

Docket No. UT-170042 - Vol. I

In the Matter of CenturyLink

February 8, 2017



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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Notice of)
Transaction and Application of)
CENTURYLINK) Docket No. UT-170042
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., and Level 3 Telecom of)
Washington, LLC to CenturyLink,)
Inc.)

PREHEARING CONFERENCE - VOLUME I

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ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

1:02 P.M.
February 8, 2017

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* * * * *

1 OLYMPIA, WASHINGTON; FEBRUARY 8, 2017

2 1:02 P.M.

3 -o0o-

4
5 JUDGE KOPTA: Let's be on the record in
6 Docket UT-170042, captioned briefly In the Matter of the
7 Notice of Transaction and Application of CenturyLink.

8 We are here for a prehearing conference, and
9 my name is Gregory J. Kopta. I'm the administrative law
10 judge who will be presiding with the commissioners in
11 this proceeding.

12 And let's begin by taking appearances,
13 beginning with CenturyLink.

14 MS. ANDERL: Good afternoon, your Honor. My
15 name is Lisa Anderl, and I am in-house counsel for
16 CenturyLink located in Seattle. My full contact
17 information was contained in the January 17th
18 application. Would you like me to state it again?

19 JUDGE KOPTA: Nope. That is sufficient.

20 MS. ANDERL: Thank you.

21 JUDGE KOPTA: Commission Staff?

22 MS. CAMERON-RULKOWSKI: Jennifer
23 Cameron-Rulkowski, Assistant Attorney General, appearing
24 on behalf of Commission Staff. And all of my contact
25 information is listed in my Notice of Appearance on

1 file.

2 JUDGE KOPTA: Thank you.

3 And Public Counsel?

4 MR. BRYANT: Armikka Bryant, Attorney
5 General's Office, Public Counsel Division. And all of
6 my contact information is also listed -- listed in the
7 Notice of Appearance.

8 JUDGE KOPTA: All right. Thank you.

9 And I understand we have representatives
10 from Level 3, et al., on the bridge line. Would you
11 like to make an appearance at this point?

12 MS. BURT (via phone): Yes, your Honor.
13 This is Danielle Burt, counsel for Level 3. I work at
14 Morgan Lewis. I do have one update to my contact
15 information that was provided in the underlying filing,
16 and that is, my address is now at 1111 Pennsylvania
17 Avenue NW, Washington, DC 20004. The rest of the
18 information remains the same.

19 JUDGE KOPTA: All right.

20 Anyone else?

21 MS. HOLLICK (via phone): And your Honor,
22 this is Pamela Hollick. I am associate general counsel
23 with Level 3 Communications. My business address is
24 4625 West 86th Street, Suite 500, Indianapolis, Indiana
25 46268.

1 JUDGE KOPTA: All right. Thank you.

2 Anyone else wishing to make an appearance?

3 Hearing none, we will proceed.

4 The first order of business is petitions to
5 intervene. The Commission has not received any written
6 petitions to intervene. Is there anyone that wishes to
7 make an oral petition to intervene? Hearing none, we
8 will now have the parties as they have appeared.

9 The next issue, discovery. Do the parties
10 feel the need to have the Commission's discovery rules
11 available?

12 MS. CAMERON-RULKOWSKI: Yes, your Honor.
13 Commission Staff would like to have the discovery rules
14 available.

15 MR. BRYANT: Yes, your Honor.

16 JUDGE KOPTA: All right.

17 MS. ANDERL: No objection.

18 JUDGE KOPTA: We will make the discovery
19 rules available to the parties.

20 Do we need a protective order, Ms. Anderl?

21 MS. ANDERL: Yes.

22 JUDGE KOPTA: All right.

23 The standard protective order with
24 confidential provisions only?

25 MS. ANDERL: Given that there are no

1 external parties, I think that confidential and highly
2 confidential information would be treated the same for
3 Public Counsel and Staff, so I think we're going to be
4 okay with just the regular designation.

5 Which is easier, to get highly confidential
6 later or to get it now and never use it?

7 JUDGE KOPTA: Well, let's just go with the
8 standard protective order for now, and if we need to
9 later on, you can ask for the highly confidential
10 protection.

11 MS. ANDERL: Yeah.

12 JUDGE KOPTA: As you say, given that we have
13 only Staff and Public Counsel as the other parties, it
14 doesn't seem to be necessary at this juncture, at least.
15 So I will enter a protective order.

