

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of)
))
THE CENTURYLINK COMPANIES -)
QWEST CORPORATION;)
CENTURYTEL OF WASHINGTON;) Docket UT-130477
CENTURYTEL OF INTERISLAND;)
CENTURYTEL OF COWICHE; AND)
UNITED TELEPHONE COMPANY OF THE)
NORTHWEST)
))
To be Regulated Under an)
Alternative Form of Regulation)
Pursuant to RCW 80.36.135)
))

PREHEARING CONFERENCE
ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA PRESIDING
JULY 26, 2023

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest
Olympia, Washington 98504-7250

TRANSCRIBED BY: Cynthia M. Allen, RMR, CRR, CRC

A P P E A R A N C E S

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2 July 26, 2023

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4 THE COURT: Good morning. Let's be on the record. We are
5 here in Docket UT-130477 captioned In the Matter of the
6 Petition of the CenturyLink Companies to be Regulated Under
7 an Alternative Form of Regulation Pursuant to RCW 80.36.135.

8 I am Gregory J. Kopta, the Administrative Law Judge who is
9 presiding in this proceeding.

10 And we are here today for a prehearing conference to
11 discuss issues arising from the revised petition that
12 CenturyLink filed to modify Order 04 in this docket to
13 extend the period under which the aid for alternative form
14 of regulation remains in effect.

15 So we will begin with appearances, starting with the
16 company.

17 MR. SHERR: Good morning, Judge Kopta.

18 Adam Sherr on behalf of CenturyLink. Last name is spelled
19 S-H-E-R-R.

20 Do you need addresses and all that for the record?

21 THE COURT: No. No. We've got all of that information.
22 We've been at this docket for a while now.

23 MR. SHERR: Okay. Thank you. Good morning.

24 THE COURT: And for staff?

25 MR. ROBERSON: Good morning, Judge Kopta.

1 Jeff Roberson, AAG for staff. With me at counsel table
2 virtually is my colleague, Cassandra Jones.

3 THE COURT: All right. And for public counsel?

4 MS. PAISNER: Good morning, Judge Kopta.

5 This is Ann Paisner. I'm an assistant attorney general
6 with the Public Counsel Unit of the Washington State
7 Attorney General's Office.

8 THE COURT: (Inaudible).

9 MS. PAISNER: And I think -- I just wanted to mention that
10 possibly joining -- I don't see him on the line, but we
11 do -- we are working with an expert, and his name is David
12 Brevitz, and he may be joining just to listen.

13 THE COURT: Okay. Fine.

14 Does anyone want to make -- anyone else want to make an
15 appearance? Not hearing anything, I will assume not.

16 All right. Well, as the most recent notice indicated, the
17 commission has reviewed revised petition and the responses,
18 and the commissioners want some additional information
19 before issuing a decision on the petition.

20 And first question that I have is: What is the status of
21 negotiations between the parties in terms of developing a
22 petition for competitive classification?

23 Mr. Sherr?

24 MR. SHERR: Sure. Thank you. Good morning.

25 So CenturyLink made a proposal to -- a confidential

1 proposal to staff and to public counsel in May -- in May --
2 on May 24th. The parties convened a settlement conference
3 in mid June. June 14th I believe is the date.

4 And there were some questions that were raised for us to
5 follow up -- for the company to follow up on during that
6 meeting, and then also public counsel sent some questions.

7 And in July we have responded to those questions,
8 July 14th to staff questions (inaudible) public counsel's
9 questions. So we have -- that is kind of where we are in
10 the process.

11 I know I won't speak for staff or for public counsel, but
12 we have made a proposal. We have had a -- we had a really
13 good discussion about it. There were -- it was a lengthy
14 discussion with lots of questions asked.

15 It was -- it felt like everyone was acting in good faith
16 and with genuine curiosity as to what the proposal was, and
17 what potential challenges with it were, and how we could
18 potentially work through it.

19 And from the company's perspective, we're awaiting
20 guidance, or a counterproposal, or something (inaudible). I
21 don't have a timeline because it's not me making the
22 proposal.

