

Decision No. R25-0683

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24F-0470T

LARIMER EMERGENCY TELEPHONE AUTHORITY,

COMPLAINANT,

V.

QWEST CORPORATION DOING BUSINESS AS CENTURYLINK QC,

RESPONDENT.

**RECOMMENDED DECISION
GRANTING COMPLAINT IN PART AND DENYING
COMPLAINT IN PART**

Issued Date: September 23 , 2025

TABLE OF CONTENTS

I. STATEMENT.....	2
II. FINDINGS OF FACT	6
III. APPLICABLE LAW	13
IV. ISSUE	14
V. ARGUMENTS OF LETA	15
A. C.R.S. § 40-3-101(2)	15
B. Commission Order from Decision C14-0491 in Proceeding 13I-1147T	15
C. Commission Rule 2143(a).....	16
D. Tariff 25	17
E. Remedies	17
VI. ARGUMENT OF CENTURYLINK	18
A. Burden of Proof	18

B. Commission Rule 2143(a).....	18
C. Tariff 25.....	19
D. Commission Order from Decision C14-0491 in Proceeding 13I-1147T	19
E. Remedies	20
VII. DISCUSSION.....	20
A. C.R.S. § 40-3-101(2)	22
B. Commission Order from Decision C14-0491 in Proceeding 13I-1147T	24
C. Commission Rule 2143(a).....	29
D. Tariff 25.....	34
E. Commission Rule 2002(b)(X)	41
F. Remedies	41
VIII. CONCLUSION	43
IX. ORDER.....	44

I. STATEMENT

1. On October 30, 2024, the Larimer Emergency Telephone Authority (“LETA” or “Complainant”) filed a Complaint against Qwest Corporation, doing business as CenturyLink QC (“CenturyLink” or “Respondents”). That filing commenced this proceeding.

2. On November 5, 2024, Rebecca White, Director, served a copy of the Complaint together with an order requiring the Respondents to satisfy or answer said complaint within 20 days, in accordance with § 40-6-108, C.R.S. An evidentiary hearing was scheduled for January 13, 2024.

3. On November 6, 2024, the above-captioned proceeding was referred by minute order to an Administrative Law Judge (“ALJ”).

4. On November 22, 2024, CenturyLink filed its Unopposed Motion to Vacate the Procedural Schedule, Request a Prehearing Conference and Request a Waiver of Response Time (“Unopposed Motion”).

5. On December 3, 2024, by Decision No. R24-0888-I, the Unopposed Motion was granted and a prehearing conference was scheduled for January 13, 2025.

6. On December 11, 2024, LETA filed its Motion to Disqualify Administrative Law Judge Robert I. Garvey (“Motion to Disqualify”).

7. On December 18, 2024, by Decision No. R24-0924-I, the prehearing conference scheduled for January 13, 2024, was vacated due to the pending Motion to Disqualify.

8. On December 26, 2024, CenturyLink filed its Response to Larimer Emergency Telephone Authority’s Motion to Disqualify Administrative Law Judge Robert I. Garvey.

9. On January 17, 2025, LETA filed its Motion to Set Prehearing Conference to Establish Procedural Schedule and Shorten Response Time (“Motion to Set Prehearing Conference”).

10. On January 21, 2025, LETA filed its Motion to Compel Discovery Responses from Qwest Corporation doing business as CenturyLink QC and Shorten Response Time (“Motion to Compel”).

11. On January 24, 2025, by Decision No. R25-0056-I, the Motion to Disqualify was denied and a prehearing conference was scheduled for February 11, 2025.

12. On January 28, 2025, CenturyLink filed its Motion for a Protective Order.

13. On January 29, 2025, LETA filed its Request for the Full Commission Review of the Interim Decision Denying LETA’s Motion to Disqualify Administrative Law Judge Robert I. Garvey (“Request for Full Commission Review”).

14. On January 30, 2025, CenturyLink and LETA filed their Joint Motion for Redaction of a Map from Public Record (“Joint Motion”).

15. On January 30, 2025, by Decision No. R25-0071-I, the prehearing conference scheduled for February 11, 2025, was vacated, the Joint Motion was granted, and the proceeding was stayed pending a resolution on the Request for Full Commission Review.

16. On January 31, 2025, LETA filed its Motion to Compel Discovery Responses from Qwest Corporation doing business as CenturyLink QC and Shorten Response Time.

17. On March 26, 2025, by Decision No. C25-0214, the Commission denied LETA’s requested relief in LETA’s Request for Commission Review.

18. On April 4, 2025, by Decision No. R25-0254-I, the stay in the proceeding was lifted and a prehearing conference was scheduled for April 28, 2025.

19. On April 4, 2025, LETA filed the direct testimony of seven witnesses and Response in Opposition to CenturyLink’s Motion for a Protective Order.

20. On April 8, 2025, CenturyLink filed its Motion for Leave to File Amended Answer (“Motion for Amended Answer”).

21. On April 10, 2025, CenturyLink filed its Response in Opposition to LETA’s Motion to Compel.

22. On April 21, 2025, LETA filed its Response in Opposition to CenturyLink’s Motion for Leave to File Amended Answer.

23. On April 28, 2025, a prehearing conference was held. At the prehearing conference the Motion to Compel and the Motion for a Protective Order were denied and the Motion for Leave to File an Amended Answer was granted. A procedural schedule was also agreed to and adopted by the Parties.

24. On May 7, 2025, by Decision No. R25-0344-I, the rulings and procedural schedule adopted at the April 28, 2025, prehearing conference were documented.

25. On June 18, 2025, CenturyLink filed its Motion Requesting a Two-Day Extension of Time to File Answer Testimony (“Motion for Extension”).

26. On June 23, 2025, LETA filed its Response to CenturyLink’s Motion Requesting a Two-Day Extension of Time to File Answer Testimony.

27. On June 26, 2025, by Decision No. R25-0481-I, the Motion for Extension was granted.

28. On July 28 and 29, 2025, the above captioned proceeding was called and a hearing was held. LETA offered the testimony of Jeff Grant, Briana Reed-Harmel and Kimberly Culp. Daniel Trupp, Tim Kunkleman and Christine Ranjel testified on behalf of the CenturyLink. Hearing Exhibits 100-110, 112-114, 120 200-214, and 300 were admitted. At the conclusion of the evidence the record was closed, and the matter was then taken under advisement.

29. On August 15, 2025, LETA and CenturyLink filed their Statement of Position (“SOP”).

30. In reaching this Recommended Decision the ALJ has considered all arguments presented, including those arguments not specifically addressed in this Decision. Likewise, the ALJ has considered all evidence presented at the hearing, even if the evidence is not specifically addressed in this Decision.

31. Pursuant to § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record of the hearing and a written recommended decision in this matter.

II. FINDINGS OF FACT

32. Mr. Jeff Grant is the Manager, Telecom and Fiber for Platte River Power Authority (“PRPA”).¹

33. Ms. Brianna Reed-Harmel is the Municipal Broadband Manager for the Electric and Communications Enterprise for the City of Loveland in the Utilities Department.²

34. Ms. Kimberly Culp is the Chief Executive Officer of LETA.³

35. Mr. Joshua Cramer is the Network Director for Trailblazer Broadband, which is Estes Park’s community owned and operated broadband service.⁴

36. Mr. Ian Stewart is Chief of Police for the Town of Estes Park, Colorado.⁵

37. Mr. Tim Sendelbach is the Fire Chief for Loveland Fire and Rescue Authority.⁶

38. Mr. Joseph Shellhammer is Undersheriff for the Larimer County Sheriff’s Office, Larimer County, Colorado.⁷

39. Mr. Tim Kunkleman is Regional Director of Government Affairs and Public Policy for CenturyLink.⁸

40. Mr. Dan Trupp is a Network Implementation Program CenturyLink.⁹

41. Ms. Christine Ranjel is a Manager Region Operations for CenturyLink¹⁰

42. On October 29, 2014, PRPA leased dark fiber to CenturyLink under a fiber-use license agreement. The agreement, though executed on this date, was backdated to an effective

¹ Hr. Ex. 100 Rev 1, p.4: 1.6.

² Hr. Ex 101 Rev 1. p. 4: 1.6-8.

³ Hr. Ex 106 Rev 1. p. 4 1.5-8.

⁴ Hr. Ex 102, p. 3: 1. 5-6

⁵ Hr. Ex. 103, p. 3: 1. 8.

⁶ Hr. Ex. 105, p.3.

⁷ Hr. Ex. 104, p. 3: 1. 6-7.

⁸ Hr. Ex. 200C Rev 1, p. 6.

⁹ Hr. Ex. 202 Rev 1, p. 4.

¹⁰ Hr. Ex 201 Rev 1, p. 5.

date of September 15, 2013¹¹. There was also a fiber-use agreement established January 8, 2019, for PRPA to provide fiber to CenturyLink's subsidiary Level 3 Communications, LLC. This fiber included two strands on the segment referred to as the "Downtown Loveland Lateral" and four strands on the segment referred to as "Long Haul" on County Rd 43 from Drake to Glen Haven.

