

## STATEMENT BY COMMISSIONER GEOFFREY STARKS

RE: *CenturyLink, Inc.*, Order and Consent Decree, DA 19-1061 (rel. Nov. 4, 2019); *West Safety Communications, Inc.*, Order and Consent Decree, DA 19-1063 (rel. Nov. 4, 2019).

As I write this statement, California is fighting no less than 6 fires, including the Kincadee fire, affecting nearly 80,000 acres in the state's wine country. Multiple states in the Midwest have experienced unprecedented flooding this year, and we still have another month left in hurricane season.

With all these disasters, the need for reliable 911 service has never been greater. Indeed, I am concerned by the stories of Californians in the midst of dealing with these fires losing their 911 service because of blackouts impacting cell towers and cable providers. But what is even more alarming are outages that caused by telephone service providers themselves. These "sunny day" outages are not caused by weather or natural disasters, but by the actions of the provider or its subcontractors. Such outages are not only foreseeable but are preventable with adequate safeguards and the adoption of well-known best practices.<sup>1</sup>

The August 2018 911 outage at issue in today's consent decrees lasted more than an hour, affected six states, including North Carolina, Minnesota and North Dakota, and resulted in hundreds of calls not reaching 911 operators. As the CenturyLink consent decree states, in Minnesota alone, 693 calls failed to reach 911 call centers. We don't know the substance of these failed 911 calls – any one of them could have involved a life or death situation. What we do know is that each call involved a person asking for help.

This is serious stuff, and the Commission has historically taken strong enforcement action on violations of our 911 rules. Between 2015 and 2016, the Commission adopted consent decrees valued at more than \$40 million against several major carriers for such violations. Indeed, one of the largest settlements during that period was with one of the parties involved in today's orders – CenturyLink. In that April 2015 consent decree, CenturyLink agreed to pay \$16 million to resolve an investigation into a six-hour 911 outage that affected at least two of the exact same states involved in the outage at issue today – Minnesota and North Carolina. In addition to paying a \$16 million fine, CenturyLink also agreed to adopt compliance measures, including designating a compliance officer, developing and implementing a compliance plan reflecting industry best practices, and performing better coordination and supervision of subcontractors.

Fast forward to the outage at issue today. Less than four months after expiration of the April 2015 consent decree, CenturyLink experienced yet another widespread 911 outage. Both Commission rules and FCC precedent state that enforcement penalties should increase for repeat

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<sup>1</sup> See, e.g., *Public Safety and Homeland Security Bureau Encourages Communications Service Providers to Follow Best Practices to Help Ensure Network Reliability*, Public Notice, 33 FCC Rcd 3776 (PSHSB 2018); *Communications Security, Reliability and Interoperability Council, Best Practices 11-6-5170, 11-8-8000* (2011), available at <https://opendata.fcc.gov/Public-Safety/CSRIC-Best-Practices/qb45-rw2t/data>.

offenders, particularly for offenses involving public safety.<sup>2</sup> Yet the \$400,000 settlement with CenturyLink today does not address the repeat nature of the outages, and in fact the consent decree fails to even mention the 2015 action. Today's consent decree re-adopts measures previously instituted, including designating a compliance officer and developing and implementing a compliance plan reflecting industry best practices. Notably, even though the consent decree assigns fault for the outage at issue here to a subcontractor, the compliance plan contains nothing about better coordination and supervision of such parties.<sup>3</sup> We should have taken stronger enforcement action here.

A final note – on December 27, 2018, two days after Christmas, CenturyLink experienced its worst 911 outage yet, impacting as many as 22 million customers across 39 states. It has been nearly a year since that event, and almost 3 months since the Commission's Public Safety and Homeland Security Bureau issued its report analyzing the causes of the outage. I understand that the investigation into that incident remains ongoing,<sup>4</sup> and expect that any enforcement action will adequately reflect the seriousness of the event, should there be a consent decree or item before the Commission.

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<sup>2</sup> See, e.g., 47 C.F.R. 1.80(b)(8) (stating that the Commission should consider “the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”) See also *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 1820, 1827-28, para. 22 (2006) (upward adjustment for Behringer's repeated and willful violations of the Commission's rules by its continued marketing of unauthorized devices despite knowing that it was in violation of Commission rules), *forfeiture ordered*, 22 FCC Rcd 10451 (2007) (forfeiture paid); *AT&T Wireless Services, Inc.*, 17 FCC Rcd 9903, 9913-14 paras. 23-26 (2002), *consent decree*, 17 FCC Rcd 19938 (2002) (upwardly adjusting forfeiture for E911 violations because of the public safety concerns).

<sup>3</sup> See *CenturyLink, Inc.*, Order and Consent Decree, DA 19-1061 paras. 4-5 (rel. Nov. 4, 2019).

<sup>4</sup> Public Safety and Homeland Security Bureau, *December 27, 2018 CenturyLink Network Outage Report* (rel. Aug. 19, 2019), available at <https://docs.fcc.gov/public/attachments/DOC-359134A1.pdf>.