

0001

1

BEFORE THE WASHINGTON

2

UTILITIES AND TRANSPORTATION COMMISSION

3

4

In the Matter of the)
Petition of)

5

THE CENTURLINK COMPANIES -)

6

QWEST CORPORATION;) Docket UT-130477

7

CENTURYTEL OF WASHINGTON;)

8

CENTURYTEL OF INTERISLAND;)

9

CENTURYTEL OF COWICHE; AND)

10

UNITED TELEPHONE COMPANY OF)

11

THE NORTHWEST)

12

13

PREHEARING CONFERENCE, VOLUME I

14

Pages 1 - 19

15

ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

16

17

1:29 P.M.

18

MAY 1, 2013

19

Washington Utilities and Transportation Commission

20

1300 South Evergreen Park Drive Southwest

21

Olympia, Washington 98504-7250

22

23

24

REPORTED BY: SHERRILYN SMITH, CCR# 2097

25

Buell Realtime Reporting, LLC

26

1411 Fourth Avenue

27

Suite 820

28

Seattle, Washington 98101

29

206.287.9066 | Seattle

30

360.534.9066 | Olympia

31

800.846.6989 | National

32

www.buellrealtime.com

0002

1 A P P E A R A N C E S

2 ADMINISTRATIVE LAW JUDGE:

3 GREGORY J. KOPTA
4 STEPHANY WATSON
5 Washington Utilities and
6 Transportation Commission
7 1300 South Evergreen Park Drive SW
8 P.O. Box 47250
9 Olympia, Washington 98504
10 360.664.1136

11
12 FOR CENTURYLINK COMPANIES:

13 LISA A. ANDERL
14 1600 Seventh Avenue
15 Room 1506
16 Seattle, Washington 98191
17 206.398.2500
18 lisa.anderl@centurylink.com

19
20 FOR SPRINT NEXTEL:

21 JUDITH A. ENDEJAN
22 Graham & Dunn
23 Pier 70
24 2801 Alaskan Way
25 Suite 300
Seattle, Washington 98121
206.340.9694
jendejan@grahamdunn.com

FOR INTEGRA TELECOM:

DOUGLAS DENNEY
Integra Telecom
1201 Northeast Lloyd Boulevard
Suite 500
Portland, Oregon 97232
503.453.8285
dkdenney@integratelecom.com

25

0003

1 A P P E A R A N C E S (Continued)

2 FOR COMMISSION STAFF:

3 JENNIFER CAMERON-RULKOWSKI
4 Assistant Attorney General
5 1400 South Evergreen Park Drive SW
6 P.O. Box 40128
7 Olympia, Washington 98504-0128
8 360.664.1186
9 jcameron@utc.wa.gov

7

8 FOR PUBLIC COUNSEL:

9 LISA W. GAFKEN
10 Public Counsel Section
11 Office of Attorney General
12 800 Fifth Avenue
13 Suite 2000
14 Seattle, Washington 98104-3188
15 206.389.2055
16 lisaw4@atg.wa.gov

13

14

15 FOR THE DOD/FEA:

15

16 KYLE SMITH
17 STEPHEN MELNIKOFF
18 Regulatory Law Office (JALS-RL)
19 U.S. Army Legal Services Agency
20 9275 Gunston road
21 Fort Belvoir, Virginia 22060-5546
22 703.614.3918
23 kyle.j.smith124.civ@mail.mil
24 stephen.s.melnikoff.civ@mail.mil

20

21

22 ALSO PRESENT: AUGUST ANKUM, QSI Consulting

22

23

24

-o0o-

25

0004

1

OLYMPIA, WASHINGTON; MAY 1, 2013

2

1:29 P.M.

3

-o0o-

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

JUDGE KOPTA: Let's be on the record in Docket UT-130477. I'm not going to read the whole caption of the docket because it's already going to be in the transcript. I am Judge Gregory J. Kopta, the administrative law division, presiding over this proceeding. With me is Judge Stephany Watson.

Our first order of business is to take appearances. Let's begin with the Company.

MS. ANDERL: Thank you, Your Honor. Would you like the full appearance?

JUDGE KOPTA: If you filed a notice of appearance, I don't think that's necessary. I think the short form is perfectly acceptable.

MS. ANDERL: All of my contact information is on the initial petition.

This is Lisa Anderl, in-house attorney representing the CenturyLink companies.

MR. DENNEY: This is Douglas Denney, the company representative for Integra Telecom.

MS. GAFKEN: Good afternoon, my name is Lisa Gafken, I am an assistant attorney general,

0005

1 appearing on behalf of Public Counsel. I will also
2 note that Simon ffitch will also be involved in this
3 matter.