16 At this point the proposed procedural rules
17 are not yet in place, so I will ask parties if they
18 consent to electronic only service from the Commission
19 in this docket?

20 MS. ANDERL: Yes, we do.

21 MS. CAMERON-RULKOWSKI: Yes, Commission
22 Staff does.

23 MR. BRYANT: Yes, Public Counsel does.

24 JUDGE KOPTA: All right.

25 MS. BURT: Level 3 does as well.

1 JUDGE KOPTA: Great. Thanks.

2 MS. ANDERL: Your Honor, could we seek
3 clarification then? With filings made by parties, is
4 that -- there's still paper copies required?

5 JUDGE KOPTA: I'm hopeful that we will have
6 the procedural rules in place in short order, but let's
7 say, for purposes of this proceeding, unless there's an
8 objection, then parties would only need to file their
9 documents and serve them electronically.

10 Is that acceptable to all the parties?

11 MS. ANDERL: That's great.

12 MS. BURT: Yes for Level 3.

13 MS. ANDERL: Was that Pamela or Danielle?

14 MS. BURT: Oh, this is Danielle.

15 JUDGE KOPTA: Commission Staff?

16 MS. CAMERON-RULKOWSKI: Commission Staff
17 says yes, we're getting there.

18 JUDGE KOPTA: I understand it's a
19 transition. I appreciate your cooperation.

20 And for Public Counsel?

21 MR. BRYANT: Public counsel agrees with
22 Commission Staff.

23 JUDGE KOPTA: All right. Then we will be
24 all electronic.

25 That's everything on my list except for the

1 schedule. Before we get to that, because I understand
2 there will be some disagreement, is there any other
3 issue that we can address -- that we need to address at
4 this point? No?

5 All right. Then let's -- oh, yes.

6 MS. CAMERON-RULKOWSKI: Yes, your Honor. It
7 may be best to try to address this before we get into
8 the specifics of the schedule. It looks like we're
9 going forward now to set a procedural schedule for this
10 matter.

11 And what Staff would be interested in
12 learning, and hopes that the Commission would also be
13 interested in learning, is whether CenturyLink is
14 conceding jurisdiction under the -- under RCW 80.12 and
15 under the A4 order.

16 And I'm asking this question because this
17 filing was originally styled as a notice and request for
18 an order declining to assert jurisdiction.

19 JUDGE KOPTA: Well, my interpretation of the
20 filing is, as is often the case in acquisition or merger
21 proceedings, that the company is asking that the
22 Commission either disclaim jurisdiction, or in the
23 alternative, approval.

24 And Ms. Anderl can correct me if my
25 interpretation is incorrect. So if it is, then I don't

1 know that we need anything else at this juncture, but I
2 will let you respond and let me know what you think.

3 MS. ANDERL: Well, you've characterized the
4 filing correctly, and I don't know if what I'm about to
5 stay will illuminate things any further or not, but
6 we'll give it a shot.

7 I think it's clear that our position is that
8 the A4 order and the statutes read together, and looking
9 at this transaction and the nature of this transaction,
10 it is a transaction that is exempt from Commission
11 approval under the A4 because it is neither a sale of
12 exchanges, nor is it a sale of access lines.

13 And the A4 carved out a pretty narrow
14 exception from the transfer of property statutes. The
15 whole point of the A4 was to recognize the intense
16 competition which the industry is subject to, and to
17 regulate CenturyLink in a manner consistent with how its
18 competitors were regulated, at least its regulated
19 competitors -- many of our competitors aren't even
20 regulated -- but as if we were a CLEC.

21 As a CLEC, no CLEC entities in the state
22 would have to seek approval for a transaction of this
23 type, and we believe that we fall squarely within that
24 as well.

25 That said, we recognize that the

1 Commission -- this is new ground, because this A4 order
2 has not been asked to be interpreted prior to this. And
3 it is a significant transaction with a fairly large
4 dollar amount at stake. We understand that, and we're
5 not -- we understand that the Commission may want, you
6 know, to have some chance to review the transaction and
7 ask questions about it.

8 We had originally suggested that the
9 appropriate process would be to set this over for a
10 recessed open meeting and give the Commission an
11 opportunity to do that at that time.

12 It now appears as though the Commission has
13 chosen to do something a little more formal than that,
14 and that's fine. We're happy to participate in that.
15 That does not constitute a waiver of our jurisdictional
16 arguments, but rather a position that we will go forward
17 preserving that jurisdictional argument and hope that
18 the proceeding comes out the way we want it to.