43. On September 4, 2018, CenturyLink filed a compliance report in Proceeding 13I-1147T, stating the completion of a new fiber route with PRPA between Drake and Glen Haven, establishing a secondary connection between Loveland and Estes Park. This path was described as having three segments, utilizing both CenturyLink-owned and PRPA-leased fiber, and was incorporated into the network for live traffic.¹²

44. Subsequent compliance filings on March 1, 2019, September 4, 2019, and March 6, 2020, reiterated the continued use of the PRPA and Town of Estes fiber lease via Western Area Power Administration ("WAPA") poles, noting its continuous use since the September 4, 2018, report. In its September 1, 2020, report, CenturyLink stated that negotiations for lease extensions with PRPA, involving Ft. Collins, Loveland, and Estes Park, were in progress.¹³

45. Mr. Kunkleman was responsible for making these compliance filings. His process before making the filing was to "contact Larry Whitman who negotiated the Fiber Use Lease Agreement with PRPA to ensure that the agreement was still in place, and that CenturyLink continued to lease both the Pole Hill Path and the segment between Drake and Glenhaven which, when combined with CenturyLink facilities, created two physically and geographically diverse paths between Loveland and Estes Park."¹⁴

¹¹ Hr. Ex 100, Attachment JG-1.

¹² Hr. Ex. 107, Attachment LETA-5

¹³ Hr. Ex. 200 Rev 1, Attachment TDK-2C.

¹⁴ Hr. Ex. 200C Rev 1, p.38.

46. In March of 2021 discussions had begun about WAPA replacing its transmission line poles but PRPA did not communicate this information to CenturyLink or any other customers¹⁵.

47. On December 7, 2021, Ms. Ranjel sent an email to various CenturyLink employees stating that the “proposed Adams Tunnel route did not pass any of our fiber characterization standards... As such, we would not want to place any traffic, 911 or otherwise, on those fibers.”¹⁶

48. On December 16, 2021, CenturyLink renewed its agreement with PRPA to lease fiber to provide the Pole Hill Path.¹⁷

49. On March 1, 2022, CenturyLink reported the completion of negotiations with PRPA to secure diverse paths between Estes Park and Loveland, extending the agreement term for three more years, through 2024. In that report, CenturyLink stated that “While all of this certainly took longer than everyone had hoped it would, it has finally come to a resolution that will give us all the stability and diversity that we all sought way back in 2013¹⁸.”

50. In December of 2022, negotiations begin to extend the lease agreement between CenturyLink and PRPA.¹⁹

51. On January 31, 2023, the lease extension until the end of 2023 was agreed to by CenturyLink and PRPA.²⁰ The lease extension included a provision requiring PRPA to give CenturyLink 30-day notice or a reasonable amount of notice if the fibers were to be relocated.

52. At no time during the negotiations does Mr. Grant, representing PRPA, mention that the Pole Hill Path would not be available for an indetermined amount of time beginning the

¹⁵ Hr. Tr. July 28, 2025, p. 164-5.

¹⁶ Hr. Ex 200 Rev. 1, Attachment TDK-8C

¹⁷ Hr. Ex. 100 Rev 1, Attachment JG-1

¹⁸ Hr. Ex. 107, Attachment LETA-8.

¹⁹ Hr. Ex. 200 Rev. 1 Attachment 24C, p.4.

²⁰ Id. at p.1.

following month.²¹ Mr. Grant was aware that the unavailability would be “roughly a year” or the entire time of the contract.²²

53. On February 6, 2023, or approximately 6 days after the lease extension was signed, Mr. Grant emailed CenturyLink change management, Ms. Ranjel and Thomas Longon²³ the following information:

What:

Platte River Power Authority staff must move fiber jumpers in Loveland, CO and Estes Park, CO to reroute connections to a different fiber cable to accommodate a construction project impacting the existing fiber cable. This work is being done to avoid a long-term outage while WAPA rebuilds their transmission line and OPGW fiber cable route from Loveland to Estes Park. We have identified your organization as using fibers in this path.

When:

Monday, February 27, 2023

Work Start Time: 10:00 am Mountain time

Work Completion Time: 2:00 pm Mountain time

Window Duration: 4 hours

Expected Impact: < 10 minutes

Note: We will need to work with a local technician to ensure this move is successful

Where:

Fiber patch cables will be moved at Boyd Substation in Loveland, CO and at the Estes Park Substation and Town Hall in Estes Park, CO. Fiber jumpers are being moved off the WAPA OPGW cable and onto the PRPA “Long-Haul 34 cable”. This will add approximately 15km to the total distance of this path from Loveland (Boyd Substation) to Estes Park (Town Hall). This alternate path has been used in the past due to previous damages and repairs.²⁴

54. The people within CenturyLink that Mr. Grant emailed for various projects differed on each email.²⁵

²¹ Hr. Tr. July 28, 2025, p.127-128.

²² Id at p. 130.

²³ Mr. Longan is in charge of national fiber circuits for CenturyLink, Hr. Tr. July 29, p. 240-241:l.21-1.

²⁴ Hr. Ex. 109, p. 6.

²⁵ Hr. Tr. July 29, p. 133-134.

55. Ms. Ranjel understood that maintenance would be done on the line but had no idea how long it would take.²⁶ Ms. Ranjel does not recall if she forwarded the email to anyone, she believed that PRPA was requesting her assistance and did not believe that it indicated she was required to do anything more.²⁷

56. CenturyLink does not have an internal policy about forwarding this type of email.²⁸

57. Ms. Ranjel assumed that PRPA would notify her when the line was to be moved back, but she did not ask PRPA when it would be moved back.²⁹

58. Mr. Grant did not provide CenturyLink with any updates regarding when the upgrades would be completed or how quickly they were progressing at any time from February 6, 2023, until the Alexander Mountain fire started on August 29, 2024.³⁰

59. On February 27, 2023, WAPA removed PRPA's fiber during the reconstruction of WAPA's overhead transmission line which comprised the Pole Hill Path. Simultaneously, PRPA established a temporary path ("Temporary Path") along PRPA fiber from Loveland to the Estes Park Town Hall, working with CenturyLink to open this second path, which supported 9-1-1 calling and remained active and lit with the same circuit ID as the previous path that utilized PRPA fiber. This temporary, alternate path would stay in place until July 31, 2024.³¹

60. On March 3, 2023, CenturyLink filed a compliance report in Proceeding No. 13I-1147T, stating that the matter had been resolved and CenturyLink planned to make a request to

²⁶ Hr. Tr. July 29, 2025, p. 303-304.

²⁷ Id at p.304.

²⁸ Id.

²⁹ Id. at p.305.

³⁰ Hr. Tr. July 28, 2025, p. 131.

³¹ Hr. Ex. 200C Rev 1, p. 9.

close the proceeding. This compliance filing makes no mention of the fiber on the Pole Hill Path having been moved.³² LETA did not object to closing Proceeding 13I-1147T³³.

61. On September 1, 2023, CenturyLink filed another compliance report in Proceeding No. 13I-1147T. This compliance states that CenturyLink “has completed the diversity efforts related to connectivity in and out of the Estes Park wire center.” There is no mention of the fiber on the Pole Hill Path having been moved.³⁴

62. On January 11, 2024, Mr. Grant sent an email to Mr. Whitman³⁵ discussing the Long-Haul 34 and Long-Haul 43 paths, referencing WAPA's ongoing 16-month construction project and described it as “still to be completed.”³⁶

63. The email on January 11, 2024, was sufficient notice to Mr. Whitman that there was no longer geographic diversity.³⁷

64. On March 8, 2024, CenturyLink filed another compliance report, through Mr. Kunkleman, in Proceeding No. 13I-1137T, reiterating previous statements about completed diversity efforts and the intent to close the proceeding. There is no mention of the fiber on the Pole Path having been moved.³⁸

65. On June 11, 2024, the new fiber path was operational and PRPA began testing the circuit sometime around this date, a process which would normally take around four to eight

³² Hr. Ex. 107, Attachment LETA-9.

³³ Hr. Ex. 200 Rev.1 p. 36, Attachment TDK-34 Rev 1, and Attachment TDK-33 Rev 1, p.11.

³⁴ Hr. Ex. 107, Attachment LETA-10.

³⁵ Mr. Whitman works in CenturyLink’s contract organization (Hr.Tr.July29,2025,p.78) and is who Mr. Kunkleman contacts before making the compliance filings in 13I-1147T. (Hr.Ex. 200 Rev. 1, p.38).

³⁶ Hr. Ex. 110, Attachment KC-12C

³⁷ Hr. Tr., July 29, 2025, p. 164-165.

³⁸ Hr. Ex. 107, Attachment LETA-12.

weeks.³⁹ PRPA still did not feel it was necessary to update CenturyLink of the progress on the project.⁴⁰

66. On July 23, 2024, an email between PRPA and WAPA discussed a plan to move the fiber connection from Highway 34 back to WAPA poles, on August 6, 2025. CenturyLink was not notified of the fiber move date and not given 30-day notice of the move of the fiber⁴¹.

