

**In the Matter of the Petition of the Centurylink
Companies**

Docket UT-130477 - Vol. VI

November 1, 2023



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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of)
)
THE CENTURYLINK COMPANIES -)
QWEST CORPORATION;)
CENTURYTEL OF WASHINGTON;)
CENTURYTEL OF INTERISLAND;)
CENTURYTEL OF COWICHE;) Docket No. UT-130477
AND UNITED TELEPHONE COMPANY OF)
THE NORTHWEST)
vs.)
)
To be Regulated Under an)
Alternative Form of Regulation)
Pursuant to RCW 80.36.135)
)

STATUS CONFERENCE - VOLUME VI
PAGES 24-41
BEFORE ADMINISTRATIVE LAW JUDGE
GREGORY J. KOPTA

Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, Washington 98504

DATE TAKEN: November 1, 2023
TRANSCRIBED BY: ELIZABETH PATTERSON HARVEY,
FAPR, RPR, WA CCR 2731

1 November 1, 2023 - 1:30 p.m.
2 -o0o-
3
4 JUDGE KOPTA: All right. Let's be on the
5 record.
6 Good afternoon. We are here in Docket
7 UTC-130477, captioned In the Matter of the Petition of
8 the CenturyLink Companies to Be Regulated Under an
9 Alternative Form of Regulation.
10 I'm Gregory J. Kopta, the presiding
11 administrative law judge. And we are here this afternoon
12 on November 1, 2023, for a status/prehearing conference
13 on the status of negotiations between the parties on
14 either a negotiated competitive classification petition
15 for CenturyLink or a revised alternative form of
16 regulation. This was something that the commission
17 required scheduling in Order 10 in this docket.
18 So we will begin by taking appearances,
19 starting with the company.
20 You're on mute, Mr. Sherr.
21 ATTORNEY SHERR: Let's try that again. Good
22 afternoon. Adam Sherr on behalf (inaudible).
23 JUDGE KOPTA: Thank you.
24 And for commission staff.
25 ATTORNEY ROBERSON: Good afternoon, Judge

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1 Kopta. Jeff Roberson, AAG.
2 With me is my colleague, Cassandra Jones.
3 JUDGE KOPTA: And for public counsel.
4 ATTORNEY PAISNER: Good afternoon. This is
5 Ann Paisner, assistant attorney general of the public
6 counsel unit of the attorney general's office.
7 JUDGE KOPTA: All right. Any other
8 appearances?
9 Hearing none --
10 ATTORNEY MEDLYN: Your Honor, I'm sorry. I'm
11 sorry for my voice. Emily Medlyn on behalf of the
12 Department of Defense and all other federal executive
13 agencies.
14 JUDGE KOPTA: Great. Thank you.
15 All right. I think that's it. So let's get
16 to the heart of the matter and hear what exactly is the
17 status of negotiations between the parties. And why
18 don't we begin with Mr. Sherr.
19 ATTORNEY SHERR: Thank you, your Honor. Yes,
20 Adam Sherr. So the status is that we provided a proposal
21 to the parties in May. We had one meeting with
22 (inaudible) staff and had to answer a number of
23 (inaudible) informal data requests --
24 JUDGE KOPTA: Mr. Sherr, you're breaking up a
25 little bit. I'm worried that the court reporter is going

1 to have a hard time transcribing this. So would you
2 start all over again and make it a little clearer.

3 ATTORNEY SHERR: Is this clearer?

4 JUDGE KOPTA: That's better.

5 ATTORNEY SHERR: I apologize. I'm not a
6 technological expert, that is for sure. I will try to
7 enunciate.

8 So we had provided a proposal to staff and
9 public counsel in May. We have had one meeting with
10 them, with staff and public counsel. I don't have the
11 date of that meeting. It was in the summer. And we have
12 answered many informal data requests that have been
13 provided by staff and by public counsel.

14 And we are awaiting a proposal from either
15 (inaudible) and have not received (inaudible). So that
16 is where we sit at this point.

17 JUDGE KOPTA: Okay. Staff?

18 ATTORNEY ROBERSON: Good afternoon, Judge
19 Kopta. That's an accurate summary. The company provided
20 a proposal in May. We had at least one meeting over the
21 summer to discuss certain things. The parties have
22 engaged in back and forth discovery.

23 I believe at the last status conference, the
24 prehearing conference, I mentioned that a big issue for
25 staff was getting access to the FCC broadband's data, the

1 responses we received yesterday at close to 5:00 p.m.
2 for questions that we asked in early September. So for
3 our part, we're still trying to understand some of the
4 proposal, which is not public, because it hasn't been
5 filed.