4 JUDGE KOPTA: Staff?

5 MS. CAMERON-RULKOWSKI: Jennifer
6 Cameron-Rulkowski appearing on behalf of Commission
7 Staff.

8 JUDGE KOPTA: And on the bridge line?

9 MR. SMITH: Kyle Smith and Stephen
10 Melnikoff on behalf of the Department of Defense and
11 all other Federal Executive Agencies.

12 MR. ANKUM: And August Ankum, QSI
13 Consulting, assisting the Department of Defense and
14 the other Federal Executive Agencies.

15 JUDGE KOPTA: Anyone else?

16 I did get a petition to intervene from Sprint
17 Nextel. I don't know whether Ms. Endejan is going to
18 be present.

19 In any event, that is the next order of
20 business, interventions. I have received petitions
21 from the Department of Defense and Federal Executive
22 Agencies, Sprint Nextel and Integra. Does anyone else
23 wish to intervene at this point?

24 Hearing nothing, we will start with those
25 three. Ms. Anderl, does the Company object to the

0006

1 intervention of any of those three parties?

2 MS. ANDERL: Yes, Your Honor, we do
3 object to the intervention of the Department of
4 Defense and Federal Executive Agencies on the basis
5 that they do not state an interest in participating in
6 the A4 docket.

7 I want to preface and caveat everything I say
8 with the recognition that the DOD/FEA is a large and
9 excellent customer of ours. We bear them no animosity
10 or ill will. In fact, we are very grateful for all
11 the business we have from them. However, I think the
12 very fact that they are such a large customer of ours,
13 coupled with recent events, such as the \$750 million
14 contract that was just awarded to CenturyLink from the
15 DOD, shows that the DOD is more than capable and has
16 more than enough market power itself to negotiate
17 favorable, fair rates, terms and conditions from us.
18 And in fact the negotiating power and leverage in
19 terms of services weighs on the federal government
20 side rather than on the CenturyLink side.

21 We therefore do not think that it is necessary
22 for them to participate in the docket, nor do we think
23 that their participation necessarily furthers the
24 public interest; rather, tends to further specific
25 interests to benefit specific installations of the

0007

1 DOD/FEA where markets and competitors would not
2 otherwise provide service. In other words, they seek
3 to extract some concessions through the docket that
4 would not be really countenanced by a free market, and
5 we therefore do not think that they state a basis for
6 intervening in the proceeding.

7 JUDGE KOPTA: Are they served
8 exclusively through contracts with the company, or do
9 they take any tariff services?

10 MS. ANDERL: Your Honor, my
11 understanding from the representations that they have
12 made is that they do take some services either out of
13 the catalog or out of the tariff, say for
14 individual -- for service stations or post offices or
15 recruiting stations that may be located in a strip
16 mall. These are representations that Mr. Melnikoff
17 has made in previous proceedings. I don't have any
18 specific list at this point of the companies and
19 services that -- of the five operating companies, what
20 services they buy from which companies in which
21 geographic locations.

22 JUDGE KOPTA: Mr. Melnikoff, or your
23 cocounsel, do you have any response?

24 MR. MELNIKOFF: I would dispute that
25 there is -- that we have the upper hand in

0008

1 negotiations contractually. That is a statement that
2 rolled out in New Mexico and we disproved it. They
3 rolled it out again in their testimony that was filed
4 I believe April the 1st.

5 We do have an interest in this case, and that
6 is of the -- taken under various vehicles, whether
7 tariff, catalogue or contractual. We have yet to make
8 up our mind whether this impacts us negatively or
9 positively. If it does impact us positively, we would
10 be supportive of lessening unnecessary regulations
11 because ultimately, it shows up in our prices or terms
12 and conditions or when services that meet our needs is
13 readily available.

14 JUDGE KOPTA: Anything further,
15 Ms. Anderl?

16 MS. ANDERL: No, Your Honor.

17 JUDGE KOPTA: I am going to overrule the
18 objection and allow the intervention. I think that as
19 long as the DOD does take services out of tariffs that
20 would impacted by this proceeding, that they have a
21 substantial interest in how that happens and how that
22 impacts the services that they receive. I think that
23 is a substantial enough interest for them to
24 participate in this docket.

25 Ms. Anderl, do you have any objections to the

0009

1 intervention of Sprint Nextel or Integra?

2 MS. ANDERL: No, Your Honor.

3 JUDGE KOPTA: Then we will allow them to
4 intervene. We will grant their petitions to
5 intervene. They will be parties to this proceeding.

6 Our next order of business is discovery. Do
7 we believe that discovery will be necessary in this
8 docket?

9 MS. CAMERON-RULKOWSKI: Yes, Your Honor.

10 JUDGE KOPTA: Not surprising. All
11 right. Then the discovery rules will be available.

12 Do we need a protective order?

13 MS. ANDERL: Yes, your Honor.

14 JUDGE KOPTA: Just the plain vanilla, or
15 do we want highly confidential?

16 MS. ANDERL: I think to the extent that
17 there might be company-specific information deduced,
18 say if we were going to do discovery of Integra, I
19 don't know if that's even likely, but -- or Sprint, if
20 we were to receive company-specific information, my
21 guess is that they would want that to be treated as
22 highly confidential, and maybe not even available to
23 each other.