67. The Alexander Mountain Fire ("the Wildfire") began on July 29, 2024, and the Highway 34 Path fibers between Loveland and Drake were threatened.⁴²

68. Mr. Trupp arrived at the Emergency Operations Center and provided incorrect information to the group. Mr. Trupp was unaware that the Pole Hill Path had been moved or even of the existence of the Pole Hill Path.⁴³

69. On July 31, 2024, CenturyLink and PRPA technicians worked together to reconnect the Pole Hill Path and to disconnect the temporary Highway 34/Highway 43 Path, creating a geographically diverse path for 9-1-1 traffic once again.⁴⁴

70. From August 1 to August 3, 2024, CenturyLink, Estes Park and LETA worked to open a temporary path through Adams Tunnel, creating a tertiary pathway for additional redundancy and geographic diversity.⁴⁵

71. There were no 9-1-1 calls dropped or affected during the Wildfire.⁴⁶

72. On August 28, 2024, CenturyLink filed another report in Proceeding No. 13I-1137T stating, "As mentioned in previous updates, the company has completed the diversity efforts

³⁹ Hr. Ex. 200, Attachment TDK-2C Rev 1 p. 25.

⁴⁰ Hr. Tr. July 28, 2025, p. 131.

⁴¹ Hr. Tr. July 28, 2025, p. 102-103 & Hr. Ex. 207C

⁴² Hr. Ex. 209C.

⁴³ Id at p. 235-236.

⁴⁴ Hr. Tr. July 28, 2025, p. 111-112.

⁴⁵ Hr. Tr. July 28, 2025, p. 120.

⁴⁶ Hr. Ex. 200C Rev 1, p. 31 & Hr. Ex. 106 Rev 1, p. 9.

related to connectivity in and out of the Estes Park wire center and intends on making a filing to request this proceeding be closed before the next compliance filing is due.”

73. In mid-October 2024, the temporary Adams Tunnel route was taken down.⁴⁷

74. On March 5, 2025, Mr. Kunkleman became aware that there had been a temporary path in place of the Pole Hill Path.⁴⁸

75. The Pole Hill Path is still currently in use providing geographic diversity.⁴⁹

III. APPLICABLE LAW

76. Colorado Revised Statute § 40-3-101(2) states the following:

(2) Every public utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public, and as shall in all respects be adequate, efficient, just, and reasonable.

77. Commission Rule 2143(a) states the following:

(a) All BESP's providing BES shall take reasonable measures to provide reliable BES including circuit diversity, central-office backup power, and diverse network monitoring. Where feasible, 9-1-1 circuits within the BES network shall be physically and geographically diverse.

(I) Circuits or equivalent data paths are physically diverse if they provide more than one physical route between end points with no common points where a single failure at that point would cause both circuits to fail. Circuits that share a common segment such as a fiber-optic cable or circuit board are not physically diverse even if they are logically diverse for purposes of transmitting data.

(II) Circuits or equivalent data paths are geographically diverse if they take different paths from endpoint to endpoint, not following the same geographic route.

78. As the party bringing the Formal Complaint, Complainant bears the burden of proof with respect to the relief sought; and the burden of proof is by a preponderance of the evidence.

⁴⁷ Hr. Ex. 200C Rev 1, p. 37 & Hr. Ex.

⁴⁸ Hr. Ex. 200, p. 18.

⁴⁹ Hr. Tr. July 29, 2025, p. 219.

Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 4 *Code of Colorado Regulations* 723-1-1500 of the Commission's Rules of Practice and Procedure.

79. The evidence must be “substantial evidence,” which the Colorado Supreme Court has defined as “such relevant evidence as a reasonable person’s mind might accept as adequate to support a conclusion ... it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.” *City of Boulder v. Colorado Public Utilities Commission*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. Public Utilities Commission*, 949 P.2d 577, 585 (Colo. 1997)).

80. The preponderance standard requires the finder of fact to determine whether the existence of a *contested fact* is more probable than its non-existence. *Swain v. Colorado Department of Revenue*, 717 P.2d 507 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party

IV. ISSUE

81. Did CenturyLink violate C.R.S. § 40-3-101(2)?

82. Did CenturyLink violate a Commission order from Decision C14-0491 in Proceeding 13I-1147T?

83. Did CenturyLink violate Commission Rule 2143(a)?

84. Did CenturyLink violate their Tariff 25?

85. Did CenturyLink violate Commission Rule 2002(b)(X)?

V. ARGUMENTS OF LETA

86. In their Statement of Position, LETA argues that CenturyLink's actions resulted in the violation of a state statute, Commission decision, Commission rule and CenturyLink's own tariff. For these violations LETA requests a series of remedies.

A. C.R.S. § 40-3-101(2)

87. In the complaint a violation of this statute was not listed among the violations LETA alleged were committed by CenturyLink for the loss of geographic diversity.⁵⁰ LETA does mention the statute and states that CenturyLink violated the statute in the complaint in a paragraph after listing alleged violations. It is unclear if LETA gave proper notice to CenturyLink that it would pursue a claim or what actions by CenturyLink constituted a violation of this statute since LETA does not list a violation of this statute among the violations due to the loss of geographic diversity. But, since LETA mentions a violation of the statute in its SOP, it shall be examined⁵¹.

88. LETA's entire argument as contained in its SOP is as follows:

"CenturyLink does not argue that this statute does not apply, and CenturyLink does not argue it did not violate this statute."⁵²

89. LETA also states that the violation of this statute gives rise to the issuance of civil penalties C.R.S. §§ 40-7-105(1) and 40-7- 113.5(1)(a).

B. Commission Order from Decision C14-0491 in Proceeding 13I-1147T

90. LETA argues that Decision C14-0491T required CenturyLink to make two compliance filings per year.

⁵⁰ See. LETA Complaint p. 3-4 and p. 32.

⁵¹ While LETA mentions a violation of this statute it appears to have abandoned claim D from its complaint.

⁵² LETA SOP, p. 14.

91. LETA states that from February 6, 2023 until August of 2024, the fiber path lacked physical and geographic diversity in the Basic Emergency Services (“BES”) Network (“BES Network”).

92. LETA argues that these filings were not accurate since there was not physical and geographic diversity in the BES Network when these filings were made.

93. LETA states that the failure to provide the information that there was no longer diversity defeated the purpose of mitigating risk and avoiding BES outages whenever possible.⁵³

C. Commission Rule 2143(a)

94. LETA’s initial argument is that “rulemaking participants, including CenturyLink, agreed to this language⁵⁴” that is contained in the rule and are bound by it and cannot make a unilateral “declaration that something is no longer feasible⁵⁵”.

95. LETA continues its argument, it 1) cites a Settlement Agreement in a previous dismissed complaint case; 2) states CenturyLink was required to maintain physical and geographic diversity due to C.R.S. § 40-3-101(2); 3) states no language in Commission rules permits CenturyLink to unilaterally end diversity at any time; 4) states “CenturyLink continued to report in the 2013 I-Docket that it had renewed the PRPA leases and the new term would not end until December 31, 2024;” and 4) references Commission Rule 2330.⁵⁶

96. In the overview section of their SOP, LETA argues that an alternative path through the Adams Tunnel was available for 911 traffic and that this path provided a feasible path.⁵⁷ However, LETA does not state this in its argument section.

⁵³ Id at p.15.

⁵⁴ LETA, SOP, p.16.

⁵⁵ Id.

⁵⁶ Id. at pp. 16-17.

⁵⁷ Id.at p. 6.

D. Tariff 25

97. LETA argues that Tariff 25 requires physical and geographic diversity. LETA states that CenturyLink was not allowed to eliminate diversity. CenturyLink's action of removing physical and geographic diversity was a violation of their tariff.

E. Remedies

98. The remaining portion of LETA's SOP (approximately 10 of 30 pages) consists of remedies LETA believes are appropriate in the instant proceeding. These remedies include:

1. A Compliance Officer to make a certified filing on the existence of physical and geographic diversity for the Estes Valley consistent with an attached form for a minimum of five years. In addition, within 90 days CenturyLink should develop a compliance plan and LETA lists numerous requirements for the plan.
2. CenturyLink should be ordered, at its own expense, to prepare and to provide LETA with current, complete, and accurate confidential as-built drawings ("As-Built") depicting the physically and geographically diverse routes between the central offices in Loveland and Estes Park. The As-builts have numerous requirements.
3. Periodic audits by a third-party auditor at CenturyLink's expense to be selected by LETA for the next ten years. There are numerous requirements for the auditor.
4. Refund of Monthly Recurring Charges Paid under Tariff 25 for a monthly recurring charge of \$752.22 for two concurrent sessions (CS) with demarcation points at the Estes Park PSAP. LETA believes it should be refunded \$752.22 x 2 CS x 17 months, or \$25,575.48, plus pre-judgment interest at 8% compounded annually per C.R.S. 5-12-102.
5. Award of Attorney's Fees and Costs.
6. Civil Penalties in the amount of \$1,040,000.00.

VI. ARGUMENT OF CENTURYLINK**A. Burden of Proof**

99. CenturyLink begins its argument by stating that the burden of proof for all allegations rests with LETA and LETA has failed to meet the burden of proof in each of its arguments.

B. Commission Rule 2143(a)

100. CenturyLink argues that under basic statutory construction that the “plain meaning” of words is required to be used. Under this interpretation Rule 2143(a) requires circuit diversity to support 9-1-1 calling in all circumstances, but physical and geographic diversity only applies “where feasible.”⁵⁸ Since physical and geographic diversity was not feasible during the time in question, they were not in violation of Rule 2143(a).

101. CenturyLink states that due to a misunderstanding of a statement made by CenturyLink personnel on July 31, 2024, when PRPA and CenturyLink were working together to disconnect the Temporary Path and re-establish the Pole Hill Path, LETA came to an inaccurate conclusion⁵⁹.

