

Docket No. UT-171082 - Vol. I

**Washington Utilities and Transportation Commission v.
Qwest Corporation d/b/a CenturyLink QC**

February 12, 2018



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND) DOCKET UT-171082
TRANSPORTATION COMMISSION,)
)
Complainant,)
)
vs.)
)
QUEST CORPORATION D/B/A)
CENTURYLINK QC,)
)
)
Respondent.)

PREHEARING CONFERENCE, VOLUME I

Pages 1-12

ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

10:00 a.m.

February 12, 2018

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* * * * *

1 OLYMPIA, WASHINGTON; FEBRUARY 12, 2018

2 10:00 A.M.

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4 P R O C E E D I N G S

5
6 JUDGE KOPTA: Let's be on the record in
7 Docket UT-171082, captioned, Washington Utilities and
8 Transportation Commission versus Quest Corporation d/b/a
9 CenturyLink QC.

10 It is Monday, February 12th, 2018. We are
11 here at 10 o'clock in the morning at the Commission's
12 offices for a prehearing conference to establish the
13 schedule and take care of some other procedural matters.

14 I am Gregory J. Kopta, the administrative
15 law judge the Commission has appointed to preside in
16 this proceeding, and we will begin by taking appearances
17 starting with the Company.

18 MS. ANDERL: Thank you, Your Honor. My name
19 is Lisa Anderl. I'm an in-house attorney for
20 CenturyLink. I've provided the court reporter with my
21 contact information on my business card unless you want
22 me to give the full appearance.

23 JUDGE KOPTA: I do not. I think everyone we
24 have contact information for, so we're good.

25 MS. ANDERL: Thank you.

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1 JUDGE KOPTA: And for Staff?

2 MS. CAMERON-RULKOWSKI: Jennifer

3 Cameron-Rulkowski, assistant attorney general appearing
4 on behalf of Staff, and I have a notice of appearance on
5 file.

6 JUDGE KOPTA: Thank you.

7 And for Public Counsel?

8 MS. GAFKEN: Yes, good morning. My name is
9 Lisa Gafken, assistant attorney general appearing on
10 behalf of Public Counsel.

11 JUDGE KOPTA: All right. That's it for the
12 hearing room. Anyone else on the bridge line who might
13 want to make an appearance? Hearing none, sounds like
14 we have everyone here.

15 I would say that the next order of business
16 is petitions to intervene. I have not -- Commission has
17 not received any written petitions to intervene. Is
18 there anyone in the hearing room or on the bridge line
19 who wishes to petition to intervene in this matter?
20 Again, hearing none, we will have no interventions, but
21 the parties are as currently constituted.

22 Discovery, are the parties wanting to have
23 the Commission's discovery rules available?

24 MS. CAMERON-RULKOWSKI: I believe that
25 would -- that may be helpful, but I think it depends

1 whether or not we end up with a schedule that calls for
2 prefiled testimony.

3 MS. ANDERL: I think, from my perspective,
4 it never hurts to have the discovery rules available and
5 a protective order as well, because there is likely to
6 be some confidential information in the docket. So I
7 would vote yes for both of those.

8 JUDGE KOPTA: Okay. I'm --

9 MS. CAMERON-RULKOWSKI: That's fine with
10 Staff.

11 JUDGE KOPTA: All right. Then we will make
12 the discovery rules available and enter the standard
13 protective order in this case.

14 That -- well, yeah, that pretty much
15 concludes my list of things that I wanted to make sure
16 that we covered except for a schedule. I understand
17 that the parties have been working on developing a
18 schedule and you just alluded to a question in terms of
19 what the nature of that schedule is going to be. Do we
20 want to have a discussion about that on the record or
21 shall we talk about it off the record and then
22 memorialize what we talked about on the record?

23 MS. ANDERL: I think it's always easier to
24 do it off the record.

25 MS. CAMERON-RULKOWSKI: So one moment,

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1 though. We do have -- we're not fully agreed on the
2 type of schedule, and so that's something -- that's a
3 discussion that we would want to have before we talk
4 about the actual schedule. We have had discussions and
5 the question, the major question here is whether we
6 should have prefiled testimony or have all of the
7 testimony be live at hearing.

8 And Staff believes that we can that --
9 although there are -- there are some significant legal
10 issues in this case, Staff believes that that -- that
11 those are best addressed on brief and that having a live
12 hearing is efficient and will save us some time, and we
13 can make our record on -- with a live hearing. And so
14 Staff -- that would be Staff's preference, would be to
15 go forward with a live hearing and -- and then have
16 several rounds of briefing to be able to get into those
17 legal issues.

18 JUDGE KOPTA: And, Ms. Anderl?

19 MS. ANDERL: And so when Staff says a live
20 hearing, I understand that to mean no prefiled
21 testimony, but oral, direct, and cross, and we're
22 opposed to that. We would like to have prefiled
23 testimony. We feel that Staff has had a long time to
24 investigate and prepare a lengthy investigative report,
25 which is essentially akin to testimony, and that we

1 would be prejudiced if we're not similarly afforded an
2 opportunity to have prefiled direct testimony.

3 We also think that it would take a lot less
4 time if we have prefiled direct testimony, because I
5 think that oral testimony could take us from what would
6 otherwise be a one-day hearing into a two- or three-day
7 hearing. So we feel very strongly that we should have
8 the usual process, which is prefiled testimony.

