

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

CENTURYLINK'S MOTION TO
ENFORCE PROTECTIVE
ORDER

- 1 On March 11, 2019 the regulatory staff (Commission Staff or Staff) of the Washington
Utilities and Transportation Commission (Commission) filed an Exhibit B to the
Protective Order (Order 01) in this case. Exhibit B is an Expert Agreement, and the
person signing the Exhibit was identified as Glenn A. Roach, an "expert witness for
Commission Staff." Mr. Roach represents that he is the CEO of a company called
Emergency Public Safety Communications Consultants.
- 2 Pursuant to the terms of Order 01, CenturyLink hereby files this motion objecting to the
named expert having access to Confidential Information in this proceeding. This motion
sets forth the basis for the objection and asks that the expert be excluded from access to
Confidential Information. Attached hereto as Exhibit 1 is the Expert Agreement
referenced above, with CenturyLink's objection noted as required.
- 3 For the Commission's information, the same set of facts exists in Docket No. UT-
140597, and in Docket No. UT-132234, except that in the former docket the Exhibit B
was filed on March 8, 2019. CenturyLink is submitting the same general motion and
objection separately in each case.

DOCKET NO. UT-170042 CENTURYLINK'S MOTION TO ENFORCE
PROTECTIVE ORDER 01 AND OBJECTION TO STAFF'S EXHIBIT B

4 By way of background, this case involved the transfer of control of Level 3 to CenturyLink in 2017. The docket was opened on January 17, 2017 and closed on August 28, 2017. During the course of the proceeding CenturyLink and Level 3 provided a significant amount of Confidential Information and Highly Confidential Information under the terms of Order 01, including fiber route maps, organization charts, financial information, broadband deployment, and other sensitive information. CenturyLink has a reasonable expectation that the terms of the Protective Order will govern disclosure or non-disclosure of that information.

5 There are a number of provisions in the Protective Order governing who has access to Confidential Information, and for what purposes.

- Paragraph 8, (Persons Permitted Access) mandates that Confidential Information is only available to the Commissioners, Commission Staff, the presiding officer, and counsel for the parties. Access to Confidential Information may be authorized by counsel, “*solely for the purposes of this proceeding. . . .to their experts in this matter.*” (emphasis added)
- Paragraph 7, (Purpose of Access and Use; Confidentiality) provides that “[n]o Confidential Information distributed or obtained pursuant to this protective order may be requested, reviewed, used or disclosed by any party or counsel having access pursuant to this order, *except for purposes of this proceeding.*” (emphasis added)
- Exhibit B requires the expert to affirm to be bound by and comply with the terms of the Protective Order.

6 As noted above, this docket is closed. Thus, CenturyLink believes that there is no legitimate claim to allow an outside expert to have access to CenturyLink’s confidential

information for purposes of this proceeding. There are no open issues or scheduled events *in this proceeding*. (emphasis added)

- 7 As such, any access to Confidential Information by the named expert is not permitted under the terms of the Protective Order. He is not an expert *in this matter*, because the matter is closed. Indeed, an attempt to access Confidential Information in this manner grants a party carte blanche to have its expert rummage through all the Confidential Information submitted in this and other cases, including Confidential Information that was provided in discovery but may not have been admitted in evidence and therefore formed no basis for the Commission's Final Order resolving the issues *in this proceeding*.
- 8 CenturyLink understands that Staff is conducting an investigation into the December 27-29, 2018 network outage, under Docket No. UT-181051. This docket is not a publicly noticed or available docket, which CenturyLink understands to be the case because the investigation is still ongoing. If the expert wants access to the Confidential Information for purposes of a new docket, it is not permitted under the terms of the Protective Order *in this proceeding*.
- 9 If Docket No. UT-181051 goes forward to become a formal proceeding, discovery will no doubt be permitted, and a Protective Order issued. Under that process, Staff may designate an expert and obtain Confidential Information. However, CenturyLink believes that it is unlikely that Staff could clear even the low bar of relevancy in discovery matters if Staff then turned around and requested all of the Confidential Information previously provided in this case. There is simply no justification for this back door approach.
- 10 CenturyLink has attempted to work this issue out with Staff. CenturyLink communicated to Staff that if there were a small number of relevant confidential documents, CenturyLink would consider each document and consider releasing them or waiving its

objection, but to date Staff has not provided that information. In order to more fully understand the purpose of the requested access, CenturyLink also asked for a copy of the professional services agreement between Staff and Mr. Roach. This agreement confirms that he has been retained only in Docket No. UT-181051.

11 CenturyLink is very concerned with this approach to obtaining or accessing Confidential Information. It runs counter to the terms of the Protective Order, and to the spirit of appropriately limiting access to Confidential Information to the proceeding in which it is produced. Upholding this approach will no doubt have a chilling effect on future production of Confidential Information, on the basis that the Protective Order offers very little protection.

12 For the reasons stated above, CenturyLink objects to disclosure of any of its Confidential Information in this docket to the named expert.

13 Respectfully submitted this 15th day of March, 2019.

CENTURYLINK

/s/ Lisa A. Anderl

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