102. CenturyLink argues there was a second route that ran from Loveland to Drake on CenturyLink facilities, from Drake to Glen Haven on PRPA facilities, and from Glen Haven to Estes Park back on CenturyLink facilities.⁶⁰

103. CenturyLink states it met the requirements of this rule (a) before the Temporary Path was in place, (b) while the Temporary Path was in place, and (c) after the Temporary Path was disconnected and the Pole Hill Path reestablished.⁶¹

⁵⁸ CenturyLink Statement of Position, p. 14.

⁵⁹ Id. at p.14-15.

⁶⁰ Id at p.14.

⁶¹ Id at p. 17.

104. Finally, CenturyLink argues that LETA failed to provide evidence that an alternative path was available to CenturyLink during the 17 months the Pole Path was unavailable and that LETA was aware that the Adams Tunnel path was only available to CenturyLink during emergencies.⁶²

C. Tariff 25

105. CenturyLink argues that the Commission must give effect to the plain language of the tariff. CenturyLink believes that the plain language of the tariff only requires circuit diversity, not physical or geographic diversity.

106. CenturyLink avers that the only way to read the tariff “as a whole” giving effect to all of its parts, is to recognize that 9.2.5(A)(5) has no bearing on physical or geographic diversity.

107. In addition, CenturyLink states that if a customer wants “additional diversity”, it can request that diversity consistent with 4 CCR 723-2-2143(a)—which only requires physical and geographic diversity “when feasible” and during the time in question it was not feasible and therefore the tariff was not violated.

D. Commission Order from Decision C14-0491 in Proceeding 13I-1147T

108. CenturyLink argues that finding that a party failed to comply with a court order is permitted only if a party has the ability to obey the order and has refused to perform the act required.

109. In the instant case, CenturyLink argues that they did not have the ability to provide geographic diversity and therefore they cannot be held to something that was not possible, after the Pole Hill Path fiber was moved.⁶³

⁶² Id. at p. 18.

⁶³ Id at p.22.

110. CenturyLink also avers that it made a good faith effort to comply with the order in Proceeding No. 13I-1147T. CenturyLink consistently made compliance filings twice per year and Mr. Kunkleman, the person responsible for compliance with the Order, thought the purpose of the I-Docket was satisfied and was unaware that changes had been made to the path.

E. Remedies

111. CenturyLink argues that since there is no evidence that CenturyLink acted with a “conscious objective” to violate a rule or statute there is no legitimate basis to order civil penalties of any kind.

112. CenturyLink also states that due to the lack of evidence of any violations of rule, statute, tariff or Commission order, there is no basis to impose any equitable remedies.

VII. DISCUSSION

113. Between the filing of the initial complaint and the filing of the SOP the claims of LETA have somewhat changed. In their initial 36-page complaint they listed the alleged violations of CenturyLink as follows⁶⁴:

- A. A Commission Order requiring CenturyLink to make compliance filings two times per year showing updates to CenturyLink’s map of its BES Network transport facilities, including any non-diverse delivery points. LETA believes at least four compliance filings contained false, inaccurate, and incorrect information: March 6, 2023, September 1, 2023, March 8, 2024, and August 28, 2024 (after the Wildfire).
- B. Commission Rule 2143(a), which requires CenturyLink to “take reasonable measures to provide reliable [basic emergency service (“BES”)] including circuit diversity. . . Where feasible, 9-1-1 circuits within the BES network shall be physically and geographically diverse.”
- C. Section 9.2.5.A.5 of Emergency Reporting Services Tariff Colo. P.U.C. No. 25 (“CenturyLink’s Tariff 25”), which states: “The ESInet Service as initially deployed includes circuit diversity, central office backup

⁶⁴ LETA Complaint, p.3-4, filed on October 30, 2024.

power, and network diversity where it existed as of September 1, 2018. Additional circuit diversity, central office backup power, or network diversity may be provided (i) subject to additional Commission-approved tariff charges to Customers pursuant to 4 CCR 723-2-2143(a)(II)-(V), or (ii) without additional charges to Customers pursuant to network improvements implemented at the Company's own initiative for the benefit of customers generally, provided that sufficient capacity exists."

- D. Commission Rule 2002(b)(X) requiring an attestation made under penalty of perjury by an authorized representative of CenturyLink that the content of an application was true, accurate, and correct. CenturyLink's Verified Amended Application for its 2024 Basic Emergency Service Provider Improvement Plan filed on February 15, 2024, in Proceeding No. 23A-0197T contained Confidential Exhibit 1, or CenturyLink's map of the network supporting BES ("the BES Map"). The BES Map showed Diversity for the Estes Valley when there was none. Paragraph 3 of the Affidavit that CenturyLink filed with the Amended Application was false.⁶⁵

In addition, CenturyLink, as a regulated public utility, violated C.R.S. § 40-3-101(2), which requires it to "furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public, and as shall in all respects be adequate, efficient, just, and reasonable."

114. In LETA's SOP, their argument section is broken down into four subsections titled as follows:

- A. The State Statute;
- B. The Commission Order;
- C. Commission Rules;
- D. Tariff 25.

115. There is no mention in LETA's SOP of alleged violation D as stated in the complaint. There is no mention of Commission Rule 2002(b)(X) or Proceeding No. 23A-0197T in their SOP.

⁶⁵ A recitation of CenturyLink's alleged violations was made twice in the initial complaint. The second time the last sentence from alleged violation D (that Paragraph 3 of the Affidavit that CenturyLink filed with the Amended Application was false) was removed by LETA.

116. In addition, other issues were brought up during the hearing and LETA's SOP which do not relate to the five alleged violations contained in LETA's complaint. These issues will be discussed to the level necessary in this decision. But, this decision shall primarily be broken down into a discussion about the alleged violations addressed by LETA in its SOP.

A. C.R.S. § 40-3-101(2)

117. As stated above, LETA's entire argument in its SOP is that it has met its burden of proof to show by a preponderance of the evidence that CenturyLink violated C.R.S. §40-3-101(2) is as follows:

"CenturyLink does not argue that this statute does not apply, and CenturyLink does not argue it did not violate this statute."⁶⁶

118. There was no reference made to this statute during either day of the hearing.

119. There was no reference to this statute in the direct testimony of Mr. Grant, Ms. Culp, Ms. Reed-Harmel, Mr. Cramer, Chief Stewart, Undersheriff Shellhammer or Fire Chief Sendelbach.

120. There was no reference to this statute in the rebuttal testimony of Mr. Grant.

121. The only reference made in any of LETA's prefiled testimony was contained in Ms. Culp's rebuttal testimony. In her testimony she states the following:

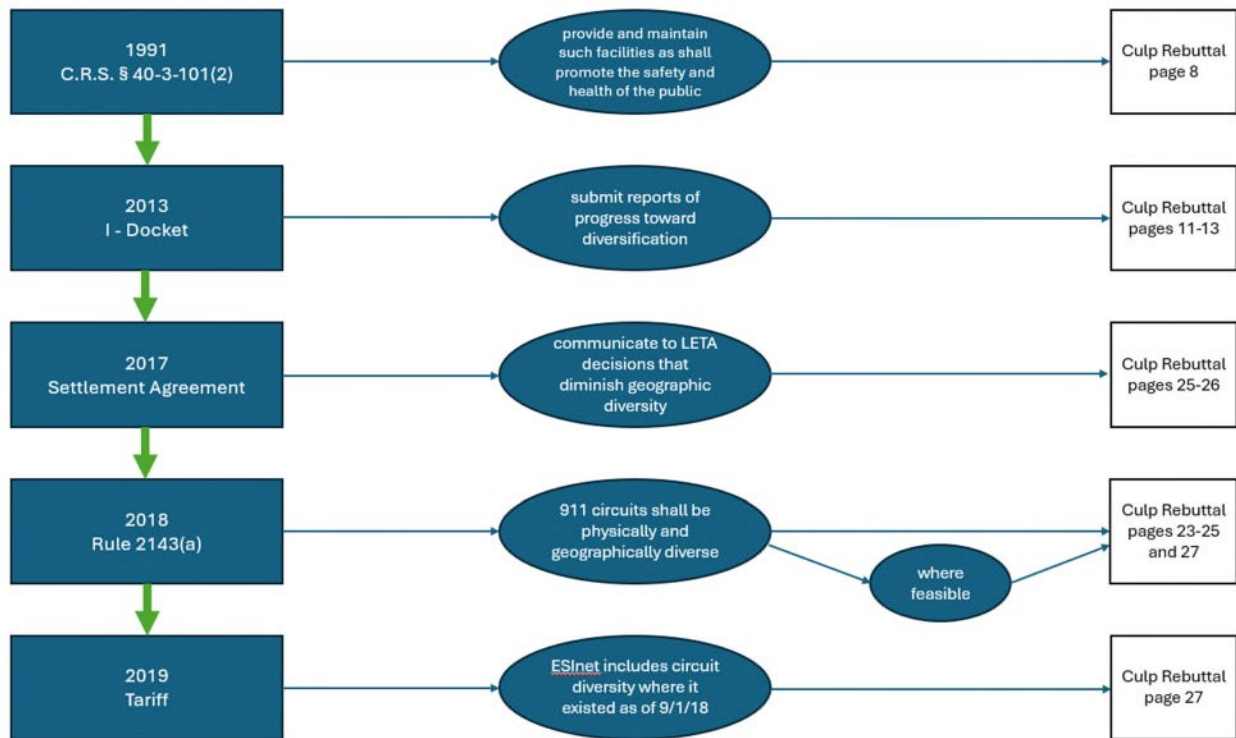
A **graphic** (*emphasis added*) showing how CenturyLink, as Colorado's basic emergency service provider, breached a state statute applicable to regulated public utilities, Commission orders, a settlement agreement, a Commission rule, and CenturyLink's tariff is below. Other than The statute enacted in 1991 requires every public utility to provide and maintain such facilities as shall (a) promote the safety and health of the public, and (b) in all respects be adequate, efficient, just, and reasonable⁶⁷...