19 JUDGE KOPTA: Fair enough.

20 MS. ANDERL: That -- is that as direct as I
21 need to be?

22 JUDGE KOPTA: I get your message, yes.
23 Thank you. And that is fully within my expectation of
24 what the company's position would be, and certainly is
25 consistent with positions that your predecessor company

1 and others have taken, and I would expect that that's
2 what -- how this proceeding will be framed.

3 I will -- I will observe that, to the extent
4 that the A4 essentially treats CenturyLink like a CLEC
5 in many regards, that the Commission has in the past
6 effectively revoked the waiver of transfer of property
7 requirements when the transaction has been sufficiently
8 large, I guess. I'm thinking specifically of one MCI
9 and Sprint who are going to merge.

10 So I'm not making any decision at this point
11 on behalf of the Commission. That's something that the
12 commissioners will have to determine, but I'm prepared
13 to schedule the -- so I'm prepared to schedule the
14 proceeding in a manner that will enable the Commission
15 to have the information that it needs to make a decision
16 either way.

17 Ms. Cameron-Rulkowski, did you want to say
18 something at this point, or would you prefer to hold
19 your fire until that issue is posed more formally?

20 MS. CAMERON-RULKOWSKI: I would like to
21 comment, your Honor.

22 One of the issues that the question affects
23 is the filing's compliance with WAC 480-143, which is
24 the transfer of control chapter, and there are some
25 aspects in which this filing is not in compliance.

1 I would expect the company to remedy that,
2 and I would hope that the -- what I take to be a
3 disinclination to admit jurisdiction will not stop the
4 company from complying with that chapter and with the
5 filing guidelines in that chapter.

6 The other issue, of course, is if we're
7 briefing jurisdiction, then we need to plan for that in
8 the schedule.

9 JUDGE KOPTA: All right. That is noted, and
10 I assume will be something that we discuss in
11 conjunction with what kind of schedule we want to
12 have -- to undertake.

13 Mr. Bryant, did you have anything on behalf
14 of Public Counsel?

15 MR. BRYANT: Not at this time.

16 JUDGE KOPTA: Thank you. All right.

17 I think we've gotten as far with that as
18 we're going to today, so let's discuss schedule.

19 I have in front of me a proposal from Staff
20 that would include pre-filed testimony and an
21 evidentiary hearing and briefing with an order
22 anticipated by mid-December of this year.

23 Ms. Anderl, I understand that you have a
24 different schedule in mind.

25 MS. ANDERL: Yes. Not surprisingly,

1 your Honor, we think that this is far too protracted of
2 a schedule with way more process than is necessary for
3 this parent company level transaction.

4 We had counter-proposed a schedule to Staff
5 and copied Public Counsel yesterday, so these dates that
6 I'm about to give you won't come as a surprise to
7 anyone.

8 We -- and I'm just going to take it from the
9 top of this page. So for discovery, we're willing to
10 actually compress discovery to five business days, or
11 seven calendar days, assuming we get the rest of the
12 schedule that we want.

13 We're ready to file direct testimony and any
14 supplemental information that we develop here today,
15 such as a copy of the merger agreement and some other
16 things that Staff feels are necessary to be compliant
17 with the WAC, by February 10th, by Friday this week.

18 The settlement conference which Staff would
19 propose scheduling for the week of March 27th, we are
20 never opposed to talking about settlement. We don't
21 think that there are going to necessarily be disputed
22 issues that need a settlement conference, and we
23 would -- we would not necessarily feel that we have to
24 formally schedule one. I think with the small number of
25 parties that we have here, once everybody felt like they

1 had enough information to sit down and talk about
2 whether there was a stipulated resolution, we could just
3 do it in Seattle or Olympia.

4 JUDGE KOPTA: Well, the Commission does
5 generally schedule at least one settlement conference,
6 so I would like to have a target date.

7 MS. ANDERL: Yeah. Then we would say that
8 March 10th would be a good settlement conference date.

9 JUDGE KOPTA: Okay.

10 MS. ANDERL: And then responsive testimony
11 from Staff and the intervenors could be March either
12 17th or 24th. We're open on that. And then the -- any
13 rebuttal and cross-answering testimony would be orally
14 at the hearing.