23 THE COURT: Well, that was sort of my next question. Is
24 there an anticipated time by which you expect that there
25 will either be an agreement or not?

1 MR. SHERR: Yeah. I think at this point not. I don't
2 think there is that particular understanding yet.

3 I would leave it to staff and public counsel to indicate.
4 I know staff is going -- is doing their diligence and
5 working through things, and so I would leave it to them to
6 identify when they think they would be able to get back to
7 us.

8 You know, like any other negotiation, if we are -- you
9 know, first of all, this isn't going to be great for the
10 recording, but if we're very far apart, and the
11 counterproposal comes back, and we're -- you know, we're one
12 inch apart, it's obviously going to be quicker and easier to
13 resolve what we can resolve. And if we're just as far
14 apart, then maybe not.

15 So it's pretty hard to put a precise date on it, but
16 would, you know, strongly encourage the commission to afford
17 us the opportunity to negotiate. Because, you know, for the
18 sake of administrative efficiency, being able to file a
19 petition that is entirely agreed to by staff and/or public
20 counsel, or mostly agreed to would obviously be far superior
21 than filing a petition where there's no agreement and we
22 have to litigate all issues.

23 So that's kind of where we are.

24 THE COURT: Well, and that -- I think that makes sense.

25 And yet at the same time the follow-up question is: If you

1 are unable to reach an agreement either in whole or in
2 part --

3 MR. SHERR: Sure.

4 THE COURT: -- is it Centurylink's intention to file a
5 petition?

6 MR. SHERR: It is. It is. Absolutely. And -- right.
7 Absolutely it is.

8 But I believe we'll be able to reach agreement on many
9 parts of what would otherwise be litigated as if this were
10 sort of just a greenfield.

11 So I do have some optimism, which isn't what I'm really
12 known for personally. But I do have some optimism that
13 we'll be able to, you know, find some common ground on much
14 of it. But yes, that is our -- that is our intention is to
15 do that.

16 And AFOR is sort of the backstop, right? Because I don't
17 think there's anyone -- and again, I'm not here to speak for
18 anyone, but I don't think that there's anyone that is
19 looking for us to become regulated like it's 1955 and be
20 fully regulated again.

21 And that's what happens if we just completely forego --
22 while we pursue competitive classification, if we don't
23 receive, you know, approval for our -- you know, if our
24 petition is denied, or if conditions are imposed on our
25 petition that aren't workable from the company's

1 perspective, and there isn't an AFOR there as a backstop,
2 then we're fully regulated.

3 And that isn't -- I don't think anyone wants that,
4 definitely including us. I don't think anyone is staffed
5 for that. It doesn't make any sense given the market. And
6 so that's why we're pursuing it this way.

7 I just wanted to make -- I'm sure that was clear, but I
8 just wanted to articulate.

9 THE COURT: No. And I appreciate that. And it is
10 something that we understand and, you know --

11 MR. SHERR: Great.

12 THE COURT: -- I don't think that there's any disagreement
13 with that, at least on my part.

14 And yet in thinking about practicalities, wouldn't we need
15 to have resolved any petition for competitive classification
16 by the July date when CenturyLink next year would need to
17 file a revised, or at least open a docket for another AFOR?

18 MR. SHERR: So yes and no. So yes, if the -- it's not
19 binary. But yes. I mean, we would have to know -- from the
20 company's perspective, we would need to either have
21 resolution of the competitive classification docket or have
22 another brief extension, right, to accommodate.

23 Obviously between July of 2023 and July of 2024 we're
24 going to have a lot more information as to where we are in
25 that process. I mean, none of us can control how long any

1 proceeding takes, because they all take their own path, you
2 know, no matter how hard we try to streamline them.

3 Obviously if we come in with a petition that is in many
4 parts stipulated to or is narrow, you know, in terms of the
5 issues in dispute, I think we can hopefully expect that it
6 will be a more streamlined process than if it's just a
7 greenfield, here's a brand-new petition with, you know, no
8 agreement on anything.

