

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

CENTURYLINK COMMUNICATIONS,
LLC,

Respondent.

DOCKET NO. UT-181051

**RESPONDENT CENTURYLINK
COMMUNICATIONS, LLC'S
RESPONSE TO COMMISSION
STAFF'S MOTION TO SUSPEND
PROCEDURAL SCHEDULE**

- I.* CenturyLink Communications, LLC (“CLC”), by and through the undersigned counsel, submits this Response in opposition to the Commission Staff’s Motion to Suspend the Procedural Schedule. Staff theorizes that despite the fact that it purportedly investigated the circumstances of the December 2018 911 outage before filing this multi-million dollar complaint against CLC, and despite having two years before filing the case and seven months since the filing to obtain information and documents from TeleCommunication Systems, Inc. d/b/a Comtech Telecommunications Corp. (“Comtech”)—the State’s principal 911 provider—and Transaction Network Services, Inc. (“TNS”)—Comtech’s agent—the Commission should now suspend the procedural schedule so Staff can obtain facts about the outage that it should have obtained long before filing this case. Granting Staff’s Motion would send the wrong message. Staff should be expected to investigate all relevant facts before initiating an enforcement complaint of this magnitude, and to continue pursuing critical information within a reasonable time thereafter. Staff should not be permitted to suspend the procedural schedule on the eve of its deadline to provide its case in chief through Direct Testimony

in order to review yet-to-be-conducted discovery it had two and one-half years to seek itself. CLC therefore respectfully requests that the Commission deny the Motion.

II. BACKGROUND

2. On July 9, 2021, CLC filed a Motion seeking third-party discovery. On July 20, 2021, Staff responded, acknowledging that “under the specific circumstances of this case third party discovery may be warranted.” Staff Response at ¶ 5. In other words, Staff appears to recognize that Comtech and TNS possess facts that could be central to the question of what caused the 911 outage in December 2018. Respectfully, this is something that Staff should have considered long before CLC sought permission to issue third party discovery and long before filing this complaint.
3. Comtech has been the State’s principal 911 provider for years. By December 2018, Comtech was responsible for routing calls to 47 of Washington’s Public Safety Answer Points (PSAPs), while CenturyLink only retained responsibility to route calls to Washington’s remaining 15 PSAPs. Emergency calls to the CenturyLink PSAPs were not impacted by the December 2018 event, but some calls to the Comtech PSAPs did not complete. Aware of this, Staff should have thoroughly investigated Comtech’s practices and network design years ago. Why did calls to CenturyLink’s PSAPs complete, yet calls to Comtech’s PSAPs did not?
4. This question is particularly relevant given the Commission’s decision in the Docket No. UT-140597. In that case the Commission held:

We reject the argument [by Public Counsel] that the violations are highly likely to recur because 911 provisioning relies on software that is not infallible. No system is foolproof, whether it depends on computers, people, or a combination of both. *Errors will inevitably occur in software coding*, for example, both in its development and in its deployment in actual 911 operating systems. *What is important for our review is to ensure that CenturyLink has*

adequate management and oversight systems in place to both reduce the risks of such errors occurring and also to have systems in place to provide awareness of outages and to restore 911 service as rapidly as possible. This applies both to the Company itself and to any contractor or vendor such as Intrado. In other words, we require regulated companies to implement measures that are reasonable under the circumstances to minimize service disruptions and other violations of Commission requirements.”

Docket UT-140597, Order No. 3 (Feb. 22, 2016), ¶ 25 (emphasis added). The Commission issued this decision at a time when CenturyLink, not Comtech, was the State’s principal 911 provider. According to the Commission, in an instance where a 911 provider (in this instance Comtech), had calls fail to complete, the central inquiry should be whether the 911 provider implemented appropriate management and systems to reduce the risks of a 911 outage, and once an outage occurred to restore service promptly. In other words, for years in this type of case the Commission has focused on the processes of the 911 provider and whether they were reasonable and appropriate.

5. Staff apparently did not consult the very legal standard the Commission set for these proceedings just a few years ago. Instead, without obtaining or perhaps even considering all relevant facts, Staff has focused all blame and attention on CLC, which acted as Comtech’s vendor’s vendor at the time of the outage.
6. Now, on the eve of Staff’s deadline to provide written testimony (a deadline set over five months ago), Staff wants a time out so it can do the very thing it should have done years ago: investigate what led to 911 calls failing to reach Comtech PSAPs in December 2018.