⁶⁶ LETA Statement of Position, p. 14.

⁶⁷ Hr. Ex. 110C, p.8.

CenturyLink cannot be excused from fulfilling its obligations in its capacity as Colorado's only active basic emergency service provider because Mr. Kunkleman finds LETA difficult, does not like talking to LETA, does not like addressing LETA's valid concerns, or does not like answering LETA's reasonable questions.⁶⁸

122. The graphic referenced in Ms. Culp's testimony is the following:⁶⁹



124. The graphic has an arrow from the statute number to a few words from the statute and then to a reference to Ms. Culp's testimony on page 8. Her testimony from page 8 concerning C.R.S. §40-3-101(2) is as follows:

A **graphic** (*emphasis added*) showing how CenturyLink, as Colorado's basic emergency service provider, breached a state statute applicable to regulated public utilities, Commission orders, a settlement agreement, a Commission rule, and CenturyLink's tariff is below. Other than The statute enacted in 1991 requires every public utility to provide and maintain such facilities as shall (a) promote the safety and health of the public, and (b) in all respects be adequate, efficient, just, and reasonable⁷⁰...

⁶⁸ Hr. Ex. 110C, p.8: 1.12-22.

⁶⁹ Hr. Ex. 110C, p.8: 1.3-10.

⁷⁰ Hr. Ex. 110C, p.8: 1.3-10

125. In other words, her testimony references the graphic, the graphic references the same testimony that says look to the graphic for evidence of how CenturyLink violated C.R.S. §40-3-101(2). More simply, it is a circular argument that fails to provide any evidence or argument.

126. CenturyLink references the statute in its SOP⁷¹ but makes no argument other than stating that there was no violation. CenturyLink also makes a general denial of all claims by LETA⁷².

127. First, LETA's main argument that CenturyLink did not argue that this statute does not apply or that was not violated shows a basic misunderstanding of how the burden works in an administrative proceeding⁷³. A party commencing a proceeding does not meet its burden or shift the burden by simply stating the other party did not deny an allegation.

128. If LETA believed that the other allegations, if proven, would also be a violation of C.R.S. §40-3-101(2) it failed to link any of these alleged actions with any aspect of C.R.S. §40-3-101(2)⁷⁴.

129. LETA failed to provide any evidence or argument in support of a violation of C.R.S. §40-3-101(2) and therefore fails to meet its burden for this alleged violation.

B. Commission Order from Decision C14-0491 in Proceeding 13I-1147T

130. LETA argues that the compliance filings made in Proceeding 13I-1147T on March 6, 2023, September 1, 2023, March 8, 2024, and August 28, 2024, were incorrect. These

⁷¹ CenturyLink SOP, p. 12.

⁷² "The Commission should find in all respects for CenturyLink" CenturyLink SOP, p. 13, "CenturyLink respectfully requests that the Commission dismiss the Complaint and find in all respects for CenturyLink." CenturyLink SOP, p. 30.

⁷³ 4 CCR 723-1-1500. "The burden of proof and the initial burden of going forward shall be on the party that is the proponent of a decision, unless previously agreed to or assumed by a party. The proponent of the order is that party commencing a proceeding, except that in the case of suspension of a proposed tariff, price list, or time schedule, the regulated entity shall bear the burden of proof."

⁷⁴ It is unclear which or how the other allegations would manifest any violation of C.R.S. §40-3-101(2).

compliance filings failed to accurately state the absence of physical and geographic diversity in the BES Network.

131. CenturyLink argues that they did not have the ability to provide physical and geographic diversity after WAPA started its upgrade of its poles and therefore they cannot be held responsible to do something that was impossible to be done.

132. CenturyLink also argues that Mr. Kunkleman believed the purpose of Proceeding 13I-1147T had been accomplished with the long-term lease with PRPA and was unaware that the fiber on the Pole Path had been moved. CenturyLink states all the filings made by Mr. Kunkleman were made in good faith.

133. But in order to determine if the filing was incorrect, or if it was a violation, it is important to note what the purpose was of Proceeding 13I-1147T and what exactly was required to be filed.

134. The proceeding was opened in October of 2013 for the following purpose:

We open this proceeding on our own motion and engage the public safety, basic emergency service provider, and telecom provider stakeholders in an inquiry to learn about the performance and impacts on 9-1-1 during the recent floods and fires. This information will assist the Commission in identifying what worked well and, importantly, system vulnerabilities and if additional steps are necessary to assure resiliency, reliability, and continuity in the 9-1-1 system and processes.

135. The ordering paragraphs from Decision C14-0491 in Proceeding 13I-1147T that LETA claims was violated by CenturyLink reads as follows:

1. No later than July 31, 2014, Qwest Corporation, doing business as CenturyLink QC (CenturyLink) shall file in this proceeding schematics and documentation identifying the physically redundant 9-1-1 connections for Estes Park and Allenspark wire centers. In addition, CenturyLink shall include the current status of the build-out and the expected completion date.

2. On September 1st and March 1st of each year until otherwise ordered, CenturyLink shall file updates as discussed above to the three-year 9-1-1

geographic diversity build-out plan and updates to confidential attachments 1-1, 2-1, 3-1, 3-2, and 5-7.

136. The first requirement was to file schematics and documents by July 31, 2014. There is no allegation that these filings were not made.

137. In the second paragraph CenturyLink was required “to file updates to the three-year 9-1-1 geographic diversity build-out plan.” From this order, it is clear that the “9-1-1 geographic diversity build-out plan” was anticipated to be completed in three years of the decision or 2017. It would make logical sense that this requirement was made so that CenturyLink would be required to show what progress was being made on the “geographic diversity build-out plan.”

138. Once the "build-out plan" was completed there would be nothing to update concerning the "plan" or how the plan is progressing. It appears that these filings were to make sure that CenturyLink continued to work on geographic diversity until it was completed. In the March 2022 compliance filing, CenturyLink proudly heralded the long-term lease and the completion of the requirements of Proceeding 13I-1147T⁷⁵.

139. These were not compliance filings to inform the Commission that geographic diversity continued, these filings were required to ensure that CenturyLink completed geographic diversity. With the completion of the long-term contract, the purpose of Proceeding 13I-1147T had been met, but it was not closed as anticipated by CenturyLink⁷⁶. Should CenturyLink inform the Commission and stakeholders if there is no longer geographic diversity and would this proceeding, prior to being closed, have been a good place to do so? Absolutely! However, it does

⁷⁵ “While all of this certainly took longer than everyone had hoped it would, it has finally come to a resolution that will give us all the stability and diversity that we all sought way back in 2013. We are grateful for everyone’s time and efforts and patience with this process. Ultimately, this is a great achievement for everyone involved, especially the citizens of the Estes Park valley.” Hr. Ex. 107, Attachment LETA-8.

⁷⁶ The first of many instances where better communication within CenturyLink could have avoided future issues.

not appear that Proceeding 13I-1147T was created to become a repository to confirm the continued geographic diversity at issue in this proceeding *ad infinitum*.

140. This also explains the numerous times that CenturyLink stated in the filings⁷⁷ in this proceeding and the emails to LETA that it was CenturyLink's intention to move to close the proceeding⁷⁸ and that LETA did not object to closing the proceeding⁷⁹.

141. The second part of the sentence requires "updates to confidential attachments 1-1, 2-1, 3-1, 3-2, and 5-7." There is no limiting language contained within this part of the sentence as there is in the first part of the sentence. The first part of the sentence required "updates" to "the build-out plan." There were no other updates to the build-out plan with the completion of the build-out plan. The second part of the sentence, however, requires any updates to these attachments that graphically show the geographic and physical diversity. They are not part of the "build-out plan;" they are a representation of what is in place and were required to be updated as any changes were made.

142. The filing on March 6, 2023, stated the following:

Please see September 1, 2023 filing. As mentioned in previous updates, the company has completed the diversity efforts related to connectivity in and out of the Estes Park wire center and intends on making a filing to request this proceeding be closed.⁸⁰

143. By August of 2023 there was no longer geographic diversity "in and out of Estes Park." Mr. Kunkleman testified that he had a routine of checking with Mr. Whitman "to ensure that the agreement was still in place, and that CenturyLink continued to lease both the Pole Hill Path and the segment between Drake and Glenhaven which, when combined with CenturyLink

⁷⁷ Hr. Ex 107, Attachment LETA-9, Hr. Ex 107, Attachment LETA-10, Hr. Ex 107, Attachment LETA-12

⁷⁸ Attachment TDK-34 Rev 1, Hr. Ex 107, Attachment LETA-9,

⁷⁹ Hr. Ex. 200 Rev.1 p. 36, Attachment TDK-34 Rev 1, and Attachment TDK-33 Rev 1, p.11.