9 But yes. So by -- I would agree with you by the date
10 of -- in July of 2024 we're either going to have to file a
11 new petition for -- or start the process of the AFOR, or
12 have another extension if the competitive classification
13 docket isn't resolved (inaudible).

14 THE COURT: So here's my fear, and that is, if CenturyLink
15 continues to negotiate, and either is able to reach
16 agreement on some or all issues or is not, and does not file
17 a petition for competitive classification until May or June
18 of (inaudible) --

19 MR. SHERR: Sure.

20 THE COURT: -- then we have another problem in terms of
21 what happens with this docket.

22 And, you know, the commission has already extended this
23 three times, and I don't think they want -- the
24 commissioners want to be in a position of having to do it
25 yet again because things dragged out and didn't get done in

1 enough time.

2 So is there some willingness to kind of put a date -- end
3 date by which CenturyLink would file any petition for
4 competitive classification to at least ensure that there is
5 some time -- and we can't guarantee how long it's going to
6 take.

7 And, you know, extending for a couple of months is one
8 thing. Extending for another year is something else.

9 So, you know, if there is, like, a date in January or
10 February by which CenturyLink would -- I won't say commit,
11 but at least target for filing any petition for competitive
12 classification so that we don't have to keep extending this
13 docket, is that something --

14 MR. SHERR: Sure.

15 THE COURT: -- that you're willing to do?

16 MR. SHERR: So theoretically, absolutely. If you were
17 going to ask me to do it by August 15th I would say no. But
18 (inaudible) I mean, you can. You're the Judge. You get to
19 ask anything you want. And I'm actually not supposed to say
20 no to you.

21 But largely, yeah. I think the answer is yes, for sure
22 that that is a reasonable -- that's a reasonable approach.

23 I don't have dominion -- the company doesn't have dominion
24 over when we get proposals, if we get proposals at all, if
25 our settling -- or, you know, negotiation partners are

1 going -- are able to fully engage or not. So I don't have
2 dominion over that.

3 But I think that if we're talking about January, that
4 provides -- that should provide an ample amount of time.

5 But I guess I would maybe perhaps like to hear from staff
6 as well, because -- and public counsel, because we're not
7 doing this alone. I mean --

8 THE COURT: No.

9 MR. SHERR: I could theoretically file a petition for
10 competitive classification tomorrow. It's just that's not
11 the approach we want to take.

12 We want to try to get it as narrow as possible in terms of
13 issues in dispute or have none at all.

14 So obviously we could file anytime. But that, to me,
15 would be -- would just strain -- would be a strain on
16 everybody to start litigating from scratch when we don't
17 need to.

18 And so yeah. So if it's possible, maybe I could reserve
19 my answer to that question until we hear from staff and
20 public counsel, if that's okay.

21 THE COURT: Well, they are next on my list to ask that
22 question.

23 MR. SHERR: Fantastic.

24 THE COURT: So, Mr. Roberson, is that something that you
25 think is at least a possibility from staff's perspective in

1 terms of what you've seen so far in negotiations?

2 MR. ROBERSON: I don't see a problem with it. The one
3 kind of issue is staff is attempting to get access to the
4 FCC fabric, like the broadband data in order to look at kind
5 of the competition Lumen faces by census block just to
6 figure out what that looks like, which is an important
7 consideration for the competitive classification petition.

8 They're in the process of attempting to get the license.
9 I don't know what the time frame is on that off the top of
10 my head.

11 But if the -- if the date is January, I can't imagine it
12 would drag out that long.

13 I can say that staff is working diligently. I'm meeting
14 with my client weekly to discuss the petition, the proposal,
15 voluminous (inaudible).

16 So it's -- there are resource constraints, but staff is
17 doing what it can within those resource constraints. I
18 don't -- I don't think anyone sees merit in dragging out a
19 2013 docket much longer than we have to. So...