15 We would like to see -- again, noting the
16 relatively simple transaction and lack of process that
17 we're advocating, we don't think it's going to be
18 necessary to pre-file witness lists or cross-exhibits,
19 again, especially with the small number of parties that
20 we have. If it's a convenience for the Commission, we
21 can obviously do that a week before the hearing.

22 But -- and we were proposing a hearing
23 during the last week in March, perhaps March 29th,
24 March 30th, depending on commissioner availability. We
25 are certainly amenable to going into April, but in

1 discussions with Public Counsel, Public Counsel's
2 schedule is pretty jam-packed in April with it seems
3 like a deadline every week, so we were trying to
4 accommodate that by saying March.

5 And then I think we would want to wait and
6 see if the commissioners wanted briefs. We don't --
7 we're aware that the Commission has in the past not
8 always asked for post-hearing briefs. Certainly one
9 round of briefs rather than two would seem to be more
10 than adequate, even if we did brief it. But I think
11 we're advocating that there would be closing arguments
12 and no briefs. I think last year at this time we did
13 the Commission investigation on the 911 outage, which is
14 the way that that case was handled procedurally as well,
15 no post-hearing briefs.

16 And then what we would like would be a
17 Commission order no later than June 30th. We don't feel
18 like that is unduly expedited in this type of a case,
19 and we are hopeful that if all of our State approvals
20 and FCC approvals are in, we could actually potentially
21 close the transaction at the end of the second quarter
22 instead of the end of the third quarter. That's a
23 benefit to all of -- to the parties to the transaction,
24 because it accelerates the benefits of the merger and
25 takes away three months of, you know, kind of pending

1 transaction uncertainty.

2 I'm not saying that I know for sure that
3 every single state and the FCC will be in by then. I
4 just don't want Washington to be not in.

5 JUDGE KOPTA: Understood.

6 When is the target date for closing the
7 transaction?

8 MS. ANDERL: Right now the closing date per
9 the agreement of merger is September 30th. It's the end
10 of the third quarter. Typically --

11 JUDGE KOPTA: Is that --

12 MS. ANDERL: -- transactions of this nature
13 want to close on a quarter end because of the -- the
14 accounting issues that make it a lot easier to do it
15 that way. So I was just talking to Staff and Public
16 Counsel. It's not like we can just move things up
17 30 days and it helps. It's kind of like it's all or
18 nothing.

19 JUDGE KOPTA: Are there any penalties or
20 other issues that would arise if you are not able to
21 close the transaction by September 30th?

22 MS. ANDERL: There's, I believe, an
23 extension available for one month, and then I'd have to
24 double-check and see what the termination provisions are
25 in the agreement by then, after that point.

1 JUDGE KOPTA: All right. I'm just trying to
2 get a sense for how hard that deadline is in terms of
3 what the companies are -- have agreed to. So --

4 MS. ANDERL: I might defer to my Level 3
5 colleagues, if any of them know of the -- if there is a
6 financial penalty or an automatic termination after the
7 October 31st extension date. I'm sorry. I just don't
8 have that at the tip of my fingers.

9 JUDGE KOPTA: And this is purely to -- in
10 terms of me deciding on a schedule, just to see what the
11 ramifications are both from the Commission standpoint
12 and from the company standpoint.

13 MS. BURT: This is Danielle again for Level
14 3. I am not aware of something concrete. As Lisa was
15 saying, there are provisions in the agreement. There
16 could be something more there. We have to look. I just
17 don't have it at my fingertips.

18 JUDGE KOPTA: Okay. Thank you.

19 MS. ANDERL: As I said, it's just the
20 synergies can't start to be realized until we can
21 actually close and begin the integrations. Those
22 synergies are significant, financially very significant
23 and valuable to the companies.

24 And as I said, if there -- you know, three
25 additional months of having the transaction pending as

1 opposed to closed is harmful if everything else is ready
2 to go.

3 JUDGE KOPTA: Understood. And obviously the
4 Commission's interest both is in having a prompt
5 resolution and in making sure that we have sufficient
6 information that we can make a determination that's
7 consistent with the public interests. So there's always
8 that balancing of interests.

9 MS. ANDERL: Right. And then that is why we
10 are willing to compress the discovery responses and, you
11 know, cooperate fully, as we always do --

12 JUDGE KOPTA: Of course.

13 MS. ANDERL: -- in getting the staff the
14 information they need.

15 JUDGE KOPTA: All right.

16 Mr. Bryant, your turn.

17 MR. BRYANT: So I believe your Honor has the
18 schedule that Staff provided in front of you.

19 JUDGE KOPTA: I do.

20 MR. BRYANT: So we can just pick up at the
21 response testimony. There, Public Counsel, it says two
22 months in between -- between the events in the timeline.
23 Public Counsel will agree to just five days there with
24 response testimony and rebuttal.

