external measures for downed poles and legislative-related complaints, including the use of PSAs [Public Service Announcements] to aid in recovering downed or damaged poles, cable, or other facilities after significant weather events. CenturyLink Statement in Support at 5. Accordingly, we conclude that CenturyLink’s corrective measures support a lower penalty.

The fifth factor is the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). I&E noted that the following facts were considered when calculating the penalty: (1) approximately seventy-nine (79) customers filed informal complaints with BCS; (2) approximately twenty-seven (27) individuals submitted email complaints to the legislature; and (3) regarding complaints that alleged service outages, the alleged duration of the outages ranged from five days to over one month. I&E Statement in Support at 11. CenturyLink submitted that the number of impacted customers and the duration of the alleged violations were limited. CenturyLink Statement in Support at 5. Given these considerations, we find the proposed civil penalty to be fair and reasonable.

We may also consider the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c)(6). “An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.” *Id.* Here, I&E noted that to date, I&E is aware of one formal complaint which alleged unreliable telephone service: *Sharon Eash v. The United Telephone Company of Pennsylvania LLC, d/b/a CenturyLink*, Docket No. C-2021-3028204 (Certificate of Satisfaction filed January 31, 2022). However, I&E referenced *Pa. PUC, Bureau of Investigation and Enforcement v. The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink*, Docket No. M-2020-3012956 (Order entered January 14, 2021) (*2021 CenturyLink Order*) to note that the Parties entered into a settlement agreement in a prior informal investigation which related to the Company’s

alleged failure to timely install services in accordance with the Code and the Commission's Regulations, and the alleged failure to meet Chapter 30 requirements due to technical issues in implementing a new dispatch system. I&E Statement in Support at 11-12. CenturyLink submitted that the Company's compliance history has been very good overall. CenturyLink Statement in Support at 5. Accordingly, we find that the civil penalty does not warrant further consideration regarding this factor.

Another factor we may consider is whether the regulated entity cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). According to I&E, CenturyLink fully cooperated during the investigation, including informal discovery and the settlement process. I&E Statement in Support at 12. Therefore, we find this factor leans toward a lower penalty.

In addition, we may consider the amount of the civil penalty or fine necessary to deter future violations, as well as past Commission decisions in similar situations. 52 Pa. Code §§ 69.1201(c)(8) and (c)(9). I&E submitted that the civil penalty amount of \$45,000, which is not tax deductible, is substantial and sufficient to deter CenturyLink from committing future violations. I&E Statement in Support at 12. CenturyLink submitted that: (1) the Company intends to comply with applicable regulations; (2) the Company plans to implement the agreed upon remedial measures; and (3) given the circumstances, the civil penalty amount is reasonable. CenturyLink Statement in Support at 6.

Regarding past Commission decisions, I&E submitted that there are no past Commission decisions that are directly responsive to the instant matter. However, I&E referenced the following decisions: (1) *Ken Eernisse v. Verizon Pennsylvania LLC*, Docket No. C-2012-2287023 (Order entered January 15, 2014), in which the Commission assessed a civil penalty of \$20,050 for failure to provide reasonable and adequate service to one customer for an extended period, resulting in multiple violations and service

outages; (2) *Curt Eckroth v. Verizon Pennsylvania Inc.*, Docket No. C-2011-2279168 (Order entered May 17, 2013), in which the Commission assessed a civil penalty of \$1,000 for a variety of service outages; and (3) *Larry L. Wolfe v. Verizon North LLP*, Docket No. C-2011-2266224 (Order entered December 20, 2012), in which the Commission assessed a civil penalty of \$1,250 for a variety of violations that involved service interruptions for one customer. I&E also referred to the *2021 CenturyLink Order* to note that, in that case, I&E and CenturyLink agreed to a civil penalty of \$32,050. I&E Statement in Support at 12-13.

Here, I&E submitted that the instant Settlement should be viewed on its own merits and is fair and reasonable. I&E Statement in Support at 13. CenturyLink submitted that, although there have been litigated Commission cases involving individual complainants and telecommunication companies, the Company is unaware of any recent cases or matters addressed by the Commission with facts similar to the allegations in the instant matter. CenturyLink noted that the terms of the proposed Settlement represent a reasonable outcome for the circumstances in the instant matter. CenturyLink Statement in Support at 6. Considering the terms of the Settlement, we agree and find that the proposed civil penalty will help deter future violations and presents a fair and reasonable outcome.

