

**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

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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 )  
)

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STATUS CONFERENCE - VOLUME VI

PAGES 24-41

BEFORE ADMINISTRATIVE LAW JUDGE

GREGORY J. KOPTA

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

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

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1 November 1, 2023 - 1:30 p.m.

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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

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

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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 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

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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 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,

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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

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.

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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

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

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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

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.

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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



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

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

3 (Proceedings concluded.)

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C E R T I F I C A T E

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

I, Elizabeth Patterson Harvey, a Certified Court Reporter and Registered Professional Reporter within and for the State of Washington, do hereby certify under penalty of perjury that the foregoing court proceedings or legal recordings were transcribed under my direction; that the transcript is true and accurate to the best of my knowledge and ability; 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 14th day of November, 2023.

*Elizabeth Patterson Harvey*



s/ ELIZABETH PATTERSON HARVEY,  
FAPR, RPR, WA CCR 2731