24 I don't know, I'm trying -- I'm buying time
25 while I think about whether anything that we produce

0010

1 would be highly confidential.

2 JUDGE KOPTA: I am reluctant to include
3 highly confidential provisions at this point, unless
4 there is a pretty good certainty that that kind of
5 information is likely be requested or submitted as
6 part of the record in this docket.

7 Mr. Denney, do you have any sense about
8 whether any information that Integra might be
9 requested will be highly confidential?

10 MR. DENNEY: Usually, marketing and
11 pricing information we do have filed as highly
12 confidential, like, for example, in the Frontier
13 proceeding. Other type of information, just kind of
14 general information about where our businesses are, we
15 would have been able to file those as confidential.
16 We may have some concerns if we got questions on that,
17 you know, that we were required to respond to.

18 JUDGE KOPTA: I don't recall in the last
19 A4 docket for CenturyLink or Qwest, was there any need
20 for highly confidential information?

21 MS. ANDERL: I didn't check, Your Honor.
22 I think that there actually -- I know in the merger
23 docket there was, obviously. I can't remember if the
24 2006 A4 had highly confidential information or not.

25 I was going to suggest a process, maybe, where

0011

1 we could have just the regular protective order, and
2 then if we did believe that information that was
3 highly confidential had been requested in discovery or
4 otherwise, we could provide it as highly confidential,
5 along with a motion for an order at the same time, so
6 that it didn't kind of gum up the works.

7 JUDGE KOPTA: That's my inclination, is
8 to just go ahead and have a regular protective order
9 at this point. If there is a need for highly
10 confidential protection, then we can address it later,
11 either as you have suggested, or depending on the
12 time, you just go ahead and file a motion to amend the
13 protective order to include provisions for highly
14 confidential information.

15 We will issue a protective -- the standard
16 protective order that the commission issues.

17 Unless there are other issues, we come to
18 scheduling.

19 MS. ANDERL: Your Honor, I do have one
20 issue, which is just to advise you and put it on the
21 record, that we are going to amend our petition and
22 plan for A4. We will file that tomorrow. I can
23 review with you what the amendment is going to be. It
24 is pretty simple, if you want to do that now or after
25 the scheduling discussion.

0012

1 JUDGE KOPTA: I'm indifferent, either
2 way. It may impact what people think about in terms
3 of scheduling, although I don't know whether you
4 already have had discussions and come up with a
5 proposed schedule at this point.

6 MS. ANDERL: Well, the amendment has
7 been previewed with people, and the schedule, even
8 though we don't agree, we kind of think we know how
9 it's going to come out.

10 JUDGE KOPTA: While we are talking about
11 it, why don't we do the amendment. Give me a
12 thumbnail of what you are going to modify in your
13 petition.

14 MS. ANDERL: Your Honor, if you go to
15 Appendix A in the plan for A4, which is just where we
16 have the list of statutes, rules or other provisions
17 to be waived, we have requested a waiver of Chapter
18 8012, a transfer of property statutes and the
19 associated rules. We said that except that during a
20 three-year transition period, we would still come in
21 automatically on a merger or exchanges. We had
22 proposed that that provision sunset, and so for years
23 4 and 5, we would have just complete waiver.

24 We are going to remove the three-year time
25 limit, so that we would have a waiver of the transfer

0013

1 of property statutes and rules for the entire term of
2 the A4, with the exception of mergers and acquisitions
3 with unaffiliated companies or sales and exchanges.
4 We would still be subject to approval, as we would
5 have to initiate a docket to effect either one of
6 those types of transactions.

7 JUDGE KOPTA: It sounds straightforward.

8 MS. ANDERL: We will do a redline and
9 send it in. I have just been short-staffed and wasn't
10 able to prepare the filing to file today.

11 JUDGE KOPTA: That doesn't sound like it
12 would be anything that would impact the schedule.

13 MS. ANDERL: No.

14 JUDGE KOPTA: That's nice to know. We
15 will look for that filing tomorrow.

16 MR. SMITH: This is Kyle Smith with the
17 Department of Defense. We just have a question of
18 whether or not there will be additional testimony to
19 support that.

20 MS. ANDERL: Well, since we are asking
21 for less than what we were originally asking for, we
22 weren't going to put anything in, in connection with
23 that. I mean what it is, is a concession that we
24 would not get that freedom in years 4 and 5. No, our
25 plan was not to amend our testimony.

0014

1 (Ms. Endejan enters.)

