

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

NC 356

PUBLIC UTILITY COMMISSION OF  
OREGON,

Complainant,

vs.

CENTURYLINK COMMUNICATIONS,  
LLC,

Defendant.

ORDER

DISPOSITION: ORDER NO. 16-478 RESCINDED; STIPULATION  
ADOPTED

In this order, we adopt the stipulation between Staff and CenturyLink Communications, LLC (CenturyLink), and rescind Order No. 16-478 finding CenturyLink in default on a complaint due to its failure to previously accept the stipulation in a timely manner.

**I. BACKGROUND**

On August 17, 2016, representatives of CenturyLink and the Oregon Utility Notification Center (OUNC) Enforcement Committee met to discuss an alleged violation of OAR 952-001-0070 for failing to notify the OUNC about a proposed excavation prior to excavating. An agreement was reached at the meeting, and on October 7, 2016, the Commission filed a complaint and provided a stipulation that documented the agreement. CenturyLink was asked to sign and return the stipulation, and was notified that failure to do so, or to otherwise answer or appear within 20 days of service, would be deemed a default. After CenturyLink failed to answer or appear within that designated period, we entered Order 16-478 on December 12, 2016, finding CenturyLink in default, and assessing a penalty higher than the amount agreed to in the stipulation.

**II. APPLICATION TO RECONSIDER OR MODIFY  
ORDER NO. 16-478 AND STIPULATION**

On February 10, 2017, CenturyLink made a filing that asks the Commission to reconsider or modify Order No. 16-478 to accept the stipulation. CenturyLink states that due to circumstances beyond the company's control, the stipulation was not timely accepted and

returned. CenturyLink attaches the now executed stipulation. In the stipulation, CenturyLink admits that the alleged violation was committed; and both parties agree the Commission may enter an order assessing the full amount of the applicable civil penalties (\$5000), instituting a one-year period of probation with suspension of a portion of the civil penalties (\$4,000), and full waiver of this portion of the penalties if no further violations occur during the probationary period. CenturyLink represents that Staff agrees that it is appropriate and consistent with the public interest for the Commission to accept the stipulation at this time.

On February 24, 2017, Staff filed a response supporting the application. Staff notes that the stipulation is in the public interest because it better assures future compliance with the applicable statutes and rules due to the one-year period of probation. Staff recommends that the Commission rescind Order No. 16-478, and adopt the executed stipulation.

### III. DISCUSSION

Order No. 16-478 is rescinded, and the stipulation is adopted. Under the terms of the stipulation, the allegations of the complaint are true, and defendant has violated the Oregon Administrative Rules as alleged. Pursuant to the provisions of ORS 757.993, penalties should be assessed against defendant under the terms and conditions of the stipulation.

### IV. ORDER

IT IS ORDERED that:

1. Order No. 16-478 is rescinded.
2. The stipulation, attached as Appendix A, is adopted.
3. Civil monetary penalties are assessed in the amount of \$5,000 against CenturyLink Communications, LLC.
4. Defendant shall pay the sum of \$1,000, due and payable within 30 days from the date of service of this order. Payment shall be by money order made out to the **Public Utility Commission of Oregon**, and the memo line of the money order shall state the "NC" docket number in the caption of this order. The Commission acknowledges receipt of the amount of \$1,000 on February 16, 2017.
5. Payment of the balance of the penalties (\$4,000) will be suspended and will be waived and no further penalties will be imposed unless defendant fails to comply with all of the terms of the stipulation and all of the rules adopted by the Oregon Utility Notification Center under ORS 757.552 for a one year period following the entry of this order.

6. If complainant contends that defendant has not complied with all of the terms of this stipulation and all OUNC rules for the one-year period, complainant may reopen this proceeding and petition for imposition of all or a portion of the suspended penalties. Defendant is entitled to be notified of the basis for noncompliance and a hearing.

Made, entered, and effective                     MAR 21 2017                    .

  
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**Lisa D. Hardie**  
Chair

  
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**John Savage**  
Commissioner



  
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**Stephen M. Bloom**  
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

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CENTURYLINK COMMUNICATIONS, LLC,

Defendant.

STIPULATION FOR ENTRY OF FINAL  
ORDER

The Public Utility Commission of Oregon, appearing by and through Johanna M. Riemenschneider, Assistant Attorney General, and CenturyLink Communications, LLC, the Defendant herein, hereby stipulate as follows:

1.

A Complaint in this case was filed before the Commission charging the Defendant with violations of OAR 952-001-0070, and proposing total civil penalties of \$5,000.

2.

Both parties to this proceeding are willing to forego any further processing of that Complaint, waive all rights to any hearing or appeal of any order entered in this docket, and are willing to resolve this matter on the basis of this Stipulation.

3.

The Defendant admits that the violation was committed as alleged in the Complaint and is willing for the Commission to enter an order finding that the violation was committed as alleged in the Complaint.

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4.

The parties further agree that the Commission may enter an order assessing civil monetary penalties against Defendant in the amount of \$5,000 under the following terms and conditions:

- A. Defendant signs and return this Stipulation.
- B. \$1,000 becomes due and payable on or before the 30<sup>th</sup> day following the Commission's entry of its order accepting the Stipulation in this case.
- C. Payment must be by money order made out to the Public Utility Commission of Oregon, and the memo line of the money order must state the "NC" docket number in the caption of this Stipulation.
- D. Payment of the balance of the civil penalties (\$4,000) will be suspended and will be waived and no further penalties will be imposed for the violation alleged in the Complaint unless Defendant fails to comply with all of the terms of this Stipulation and all of the rules adopted by the Oregon Utility Notification Center (OUNC) under ORS 757.552 for a one-year period following the date of the Commission's entry of an order.
- E. In the event that Complainant contends that Defendant has not complied with all of the terms of this Stipulation and all OUNC rules for that one-year period, Complainant may reopen this proceeding and petition for imposition of all or a portion of the suspended penalties. In such case, Defendant is entitled to a hearing and to be notified of the basis upon which Complainant contends that compliance has not occurred.

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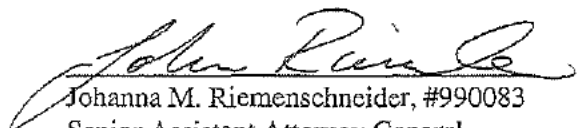
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F. Complainant's failure to enforce any provision of this Stipulation, or decision to waive any violation or nonperformance of this Stipulation in one instance, will not constitute a waiver by the Complainant of that provision, any other provision, or any other violation or nonperformance in another instance.

5.

This Stipulation is conditioned upon final approval of its terms by the Commission. If the Stipulation is not accepted in its entirety, it is deemed withdrawn.

DATED this 7<sup>th</sup> day of February 2017.



Johanna M. Riemenschneider, #990083  
Senior Assistant Attorney General  
Of Attorneys for the Public Utility Commission  
of Oregon

DATED this 7<sup>th</sup> day of February 2017.



Defendant / Representative (signature)

William E. Hendricks  
(Print Name)