

**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
TELECOMMUNICATIONS
SYSTEMS, INC.'S LATE-FILED
PETITION TO INTERVENE**

1. CenturyLink Communications, LLC (“CLC”), by and through its undersigned counsel, submits this Response to TeleCommunication Systems, Inc.’s (hereinafter “Comtech”) late-filed petition to intervene. Given Comtech’s role as the principal 911 provider for the state of Washington, and given Comtech’s central role in the events that led to the December 2018 911 outage, CLC does not object to Comtech’s late request *conditioned on* Comtech’s agreement to produce the documents and participate in the corporate deposition requested by CLC on July 9, 2021.
2. Washington Commission rule states that “The commission may grant a petition to intervene made after the initial hearing or prehearing conference, whichever occurs first, only on a showing of good cause, including a satisfactory explanation of why the person did not timely file a petition to intervene.” WAC 480-07-355(1)(b).
3. The Commission issued a Notice of Virtual Prehearing Conference on January 20, 2021 directing that “[p]ersons seeking to intervene in the proceeding must file written petitions to intervene at least three business days before the date of the prehearing conference.” Notice of Virtual Prehearing Conference ¶ 6. The Commission held a pre-hearing conference in this matter on February 9, 2021. On July 20, 2021—more than five months

after the prehearing conference and just days before the Staff was expected to submit its direct testimony—Comtech filed its petition to intervene.

4. In its petition, Comtech did not even attempt to explain why it did not timely file a petition to intervene as required by WAC 480-07-355(1)(b). Instead, Comtech stated that in 2017 it entered into a contract to become the state’s primary 911 provider, and that in December 2018 a network event occurred (which Comtech tries to blame on CLC) that “affected TSYS’s ability to process certain 911 calls from callers in the State of Washington.” Petition ¶¶ 6-7. Comtech then stated that:

As an ESInet service provider to the State of Washington at the time of CenturyLink’s December 2018 network outage, *TSYS has a significant interest in, and information relating to, the facts surrounding CenturyLink’s December 2018 network outage.*

Petition ¶ 8 (emphasis added).

5. Comtech has always had “information related to the facts surrounding” the December 2018 outage.” As such, it should have moved to intervene at the outset of this proceeding. Likewise, Staff should have been working with Comtech to gather all relevant facts and information, which clearly it did not.
6. Indeed, Comtech should have recognized the criticality of its involvement in the proceeding given the Commission’s decision in the Docket 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’s standard, in this case the central inquiry should be whether Comtech—the 911 provider which had calls fail to complete—implemented appropriate management and systems to reduce the risks of a 911 outage, and once an outage occurred to restore service promptly.

7. For inexplicable reasons, however, Comtech did not intervene until CLC pressed the issue and sought discovery in the form of documents and deposition testimony from Comtech and from its vendor, Transaction Network Services.
8. Finally, WAC 480-07-355(1)(b) requires “good cause” to justify a late filed petition. 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)). Comtech does not attempt to justify its late request; instead, Comtech appears to be intervening because, now that CLC forced the issue, it feels it has no choice. Comtech has known all along that it is a central player in this proceeding, has facts and information critical to the proceeding, and despite that refused to return calls from CLC counsel seeking facts and information. Comtech has clearly been hoping to avoid scrutiny in this proceeding. Comtech simply cannot establish good cause.

9. Given that Comtech admits that it possesses information and facts about the December 2018 911 outage, that Comtech itself states that it has a “significant interest” in this proceeding, and that Comtech waited so long to seek leave to participate in this proceeding, the Commission should condition Comtech’s intervention on:

- a. Treating CLC’s subpoena for documents (attached as Exhibit A to CLC’s Motion for Third-Party Discovery) as requests for production of documents from a party to which Comtech must respond within 10 calendar days from the Commission’s order authorizing the intervention; and
- b. Agreeing to sit for a corporate deposition on the topics in CLC’s deposition request (attached as Exhibit B to CLC’s Motion for Third-Party Discovery) within 60 calendar days from the Commission’s order authorizing the intervention.

10. These conditions will allow the parties to get up to speed promptly on the facts and information Comtech admits is in its possession about the December 911 outage and the circumstances that led to the outage.

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11. WHEREFORE, for all of the reasons set forth above, CLC respectfully requests that the Commission condition Comtech's late filed request for intervention on the points set forth in Paragraph 9(a) and (b) above.

Dated this 30th day of July 2021.

CENTURYLINK COMMUNICATIONS, LLC



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