

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

CENTURYLINK COMMUNICATIONS,
LLC,

Respondent.

DOCKET UT-181051

ORDER 03

GRANTING PETITION TO
INTERVENE; DENYING MOTION
FOR THIRD PARTY DISCOVERY;
GRANTING MOTION TO SUSPEND
PROCEDURAL SCHEDULE;
REQUIRING PROPOSED REVISED
SCHEDULE

BACKGROUND

- 1 On December 22, 2020, the Washington Utilities and Transportation Commission (Commission), on its own motion and through its regulatory staff (Staff) issued a complaint against CenturyLink Communications, LLC, (CenturyLink or Company) regarding interruptions in 911 service on December 27, 2018. The Commission convened a prehearing conference on February 9, 2021, and on February 24, entered Order 01, Prehearing Conference Order; Notice of Hearing (Order 01).¹
- 2 In Order 01, the Commission granted intervention to the Washington State Military Department E911 Coordination Office (WMD). Order 01 also established a procedural schedule for this adjudication and provided that the parties may conduct discovery according to the Commission's procedural rules, specifically WAC 480-07-400-425. On July 9, 2021, CenturyLink filed a Motion for Third-Party Discovery (Motion for Discovery), requesting that the Commission issue subpoenas to TeleCommunication Systems, Inc., d/b/a Comtech Telecommunications Corp. (TSYS) and Transaction Network Services, Inc., (TNS) pursuant to WAC 480-07-400(2)(a). CenturyLink contends that these entities have information about the service interruption, which only they possess, that is necessary for the Commission to consider in this proceeding.
- 3 Staff opposes the Motion for Discovery. Staff acknowledges the Commission's authority to issue subpoenas to third parties but asserts that granting the Motion for Discovery

¹ Errors in Order 01 were corrected by a Notice of Erratum issued on February 25, 2021.

would substantially prejudice Staff because there would not be enough time to review discovery before Staff's initial testimony is due.

4 The Public Counsel Unit of the Washington Attorney General's Office (Public Counsel) and WMD took no position on the Motion for Discovery.

5 On July 20, 2021, TSYS filed a Petition to Intervene (Petition), stating that CenturyLink's Motion for Third-Party Discovery shows that its participation as a party in the proceeding is appropriate. TSYS also asserts that as a contractor for WMD, it has significant interest in and information relating to, the facts surrounding CenturyLink's December 2018 network outage.

6 Public Counsel, Staff, and WMD do not object to TSYS's Petition.

7 CenturyLink does not object to TSYS's Petition on the condition that TSYS agrees to provide the documents and participate in deposition requested by the Company in its Motion for Discovery.

8 On July 27, 2021, Staff filed a Motion to Suspend Procedural Schedule (Motion to Suspend). Staff asserts that depending on the responses to the Motion for Discovery and the Petition, reorientation of the procedural schedule would be necessary to ensure a new party's meaningful participation and allow all parties sufficient time to review discovery. Additionally, Staff requests a status conference to resolve the procedural matters and change in schedule.

9 On July 28, 2021, the Commission issued a notice suspending the July 29, 2021, deadline for filing initial testimony and requesting expedited responses to the Motion to Suspend.

10 Public Counsel supports Staff's Motion to Suspend. WMD did not file a response.

11 CenturyLink opposes Staff's Motion to Suspend, arguing that Staff had two years to investigate the outage. The Company asserts that Staff should have investigated vendors, as well as the Company, and therefore no legitimate reason exists to suspend the procedural schedule. CenturyLink additionally argues that WAC 480-07-385(3)(a) requires any request to amend a procedural schedule must be filed at least five days before the next deadline, and therefore Staff's motion was not timely filed.