6 So we can't go into detail any more than that,
7 just that we still have questions. We haven't really
8 made any progress since we last spoke with you at the
9 last prehearing conference.

10 JUDGE KOPTA: Okay. Has DOD-FEA been involved
11 in those discussions?

12 ATTORNEY MEDLYN: Your Honor, no, we have not
13 been, to my understanding, and we would like to request
14 that, you know, we'd like to be involved going forward.

15 JUDGE KOPTA: All right. I'm sure that
16 Mr. Sherr is taking notes.

17 ATTORNEY SHERR: Indeed.

18 JUDGE KOPTA: All right. It sounds like
19 there's not a whole lot of progress that's being made.
20 And so I'm wondering what the parties' prospect is that
21 there will be a filing by mid-January as the commission
22 anticipated in Order 10. Mr. Sherr?

23 ATTORNEY SHERR: Yeah. We -- kind of
24 confirming what you've heard, we're still, you know,
25 awaiting a proposal. The company is intending to make a

1 fabric data for broadband penetration. That contract
2 took longer than probably it should have, given the
3 intricacies of the Public Records Act in Washington.
4 We've ironed out those issues.

5 I know -- I believe the contract has been
6 executed. I believe payment has been made and staff has
7 access to the broadband data. They're engaging in their
8 analysis. They're working on a counterproposal at this
9 time.

10 JUDGE KOPTA: Okay. And public counsel?

11 ATTORNEY PAISNER: Thank you, your Honor. So
12 we're engaged in an informal discovery process here,
13 since there's no filing. And the premise of this
14 extension of the AFOR is on something that has not been
15 filed and is therefore theoretical.

16 And we've asked a number of questions. And
17 while CenturyLink is saying that they have answered
18 everything, the last few questions we asked, we only
19 received a response yesterday, and that was after
20 following up twice after the typical ten-day response
21 period had passed, long passed, actually.

22 And every time that we've issued questions,
23 it's taken following up at least once and usually twice
24 to get those answers.

25 And so we have not had time to analyze the

1 filing probably, given what are the status of things, is
2 going to (inaudible). And it may not wait -- we probably
3 won't wait until January (inaudible).

4 JUDGE KOPTA: You probably won't wait until
5 what?

6 ATTORNEY JONES: I apologize, your Honor. We
7 probably won't wait until January. We may do it sooner.
8 If there doesn't -- if there's not a lot of progress made
9 towards a resolution, a negotiated resolution, then we'll
10 simply move forward.

11 And we don't have any incentive to wait as
12 long as possible. To wait until January that doesn't do
13 any good for anyone if it doesn't appear that we're going
14 to get anywhere. And again, I haven't even received a
15 counterproposal at this point after five-plus months.

16 So, you know, we're on track to prepare an
17 appropriate petition and file it with the commission
18 sooner than January if we can do that. Now, that could
19 be affected if we receive a proposal that kind of draws
20 us to the table and there are active negotiations.
21 That's what we've been aiming for the whole time. So if
22 that happens, that's great. And we'll act accordingly.
23 If we don't see a possibility of progress, then we'll
24 simply move forward.

25 JUDGE KOPTA: All right. Well, I mean,

Page 32

1 obviously the commission established that January date
 2 with the concern that there needs to be something done in
 3 the AFOR docket if there isn't a petition in July. And
 4 we don't want to be in a position where there's a filing
 5 for competitive classification shortly before the AFOR
 6 expires or is due to expire, and we are back in the mode
 7 of having to push things off once again.
 8 So it sounds to me -- correct me if I'm wrong
 9 -- that the company is sensitive to that and plans to
 10 make a filing on or before January of next year.
 11 ATTORNEY SHERR: Absolutely. We heard you
 12 loud and clear. So yes. We're not planning to come in
 13 and ask for another extension. We are going to do it in
 14 January, but likely before, unless, again, there's
 15 something that moves to us a position where it seems like
 16 we should use more time to negotiate.
 17 JUDGE KOPTA: All right. Well, and then --
 18 ATTORNEY SHERR: -- (inaudible) so we'll see
 19 what happens.
 20 JUDGE KOPTA: And if there is something that
 21 comes up, we may schedule another prehearing/status
 22 conference if we haven't heard anything from you by early
 23 January, just to see where things are. But for now, I
 24 think we will just wait and see what the company does.
 25 Anything further on that from staff or public