2 JUDGE KOPTA: All right. I see that
3 Ms. Endejan has joined the party.

4 MS. ENDEJAN: Good afternoon, Judge
5 Kopta. Yes, Judy Endejan for Sprint Nextel. I
6 apologize for being a few minutes late.

7 JUDGE KOPTA: All right. That happens.
8 We proceeded without you. Even though you weren't
9 here, we decided we would let Sprint Nextel join the
10 party.

11 MS. ENDEJAN: Sprint is very
12 appreciative.

13 JUDGE KOPTA: I'm sure they are.

14 We are up to scheduling issues now. Do we
15 have a proposed schedule, or do we need to take a
16 break and have a discussion about a proposed schedule?

17 MS. CAMERON-RULKOWSKI: Your Honor, we
18 have competing schedules at this point, with not all
19 parties having weighed in. Perhaps it would behoove
20 us to take a few minutes and just hear from everyone.

21 JUDGE KOPTA: Let's be off the record.

22 (A brief recess.)

23 JUDGE KOPTA: Let's be back on the
24 record.

25 During our break, we had a discussion about

0015

1 scheduling, which I will now memorialize on the
2 record, subject to correction by anyone who finds that
3 I have made an error.

4 We will have a settlement conference for
5 parties only on Friday, June 28th. Staff, Public
6 Counsel and intervenor response testimony and exhibits
7 will be due on Thursday, August 22nd. Company
8 rebuttal testimony and exhibits will be due on
9 Thursday, September 19th. Cross-examination exhibits
10 will be distributed and filed on Thursday,
11 October 10th. Evidentiary hearings will be October 15
12 through 17, with simultaneous posthearing briefs filed
13 on Thursday November 14th.

14 Ordinarily the statutory deadline for
15 Commission action in this docket is Wednesday,
16 January 1st, but the Company has agreed to waive that
17 deadline to Friday, January 17th, 2014. I will ask,
18 just to make sure that we have documentation of that,
19 that the Company send in a letter to that effect.

20 Also discovery responses will be the standard
21 ten business days, as provided in the Commission's
22 rules, until Thursday, August 22nd, after which
23 discovery period shortens to seven business days for
24 any data requests that are directed to either the
25 Staff, Public Counsel, and intervenor response

0016

1 testimony and exhibits or the Company's rebuttal
2 testimony.

3 I think that's it, unless somebody else has
4 any corrections or additions.

5 MS. ANDERL: No, Your Honor.

6 MS. GAFKEN: Just one minor point. We
7 didn't talk about this off the record, but there is a
8 public notice report date of June 28th. We would like
9 to have that on a calendar, just as a date that we
10 know that we have a file a letter letting the
11 Commission know that we are doing okay or we are not
12 doing okay with the public notice.

13 JUDGE KOPTA: That's something that I
14 usually do not put into schedules, assuming that you
15 will file it. We don't need to have your feet held to
16 the fire to be able to do that. If you would like to
17 have that in there so that you will make sure that
18 it's on your calendar and do it --

19 MS. GAFKEN: I find that it is helpful
20 in terms of getting parties, and us, just to make sure
21 that the discussions are happening in a timely manner.
22 I find that it is helpful to have it on the calendar.

23 JUDGE KOPTA: All right, we can add that
24 on the calendar --

25 MS. GAFKEN: Thank you.

0017

1 JUDGE KOPTA: -- for Friday, June 28th.

2 Anything else?

3 MS. GAFKEN: The only other item would
4 be the public comment hearing.

5 JUDGE KOPTA: At this point, we will
6 have to decide when and where and how many, I suppose,
7 potentially.

8 MS. GAFKEN: Okay.

9 JUDGE KOPTA: We will do that and send
10 out a notice once we have made that determination.

11 MS. GAFKEN: I will just put my
12 recommendation on the record, if that's okay. Public
13 Counsel is recommending that we have two public
14 comment hearings, one in Olympia and one on the east
15 side of the state, perhaps in Yakima or Spokane. We
16 will need to know what the Commissioners want to do
17 and have some input there. That's our recommendation
18 at this time.

19 JUDGE KOPTA: All right. Well, we will
20 consult with the Commissioners and see what their
21 preference is. We will let the parties know.

22 Anything else?

23 MS. ANDERL: No, Your Honor.

24 MS. GAFKEN: No.

25 JUDGE KOPTA: All right, then we are

0018

1 adjourned. Off the record.

2 (Prehearing conference concluded 2:29 p.m.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0019

1

C E R T I F I C A T E

2

3

STATE OF WASHINGTON

4

COUNTY OF KING

5

6

I, Sherrilyn Smith, a Certified

7

Shorthand Reporter in and for the State of Washington,

8

do hereby certify that the foregoing transcript is

9

true and accurate to the best of my knowledge, skill

10

and ability.

11

12

13

14

15

16

17

SHERRILYN SMITH

18

19

20

21

22

23

24

25