⁸⁰ Hr. Ex. 107, Attachment LETA-12.

facilities, created two physically and geographically diverse paths between Loveland and Estes Park.”⁸¹

144. It is also clear that Mr. Kunkleman believed that if Mr. Whitman became aware that the two physically and geographically diverse paths between Loveland and Estes Park were no longer in place he would advise Mr. Kunkleman of this development⁸².

145. In September of 2023, when a compliance filing is made there was no evidence presented that Mr. Whitman was aware that geographic diversity had been lost. Whether Mr. Whitman should have known this fact is a different question⁸³. Mr. Kunkleman testified credibly that he was unaware of the loss of geographic diversity and would not have known at the time of the first two filings LETA believe constitute a violation of the order in Proceeding13I-1147T⁸⁴.

146. At the time the March 2023 and September 2023 filing was made, there is no evidence that Mr. Kunkleman or Mr. Whitman knew or should have known that there was no longer physical diversity. This filing was made with the information that they had at the time.

147. The filing on March 8, 2024, is different from the first two filings. When this filing was made there is evidence that Mr. Whitman was aware or should have been aware that there was no longer geographic diversity and should have advised Mr. Kunkleman⁸⁵.

148. At the time of this filing, confidential attachments 1-1, 2-1, 3-1, 3-2, and 5-7 should have been updated to show that there was no longer physical and geographic diversity.

⁸¹ Hr. Ex. 200C Rev.1. p. 38.

⁸² Hr. Tr. July 29, 2025, P.162.

⁸³ Again, there were failures within the internal communication process at CenturyLink and in the communication process at PRPA.

⁸⁴ LETA appears to believe that there was an intentional plan by CenturyLink to remove the geographic diversity. It is clear that CenturyLink paid PRPA for the fiber path they no longer had in place so there would be no benefit to CenturyLink. There was no incentive or reason for CenturyLink to intentionally end physical and geographic diversity.

⁸⁵ Hr. Tr. July 29, 2025, P.162.

149. The filing on August 28, 2024, is also different. By this time the geographic diversity had been restored. LETA argues that this filing is deficient since it did not list the temporary path through the Adams Tunnel. Since this was a temporary measure taken during the Wildfire and was planned to be removed by the end of September 2024 and that was known by all interested parties, it would potentially be more confusing to have a temporary path contained in the filing that was to be removed less than a month later.

150. Attachments 2-1 and 3-1 should have been updated in the March 8, 2024, filing, when it should have become known to CenturyLink that there was no longer geographic diversity.

151. It appears from the evidence presented that these filings became a nuisance that was not updated and at times not even remembered.⁸⁶ When the filing was eventually remembered, statements would be made about the intention to close the proceeding, and then the filing was forgotten again until the next filing.⁸⁷ This lack of concern does not excuse CenturyLink from maintaining the filings until the proceeding was closed.

C. Commission Rule 2143(a)

152. LETA starts this argument by claiming that CenturyLink violated Commission Rule 2143(a) and that CenturyLink “agreed⁸⁸” to this rule and then unilaterally removed the geographic diversity and that was a violation of this rule.

153. LETA then appears to attempt to refute any argument CenturyLink may have to violating Rule 2143(a) by stating CenturyLink was required to maintain geographic diversity beyond 2019 due to an unrelated complaint case that was later dismissed; CenturyLink’s responsibilities under C.R.S. §40-3-101(2); the lack of a Commission rule allowing the ending

⁸⁶ The filing for September 2022 and March 2023 were combined for a filing on March 3, 2023.

⁸⁷ This is one of the many ways that CenturyLink has shown that communication within the company is far below what one would expect of a company this size that controls resources that are this vital to public safety.

⁸⁸ LETA Statement of Position, p. 16.

diversity without notice; filings made in Proceeding 13I-1147T; and finally a series of rules that were not mentioned anywhere in the complaint or the hearing.

154. CenturyLink argues that during the time that WAPA was replacing its transmission line it was not feasible to have physical and geographic diversity.

155. First, a few of LETA's arguments require clarification. CenturyLink did not "unilaterally end the physical diversity"⁸⁹ at issue in this proceeding. Work was being done by WAPA on its transmission line poles and the Pole Hill Path was moved for that reason. CenturyLink did not decide to end the physical and geographic diversity on their own, and there is absolutely no evidence whatsoever that there would be any benefit to CenturyLink if they removed it. As noted previously, CenturyLink was pleased and proud that the physical and geographic diversity had been accomplished.

156. In January of 2023, CenturyLink entered into a contract to lease fibers for an additional year with five annual renewals. At no time during the negotiations of this lease extension did PRPA even think to mention that the fiber that CenturyLink would be leasing would be moved within a month⁹⁰. This lack of candor by PRPA when negotiating a one-year contract occurred, according to Mr. Grant, because it was a temporary condition that was known for years would occur. It also was of no consequence to Mr. Grant that this temporary condition would start in a month and could last for over a year,⁹¹ or 10 months of the 12-month contract. The fiber ended up not being available for 17 months starting February 27, 2023.⁹²

⁸⁹ LETA Statement of Position, p. 17.

⁹⁰ Hr. Tr. July 28, 2025, p. 128.

⁹¹ Id. at p.130.

⁹² There is sufficient evidence to question PRPA's actions surrounding the events that lead to the filing of this complaint, but PRPA is not regulated by the Commission and is not a party to this proceeding.

157. Mr. Grant also sent an email, without 30-day notice requirement, that was unclear as to the length of time the fiber would be moved and also failed to send it to the person with whom he just negotiated the contract days earlier⁹³. Mr. Grant was also inconsistent with whom he emailed at CenturyLink⁹⁴. PRPA also determined that there was no need to provide CenturyLink with any updates on the progress.⁹⁵

158. There was no evidence presented that CenturyLink was not required to pay for this fiber while it was not able to use the fiber for the purpose the fiber was leased. This also bolsters Mr. Kunkleman's testimony that he was unaware that the Pole Hill Path had been moved.

159. As mentioned at different points in this decision, there is ample evidence that the internal communications within CenturyLink are substandard. There is evidence that CenturyLink employees should have been aware that there was no longer physical and geographic diversity by January of 2024, but more CenturyLink employees should have known sooner or at the very least inquired with PRPA as to a clarification of the email sent by Mr. Grant. This lack of communication within CenturyLink is a problem and there are many people who should shoulder the blame for these communication failures, but to refer to the loss of physical and geographic diversity as being due to some unilateral decision made by CenturyLink is unfounded.

160. LETA's arguments concerning any violation of Rule 2143(a) are without merit. First, the fact that a party did not object to language contained in a proposed rule during a rulemaking hearing is totally irrelevant.

⁹³ Hr. Ex. 109, p. 6.

⁹⁴ Hr. Tr. July 29, p. 133-134.

⁹⁵ Hr. Tr. July 28, 2025, p. 76.

161. If a party objects to the language in a proposed rule and that language is adopted, it does not make that party any more or less responsible for following the rule. It is unclear what point LETA attempts to make with that statement.

162. Next, it is again unclear why LETA brings up an unrelated statute, a dismissed complaint case⁹⁶, non-existent rules⁹⁷, Proceeding 13I-1147T or unrelated rules. None of these things relate to the question of whether CenturyLink violated Rule 2143(a). LETA has the burden in this proceeding to show that CenturyLink violated Rule 2143(a) by applying the facts of the proceeding to the rule. It is irrelevant what occurred in other proceedings or non-existent rules.

163. To meet its burden LETA needs to show, by a preponderance of the evidence, that CenturyLink did not “take reasonable measures to provide reliable BES including circuit diversity, central-office backup power, and diverse network monitoring. Where feasible, 9-1-1 circuits within the BES network shall be physically and geographically diverse.”⁹⁸

164. None of the arguments presented by LETA in their SOP address how it was feasible for CenturyLink to provide physical and geographical diversity. Therefore, their arguments contained within the arguments section of their SOP fail.

165. However, contained within LETA’s SOP, in the overview section, they make the following statement, “A viable alternate route for 911 traffic existed through the Adams Tunnel, and nothing prevented CenturyLink from evaluating, securing, and preparing that path in advance for emergency use when the Pole Hill Path was disconnected.” This is a fair argument, and unlike

⁹⁶ The proceeding resulted in a settlement between the parties in the complaint case. The proceeding was dismissed without prejudice.

⁹⁷ LETA argues that there is no rule that allows for CenturyLink to “unilaterally end diversity at any time, especially without notice to the Commission or the customer.” is an argument they violated a rule. *LETA Statement of Position p. 17*. Based upon this logic, the lack of a rule preventing CenturyLink from ending unilaterally ending diversity would support CenturyLink unilaterally removing diversity..

the statements contained in their argument section, addresses what is at issue for a claimed violation of this rule. Even though it was not contained in their argument, for the sake of completeness it shall be addressed.

166. First, it must be remembered there are a few other factors that have to be considered when addressing this argument. It was understood, by those who were aware of it, that this was a temporary move off the PRPA fiber. But it was not clear how long it would take to complete the upgrades nor is it clear certain people became aware or if they ever did become aware that physical and geographic diversity was lost.⁹⁹

167. Again, CenturyLink had just entered into a one-year contract with PRPA to lease the fiber less than a month before the upgrades began and physical and geographic diversity was lost.