Page 33

1 counsel?
 2 ATTORNEY PAISNER: Yes, your Honor. This is
 3 Ann Paisner for public counsel. You know, if there's a
 4 filing of a request for competitive classification, we
 5 would really like to see some public comment hearings
 6 scheduled once that happens. I just wanted to discuss it
 7 here. I know there's no filing, so we can't make a
 8 request for that.
 9 But I know there are five service territories
 10 for -- you know, the five companies, each have a service
 11 territory. And, you know, we would hope to see a couple
 12 for the largest one, Qwest, and then one in each of the
 13 others.
 14 So I guess I wanted to sort of forecast that
 15 that's something we're interested in to get customer
 16 input on the record.
 17 JUDGE KOPTA: Okay. Well, that's good to
 18 know. And I'm expecting that when we have a prehearing
 19 conference on any filing that CenturyLink makes, that
 20 that will be an issue in terms of scheduling, and
 21 something I would hope that the parties would discuss
 22 before the prehearing conference so that we can move
 23 expeditiously in establishing a schedule. But as you
 24 say, that's not something that's been filed yet. So we
 25 have yet to make that determination.

Page 34

1 Mr. Roberson, anything for staff further?
 2 ATTORNEY ROBERSON: No. I think staff has
 3 been clear that if the company needs to file, then the
 4 company needs to file, you know. We'll deal with
 5 whatever happens when it happens.
 6 JUDGE KOPTA: All right.
 7 MS. ROTH: Hey, Jeff, this is Jing, Jing
 8 Roth.
 9 Your Honor, may I be heard?
 10 JUDGE KOPTA: Certainly, Ms. Roth.
 11 MS. ROTH: So I just want to emphasize one
 12 thing on the record. It is the staff's understanding
 13 that CenturyLink is not willing to negotiate a new
 14 version of AFOR, a new formal AFOR. So as far as I'm
 15 concerned, that is off the table.
 16 So we're in the AFOR docket here for the
 17 hearing. They are not waiting to negotiate a new form of
 18 AFOR. I want to be -- that on the record for the company
 19 to confirm. And that's all have I to say.
 20 JUDGE KOPTA: All right. Mr. Sherr, is that
 21 an accurate characterization of the company's position?
 22 ATTORNEY SHERR: I'm not sure I understand
 23 (inaudible) to be honest.
 24 THE ARBITRATOR: Well, my understanding of
 25 what Ms. Roth says is that the company is not willing to

Page 35

1 negotiate a new AFOR, but instead is focused entirely on
 2 a petition for competitive classification. Is that --
 3 MS. ROTH: Thank you, your Honor. Thank you,
 4 your Honor. That's what I'm saying.
 5 ATTORNEY SHERR: Okay.
 6 MS. ROTH: I want to be on -- confirm on the
 7 record.
 8 ATTORNEY SHERR: Thank you. Thanks for
 9 clarifying. Thanks for the question, and thanks for
 10 clarifying the question. It is our intention to seek
 11 competitive classification. That is correct.
 12 I will let you know that I am also trying to
 13 consider whether we need to simultaneously seek an AFOR
 14 as some sort of fallback, because if we petition -- if we
 15 let the AFOR simply wither and disappear and we seek
 16 competitive classification, and for some reason it's
 17 denied or it's conditioned in a way that's unacceptable
 18 to the company, then we are sitting in rate return
 19 regulation. And I don't believe there's anyone on this
 20 planet who thinks that's appropriate for Qwest at this
 21 time. I guess I shouldn't speak for other people. I
 22 don't believe that that's appropriate to (inaudible)
 23 CenturyLink pursuant to the rate (inaudible).
 24 So there may be, as a -- from a procedural
 25 perspective and for fallback, there may need to be some