25 JUDGE KOPTA: So why don't you give me

1 dates. I think that would make it easier for me to see
2 what exactly it is that you're proposing.

3 MR. BRYANT: Okay. So that would be, after
4 the response testimony, five days for discovery. I
5 don't have a calendar in front of me, so I don't know
6 what day of the week that is, if that would fall on the
7 weekend, but it's looking around March -- or I'm sorry,
8 April 30th.

9 JUDGE KOPTA: All right. I'm a little
10 confused. Right now Staff proposes direct testimony on
11 February 28th and response testimony on April 25th. Are
12 you proposing to change either of those dates?

13 MR. BRYANT: The response testimony.

14 JUDGE KOPTA: And you would change that to
15 what date?

16 MS. GAFKEN: Sorry. I'll just jump in real
17 quick.

18 JUDGE KOPTA: Sure.

19 MS. GAFKEN: So the proposal there is to
20 insert kind of a standard ratcheting down of the
21 response time for discovery after the responsive
22 testimony comes in. So we have the ratcheting down to
23 seven, so although it sounds like we may also ratchet it
24 down to five at the start. But if it starts out at
25 seven, then we would propose that it then shrinks down

1 to five days after the responsive testimony comes in.

2 JUDGE KOPTA: But at this point you're
3 still -- you're in agreement with Staff of that deadline
4 for the response testimony to be filed?

5 MS. GAFKEN: Correct.

6 JUDGE KOPTA: Okay.

7 And any further revisions that you would
8 propose, Mr. Bryant, to Staff's --

9 MR. BRYANT: Yes. So with the rebuttal,
10 cross-answering testimony, I believe Lisa proposed that
11 that be oral at the hearing. We prefer written
12 briefing -- briefing in writing.

13 JUDGE KOPTA: You would prefer to have
14 written pre-filed rebuttal testimony?

15 MR. BRYANT: Yes.

16 JUDGE KOPTA: And would you change the date?

17 MR. BRYANT: We are looking at, instead of
18 one month to get that in, three weeks is fine with
19 Public Counsel.

20 JUDGE KOPTA: So a week earlier than what
21 Staff has proposed?

22 MR. BRYANT: Yes, correct.

23 JUDGE KOPTA: And do you have a different
24 hearing date in mind?

25 MR. BRYANT: Hearing date, no.

1 JUDGE KOPTA: Okay.

2 So as I read this, you're -- Public Counsel
3 basically is supportive of Staff's proposed schedule; is
4 that correct?

5 MR. BRYANT: I'm sorry. And -- I'm sorry.
6 Reply briefs. CenturyLink's proposed schedule says to
7 eliminate that step in the process, and we would prefer
8 to have reply briefs filed.

9 JUDGE KOPTA: Okay. So you're still in
10 accord with Staff?

11 MR. BRYANT: Yes.

12 JUDGE KOPTA: Okay.

13 Yes, Ms. Cameron-Rulkowski.

14 MS. CAMERON-RULKOWSKI: I just wanted to be
15 sure that I'll get a chance to talk about our proposed
16 schedule.

17 JUDGE KOPTA: Well, I will certainly give
18 you that opportunity because I will want to understand
19 why Staff and Public Counsel believe that a schedule
20 that is this lengthy is necessary in this proceeding.

21 So unless Mr. Bryant has anything further, I
22 will let Ms. Cameron-Rulkowski give her explanation.

23 MR. BRYANT: I'm sorry. I will jump back
24 in. It's not that we are concurring or agreeing with
25 the schedule. Our -- it's just that, other than the

1 conflicts through April, which Ms. Anderl stated
2 earlier, this schedule does not conflict with our
3 current schedule.

4 JUDGE KOPTA: Okay. Understood.

5 And with respect to the schedule that
6 CenturyLink has proposed, do you have conflicts with
7 that schedule?

8 MR. BRYANT: It would kind of put us -- we'd
9 be burning the candle at both ends with respect to the
10 different filings we have due in April. And to meet
11 this compressed timeline for a March 29th hearing would
12 be a bit burdensome given our current staffing.