20 THE COURT: Well, yeah. Once it hits the ten-year
21 anniversary, it is kind of time to move on to something
22 else.

23 Ms. Paisner, is public counsel at this point comfortable
24 with the idea of setting a January date by which to file
25 competitive classification petition by CenturyLink?

1 MS. PAISNER: Thank you, Your Honor.

2 I believe that the parties could still engage in the
3 current discussions if there is an open docket.

4 If the company files a request for competitive
5 classification today, we could still have the same
6 conversations. And so I mean, I think that setting a date
7 in January, we would not object if the commission decides
8 that's what it wants to do.

9 But I think we mentioned this in our response to the
10 revised petition for extension, that given the timing, and
11 exactly as you mentioned earlier when you were asking
12 questions about the possibility that you could run up until
13 the July 2024 date and then have this exact, same situation
14 happen again.

15 So we would not object to a January date, if that's what
16 the commission wants, to set a timeline for competitive
17 classification. We also wouldn't object to anything earlier
18 than that or filing it now.

19 We think these issues, if it's either a request for
20 competitive classification or a new AFOR, are the same.

21 We also wouldn't object to, you know, consolidating this
22 docket with that competitive classification docket, because
23 we think it's the same issues of how to regulate the company
24 going forward.

25 And we do think those, you know, discussions need to

1 continue, and what to do with the current AFOR needs to --
2 you know, that needs to get underway as well.

3 So to answer your question more succinctly, we would not
4 object to a January date, and also wouldn't object to
5 something earlier than that.

6 Thank you.

7 THE COURT: Sure. Thank you.

8 And I agree with you, or at least my expectation is that
9 even if there is some more negotiation to be done in
10 January, heaven forbid, that could still progress. You
11 know, we'll have another prehearing conference and, you
12 know, we can work into the schedule additional negotiations
13 if those are necessary and the parties believe they are
14 fruitful.

15 I, for my part, would just like to see things get started
16 by then. And, you know, I recognize that it may be that we
17 have to have some wiggle room. I don't see this docket
18 continuing.

19 I mean, in fact, the requirement in Order 04 is for the
20 company to open a new docket for a new AFOR; and that would,
21 if necessary, be consolidated with any petition for
22 competitive classification.

23 I recognize from a procedural standpoint that we may be in
24 a situation where we have to look at both at the same time,
25 because there is at least the theoretical possibility that

1 the petition for competitive classification would be denied,
2 and I don't think anybody wants to be in a position of going
3 back to full regulation at this point.

4 So that's something to look at down the road. But as I
5 say, I really think that the commission -- commissioners
6 wants to be able to have some confidence that we're moving
7 forward, and not just stuck where we have been for the past
8 couple of years.

9 One other -- well, at least one other question.
10 CenturyLink filed or introduced legislation in the last
11 legislative session that did not get passed.

12 Is CenturyLink anticipating that there will be additional
13 legislation in the next legislative session that could kind
14 of alter how we proceed?

15 MR. SHERR: I'm going to assume that question is for me.

16 THE COURT: You assume correctly.

17 MR. SHERR: Oh, good. I got one right.

18 I am not aware of any. Yeah. I'm not aware of any
19 legislative efforts at this point.

20 I think we're focusing on trying to avail ourselves of the
21 processes available by statute before the commission. So...

22 THE COURT: Okay. I appreciate that. Obviously, you
23 know, nothing you say about that would be binding.

24 MR. SHERR: Yeah. (Inaudible) not aware of anything.

25 THE COURT: Yeah. I just want to be mindful of all

1 factors that --

2 MR. SHERR: Sure.

3 THE COURT: -- would influence how the schedule works.

4 MR. SHERR: (Inaudible).

5 THE COURT: The other thing that the commissioners would

6 like is periodic updates. We don't want to wait until

7 sometime in the future and just, you know, see what gets

8 filed. So what they talked about was quarterly updates.

9 Is that something that the parties would be willing to

10 provide as -- at least between now and any filing in

11 January? At least one update, and then another if something

12 happens and whatever the filing date is in January comes and

13 goes?