Page 36	Page 38
<p>1 other process that is connected to this to ensure that we 2 don't end up where nobody wants us to be. 3 JUDGE KOPTA: All right. Thank you, 4 Mr. Sherr. 5 Ms. Roth, I believe the answer to your 6 question is that a new AFOR is not off the table. And I 7 assume that staff and the company and the other parties 8 will be addressing that possibility as part of the 9 discussions that they are having on an ongoing basis. 10 Ms. Paisner, did you have something 11 further? 12 ATTORNEY PAISNER: Yes, thank you, your 13 Honor. I guess I just wanted to circle back, because I 14 as though the company has given the impression that 15 they've been sitting back waiting for us to make a 16 proposal when for almost the last month, we had pending 17 data requests that weren't responded to. 18 And I feel like it's been -- we've been 19 dealing with some chronic unresponsiveness from the 20 company when we ask questions. We've had to ask the same 21 questions multiple times. 22 So I just wanted to clarify that it's not for 23 lack of attempting to get information from our part. So 24 I just wanted to clarify that. Thank you. 25 JUDGE KOPTA: All right. I have no judgments</p>	<p>1 JUDGE KOPTA: The original order was that 2 there would be some discussion and/or negotiation about a 3 revised form of AFOR that would then be reflected in 4 whatever the company files in July. 5 So I'm assuming that if the AFOR is still on 6 the table, which it is, according to the company, that 7 there will be discussions between staff and the company 8 in terms of what that filing will look like. 9 So above and beyond that, I am not prepared 10 to have a discussion about that particular filing. I 11 will discuss process, but not substance. So -- 12 ATTORNEY SHERR: Judge Kopta, can I make 13 another comment? 14 JUDGE KOPTA: Yes, Mr. Sherr. 15 ATTORNEY SHERR: I am certainly not intending 16 to impugn staff or public counsel in terms of the 17 process. I understand -- I mean, I think both are 18 working very diligently to obtain the information that 19 they think they need. 20 I don't know -- staff has indicated that a 21 proposal will come at some point. 22 I have not heard that from public counsel. I 23 don't know if that's the intention or not (inaudible). 24 It's up to them. 25 I was simply -- you asked me what the status</p>
Page 37	Page 39
<p>1 about any party or anything having to do with the 2 negotiations themselves. 3 I am only concerned in terms of the 4 commission's scheduling and knowing what we are likely to 5 be able to receive. 6 So duly noted. And I hope that the parties 7 will continue their discussions, and I will leave it up 8 to them to decide whether they are fruitful or not. And 9 I will just leave it at that. 10 MS. ROTH: Judge Kopta, this is Jing again. 11 JUDGE KOPTA: Yes. 12 MS. ROTH: I know you don't want to know the 13 details of negotiation. But there's a couple informal 14 questions that staff asked the company about AFOR, you 15 know, asked them what can we work out streamlining the 16 current AFOR. We're in the AFOR docket. 17 Stop me if I'm not talking appropriately. We 18 asked that. The company didn't -- 19 ATTORNEY ROBERSON: Judge Kopta, I feel like 20 this gets into the substance of settlement negotiations. 21 MS. ROTH: This is the AFOR I'm talking 22 about. 23 JUDGE KOPTA: Well, that is part of the 24 negotiation. I mean, the original -- 25 MS. ROTH: Oh, okay.</p>	<p>1 was. And I was indicating what the status is, and I'm 2 not here to impugn anybody. But since a negotiation is a 3 voluntary act, right, and I can't force someone -- and 4 I'm not here to force someone to negotiate if they're not 5 interested or are unable to. I just didn't want you to 6 get the wrong impression. That statement gave me, you 7 know, a concern that I gave you the wrong information. 8 JUDGE KOPTA: Well, thank you for that 9 clarification, Mr. Sherr. I do not have -- I'm not 10 seeing anyone impugning anyone else's motives at this 11 point. And it wouldn't be appropriate for me to be 12 involved to that extent anyway. 13 So at this point, my understanding is that 14 the discussions are ongoing, and that the company will 15 make -- at least at this point, intends to make a filing 16 on or before January, either an agreed petition for 17 competitive classification or an independent petition. 18 And we will see what happens, and if 19 necessary, reconvene in January to discuss whatever the 20 status is at that point if there is no such filing by 21 then. 22 So I believe that concludes what we need to 23 talk about today unless there is anything further. 24 ATTORNEY ROBERSON: No. 25 JUDGE KOPTA: Okay. Not hearing anything, we</p>

1 are concluded and off the record. Thank you all for your
2 cooperation.

3 (Proceedings concluded.)
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1 CERTIFICATE
2

3 STATE OF WASHINGTON)
4) ss
5 COUNTY OF KING)

6 I, Elizabeth Patterson Harvey, a Certified
7 Court Reporter and Registered Professional Reporter
8 within and for the State of Washington, do hereby certify
9 under penalty of perjury that the foregoing court
10 proceedings or legal recordings were transcribed under my
11 direction; that the transcript is true and accurate
12 to the best of my knowledge and ability; that I am not a
13 relative or employee of any attorney or counsel employed
14 by the parties hereto, nor financially interested in its
15 outcome.