13 JUDGE KOPTA: Okay.

14 MS. ANDERL: And your Honor --

15 JUDGE KOPTA: Did you have something
16 further, Mr. Bryant?

17 MR. BRYANT: Yes, I did. We also are -- we
18 are reaching out to several different consultants, and
19 to have their availability in front of us before
20 committing to this compressed timeline would be
21 something that we would greatly appreciate. We don't
22 have any experts lined up at this particular time.

23 JUDGE KOPTA: Okay.

24 Ms. Anderl, did you want to say something?

25 MS. ANDERL: May I hold my fire until after

1 Ms. Cameron-Rulkowski speaks?

2 JUDGE KOPTA: I think that probably makes
3 more sense.

4 MS. CAMERON-RULKOWSKI: That doesn't bode
5 well.

6 So first I'd like to clarify. I have all of
7 the dates in the schedule to provide the most
8 information that I can. It was not the intent of Staff
9 that the Commission would not get an order out until
10 December. In fact, with our schedule, it looked
11 perfectly reasonable to get that order out in time for
12 the company's preferred closing date of September 30th.
13 I understand that they'd like to close earlier than
14 that, but that is their closing date.

15 I will also note that I did take a look at
16 the agreement and plan of merger which is footnoted in
17 the filing, and I have the termination date in this
18 schedule, which is October 31st, but I do recall reading
19 that the closing could be extended, and I can't remember
20 if it was three or four months if State approvals had
21 not been received by that time. So that's something, of
22 course, that we can all go and read ourselves.

23 I'm -- we're pleased to hear CenturyLink
24 willing to compress discovery. Staff has a lot of
25 concerns about getting the information that they need.

1 As counsel for CenturyLink mentioned, this is a large
2 transaction. News reports are putting -- are valuing it
3 at about 34 billion dollars. Staff needs enough time to
4 understand the financial ramifications of the
5 transactions, and primarily for the CenturyLink
6 companies.

7 Staff right now -- telecom staff has shrunk
8 in the last few years. They are not staffed up to -- to
9 handle nonroutine business. That is a serious concern
10 and played into our schedule. There's really no way
11 that Staff could be filing testimony by the dates that
12 CenturyLink has proposed.

13 Staff is also taken up with business during
14 the legislative session, which will go -- well, if it
15 ends on schedule, that takes us -- that takes us well
16 into the spring.

17 We also have some times when Staff will be
18 out. I will also mention that I will be out of the
19 country from June 12th to 26th, in case that needs to be
20 taken into consideration. And I also have some other --
21 some other dates.

22 I mentioned that Staff is concerned about
23 getting the information that it needs. One -- and one
24 of the reasons that I asked about jurisdiction, too, and
25 that I already alluded to, is that the filing doesn't

1 comply with WAC 480-143, and specifically with the
2 sections 020, 030 and 040. And so we'd like to have
3 that -- make sure that those sections are complied with
4 speedily, and would leave that to CenturyLink to state
5 when they could do that.

6 The other concern is that lately CenturyLink
7 has not been providing information to Staff that Staff
8 needed. There were a series of major outages in
9 Washington in October, November and December --

10 JUDGE KOPTA: I'm going to stop you there.
11 Let's not deviate from what we're talking about right
12 here for right now. I understand that Staff wants to
13 make sure they get the information timely, and that's
14 all I need to know at this point.

15 MS. CAMERON-RULKOWSKI: Thank you. Timely
16 and meaningful responses is what Staff is looking for to
17 be able to expedite its review.

18 I see the need for two rounds of briefing,
19 given that it looks like we may be briefing
20 jurisdiction. And I -- I guess I would just finally
21 note that I know that CenturyLink and Level 3 are
22 seeking an expedited schedule, and under the statute,
23 the Commission has 11 months. And so the schedule that
24 we've proposed is expedited.

25 JUDGE KOPTA: All right.

1 Before giving Ms. Anderl an opportunity to
2 respond, there's obviously a wide divergence between the
3 proposals in terms of when the hearing date would be,
4 either at the -- toward the end of March, as CenturyLink
5 would prefer, or in mid-July, which is what Staff and
6 Public Counsel are supporting.

7 Just sort of playing devil's advocate, is
8 there a point in between that both parties could live
9 with, say a hearing in May? That would be before you're
10 going to be out of the country, Ms. Cameron-Rulkowski,
11 and while it would not be as much time as you
12 anticipated, is that -- would that be an unbearable
13 hardship for Staff to prepare for a hearing in May?