14 MR. SHERR: Yeah. On behalf of the company, absolutely.

15 Obviously we wouldn't want to be talking about the specifics

16 of negotiations, as those are confidential, and that

17 wouldn't make any sense for those to be publicly described

18 when they may or may not be agreed upon.

19 But yeah, absolutely, we can provide an update at whatever

20 interval the commission would like.

21 THE COURT: Yeah. Well, it would just be to make sure

22 that things are progressing, and, you know, we don't just

23 have somebody say, well, yeah, we're waiting around, and

24 it's been two months, but nothing's happened. I mean...

25 MR. SHERR: Absolutely.

1 THE COURT: If we need to light a fire under somebody,
2 then we want to do it, you know, sooner than January.

3 MR. SHERR: Sure. Yeah. I could suggest, yeah, a date
4 certain would be great, and absolutely. That's fine.

5 THE COURT: All right. Mr. Roberson, from staff's
6 perspective, is that something that would be acceptable?

7 MR. ROBERSON: Yeah. I think staff would have the same
8 concerns that Mr. Sherr just expressed. But if it's just a
9 procedural update, absolutely staff can provide that as
10 often as the commission would like it.

11 THE COURT: And, Ms. Paisner?

12 MS. PAISNER: Thank you, Judge Kopta.

13 Public counsel wouldn't object to that. I also wanted to
14 just add that, respecting confidentiality of those
15 discussions, we still have questions, and we don't have a
16 position.

17 And so I imagine that, you know, updates being somewhat
18 limited in what they could provide would, you know, be of
19 the nature of, you know, explaining that we're sort of
20 engaged in the same discussions or, you know, trying to walk
21 that line of not revealing the content of the discussions
22 that are -- that's confidential.

23 THE COURT: Understood. And I think it really is more in
24 the sense of making sure that things are progressing. And,
25 you know, we may know more in October about where the status

1 of the negotiations than we do now. I mean, I would hope
2 that we would, and have a better idea of what to expect.

3 I mean, the January date, in my mind, would just be sort
4 of the end. I mean, there's no reason why, if you reach
5 agreement, you know, in September that you wouldn't file it
6 then.

7 So it's not -- we're not setting a date in stone for
8 saying this is when the petition would be filed. We're just
9 saying that by this date CenturyLink will have filed a
10 petition, or I guess, you know, could inform us we're not
11 going to file a petition after all, we're just going to go
12 with the AFOR.

13 So that is my thinking at this point. And I think the
14 commissioners just want to be kept in the loop in terms of
15 how things are progressing, and what to expect when.

16 MR. SHERR: Your Honor, from the company's perspective, as
17 soon as we know where we are and reach an agreement or --
18 you know, we would file. We would not wait until January.
19 We have no incentive to wait. Right?

20 This is where -- it may not appear so, but the fact that
21 we keep asking for extensions of the AFOR, but we are very
22 interested in reaching the end of all of this process as
23 well, and just, you know, finding a new regulatory status
24 that isn't ever-changing or ever-litigated.

25 So yeah. We have the same incentive that you do, of

1 course.

2 THE COURT: Okay. No. And that is certainly my
3 expectation. So like to think that we're on the same page.

4 Is there a date in January that you want to pick out of a
5 hat? I mean, we can do it, but if you had some ideas as
6 we're sitting here right now...

7 MR. SHERR: I'm just looking to see what the weekends are
8 in January, if you can bear with me for one moment.

9 THE COURT: Sure.

10 MR. SHERR: January 15th is fine. It's a Monday.

11 THE COURT: It may be Martin Luther King Day.

12 MR. SHERR: Ah, perfect. Sure. Let's see. Sure. How
13 about January 17th? That's a Wednesday. Probably not
14 Martin Luther King.

15 THE COURT: That ought to be -- that ought to be safe.

16 MR. SHERR: Okay.

17 THE COURT: How does that date work for staff?

18 MR. ROBERSON: That's fine. Honestly, staff does not
19 anticipate this lasting until January. I think either we're
20 going to have an agreement before then, or we're not, and
21 CenturyLink is going to have to file a petition. So...