16 IN WITNESS WHEREOF, I have hereunto set my
17 hand this 14th day of November, 2023.

18 
19
20 s/ ELIZABETH PATTERSON HARVEY,
21 FAPR, RPR, WA CCR 2731
22
23
24
25



<p style="text-align: center;">A</p> <p>AAG 27:1 ability 41:10 able 37:5 Absolutely 32:11 access 28:25 29:7 accurate 28:19 34:21 41:9 act 29:3 31:22 39:3 active 31:20 Adam 25:3 26:22 27:20 adam.sherr@lu... 25:4 addressing 36:8 administrative 24:14 26:11 AFOR 29:14 32:3,5 34:14,14,16,18 35:1,13,15 36:6 37:14,16,16,21 38:3,5 afternoon 26:6,11 26:22,25 27:4 28:18 agencies 25:20 27:13 Agency 25:22 agreed 39:16 aiming 31:21 alternative 24:10 26:9,15 analysis 29:8 analyze 29:25 and/or 38:2 Ann 25:15 27:5 33:3 ann.paisner@atg... 25:16 answer 27:22 36:5 answered 28:12 29:17 answers 29:24 anticipated 30:22 anybody 39:2</p>	<p>anyway 39:12 apologize 28:5 31:6 appear 31:13 appearances 26:18 27:8 appropriate 31:17 35:20,22 39:11 appropriately 37:17 ARBITRATOR 34:24 Army 25:22 asked 29:16,18 30:2 37:14,15,18 38:25 assistant 27:5 assume 36:7 assuming 38:5 attempting 36:23 attorney 25:11,16 26:21,25 27:4,5,6 27:10,19 28:3,5 28:18 29:11 30:12 30:17,23 31:6 32:11,18 33:2 34:2,22 35:5,8 36:12 37:19 38:12 38:15 39:24 41:11 Avenue 25:17 awaiting 28:14 30:25</p> <p style="text-align: center;">B</p> <p>back 28:22 32:6 36:13,15 basis 36:9 behalf 26:22 27:11 believe 28:23 29:5 29:6 35:19,22 36:5 39:22 Belvoir 25:23 best 41:10 better 28:4 beyond 38:9 big 28:24 bit 27:25</p>	<p>Box 25:12 breaking 27:24 broadband 29:1,7 broadband's 28:25</p> <p style="text-align: center;">C</p> <p>C 25:1 41:1,1 captioned 26:7 Cassandra 25:10 27:2 cassandra.jones... 25:10 CCR 24:25 41:21 CenturyLink 24:5 25:2 26:8,15 29:17 33:19 34:13 35:23 CENTURYTEL 24:6,6,7 certain 28:21 certainly 34:10 38:15 Certified 41:4 certify 41:6 characterization 34:21 chronic 36:19 circle 36:13 clarification 39:9 clarify 36:22,24 clarifying 35:9,10 classification 26:14 32:5 33:4 35:2,11 35:16 39:17 Cleanwater 25:11 clear 32:12 34:3 clearer 28:2,3 close 30:1 colleague 27:2 come 32:12 38:21 comes 32:21 comment 33:5 38:13 commission 24:2 24:17 25:8 26:16 26:24 30:21 31:17</p>	<p>32:1 commission's 37:4 companies 24:5 26:8 33:10 company 24:7 26:19 28:19 30:25 32:9,24 34:3,4,18 34:25 35:18 36:7 36:14,20 37:14,18 38:4,6,7 39:14 company's 34:21 competitive 26:14 32:5 33:4 35:2,11 35:16 39:17 concern 32:2 39:7 concerned 34:15 37:3 concluded 40:1,3 concludes 39:22 conditioned 35:17 conference 24:12 26:12 28:23,24 30:9 32:22 33:19 33:22 confirm 34:19 35:6 confirming 30:24 connected 36:1 consider 35:13 continue 37:7 contract 29:1,5 cooperation 40:2 CORPORATION 24:5 correct 32:8 35:11 counsel 25:14 27:3 27:6 28:9,10,13 29:10 33:1,3 38:16,22 41:11 counterproposal 29:8 31:15 COUNTY 41:3 couple 33:11 37:13 court 27:25 41:5,7 COWICHE 24:7 current 37:16</p>	<p>customer 33:15</p> <p style="text-align: center;">D</p> <p>data 27:23 28:12 28:25 29:1,7 36:17 date 24:23 28:11 32:1 day 41:15 deal 34:4 dealing 36:19 decide 37:8 Defense 25:19 27:12 denied 35:17 Department 25:19 27:12 detail 30:6 details 37:13 determination 33:25 diligently 38:18 direction 41:9 disappear 35:15 discovery 28:22 29:12 discuss 28:21 33:6 33:21 38:11 39:19 discussion 38:2,10 discussions 30:11 36:9 37:7 38:7 39:14 Division 25:22 docket 24:7 26:6,17 32:3 34:16 37:16 DOD-FEA 30:10 draws 31:19 Drive 25:11 due 32:6 duly 37:6</p> <p style="text-align: center;">E</p> <p>E 25:1,1 41:1,1 early 30:2 32:22 either 26:14 28:14 39:16</p>