9 I know Staff has said that in Staff's
10 experience, investigative hearing -- hearings on
11 investigation reports or penalty assessments don't
12 usually involve prefiled testimony. In CenturyLink's
13 case, when we had the cable cut in the San Juan Islands
14 and when we had the 911 outage, both of those were
15 hearings on investigation reports, and both of those
16 proceedings did follow the process of prefiled testimony
17 and then a hearing only for purposes of
18 cross-examination and maybe oral argument. So that's --
19 that's our ask.

20 JUDGE KOPTA: My understanding from
21 obviously just having read what is in the file is that
22 this is predominantly legal issues as opposed to factual
23 issues. Do you have a different take on it, Ms. Anderl?

24 MS. ANDERL: Yeah, I think that there are
25 significant public policy issues that will be best

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1 developed through additional factual evidence. I don't
2 think there's a lot of dispute about the facts in the
3 investigation report, but it's our strong feeling that
4 those are not all of the facts that the Commission
5 should consider when making its decision in this case.
6 There are implications for how the Company operates and
7 service to customers and other types of developments and
8 situations that would be impacted by a decision in this
9 case. And we certainly want to develop an evidentiary
10 record on that.

11 JUDGE KOPTA: All right. Ms. Gafken, do you
12 have a dog in this fight?

13 MS. GAFKEN: I don't have a large dog in the
14 fight. I guess I'll just offer a couple of
15 observations. I think there are times when compliance
16 dockets do happen in a live manner. I'll just note that
17 the cases that Public Counsel has been involved in, they
18 have followed the written testimony framework. I do see
19 some value in doing it that way in terms of efficiency.
20 If we do a live testimony framework in this case, for
21 example, I think I would want to do depositions because
22 you don't want to walk into a hearing without knowing
23 what other parties are going to say. And so depositions
24 aren't something that we normally do in the ordinary
25 course, and I think in large part it's because of the

1 prefiled written testimony. Certainly we do have the
2 Staff report, and so we sort of know where Staff is
3 going, but we certainly don't know where CenturyLink is
4 going so -- and other parties may want to depose any
5 witness that I may bring forward as well.

6 So I think that adds at least a different
7 component to the proceeding. I'm not sure any more or
8 less efficient, but I guess I would approach the case
9 like a normal court case where you have direct -- live,
10 direct testimony and then followed by cross. Those are
11 just my observations.

12 JUDGE KOPTA: Okay. Thank you.

13 Ms. Cameron-Rulkowski, did you have anything
14 further?

15 MS. CAMERON-RULKOWSKI: While we're talking
16 about efficiencies, I guess I would mention that as
17 we've tried to work together to come up with a schedule
18 that works for everyone, as soon as you have those
19 rounds of prefiled testimony, it pushes the schedule
20 out. And so the actual effect of having prefiled
21 testimony is that it ends up going a little bit later,
22 and I don't -- and that's okay. I certainly want to
23 have sufficient rounds of briefing, so we need a certain
24 amount of time, I recognize that. But I think that we
25 could certainly get the facts out that we need to get

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1 out in -- in one -- in a hearing with live testimony.

2 JUDGE KOPTA: All right. Well, I will take
3 this under advisement for right now, but I would like to
4 have a discussion about schedules under either
5 alternative off the record. So let's be off the record
6 for right now.

7 (A break was taken from
8 10:11 a.m. to 10:40 a.m.)

9 JUDGE KOPTA: Let's be back on the record.
10 While we were off the record, we had a discussion about
11 scheduling and developed what I believe is a consensus
12 or at least it will be my decision that we will have
13 prefiled testimony as part of our procedural schedule.
14 And as a result, that schedule will be direct testimony
15 from Staff is due April 6th; response testimony from the
16 Company and Public Counsel is due June 1st; rebuttal
17 from Staff and any cross-answering testimony would be
18 due on July 3rd; cross-examination, exhibits, and
19 cross-estimates would be due on July 17th. We will have
20 an evidentiary hearing pending kind of confirmation of
21 the hearing room availability on Monday, July 23rd;
22 simultaneous opening briefs are due on August 23rd, and
23 simultaneous reply briefs due on September 12th.

24 Have I gotten those dates correct?

25 MS. CAMERON-RULKOWSKI: I believe so, Your

1 Honor. Thank you.

2 JUDGE KOPTA: And while the Commission
3 requires a settlement conference to be part of any
4 procedural schedule, I will waive that particular rule
5 in this case because I agree with the parties that it
6 would not be productive given the fact that this is
7 largely a legal and policy dispute and not easily
8 susceptible to settlement. That does not mean, however,
9 of course, that the parties are still encouraged to have
10 discussions and to at least narrow issues, agree on
11 facts, whatever you can do to minimize the disputes so
12 that we crystallize them to the point they are really
13 issues that the Commission needs to resolve.

14 So with that, do we have anything further we
15 need to discuss today?

16 MS. CAMERON-RULKOWSKI: Nothing from Staff.

17 MS. ANDERL: Not from the Company.

18 MS. GAFKEN: Not from Public Counsel.

19 JUDGE KOPTA: Then we are adjourned. Thank
20 you very much.

21 (Adjourned at 10:42 a.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.

Tayler Garlinghouse

Tayler Garlinghouse, CCR 3358