168. In January of 2024, there is evidence that Mr. Whitman should have been aware of the lack of diversity and advised Mr. Kunkleman, or almost one year after the upgrade started, which is about how long Mr. Grant testified it should take to complete the upgrade¹⁰⁰.

169. No matter who knew what and when they knew it, from CenturyLink's perspective, by the time they should have known the issue existed, this could not be viewed as anything more than a temporary situation for an unknown time period which should be near its end. The amount of money and time that should be expended for a temporary solution for an undetermined amount of time is a question that was not asked or answered during the hearing.

170. What is known is that as early as 2021, CenturyLink had determined that Adams Tunnel was not a viable solution to support CenturyLink's systems¹⁰¹. It is also known that the

⁹⁹ Hr. Tr. July 28, 2025, p. 130.

¹⁰⁰ "Roughly one year, possibly less, possibly more" Id.

¹⁰¹ Id at p. 240.

fiber was owned by WAPA and they told CenturyLink they were prohibited from leasing it other than in an emergency.¹⁰²

171. The Adams Tunnel was not a viable option even if CenturyLink was aware that there was no longer geographic diversity. Although, not stated as an argument by LETA in its SOP, the Adams Tunnel was not a feasible path and the failure to utilize Adams Tunnel does not constitute a violation of Rule 2143(a).

172. Under Commission Rule 2143(a) “[w]here feasible, 9-1-1 circuits within the BES network shall be physically and geographically diverse.” While WAPA upgraded the poles that contained the fiber CenturyLink leased from PRPA, there was not a feasible option for CenturyLink, if they even were aware, to provide geographic diversity.

173. LETA has failed to meet its burden to show that CenturyLink violated Commission Rule 2143(a).

D. Tariff 25

174. LETA argues that CenturyLink removed physical and geographic diversity and by that action violated their tariff.

175. CenturyLink argues that under a plain reading of the tariff only circuit diversity is required. CenturyLink argues that Section 9.2.5(A)(5) does not reference physical or geographic diversity. CenturyLink states that circuit diversity is well known in the industry and incorporated into 4 CCR 723-2-2143(a).

¹⁰² Hr. Tr. July 29, 2025, p. 169-171.

176. CenturyLink also does not believe it was required to notify LETA of any change since it was WAPA that made the decision to modify network diversity, and CenturyLink had no contractual obligation to communicate with LETA about the change.¹⁰³

177. The tariff provision in question reads as follows:

The ESInet Service as initially deployed includes circuit diversity, central office backup power, and network diversity where it existed as of September 1, 2018. Additional circuit diversity, central office backup power, or network diversity may be provided (i) subject to additional Commission-approved tariff charges to Customers pursuant to 4 CCR 723-2-2143, or (ii) without additional charges to Customers pursuant to network improvements implemented at the Company's own initiative for the benefit of customers generally, provided that sufficient capacity exists.

178. When looking at this tariff it is important to keep in mind the last portion of the first sentence, "where it existed as of September 1, 2018." So, when looking at this first sentence, any requirements should be looked at from the context of how it existed "as of September 1, 2018." Failure to provide ESInet Service including "circuit diversity, central office backup power, and network diversity where it existed as of September 1, 2018" would be a violation of the tariff.

179. The second sentence starts with the word "[a]dditional." So, the rest of the tariff concerns only **additions** (*emphasis added*) made to the ESInet Service after September 1, 2018. In the instant case, there are no additions to the ESInet Service that are at issue.

180. The first requirement of the tariff is maintaining "circuit diversity" as existed after September 1, 2018. Physical diversity is defined in Rule 2143(a)(I) as:

Circuits or equivalent data paths are physically diverse if they provide more than one physical route between end points with no common points where a single failure at that point would cause both circuits to fail. Circuits that share a common segment such as a fiber-optic cable or circuit board are not physically diverse even if they are logically diverse for purposes of transmitting data.

181. Geographic diversity is defined as the following:

(III) Circuits or equivalent data paths are geographically diverse if they take

¹⁰³ CenturyLink Statement of Position, p. 27.

different paths from endpoint to endpoint, not following the same geographic route.

182. LETA believes that there was not circuit diversity based on confusion by CenturyLink employees at the start of the Wildfire¹⁰⁴.

183. Ms. Ranjel credibly testified that there were two circuits that were lit during the time in question.¹⁰⁵ Once again, CenturyLink showed throughout the hearing that their internal communication before and during the Wildfire was almost non-existent or at best severely deficient. Even though many CenturyLink employees may have been unaware or unable to quickly confirm the existence of circuit diversity at the onset of the Wildfire, there was in fact circuit diversity before after and during the Wildfire. There is no evidence that it was ever lost.

184. CenturyLink next states that an examination of this tariff requires it to be read with the plain reading of the words. Yet CenturyLink stops reading the plain words of the tariff after the words "circuit diversity." But "the only way to read the tariff "as a whole" is by giving effect to all of its parts.¹⁰⁶

185. The next requirement is that there is central office backup power. There is no allegation that this portion of the tariff was violated, so it shall not be examined

186. The last part of the tariff paragraph is a little tricky. It calls for network diversity. Unlike physical diversity and geographic diversity, network diversity is not defined in Commission rules. But by using a plain reading of the tariff, a few things can be determined about “network diversity” even if there is not a direct definition.

187. Since network diversity is listed separately from physical diversity and the mention of circuits, it is something different or in addition to circuit or physical diversity. So, maintaining

¹⁰⁴ Hr. Ex. 106 Rev 1, p. 14, Hr. Ex. 101, p. 12-13,

¹⁰⁵ Hr. Ex. 201C Rev1 p. 19 l. 1-6 and Hr. Tr. July 29, 2025, p. 308, l. 8-20.

¹⁰⁶ CenturyLink Statement of Position, p. 27.

physical diversity does not show that you are complying with the network diversity requirement listed in Tariff 25. To conform with Tariff 25 there must be a diversity in place in addition to physical diversity, if it was in place on September 1, 2018.

188. A check of Commission rules shows that the word “diversity” is used two times, both times in Rule 2143. The first reference is “physical diversity” as contained in Rule 2143(a). The second reference does not have a modifier before the word diversity. Also contained within Rule 2143(a) is the phrase “[a]ll BESP’s providing BES shall take reasonable measures to provide reliable BES including circuit diversity, central-office backup power, and diverse network monitoring.” So once again, “network diversity” is separate from “circuit diversity.”

189. There is no other diversity that is mentioned in Commission rules that could be considered “network diversity” therefore “network diversity” must be or include geographic diversity.

190. CenturyLink appears to agree with this conclusion in their SOP. CenturyLink maintains that circuit diversity was not lost or modified. According to CenturyLink, the only diversity that was modified when WAPA started the upgrades was geographic diversity. So, when CenturyLink makes this argument in its SOP, it appears to acknowledge that network diversity is in fact geographic diversity.

Because CenturyLink did not make a decision to modify network diversity, it had no contractual obligation to communicate with LETA about the change.¹⁰⁷

At the very least, CenturyLink acknowledges that network diversity includes physical and geographic diversity.

¹⁰⁷ CenturyLink Statement of Position, p. 27.

191. The compliance filing made by CenturyLink on September 4, 2018, stated the following:

In late March, CenturyLink and Platte River Power Authority (PRPA) completed a new fiber route between Drake and Glenhaven that provides a secondary connection for the company between Loveland and Estes Park.¹⁰⁸

192. As of September 1, 2018, there was circuit diversity and network/physical and geographic diversity. Between February of 2023 and August 2024 there was no longer geographic diversity. This was a violation of the tariff.

193. At the point that they became aware of the lack of geographic diversity, CenturyLink should have notified all interested parties and determined what, if any, action should be taken.

194. The key is when CenturyLink became aware that there was no longer geographic diversity. It cannot be expected that CenturyLink would have done anything until this information was received by the proper CenturyLink employees.

195. During the hearing, there was ample finger-pointing and little responsibility taken for the lack of knowledge concerning the loss of geographic diversity. Without question the internal communications within CenturyLink are poor if they even exist.

196. When the Wildfire starts in July of 2024, Mr. Trupp is not only unaware that there is no longer geographic diversity but lacks the basic knowledge it existed and does not have the ability to see on CenturyLink's network design system the existence of lines that are leased from PRPA¹⁰⁹.

197. The actions of PRPA also leave a lot to be desired. As mentioned above, it is inconceivable that when you are negotiating a lease of fiber for the next year you don't see the

¹⁰⁸ Hr. Ex. 107, Attachment LETA-5.

¹⁰⁹ Hr. Tr., July 28, 2025, p.234:14 235:23.

necessity to inform the other party that the fiber they are leasing will be moved for all but one month of the contract.¹¹⁰ It also makes little sense that PRPA, which was sent progress updates from WAPA,¹¹¹ would not pass these along to CenturyLink.

198. PRPA also failed to give the required 30-day notice if the fibers were to be re-located. PRPA knew years in advance that the fibers would be relocated but failed to inform CenturyLink until PRPA knew the exact day the fibers would be moved, and then the notice was not clear.