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ELD 25:22	31:1 32:4,10 33:4	32:19 33:6 34:5,5	interested 33:15	Kopta 24:15 26:4
Elizabeth 24:24	33:7,19 38:8,10	39:18	39:5 41:12	26:10,23 27:1,3,7
41:4,20	39:15,20	hard 28:1	INTERISLAND	27:14,24 28:4,17
else's 39:10	financially 41:12	Harvey 24:24 41:4	24:6	28:19 29:10 30:10
Emily 25:21 27:11	five 33:9,10	41:20	intricacies 29:3	30:15,18 31:4,25
emily.w.medlyn....	five-plus 31:15	hear 27:16	involved 30:10,14	32:17,20 33:17
25:21	Floor 25:5	heard 30:24 32:11	39:12	34:6,10,20 36:3
emphasize 34:11	focused 35:1	32:22 34:9 38:22	ironed 29:4	36:25 37:10,11,19
employed 41:11	following 29:20,23	hearing 27:9 34:17	issue 28:24 33:20	37:23 38:1,12,14
employee 41:11	force 39:3,4	39:25	issued 29:22	39:8,25
engaged 28:22	forecast 33:14	hearings 33:5	issues 29:4	
29:12	foregoing 41:7	heart 27:16		L
engaging 29:7	form 24:10 26:9,15	hereto 41:12	J	Lacey 24:18
ensure 36:1	34:17 38:3	hereunto 41:14	J 24:15 26:10	lack 36:23
entirely 35:1	formal 34:14	Hey 34:7	January 31:3,7,12	largest 33:12
enunciate 28:7	Fort 25:23	honest 34:23	31:18 32:1,10,14	law 24:14 25:22
established 32:1	forth 28:22	Honor 27:10,19	32:23 39:16,19	26:11
establishing 33:23	forward 30:14	29:11 30:12 31:6	Jeff 25:9 27:1 34:7	leave 37:7,9
exactly 27:16	31:10,24	33:2 34:9 35:3,4	jeff.roberson@ut...	legal 25:22 41:8
executed 29:6	fruitful 37:8	36:13	25:9	Lenora 25:5
executive 25:20	further 32:25 34:1	hope 33:11,21 37:6	Jing 34:7,7 37:10	let's 26:4,21 27:15
27:12	36:11 39:23		Jones 25:10 27:2	little 27:25 28:2
expecting 33:18		I	31:6	long 29:21 31:12
expeditiously 33:23	G	impression 36:14	judge 24:14 26:4	longer 29:2
expert 28:6	general 25:11,16	39:6	26:11,23,25 27:3	look 38:8
expire 32:6	27:5	impugn 38:16 39:2	27:7,14,24 28:4	Loop 24:18
expires 32:6	general's 27:6	impugning 39:10	28:17,18 29:10	lot 30:19 31:8
extension 29:14	getting 28:25	inaudible 26:22	30:10,15,18 31:4	loud 32:12
32:13	given 29:2 31:1	27:22,23 28:15,15	31:25 32:17,20	Lumen 25:4
extent 39:12	36:14	31:2,3 32:18	33:17 34:6,10,20	
	go 30:6	34:23 35:22,23	36:3,25 37:10,11	M
F	going 27:25 30:14	38:23	37:19,23 38:1,12	matter 24:4 26:7
F 41:1	31:2,13 32:13	incentive 31:11	38:14 39:8,25	27:16
fabric 29:1	good 26:6,21,25	independent 39:17	judgments 36:25	mean 31:25 37:24
fallback 35:14,25	27:4 28:18 31:13	indicated 38:20	July 32:3 38:4	38:17
FAPR 24:25 41:21	33:17	indicating 39:1		Medlyn 25:21
far 34:14	great 27:14 31:22	informal 27:23	K	27:10,11 30:12
FCC 28:25	Gregory 24:15	28:12 29:12 37:13	kind 30:23 31:19	meeting 27:21 28:9
federal 25:19 27:12	26:10	information 36:23	KING 41:3	28:11,20
feel 36:18 37:19	guess 33:14 35:21	38:18 39:7	know 29:5 30:14,24	mentioned 28:24
Fifth 25:17	36:13	input 33:16	31:16 33:3,7,9,10	mid-January 30:21
file 31:17 34:3,4	Gunston 25:23	intending 30:25	33:11,18 34:4	mode 32:6
filed 29:15 30:5		38:15	35:12 37:12,12,15	month 36:16
33:24	H	intends 39:15	38:20,23 39:7	months 31:15
files 38:4	hand 41:15	intention 35:10	knowing 37:4	motives 39:10
filing 29:13 30:21	happens 31:22	38:23	knowledge 41:10	move 31:10,24