22 THE COURT: And, Ms. Paisner, I gather that that's
23 probably your take on things, too?

24 MS. PAISNER: Well, in part. The date is fine for a
25 filing. I just wanted to ask the question, is this going to

1 be a date that there must be a filing for a petition for
2 competitive classification, or whatever -- at that point
3 something needs to be requested on that date, and not just
4 an update on the status of negotiations?

5 THE COURT: That is the date by which the commission would
6 expect to receive a petition for competitive classification.
7 If --

8 MS. PAISNER: Gotcha.

9 THE COURT: If there is not one filed by that date, then
10 we would expect there would be something else that would be
11 provided in terms of letting the commission know that the
12 company is proceeding with an AFOR or, I don't know,
13 whatever they're going to do.

14 MS. PAISNER: That's acceptable for -- we, again, would
15 not object.

16 Without a litigation schedule in place, discovery rules
17 are not invoked. That is one disadvantage of not having a
18 petition filed earlier.

19 However, at that point I think, given what the timing
20 would be of extending the AFOR, I think that would then
21 allow enough time under a separate docket to work through
22 issues there.

23 And as I said before, I don't believe that filing a
24 petition in any way affects the ability of us to continue
25 the exact, same conversations we're having now. It just

1 would do it in the context of more formal procedure --
2 litigation procedure.

3 Thank you.

4 THE COURT: Yeah. Well, again, this is just to make sure
5 that things keep moving along, from the commission's
6 perspective, and that this will be the last at least annual
7 extension of the AFOR. And, you know, we just don't want to
8 be in this position again a year from now.

9 So this is our idea in terms of, you know, having orderly
10 updates and a target date for filing a petition. And
11 recognizing that the realities may intrude, but at that
12 point we would expect probably the company to let us know
13 what's going on and provide some idea of what's going to
14 happen come next July.

15 All right. I think that's the information that we need.
16 We will set a date for probably another prehearing
17 conference as a status update, I would expect probably
18 sometime in October, early October. I don't know that we
19 need to set a date right now, unless you all have a date in
20 mind. But it will be just sometime, at some time.

21 And then it would be a short get-together to see where we
22 are -- where you are more specifically, and what progress is
23 being made, and how it looks in terms of meeting the January
24 filing deadline.

25 MS. PAISNER: If I may, Judge Kopta, October 6th is a date

1 for cross answering testimony in a separate docket, the
2 Pacific Corp CEAP docket, and if possible, to avoid that
3 October 6th date, we would appreciate that.

4 THE COURT: All right. I will keep that in mind. I was
5 thinking probably like, you know, mid October, because that
6 would be basically three months from now and three months
7 before the January deadline.

8 So, but I will keep that in mind in terms of avoiding the
9 6th. And it would just be --

10 MS. PAISNER: Thank you.

11 THE COURT: -- us chickens. The commissioners would not
12 be involved. So it should be easy to schedule or to move if
13 necessary because of some unforeseen conflict.

14 All right. Is there anything else that we need to
15 discuss? Doesn't sound like it.

16 The commission will enter an order in due course. I am
17 expecting that we will grant the extension under the
18 conditions that we have been discussing today, and hope that
19 you all are able to complete negotiations and come up with
20 an agreed petition, and we can move forward as expeditiously
21 and effortlessly as possible.

22 And with that, we are adjourned. Thank you all very much.

23 MR. SHERR: Thank you, Judge. Thanks, all.

24 MS. PAISNER: Thank you.

25 (Conclusion of hearing)

C E R T I F I C A T E

STATE OF WASHINGTON)

COUNTY OF KING)

I, the undersigned, do hereby certify under penalty of perjury that the foregoing court proceedings or legal recordings were transcribed under my direction as a certified transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability, including changes, if any, made by the trial judge reviewing the transcript; that I received the electronic recording directly from the court; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of August, 2023.

Cynthia M. Allen



s/ Cynthia M. Allen, RMR, CRR, CRC