II. ARGUMENT

7. WAC 480-07-385(2)(a) states that “[t]he commission will grant a continuance if the requesting party demonstrates good cause for the continuance and the continuance will not prejudice any party or the commission.” In addition, WAC 480-07-385(3)(a) states that “[a] party must file and serve any written motion for continuance . . . at least five business days prior to the deadline the party requests to continue. Staff cannot satisfy either of these requirements.

8. Staff cannot establish the requisite good cause for the requested extension. Good cause for a continuance is universally recognized as the inability to meet scheduled deadlines “despite the exercise of due diligence.” *Henderson v. ABW Techs., Inc.*, No. 07-1426RAJ, 2009 WL 223924, at *1 (W.D. Wash. Jan. 29, 2009) (citing *Zivkovic v. Southern Calif. Edison Co.*, 302 F.3d 1080, 1087–88 (9th Cir. 2002)). “If the party seeking a modification did not exercise diligence, then the motion for modification should be denied.” *Id.* at 1087. Here, Staff had two and one-half years to obtain facts necessary for its written testimony. Nevertheless, Staff never actually sought this information (and in fact opposes its collection, but if that fails wants additional time to rely on CLC’s efforts to collect it) and waited until two days prior to its deadline to seek a continuance. This is the antithesis of diligence that would justify good cause for a continuance, and indeed, such requests are routinely denied. *See, e.g., Henderson*, 2009 WL 223924, at *1 (finding that there was no good cause for a continuance when plaintiff waited until the last day of the discovery period before requesting a continuance “without providing any justification for waiting so long”); *Blough v. Shea Homes, Inc.*, No. C12-1493 RSM, 2014 WL 1400990, at *1 (W.D. Wash. Apr. 10, 2014) (“Mere failure to complete discovery by the Court ordered deadline does not constitute good cause for continuance.”).

9. Staff's motion relies on the false premise that Staff need not file its case in chief (through Direct Testimony) until it is in possession of all relevant facts that might be discovered in the case. This is obviously untrue given that Order No. 1 requires Staff and Public Counsel to file Direct Testimony on July 29, 2021, but does not cut off discovery until December 9, 2021. Especially in light of Staff's failure to sufficiently pursue information from Comtech, Staff's argument is wholly unwarranted, and certainly does not constitute good cause for suspension of the procedural schedule set in February. Furthermore, Staff will have ample opportunity to participate in third party discovery (should it be permitted) and to utilize documents and information in its Cross-Answering Testimony and at hearing.¹
10. As to the timing of its Motion, Staff filed the motion to suspend two days before its written testimony was due. Staff argues that WAC 480-07-385(3)(a) is permissive instead of mandatory as to when the motion should be filed. The plain language of the rule shows otherwise. The rule states that motions to continue *must* be filed at least five days in advance. Even if CLC's motion for third party discovery created good cause for upending the schedule, CLC filed its motion for third party discovery 19 days ago. Staff had plenty of time to file the motion timely, and offers no explanation for its delay.

III. CONCLUSION

11. For the foregoing reasons, CLC respectfully requests that the Commission deny the Motion to Suspend the Schedule and order Staff to file its testimony within 48-hours of the Commission's decision. This timing is appropriate because Staff filed the Motion to Suspend 48-hours before its opening testimony was due. The remaining testimony

¹ In its Motion, Staff also argues (without much explanation) that it needs additional time to prepare testimony because of the possible granting of Comtech's petition to intervene. Whether or not Comtech is granted party status does not logically affect Staff's ability to present its case in chief at this time.

deadlines should likewise be extended for the same number of days Staff's testimony deadline is ultimately extended.

Dated this 28th day of July 2021.

CENTURYLINK COMMUNICATIONS, LLC



Adam L. Sherr (WSBA # 25291)
Assistant General Counsel
1600 – 7th Ave., Room 1506
Seattle, WA 98191
206 398 2507
adam.sherr@lumen.com

Charles W. Steese, Esq.
Armstrong Teasdale LLP
4643 South Ulster Street, Ste. 800
Denver, Colorado 80237
(720) 200-0677 Ext. 3805
csteese@atllp.com