14 MS. CAMERON-RULKOWSKI: If we're preparing
15 for hearing in May, that means that we're compressing
16 the rest of the schedule?

17 JUDGE KOPTA: That would be my anticipation,
18 yes.

19 MS. CAMERON-RULKOWSKI: Right, which is what
20 we did look at initially, and -- and came to the
21 conclusion that that would be difficult with Staff's
22 current workload and with the burdens of session.

23 JUDGE KOPTA: Okay.

24 And Public Counsel, I'll pose the same
25 question to you.

1 MS. GAFKEN: I'll jump in, just because I
2 have a pretty good grasp on everything that's before
3 Public Counsel.

4 JUDGE KOPTA: I would expect so, yes.

5 MS. GAFKEN: May would also be fairly
6 difficult just because we're carrying the energy dockets
7 as well, and I know you're familiar with them and the
8 deadlines. So compressing this docket into May and
9 having a hearing in May may be possible, but it will --
10 it would be fairly difficult to do as well.

11 JUDGE KOPTA: Well, I understand that
12 there's one large energy rate case that has yet to have
13 a prehearing conference, so we don't know -- at least I
14 don't know what the schedule will be. So I understand
15 that we're talking hypothetically, and without the full
16 information, but --

17 MS. GAFKEN: Well, and I did anticipate that
18 docket as well, and so my matrix here has anticipated
19 dates for that docket also.

20 So I guess, just to weigh in a little bit,
21 too, I know that the Staff proposal is a bit more
22 elongated than the parties wanted, but it does take into
23 [sic] litigation needs and balancing of work demands and
24 the need to get information, consultant availability and
25 whatnot.

1 We've faced the same issue with other
2 dockets. PacifiCorp 300 -- Schedule 300 docket had the
3 same issue. In that case, they wanted to move quickly,
4 and Staff and Public Counsel and other intervenors
5 worked together and came up with a schedule that was a
6 little bit longer than the companies wanted, but it
7 worked based on workload and other business before the
8 Commission.

9 So there's a lot of competing components
10 when it comes into developing the schedule. Lots of
11 things to balance.

12 JUDGE KOPTA: I understand. We have the
13 same scheduling issues, as you can imagine. I have a
14 hearing scheduled the week before July 11th, so I
15 understand that things sometimes stack up, and it's
16 lumpy as opposed to nice and spread out.

17 But, you know -- I will provide you with an
18 opportunity to respond, Ms. Anderl, but I can establish
19 a schedule in consultation with the commissioners, but
20 it would be our schedule and not yours. I mean,
21 obviously it would be nice if we could get the parties
22 to work out something along the lines that I've just
23 discussed. If it's not possible, then that's fine and
24 we will establish the schedule that we think is
25 appropriate. But I just sort of give you fair warning

1 that you may not like it.

2 Ms. Anderl?

3 MS. ANDERL: Thank you, your Honor. I
4 didn't want to bid against myself right at the
5 beginning, but your proposal for a May hearing is
6 actually, you know, an alternative proposal that is
7 reasonable, as would an April hearing sometime. But I
8 was, like I said, trying to respect the knowledge that I
9 had with Public Counsel and their deadlines that we had
10 already talked about, and their April does sound pretty
11 jam-packed.

12 Now, I don't know if some of those things
13 slip as well, and, again, I don't know, you know, how
14 much -- how big these testimony filings are going to be.
15 They may say, well, gee, this bothers us, or actually
16 nothing bothers us. So -- and wouldn't that be great?

17 But you know, I don't think that the
18 hearing, regardless of -- well, we don't know, but I
19 don't think we would need more than a day. Nobody's
20 proposed more than a day. I appreciate that Staff and
21 Public Counsel want to do their due diligence. I'm not
22 suggesting that that be given short shrift or glossed
23 over in any way. I'm not suggesting that people
24 shouldn't have time to do their jobs.

25 But we do feel as though, like I said, with

1 the nature of the transaction at the parent company
2 level -- you know, were Level 3 not a telco, we could do
3 this transaction -- you know, there would be no
4 question -- if we wanted to buy Google and we had the
5 money, we could do that without Commission approval.

6 And so, you know, I don't -- I think that
7 we're kind of here for reasons that maybe are just some
8 regulatory quirks and -- but I understand that the
9 Commission still wants to take a look at it. We're not
10 going to pound the table on that at this point.