DISCUSSION

A. Petition to Intervene

- 12 We grant TYSY’s petition to intervene. The Administrative Procedure Act (APA) states that a presiding officer may grant a petition to intervene in an adjudication “upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.”² Commission rules provide the presiding officer with discretion to grant intervention “[i]f the petition discloses a substantial interest in the subject matter of the hearing or if the petitioner’s participation is in the public interest.”³
- 13 The Commission will not grant a petition to intervene submitted after the initial prehearing conference in an adjudication without good cause. Such justification appears under the circumstances presented here. CenturyLink’s Motion for Discovery and the Petition demonstrate that as a contractor for the WMD, TSYs participated in providing 911 services and would have knowledge of the facts surrounding CenturyLink’s December 2018 network outage. While we would have preferred that TSYs petition to intervene prior to the prehearing conference, we find that TSYs’s participation will assist the Commission with making a full and fair determination consistent with its duty to regulate in the public interest. Moreover, TSYs’s participation serves the Commission’s interest in fully developing the record.
- 14 We deny CenturyLink’s request for conditions as unnecessary. As a party to this docket, TYSY will be required to follow the same rules of discovery as outlined in Order 01 of this docket.⁴ CenturyLink thus may conduct discovery of TSYs to the same extent as any other party.
- 15 We also note that the issue in this proceeding is whether CenturyLink violated any statutes or Commission rules resulting in the December 2018 network outage. The participation of TSYs in this docket will not broaden the scope of the proceeding to address its or any other nonregulated entity’s liability or contractual obligations.

² RCW 34.05.443(1).

³ WAC 480-07-355(3).

⁴ *Washington Utilities and Transportation Commission v. CenturyLink Communications, LLC*, Docket UT-181051, Order 01, 2 ¶ 9-10, (February 24, 2021).

B. Motion for Discovery

16 We deny CenturyLink's Motion for Discovery. While subpoena authority is available to
the Commission under WAC 480-07-400 as provided by Title 80 or 81, we agree with
Staff that third party discovery is within the Commission's discretion⁵ and should be
reserved for extraordinary circumstances.⁶

17 We find no such circumstances here. CenturyLink bears the burden of proving that its
actions related to the December 2018 Outage were lawful, and the Company should
already possess data on its own conduct. TSYS, moreover, will now be a party to this
proceeding and will be subject to party discovery,⁷ rendering moot the Motion for
Discovery directed to TSYS. CenturyLink has failed to demonstrate the necessity for
third party discovery of the other entity requested in the motion, much less that it
outweighs the burden on that entity.

C. Motion to Suspend

18 We grant Staff's Motion to Suspend. Pursuant to WAC 480-07-385, the Commission will
grant such a request unless it is inconsistent with the public interest or the Commission's
administrative needs, holding all procedural deadlines established pending further
Commission action.

19 Given the late intervention of TSYS, we find it reasonable to suspend and adjust the
procedural schedule to allow all parties time to request and review relevant materials that
TSYS may provide.

20 CenturyLink opposes Staff's Motion for Suspension, asserting that Staff should have
been prepared for such information through a diligent investigation and because WAC
480-07-385(3)(a) requires that such requests be filed five days prior to approaching
deadlines. However, CenturyLink fails to state how granting the motion will injure the

⁵ *Stericycle of Washington, Inc. v. Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions of Washington*, Docket TG-121597, Order 06, 4 ¶ 13, n.9 (December 12, 2013).

⁶ *Id.* 4 ¶ 13

⁷ TSYS is one of the two third parties that CenturyLink requested be subpoenaed in its motion.

Company or is otherwise inconsistent with the public interest. In the absence of such a showing, the Company's objection is not compelling.

21 Additionally, the Commission, in response to a motion or on its own initiative, may modify application of its own rules if that modification is in the public interest and is not inconsistent with the purpose underlying the regulation or applicable statutes.⁸ Here, we waive the five-day requirement and grant Staff's request to allow all parties to meaningfully participate in this proceeding in light of TSYS's late intervention.

22 The Commission, therefore, requires the parties to confer and submit a new proposed schedule by 5 p.m. on August 20, 2021. If the parties are unable to agree on a new schedule, each party must submit its own proposal, and the Commission will establish a revised schedule.

ORDER

THE COMMISSION ORDERS:

- 23 (1) TeleCommunication Systems, Inc., d/b/a Comtech Telecommunications Corp.'s Petition to Intervene is GRANTED.
- 24 (2) CenturyLink Communications, LLC's Motion for Third-Party Discovery is DENIED.
- 25 (3) Commission staff's Motion to Suspend the Procedural Schedule is GRANTED.
- 26 (4) The parties must submit an agreed proposed revised procedural schedule, or individual party proposals in the absence of an agreement, by August 20, 2021.

DATED at Lacey, Washington, and effective August 9, 2021

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Samantha Doyle
SAMANTHA DOYLE
Administrative Law Judge

⁸ WAC 480-07-100

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.