199. The email informing CenturyLink that WAPA would be replacing the poles is problematic. Mr. Grant sent emails at different times to different people concerning similar issues. PRPA should email everyone they are aware of that could have any interest in the information. Considering that Mr. Grant had just negotiated a lease of fiber for the next year, it's surprising the email was not clear that the fiber was going to be moved for almost the entire duration of the lease. It is also odd that he failed to include the person with whom he had just negotiated the contract on this very important email.

200. CenturyLink is far from blameless for this information not being relayed throughout the company. CenturyLink should have a list of email addresses that they give to PRPA to ensure that anyone who may have an interest in any actions concerning PRPA is aware. There should also be a policy to forward any information that may be of interest to other CenturyLink employees. If an email is unclear, there should be a process to ensure that anyone within the organization that may be affected by any actions contained in an email are notified of the email and inquiries are made to make sure that all confusion is cleared up.

¹¹⁰ Hr. Ex. 200, Rev. 1, Attachment TDK-23C

¹¹¹ Hr. Ex. 200 Rev. 1 Attachment TDK-14.

201. There were numerous balls dropped by numerous people at CenturyLink and PRPA. Due to the lack of communication between PRPA and CenturyLink and internally within CenturyLink it is difficult to determine who knew what and when they knew it. It is clear both parties are at fault for the lack of communication about the loss of geographic diversity.

202. There is no evidence that anyone at CenturyLink was aware or should have been aware of the lack of geographic diversity until January of 2024, including Mr. Kunkleman.

203. The evidence does not support a finding that CenturyLink knowingly violated its tariff. But by January 2024 CenturyLink, by following normal procedures, should have come to the discovery that there was no longer geographic diversity.

204. Mr. Kunkleman testified to the procedures he followed before making the compliance filings in Proceeding 13I-1147T. The first thing that Mr. Kunkleman would do before making a compliance filing was to contact Mr. Whitman to make sure the lease was in place that “created two physically and geographically diverse paths between Loveland and Estes Park.”¹¹²

205. On January 11, 2024, Mr. Grant sent an email to Mr. Whitman referencing WAPA's ongoing 16-month construction project and described it as "still to be completed"¹¹³. The email on January 11, 2024, was sufficient notice to Mr. Whitman that there was no longer geographic diversity¹¹⁴. When Mr. Whitman was aware that geographic and physical diversity no longer existed, he should have notified Mr. Kunkleman. Following normal procedures Mr. Kunkleman should have been made aware of the loss of geographic and physical diversity and known that CenturyLink was no longer in compliance with its tariff.

¹¹² Hr. Ex. 200 Rev.1, p. 38.

¹¹³ ¹¹³ Hr. Ex. 110, Attachment KC-12C

¹¹⁴ Hr. Tr., July 29, 2025, p. 164-165.

206. There was a violation of this tariff from January 2024 until the fiber was returned to its original path in August of 2024.

E. Commission Rule 2002(b)(X)

207. LETA failed to mention how CenturyLink violated this rule in its SOP.

208. Rule 2002(b)(X) is not mentioned in the testimony of any of LETA's witnesses.

209. LETA has presented no evidence in support of this claim; therefore they have failed to meet their burden.

210. It also appears from the language contained in the Complaint that the alleged violation would be a collateral attack on a previous Commission decision. Section 40-6-112(2), C.R.S., provides: "In all collateral actions or proceedings, the decisions of the [C]ommission which have become final shall be conclusive."¹¹⁵

F. Remedies

211. LETA spends one third of its SOP on a multitude of remedies that it believes are appropriate. LETA bases all of its remedies on the premise that CenturyLink acted knowingly and purposefully in removing physical and geographic diversity. There is no evidence supporting this premise.

212. CenturyLink gained nothing monetarily from the loss of geographic and physical diversity, and in fact paid PRPA for fiber that was not providing what CenturyLink believed it was providing.

¹¹⁵ 9 § 40-6-112(2), C.R.S.; see also *Lake Durango Water Co. v. PUC*, 67 P.3d 12, 22 (Colo. 2003).

213. The actions of CenturyLink exposed a lack of communication within the company. As much as LETA has been looking for a motive since the start of the Wildfire¹¹⁶, it just does not exist. As mentioned above, any confusion that occurred during the Wildfire was due to poor communication between PRPA and CenturyLink and within CenturyLink. These are problems that should be corrected, but the issues in this proceeding concern the alleged violations of Commission rules, a tariff, a statute and a Commission order.

214. The remedies requested by LETA concerning the hiring of a compliance officer and compliance filings do not address any issue in this proceeding. Other requests appear to use an investigation by Staff pursuant to 4 CCR 723-2-2143(k) to request additional remedies for issues that are not relevant or at issue in the instant proceeding.

215. The imposition of civil penalties requires a finding of an “intentional violation.”¹¹⁷ An intentional violation is defined when a person acts with “intentionally or with intent when his conscious objective is to cause the specific result proscribed by the statute, rule, or order defining the violation.”¹¹⁸ There is no evidence that CenturyLink acted with intent in violating its tariff. Civil penalties are not appropriate or warranted in this instance.

¹¹⁶ The ALJ was surprised that legal counsel was present at the EOC meetings during the Wildfire. Ms. Culp testified that, counsel “was at my building for another meeting we were having with our board chair. And I had to carve out time to have that meeting because it was a highly critical meeting during the Wildfire. So, this was not wildfire-related. And I asked her if she wanted to come down to the EOC meeting based on what we were talking about. So yes, she did come in and sit and observe what was going on.” Hr. Tr. July 28, 2025, p. 200. The undersigned found this testimony credible and determined based upon this testimony that it was a coincidence that counsel happened to be at the offices for a different meeting that had not been canceled during the Wildfire and that counsel just observed the meeting. Yet, in LETA’s SOP footnote 33 LETA contradicts this testimony. LETA takes exception to CenturyLink’s failure to preserve some documents in anticipation of legal action stating “[a]s of August 1, 2024, based on all that had transpired in three EOC meetings during the Wildfire, including CenturyLink’s internal communications that LETA’s legal counsel attended an EOC meeting... was reasonably foreseeable.” Contrary to Ms. Culp’s depiction of this interaction as an innocent coincidence, LETA states it should have been obvious to CenturyLink that while the Wildfire was still growing that LETA was planning legal action. By their own admission, LETA admits that at the onset of the Wildfire, that some of their actions during the EOC were an obvious manifestation of preparing for legal action. This is contrary to the statement that counsel’s presence at the EOC was “not wildfire related.”

¹¹⁷ 4 CCR 723-3-2009(b)

¹¹⁸ 4 CCR 723-3-2009(b)

216. LETA also requests additional remedies that are far beyond the scope of this proceeding and therefore need not be addressed individually.¹¹⁹

217. There was a communications failure within CenturyLink. This communications failure led to the failure of internally knowing that geographic and physical diversity was no longer in place. At the time that CenturyLink became aware or should have become aware of this fact it should have communicated this information to stakeholders and the Commission. It is at this time CenturyLink was in violation of its tariff. LETA paid for what they thought was geographic and physical diversity.

218. There was no evidence presented that would lead to the conclusion that CenturyLink had actual knowledge it was paying PRPA for physical and geographic diversity that no longer existed. But as mentioned above, in the normal course of business CenturyLink should have known that diversity was lost in January of 2024.

219. CenturyLink shall therefore refund to LETA the monthly recurring charge of \$752.22¹²⁰ for two concurrent sessions for seven months from January 2024 until August 2024 or \$10,531.08.

220. Attorney's fees are not warranted.

VIII. CONCLUSION

221. LETA did not meet its burden to show by a preponderance of evidence that CenturyLink violated C.R.S. § 40-3-101(2).

222. LETA met its burden to show that CenturyLink failed to file an accurate diagram in its filing of March 8, 2024, compliance filing in Proceeding I13-1147T. CenturyLink is ordered

¹¹⁹ These include the hiring of a third party auditor and the creation of "as built."

¹²⁰ This figure was provided by LETA in its Statement of Position

to file a corrected update to the original Attachment 2-1 and Attachment 3-1 in Proceeding I13-1147T within 30 days of a final decision in this proceeding.

223. LETA did not meet its burden to show by a preponderance of evidence that CenturyLink violated Commission Rule 2143(a).

224. LETA met its burden to show that CenturyLink violated their Tariff 25. CenturyLink shall refund \$10,531.08 to LETA.

IX. ORDER

1. The Complaint filed by the Larimer Emergency Telephone Authority (“LETA”) on October 30, 2024, against Qwest Corporation, doing business as CenturyLink QC (“CenturyLink”) is denied in part and granted in part.

2. CenturyLink is not found to have violated C.R.S. § 40-3-101(2), Commission Rule 2143(a), or Commission Rule 2002(b)(X). These claims are dismissed.

3. CenturyLink is found to have violated a Commission order from Decision C14-0491 in Proceeding I13-1147T. CenturyLink is ordered to file a corrected exhibit 2-1 and 3-1 in Proceeding I13-1147T within 30 days of a final decision in this proceeding

4. CenturyLink is found to have violated their Tariff 25. CenturyLink shall refund \$10,531.08 to LETA within 30 days of a final decision in this proceeding.

5. Proceeding 24F-0470T is now closed.

6. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

7. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
 - b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.
8. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded
9. Responses to exceptions shall be due within seven calendar days from the filing of exceptions.

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
DirectorTHE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge