

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

CENTURYTEL OF INTER ISLAND, INC.
D/B/A CENTURYLINK,

Respondent.

DOCKET UT-132234

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

QWEST CORPORATION d/b/a
CENTURYLINK QC,

Respondent.

DOCKET UT-140597

In the Matter of the Notice of Transaction
and Application of

CENTURYLINK

For an Order Declining to Assert
Jurisdiction Over, or, in the Alternative,
Expedited Approval of the Indirect Transfer
of Control of Level 3 Communications,
LLC, Broadwing Communications, LLC,
Wiltel Communications, LLC, Global
Crossing Telecommunications, Inc., Global
Crossing Local Services, Inc., and Level 3
Telecom of Washington, LLC to
Centurylink, Inc.

DOCKET UT-170042

COMMISSION STAFF'S RESPONSE
TO CENTURYLINK'S MOTIONS TO
ENFORCE PROTECTIVE ORDERS,
AND MOTION FOR MODIFICATION,
OR IN THE ALTERNATIVE,
MOTION FOR INVESTIGATIVE
SUBPOENA

I. INTRODUCTION AND FACTS

1 On December 27, 2018, E911 services in Washington state experienced interruptions. CenturyLink Communications, LLC (“CenturyLink” or “company”) provides E911 services in Washington state. On December 28, the Utilities and Transportation Commission (Commission) announced via a news release that it would open an investigation into the cause of the outage, the company’s emergency preparedness and response, restorations efforts, and communication with the public. Subsequently, the Commission retained the services of Glenn Roach, an independent consultant familiar with 911 systems, to aid the Commission’s review and act as an expert witness.¹

2 As part of its investigation, Commission Staff seeks to have the consultant review material that has been filed in two prior Commission dockets involving CenturyLink: UT-140597 and UT-170042.² Docket UT-140597 pertained to a CenturyLink 911 service outage that occurred statewide on April 10, 2014. Docket UT-170042 concerned a merger between CenturyLink and another telecommunications company. Although Docket UT-170042 does not directly involve a CenturyLink service outage, CenturyLink has filed several confidential documents in that docket that may be relevant to Staff’s current investigation, such as an outage report for December 27-29, 2018, and a root cause analysis.

3 Dockets UT-140597 and UT-170042 are both subject to Commission protective orders restricting access to information that was filed as “confidential.”³ The protective

¹ See Appendix A.

² Staff no longer seeks to have its consultant access confidential information in Docket UT-132234.

³ See *Washington Utilities and Transportation Commission v. Qwest Corporation d/b/a CenturyLink QC*, Docket UT-140597, Order 02 (April 23, 2015)(hereinafter “UT-140597 Order 02”), and *In the Matter of the Notice of Transaction and Application of CenturyLink For an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Expedited Approval of the Indirect Transfer of Control of Level 3 Communications, LLC, Broadwing Communications, LLC, Wiltel Communications, LLC, Global Crossing Local Services, Inc., and*

orders state that confidential information subject to the protective order may not be requested, used, or reviewed, except for the purposes of the proceeding in which the protective order was entered.⁴ The protective orders also require the portions of the record containing confidential material to be sealed for all purposes unless the confidential information is released from the terms of the protective order through agreement of the parties or a lawful Commission order.⁵

4 On March 8, 2019, and March 11, 2019, Commission Staff's consultant signed confidential information agreements associated with Dockets UT-140597 and UT-170042 respectively. On March 13, 2019, the Commission, in response to a public records request by CenturyLink, provided copies of both the consultant's contract with the Commission and a February 5, 2019, non-disclosure agreement executed by Commission Staff and Mr. Roach.⁶ On March 19, CenturyLink filed a motion to enforce the terms of the protective orders, objecting to the consultant's access to confidential information. Commission Staff notes that CenturyLink's objection declined to mention the non-disclosure agreement between Commission Staff and Mr. Roach.

II. ARGUMENT

A. Motion to Modify

5 Commission Staff brings this motion to modify Order 02 in Docket UT-140597, and Order 01 in Docket UT-170042 to permit Staff's consultant to review the confidential material filed in the respective dockets for the purpose of Commission Staff's investigation

Level 3 Telecom of Washington, LLC to CenturyLink, Inc., Docket UT-170042, Order 01 (February 13, 2017)(hereinafter "UT-170042 Order 01").

⁴ UT-140597 Order 02 at 3, UT-170042 Order 01 at 3.

⁵ UT-140597 Order 02 at 5, UT-170042 Order 01 at 5.

⁶ See Appendix B.

in UT-181051. As mentioned above, Staff believes that the confidential material in UT-140597 and UT-170042 may have information or lead to the discovery of information that is relevant to the subject matter of Staff’s investigation in UT-181051. Furthermore, Commission Staff contends that modifying the prior orders will not compromise the confidentiality safeguards provided by those orders.

1. The Commission has authority to modify prior protective orders.

6 Under RCW 80.04.210, the Commission “may at any time, upon notice to the public service company affected, and after opportunity to be heard as provided in the case of complaints[,] rescind, alter, or amend any order or rule made, issued or promulgated by it.” Similarly, Order 02 in UT-140597, and Order 01 in UT-170042 state that “[t]he Commission may modify this Order on [the] motion of a party or on its own motion upon reasonable prior notice to the parties and an opportunity for hearing.”⁷

2. Modification of protective orders will not compromise confidential protections.

7 Both UT-140597 Order 02, and UT-170042 Order 01 state that “[a]bsent a protective order, a significant risk exists that confidential information might become available to persons who have no legitimate need for such information and that injury to the information provider could result.” To ensure that confidential material remains confidential, Staff will control the consultant’s access to Staff’s SharePoint files and has entered into a non-disclosure agreement with the consultant as referenced above. To reiterate, Commission Staff has no intention of allowing the consultant to have unfettered access to Commission files so that he may indiscriminately “rummage” through them. As part of the non-disclosure

⁷ UT-140597 Order 02 at 6, UT-170042 Order 01 at 6.

agreement, the consultant must seek written approval from Staff before publishing, copying, or otherwise disclosing any confidential information, and is required to return any material pertaining to confidential information at Staff’s request. Additionally, the Commission may enter a protective order in UT-181051 to clarify the extent and terms of the consultant’s access to confidential information in UT-140597 and UT-170042, as well as ensure that the consultant is subject to the same confidentiality safeguards as in UT-140597 Order 02, and UT-170042 Order 01.⁸

8 Therefore, the Commission should modify UT-140597 Order 02 and UT-170042 Order 01 to permit Commission Staff’s consultant to review the confidential information filed in those dockets for the purposes of Staff’s investigation in UT-181051.

B. Investigation Subpoena

9 In the alternative, if the Commission declines to modify the prior protective orders, Staff requests that the Commission issue a subpoena directing CenturyLink to refile the information designated as confidential in UT-140597 and UT-170042 into UT-181051 and to enter a protective order in UT-181051 to preserve confidentiality.

10 Under RCW 80.04.020 “[e]ach commissioner shall have power to . . . issue subpoenas for . . . the production of papers, books, accounts, documents, and testimony in any inquiry, *investigation*, hearing or proceeding in any part of the state.” (Emphasis added.) Similarly, RCW 80.01.060 states that an administrative law judge “may . . . issue subpoenas for the . . . production of papers, waybills, books, accounts, documents, and testimony . . . in

⁸ Although Staff’s consultant has already signed protective agreements associated with UT-140597 Order 02, and UT-170042 Order 01, the entry of a protective order in Docket UT-181051 may help clarify any ambiguity caused by modification of the prior orders and unify the parties’ expectations regarding the treatment of and access to confidential information for the purposes of UT-181051.

any inquiry, *investigation*, hearing, or proceeding in any part of the state, under such rules as the commission may adopt.” (Emphasis added.)

11 Furthermore, under RCW 80.04.070, “any person employed by the commission[] shall have the right, at any and all times, to inspect the accounts, books, papers, and documents of any public service company[.]” RCW 80.04.010(23) defines a “public service company” in part as “every . . . telecommunications company[.]” CenturyLink is presently regulated by the Commission as a telecommunications company.⁹ Therefore, pursuant to RCW 80.04.070, Commission Staff has the right to inspect the company’s papers and documents in the course of its investigation.

12 However, Staff acknowledges that the material it seeks to review will contain information that the company has previously designated as confidential and subject to prior protection orders. In order to maintain confidentiality, Staff also requests that the Commission enter a protective order in UT-181051 under the same or similar terms as were included in UT-140597 Order 02, and UT-170042 Order 01.

13 Therefore, if the Commission declines to modify UT-140597 Order 02, and UT-170042 Order 01, the Commission should enter a protective order in UT-181051 governing access to that confidential information, and require CenturyLink to refile portions of the confidential information in Dockets UT-140597 and UT-170042 in Docket UT-181051.¹⁰

⁹ https://www.utc.wa.gov/regulatedIndustries/utilities/telcom/Pages/AllTelecoCompanies.aspx#InplviewHash166d70cb-a993-487a-996a-511358599138=Paged%3DTRUE-p_Title%3DBCN%2520Telecom%252c%2520Inc%252e-p_ID%3D300-PageFirstRow%3D31.

¹⁰ While Commission Staff suggests that modifying the prior protective orders will avoid the need for redundant, duplicative filing of confidential information by CenturyLink, Commission Staff is willing to work with the company to identify which specific materials should be refiled in Docket UT-181051. Commission Staff does not anticipate needing to rely on all of the material designated as confidential in Docket UT-140597 and UT-170042 for its investigation in Docket UT-181051.

III. CONCLUSION

14 Commission Staff asks the Commission to make a limited modification of UT-140597 Order 02, and UT-170042 Order 01 to allow Staff's consultant to review confidential information in those dockets as part of Staff's investigation in UT-181051, while ensuring Staff's consultant adheres to the remainder of the confidentiality protections contained in the protective orders. Alternatively, the Commission should issue a protective order in UT-181051, and issue a subpoena directing the company to refile portions of the confidential information in Dockets UT-140597 and UT-170042 in Docket UT-181051.

DATED this 22nd day of March 2019.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

/s/ Harry Fukano, WSBA No. 52458
Assistant Attorney General
Sally Brown, WSBA No. 17094
Senior Assistant Attorney General
Office of the Attorney General
Utilities and Transportation Division
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APPENDIX A

APPENDIX A

**Contract for Services
between the
State of Washington
Utilities and Transportation Commission
and
Emergency Public Safety Communications Consultants**

This Contract is made and entered into between the state of Washington, Utilities and Transportation Commission (Commission) and Emergency Public Safety Communications Consultants (Contractor) located at 133 NE 133rd St., Seattle, WA 98125, in the matter of CenturyLink Communications LLC (CenturyLink), Docket No. UT-181051.

The Commission and the Contractor agree as follows:

I. INTRODUCTION

- A. Pursuant to prior communications between the parties, in which the terms and conditions of this agreement have been discussed, the Contractor will provide the Commission with expertise in the preparation of testimony and exhibits and perform associated duties as well as appear as an expert witness for Commission Staff relating to the analyses of a statewide communications service outage that affected 911 emergency services that began on December 27, 2018.
- B. The Commission has determined that the Contractor's extensive familiarity and knowledge of 911 systems, operations, and management lead to the conclusion that the Contractor is the person best qualified to undertake this assignment.

II. SCOPE OF WORK

- A. The Contractor will perform the following tasks relating to the matters described above:
 - 1. Prepare a report to Commission Staff that examines and determines the root cause of the communications service outage which began on December 27, 2018, and affected 911 emergency services in the state of Washington. This report will require an in-depth analysis of the various networks supporting Washington's 911 service, monitoring and management systems, as well as recovery processes that were in place to support 911 service.
 - 2. Prepare Commission Staff data requests to CenturyLink and TeleCommunication Systems, Inc. (TCS) d/b/a Comtech

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Telecommunications Corp., (Comtech) and other parties, and responses to Commission Staff data requests from CenturyLink and Comtech and other parties.

3. Assist Commission Staff and counsel in preparing for cross-examination and the cross-examination of witnesses of CenturyLink and Comtech and other parties and, if requested, attend the hearings at which such witnesses are cross-examined.
 4. Review the prefiled direct and rebuttal testimony of CenturyLink, Comtech, and other parties and the direct, surrebuttal cross-answering, and testimony of all parties, as well as other materials submitted by Commission Staff and counsel relating to such testimony.
 5. Prepare testimony on behalf of Commission Staff.
 6. Prepare for and stand cross-examination at hearing in Olympia, Washington on Contractor's testimony.
 7. Assist Commission Staff and counsel in the preparation of briefs regarding the December 2018, service outage and 911 impact.
- B. The Contractor will perform the above-described services in consultation with Commission Staff, counsel, and other persons as directed by counsel and make himself available to Commission Staff and counsel in the preparation of testimony and in responding to the case presented by CenturyLink, Comtech, and other parties.
- C. The Contractor personally will be responsible for the development of his testimony and personally will be the witness presenting and supporting the same at the hearings, except as may be authorized by counsel for the Commission. The Contractor will commit himself to the completion of the purposes for which he is engaged as an expert witness. The Contractor understands that it is essential that testimony and exhibits be prepared for distribution in compliance with a procedural schedule established by the Commission. Contractor, therefore, agrees to perform the above-described services in accordance with a schedule to be established by Commission Staff and counsel.
- D. The work envisioned under this contract does not supplant work that Commission Staff otherwise would be able to perform in a timely manner.

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III. PERIOD OF PERFORMANCE

Subject to other contract provisions, the period of performance under this contract will begin February 1, 2019, and continue through December 31, 2019, unless otherwise agreed upon as provided herein.

IV. COMPENSATION AND PAYMENT

- A. Contractor will provide the described services for a maximum of thirty-two thousand, four hundred dollars. Contractor will bill at an hourly rate of \$135.00 per hour and will not exceed 240 hours of work during the period of performance.
- B. Miscellaneous expenses and expenses for travel from Seattle, Washington to Olympia, Washington will be within the maximum sum stated above. Travel expenses shall be reimbursed at the current authorized state travel reimbursement rates.
- C. Statements for compensation and reimbursement shall be submitted in such detail as may be required by the Chief Financial Officer of the Washington Utilities and Transportation Commission. Such statements shall be submitted monthly or at such other periodic intervals as may be approved by the Commission. The invoice shall include the contract reference number 19-PS-26. Statements shall not contain claim(s) for reimbursement for any item of expense not allowed as an expenditure by public agencies of this state.
- D. At least ten percent of the total maximum compensation and reimbursement shall be withheld until all phases of the contract are completed.

V. CONTRACT REPRESENTATIVES

The contract manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of the contract.

Contract Manager for CONTRACTOR: Emergency Public Safety Communications Consultants 133 NE 133 rd St. Seattle, WA 98125 Phone: (512) 452-1692 E-mail address: glenn@9-1-1consultant.com	Contract Manager for COMMISSION: Mark Vasconi, UTC Regulatory Director P.O. Box 47250 Olympia, WA 98504-7250 Phone: (360) 664-1308 Fax: (360) 753-2629 E-mail address: mark.vasconi@utc.wa.gov
	Contract Administrator for COMMISSION: Melissa Hamilton P.O. Box 47250

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Olympia, WA 98504-7250 Phone: (360) 664-1158 Fax: (360) 664-1289 E-mail address: melissa.hamilton@utc.wa.gov
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VI. TERMINATION

The Commission reserves the right to terminate Contractor's engagement at any time upon five days' notice by registered mail. The obligation of the Commission thereupon shall be limited to compensation and reimbursement for services rendered prior to notice of termination and otherwise subject to claim. Within thirty days after termination pursuant to this paragraph, Contractor shall submit an itemized invoice for all unreimbursed contract work completed before termination. In the event of termination, all finished or unfinished documents, data, studies, surveys, and reports prepared under this agreement shall, at the option of the Commission, become its property.

VII. MISCELLANEOUS PROVISIONS

- A. The Contractor may not assign, delegate, or subcontract for the performance of any of his responsibilities under this contract without the Commission's prior written consent.
- B. This contract shall be governed by the laws of the state of Washington. In the event of a lawsuit involving this contract, venue shall be proper only in Thurston County, Washington. The Contractor by execution of this contract acknowledges the jurisdiction of the courts of the state of Washington in this matter.
- C. The Contractor and his employees or agents performing under this contract are not employees or agents of the Commission. No such person shall hold himself or herself out as, nor claim to be, an officer or employee of the Commission or of the state of Washington.
- D. The Contractor agrees that any information reviewed by Contractor that is collected by the Commission about a natural person and readily identifiable to that specific individual may be used solely for the purposes of this contract and may not be shared with, transferred, or sold to unauthorized third parties.
- E. The Contractor agrees to defend, hold harmless, and indemnify the state of Washington and the Commission, their officers, agents, employees, and assigns against any and all damages or claims from damages resulting or allegedly resulting from the Contractor's performance or activities hereunder.

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F. This contract may be modified only by a written agreement signed by authorized representatives of the parties.

THIS CONTRACT, consisting of five pages is executed by the persons signing below who warrant that they have the authority to execute this contract.

CONTRACTOR

STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION
COMMISSION

By  _____

By  _____

GLENN ROACH, ENP
EMERGENCY PUBLIC SAFETY
COMMUNICATIONS CONSULTANTS

MARK JOHNSON
EXECUTIVE DIRECTOR AND
SECRETARY

Date February 2, 2019

Date Feb 4, 2019

Approved as to form only:



Assistant Attorney General

Date 02/04/19

APPENDIX B

APPENDIX B

From: [Smith, Ryan \(UTC\)](#)
To: lisa.anderl@centurylink.com
Subject: Request for Public Records No. 1882 - Response
Date: Wednesday, March 13, 2019 4:13:00 PM
Attachments: [Final 911 Investigation Contract UT-181051.pdf](#)
[NDA 911 investigation Docket UT-181051.pdf](#)

Ms. Anderl,

On March 12, 2019, you submitted a request for public records to the commission, in which you requested:

“Commission Staff has retained an expert witness named Glenn A. Roach. Please provide a complete copy of the professional services agreement and/or statement of work between Mr. Roach and Commission Staff.”

The commission has reviewed its records and has attached responsive documents to your request.

This email completes your request for public records. If you have any further questions on this subject, please reply to this email or contact me directly at the number listed below.

Thank you,
Ryan Smith
Forms and Records Analyst 3
Records Center

Utilities and Transportation Commission
utc.wa.gov
Respect • Professionalism • Integrity • Accountability
360-664-1165 • ryan.smith@utc.wa.gov

APPENDIX B

NON-DISCLOSURE AGREEMENT

This Non-disclosure Agreement (the "Agreement") is entered into by and between the Washington Utilities and Transportation Commission ("Commission") with its principal offices at Olympia, WA ("Disclosing Party") and Emergency Public Safety Communications Consultants ("EPSC Consultants") located at Seattle, WA ("Receiving Party") for the purpose of preventing the unauthorized disclosure of Confidential Information as defined below. The parties agree to enter into a confidential relationship with respect to the disclosure of certain proprietary and confidential information ("Confidential Information"), pending formal entry by the Commission of a Protective Order in **Docket UT-181051: In the Matter of CenturyLink Communications LLC**.

1. **Definition of Confidential Information.** For purposes of this Agreement, "Confidential Information" shall include all information or material that has or could have commercial value or other utility in the business in which Disclosing Party is engaged. If Confidential Information is in written form, the Disclosing Party shall label or stamp the materials with the word "Confidential" or some similar warning. If Confidential Information is transmitted orally, the Disclosing Party shall promptly provide a writing indicating that such oral communication constituted Confidential Information.

2. **Exclusions from Confidential Information.** Receiving Party's obligations under this Agreement do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (b) discovered or created by the Receiving Party before disclosure by Disclosing Party; (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or (d) is disclosed by Receiving Party with Disclosing Party's prior written approval.

3. **Obligations of Receiving Party.** Receiving Party shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party. Receiving Party shall carefully restrict access to Confidential Information to employees, contractors, and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Agreement. Receiving Party shall not, without prior written approval of Disclosing Party, use for Receiving Party's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information. Receiving Party shall return to Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately if Disclosing Party requests it in writing.

4. **Time Periods.** The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret or until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Agreement, whichever occurs first.

5. **Relationships.** Nothing contained in this Agreement shall be deemed to constitute either party a partner, joint venturer or employee of the other party for any purpose.

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6. **Severability.** If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to effect the intent of the parties.

7. **Integration.** This Agreement expresses the complete understanding of the parties with respect to non-disclosure and supersedes all prior proposals, agreements, representations, and understandings. This Agreement may not be amended except in a writing signed by both parties.

8. **Waiver.** The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.

This Agreement and each party's obligations shall be binding on the representatives, assigns, and successors of such party. Each party has signed this Agreement through its authorized representative.

Disclosing Party

By: 

Printed Name: Mark Vasconi

Title: Director, Regulatory Services

Dated: Feb 4, 2019

Receiving Party

By: 

Printed Name: Glenn A. Roach, ENP

Title: Chief Executive Officer

Dated: 2/5/2019