11 We would greatly appreciate a hearing date
12 in, you know, either April or May that would reasonably
13 allow the parties time to prepare for a hearing, allow
14 the Commission to receive post-hearing briefing if they
15 wanted, allow Ms. Cameron-Rulkowski to leave the country
16 in June, and us to get an order before the end of the
17 second quarter.

18 JUDGE KOPTA: All right.

19 Here's what I can do today. Since
20 CenturyLink has represented that they can file their
21 direct testimony and any supplemental information that
22 they need to to be in compliance with WAC 480-143 by the
23 end of this week, then I will establish that deadline.
24 I don't think anyone's going to object, since that's
25 sooner than Staff and Public Counsel have proposed.

1 With respect to the remainder of the
2 schedule, I will take that under advisement. I will
3 discuss it with the commissioners and see what their
4 thoughts are. In the meantime, I would strongly urge
5 the parties to confer and see if they can come up with a
6 schedule that would anticipate a hearing in May.

7 If I don't hear anything from you within the
8 next couple of days, then I will assume that that was
9 not a fruitful discussion and we will proceed
10 accordingly as the commissioners decide.

11 Ms. Cameron-Rulkowski?

12 MS. CAMERON-RULKOWSKI: Thank you,
13 your Honor. Do you know that there are hearing dates
14 available in May?

15 JUDGE KOPTA: I do not. I am simply sitting
16 up here knowing my own schedule and what you all have
17 proposed. And certainly I can let you know if there are
18 dates in May that might work.

19 But obviously if that's just going to be a
20 nonstarter for Staff or Public Counsel, then that's kind
21 of fruitless trying to come up with that, because we'll
22 have to come up with that ourselves and within the
23 Commission, and we don't want to do that, obviously.

24 We would much rather set a date that is
25 going to work, however uncomfortably, with the parties'

1 schedules. But at the same time, when there's
2 disagreement, we have to resolve it.

3 MS. ANDERL: Your Honor -- I'm sorry. Go
4 ahead.

5 JUDGE KOPTA: I wasn't going to say
6 anything. Ms. Cameron-Rulkowski?

7 MS. CAMERON-RULKOWSKI: Just to make sure, I
8 was assuming that the commissioners will be sitting on
9 the hearing. Is that your understanding as well?

10 JUDGE KOPTA: That is my understanding, yes.

11 MS. CAMERON-RULKOWSKI: Thank you,
12 your Honor.

13 MS. ANDERL: Oh, I just wanted to clarify
14 and make sure that we were in agreement with Staff and
15 Public Counsel in terms of what -- besides our testimony
16 to be filed on Friday, what they believe is necessary
17 for compliance with those provisions of the Washington
18 Administrative Code that Ms. Cameron-Rulkowski cited. I
19 have in mind what I think we're going to file. I'd
20 rather not hear in three weeks that they didn't think it
21 was enough.

22 JUDGE KOPTA: Well, why don't we do this.
23 Rather than hash that out right now, as part of your
24 discussions about a potential agreed schedule, if you
25 would address that issue.

1 And if there are disagreements, then you can
2 present that to me and I can make a determination.
3 Hopefully you can see eye to eye on what you need -- on
4 what CenturyLink and Level 3 need to file in Staff's
5 view.

6 MS. ANDERL: We'll be happy to discuss that.

7 JUDGE KOPTA: All right.

8 MS. CAMERON-RULKOWSKI: Yes, your Honor.

9 JUDGE KOPTA: All right. Well, I think
10 that's where we are.

11 Is there anything else that we need to
12 discuss while we're here and on the record?

13 MS. CAMERON-RULKOWSKI: Yes, your Honor.
14 There was one item that I did not mention yet. Under
15 WAC 480-143-210, customer notices are generally
16 required. And we don't have to get that settled today,
17 but I did want to mention it and -- so that that can be
18 discussed among the parties.

19 JUDGE KOPTA: And I would expect that the
20 parties will discuss that. And again, if there's an
21 issue, you will bring it to my attention.

22 MS. CAMERON-RULKOWSKI: Thank you,
23 your Honor.

24 MS. ANDERL: Thank you.

25 JUDGE KOPTA: All right. Then we're done

1 and off the record. Thank you.

2 (Hearing concluded at 1:44 p.m.)

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CERTIFICATE

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I, ANITA W. SELF, 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.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this 15th day of February, 2017.

ANITA W. SELF, RPR, CCR #3032