The tenth factor to consider is other “relevant factors.” 52 Pa. Code § 69.1201(c)(10). I&E submitted that an additional relevant factor of pivotal importance to the instant Settlement is whether the case was settled or litigated. I&E noted that a settlement avoids the necessity for the governmental agency to prove elements of each allegation. I&E further noted that, upon both parties negotiating from their initial litigation positions, the opposing party agrees to a lesser fine, penalty, or other remedial action that would have been difficult to predict in a fully-litigated proceeding. As such, I&E offered that the terms of a reasonable settlement can represent a compromise while allowing the parties to move forward and focus on implementing the agreed upon

remedial actions. I&E Statement in Support at 13. CenturyLink submitted that there are no additional relevant factors beyond what is addressed in the Settlement. CenturyLink Statement in Support at 6. We believe that it is in the public interest to settle this matter, so as to avoid the expense of litigation.

Finally, as asserted by the Parties, we agree that it is in the public interest to settle this matter, so as to avoid the expense of litigation and to conserve administrative and judicial resources.

For the reasons set forth above, after reviewing the terms of the Settlement, we find that approval of the Settlement is in the public interest and is consistent with the terms of our Policy Statement and our past decisions.

V. Conclusion

It is the Commission's policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the proposed Settlement. Based on our review of the record in this case, the Commission's Regulations and policy statements, as well as the foregoing discussion, we find that the proposed Settlement between the Commission's Bureau of Investigation and Enforcement and The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink is in the public interest and merits approval. Accordingly, we will approve the Settlement, consistent with this Opinion and Order issuing a decision on the merits of the proposed Settlement, consistent with the requirement of 52 Pa. Code § 3.113(b)(3), and for the reason(s) stated above;
THEREFORE,

IT IS ORDERED:

1. That the Joint Approval of Settlement Petition filed on July 18, 2022, between the Commission’s Bureau of Investigation and Enforcement and The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink, at Docket No. M-2022-3028754, is approved in its entirety without modification.

2. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within sixty (60) days of the date this Opinion and Order becomes final, The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink shall remit a civil penalty of Forty-Five Thousand Dollars (\$45,000), payable by certified check or money order to “Commonwealth of Pennsylvania” and sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

3. That The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink shall: (1) continue to implement and modify the Quality Assurance (QA) Program, as needed, to follow up and audit customer service calls to ensure that repair tickets, as applicable, are created to address customer complaints; and (2) continue to utilize the QA Program, and/or other measures, programs or systems, to audit and modify processes related to customer interfacing functions.

4. That The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (CenturyLink) shall: (1) meet with the Commission’s Bureau of Consumer Services (BCS) by December 31, 2022 and again in 2023, as needed or requested by BCS to review and address informal customer complaints received by BCS regarding repair

tickets for Commission-regulated voice services; and (2) provide status reports to the Commission's Bureau of Investigation and Enforcement of: (a) CenturyLink's meetings with BCS within fifteen (15) days of the meeting; and (b) a summary of any preventative measures or additional facility buildouts undertaken by CenturyLink in the counties of Perry, Cumberland, Franklin, and Juniata, including an update of the Company's responsiveness to voice out-of-service trouble tickets.

5. That during 2022 and 2023, The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (CenturyLink) shall: (1) meet with legislative representatives in the portions of Perry, Cumberland, Franklin, and Juniata counties served by CenturyLink, to review potential customer issues; and (2) provide updated CenturyLink contact information to legislative representatives serving areas within CenturyLink's service territory and provide any update of progress regarding facility buildouts in applicable legislative districts.

6. That The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (CenturyLink) shall: (1) circulate downed pole protocols and practices within internal company operations and customer care groups, including group employee trainings; (2) circulate Public Service Announcement information within the communities served by CenturyLink, to report downed poles, downed wires, or other damaged CenturyLink facilities; and (3) review and revise, as needed, its internal processes regarding miscellaneous trouble tickets that are associated with downed poles, downed wires, and damaged CenturyLink facilities, to ensure that the trouble tickets are responded to within a reasonable period of time.

7. That within sixty (60) days of the date this Opinion and Order becomes final, The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink shall complete outreach and education efforts, relative to organizations or groups which commonly report downed wires and/or poles, including, but not limited to, fire

departments, local police departments, 911 call centers, and local municipalities, to ensure that those organizations or groups have the latest contact information for reporting downed wires and/or poles.

8. That the remedial measures in Ordering Paragraphs 3 to 7, above, will remain effective through and until December 31, 2023, but shall not be construed as limiting continuation of remedial measure beyond the effective date should The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink determine.

9. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.

10. That, after The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink remits the civil penalty as set forth in Ordering Paragraph No. 2, above, and upon the receipt of the civil penalty and The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink's compliance with Ordering Paragraphs 3 to 7, above, the Secretary's Bureau shall mark this proceeding closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 8, 2022

ORDER ENTERED: December 8, 2022