<p>33:22 moves 32:15 multiple 36:21 mute 26:20</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N 25:1 necessary 39:19 need 35:13,25 38:19 39:22 needs 32:2 34:3,4 negotiate 32:16 34:13,17 35:1 39:4 negotiated 26:14 31:9 negotiation 37:13 37:24 38:2 39:2 negotiations 26:13 27:17 31:20 37:2 37:20 new 34:13,14,17 35:1 36:6 NORTHWEST 24:8 noted 37:6 notes 30:16 November 24:23 26:1,12 41:15 number 27:22 29:16</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>o0o- 26:2 obtain 38:18 obviously 32:1 office 27:6 Oh 37:25 okay 28:17 29:10 30:10 33:17 35:5 37:25 39:25 Olympia 25:12 once 29:23 32:7 33:6 ongoing 36:9 39:14 order 26:17 30:22</p>	<p>38:1 original 37:24 38:1 outcome 41:13</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 25:1,1 p.m 26:1 30:1 PAGES 24:13 Paisner 25:15 27:4 27:5 29:11 33:2,3 36:10,12 part 30:3 36:8,23 37:23 particular 38:10 parties 26:13 27:17 27:21 28:21 33:21 36:7 37:6 41:12 parties' 30:20 party 37:1 passed 29:21,21 Patterson 24:24 41:4,20 payment 29:6 penalty 41:7 pending 36:16 penetration 29:1 people 35:21 period 29:21 perjury 41:7 perspective 35:25 petition 24:4 26:7 26:14 31:17 32:3 35:2,14 39:16,17 planet 35:20 planning 32:12 plans 32:9 PO 25:12 point 28:16 31:15 38:21 39:11,13,15 39:20 position 32:4,15 34:21 possibility 31:23 36:8 possible 31:12 prehearing 28:24</p>	<p>30:9 33:18,22 prehearing/status 32:21 premise 29:13 prepare 31:16 prepared 38:9 presiding 26:10 probably 29:2 31:1 31:2,4,7 procedural 35:24 proceedings 40:3 41:8 process 29:12 36:1 38:11,17 Professional 41:5 progress 30:8,19 31:8,23 proposal 27:20 28:8,14,20 30:4 30:25 31:19 36:16 38:21 prospect 30:20 provided 27:20 28:8,13,19 public 25:14 27:3,5 28:9,10,13 29:3 29:10 30:4 32:25 33:3,5 38:16,22 pursuant 24:10 35:23 push 32:7</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>question 35:9,10 36:6 questions 29:16,18 29:22 30:2,7 36:20,21 37:14 Qwest 24:5 33:12 35:20</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>R 25:1 41:1 rate 35:18,23 RCW 24:10 really 30:7 33:5</p>	<p>reason 35:16 receive 31:19 37:5 received 28:15 29:19 30:1 31:14 reconvene 39:19 record 26:5 33:16 34:12,18 35:7 40:1 recordings 41:8 Records 29:3 reflected 38:3 Registered 41:5 Regulated 24:9 26:8 regulation 24:10 26:9,16 35:19 Regulatory 25:22 relative 41:11 reporter 27:25 41:5 41:5 request 30:13 33:4 33:8 requests 27:23 28:12 36:17 required 26:17 resolution 31:9,9 responded 36:17 response 29:19,20 responses 30:1 return 35:18 revised 26:15 38:3 right 26:4 27:7,15 30:15,18 31:25 32:17 34:6,20 36:3,25 39:3 Road 25:23 Roberson 25:9 26:25 27:1 28:18 34:1,2 37:19 39:24 Roth 34:7,8,10,11 34:25 35:3,6 36:5 37:10,12,21,25 RPR 24:25 41:21</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S 25:1,22 s/ 41:20 saying 29:17 35:4 says 34:25 schedule 32:21 33:23 scheduled 33:6 scheduling 26:17 33:20 37:4 SE 24:18 Seattle 25:6,17 see 31:23 32:18,23 32:24 33:5,11 39:18 seeing 39:10 seek 35:10,13,15 sensitive 32:9 September 30:2 service 33:9,10 Services 25:22 set 41:14 settlement 37:20 Sherr 25:3 26:20 26:21,22 27:18,19 27:20,24 28:3,5 30:16,17,22,23 32:11,18 34:20,22 35:5,8 36:4 38:12 38:14,15 39:9 shortly 32:5 simply 31:10,24 35:15 38:25 simultaneously 35:13 sit 28:16 sitting 35:18 36:15 sooner 31:7,18 sorry 27:10,11 sort 33:14 35:14 sounds 30:18 32:8 speak 35:21 spoke 30:8 Square 24:18 ss 41:3 staff 25:8 26:24</p>
--	--	--	---

27:22 28:8,10,13 28:17,25 29:6 32:25 34:1,2 36:7 37:14 38:7,16,20 staff's 34:12 start 28:2 starting 26:19 State 24:1 41:2,6 statement 39:6 status 24:12 26:13 27:17,20 28:23 31:1 38:25 39:1 39:20 status/prehearing 26:12 Stop 37:17 streamlining 37:15 Street 25:5 substance 37:20 38:11 Suite 25:17,23 summary 28:19 summer 28:11,21 sure 28:6 30:15 34:22 SW 25:11	39:8 40:1 thanks 35:8,9,9 theoretical 29:15 thing 34:12 things 28:21 31:1 32:7,23 think 27:15 32:24 34:2 38:17,19 thinks 35:20 time 28:1 29:9,22 29:25 31:21 32:16 35:21 times 36:21 today 39:23 track 31:16 transcribed 24:24 41:8 transcribing 28:1 transcript 41:9 Transportation 24:2,17 true 41:9 try 26:21 28:6 trying 30:3 35:12 twice 29:20,23 typical 29:20	<hr/> V <hr/> version 34:14 VI 24:12 Virginia 25:23 voice 27:11 VOLUME 24:12 voluntary 39:3 vs 24:8	<hr/> X <hr/> <hr/> Y <hr/> Yeah 30:23 year 32:10 yesterday 29:19 30:1	<hr/> 8 <hr/> 80.36.135 24:10 800 25:17
<hr/> T <hr/> T 41:1,1 table 31:20 34:15 36:6 38:6 taken 24:23 29:23 talk 39:23 talking 37:17,21 technological 28:6 Technology 25:4 TELEPHONE 24:7 ten-day 29:20 terms 33:20 37:3 38:8,16 territories 33:9 territory 33:11 thank 26:23 27:14 27:19 29:11 35:3 35:3,8 36:3,12,24	<hr/> U <hr/> U 25:22 unable 39:5 unacceptable 35:17 understand 30:3 34:22 38:17 understanding 30:13 34:12,24 39:13 unit 27:6 UNITED 24:7 unresponsiveness 36:19 use 32:16 usually 29:23 UT-130477 24:7 UTC-130477 26:7 Utilities 24:2,17	<hr/> W <hr/> W 25:21 WA 24:25 41:21 wait 31:2,3,4,7,11 31:12 32:24 waiting 34:17 36:15 want 32:4 34:11,18 35:6 37:12 39:5 wanted 33:6,14 36:13,22,24 wants 36:2 Washington 24:1,6 24:17,18 25:6,11 25:12,16,17 29:3 41:2,6 way 35:17 we'll 31:9,22,23 32:18 34:4 we're 29:12 30:3,24 31:13,16 32:12 33:15 34:16 37:16 we've 29:4,16,22 31:21 36:18,20 weren't 36:17 WHEREOF 41:14 willing 34:13,25 wither 35:15 WITNESS 41:14 wondering 30:20 Woodland 24:18 work 37:15 working 29:8 38:18 worried 27:25 wouldn't 39:11 wrong 32:8 39:6,7	<hr/> Z <hr/> <hr/> 0 <hr/> <hr/> 1 <hr/> 1 24:23 26:1,12 1:30 26:1 10 26:17 30:22 120 25:5 14th 41:15	<hr/> 9 <hr/> 9275 25:23 98104 25:17 98121 25:6 98504 24:18 98504-0145 25:12
			<hr/> 2 <hr/> 2000 25:17 2023 24:23 26:1,12 41:15 206.398.2507 25:6 206.464.7740 25:18 22060 25:23 24-41 24:13 2731 24:25 41:21	
			<hr/> 3 <hr/> 360.586.2466 25:13	
			<hr/> 4 <hr/> 40145 25:12 4300 25:23	
			<hr/> 5 <hr/> 5:00 30:1 5th 25:5	
			<hr/> 6 <hr/> 621 24:18	
			<hr/> 7 <hr/> 703.614.3908 25:24 7141 25:11	