

Docket No. UT-170042 - Vol. I

In the Matter of CenturyLink

February 8, 2017



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<p style="text-align: right;">Page 1</p> <p>1 BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION</p> <p>2</p> <p>3 In the Matter of the Notice of ) Transaction and Application of )</p> <p>4 CENTURYLINK ) Docket No. UT-170042</p> <p>5 )</p> <p>6 For an Order Declining to Assert) Jurisdiction Over, or in the ) Alternative, Expedited Approval ) 7 of the Indirect Transfer of ) Control of Level 3 )</p> <p>8 Communications, LLC, Broadwing ) Communications, LLC, Witel ) 9 Communications, LLC, Global ) Crossing Telecommunications, ) Inc., and Level 3 Telecom of ) 10 Washington, LLC to CenturyLink, ) 11 Inc. )</p> <p>12</p> <p>13 PREHEARING CONFERENCE - VOLUME I</p> <p>14 PAGES 1 - 36</p> <p>15 ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA</p> <p>16</p> <p>17 1:02 P.M. February 8, 2017</p> <p>18 Washington Utilities and Transportation Commission 1300 South Evergreen Park Drive Southwest 19 Olympia, Washington 98504-7250</p> <p>20 REPORTED BY: ANITA W. SELF, RPR, CCR #3032</p> <p>21 Buell Realtime Reporting, LLC. 22 1325 Fourth Avenue, Suite 1840 Seattle, Washington 98101 23 206.287.9066   Seattle 360.534.9066   Olympia 24 800.846.6989   National 25 www.buellrealtime.com</p>	<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S</p> <p>2 FOR LEVEL 3 COMMUNICATIONS, LLC:</p> <p>3 DANIELLE BURT (via phone) Morgan, Lewis &amp; Bockius, LLP 4 1111 Pennsylvania Avenue NW Washington, DC 20004 202.373.6000 danielle.burt@morganlewis.com</p> <p>5 PAMELA HOLLICK (via phone) Associated General Counsel 6 4625 W. 86th Street, Suite 500 Indianapolis, IN 46268 317.713.8977 pamela.hollick@level3.com</p> <p>7 *****</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2 ADMINISTRATIVE LAW JUDGE:</p> <p>3 GREGORY J. KOPTA Washington Utilities and 4 Transportation Commission 1300 So. Evergreen Park Drive SW 5 P.O. Box 47250 Olympia, Washington 98504 360.664.1355 gkopta@utc.wa.gov</p> <p>6</p> <p>7</p> <p>8 FOR WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION:</p> <p>9 JENNIFER CAMERON-RULKOWSKI Assistant Attorney General 10 1400 So. Evergreen Park Drive SW P.O. Box 40128 11 Olympia, Washington 98504 360.664.1186 jcameron@utc.wa.gov</p> <p>12</p> <p>13</p> <p>14 FOR CENTURYLINK:</p> <p>15 LISA A. ANDERL CenturyLink Associate General Counsel 16 1600 7th Avenue, Room 1506 Seattle, Washington 98191 206.345.1574 lisa.anderl@centurylink.com</p> <p>17</p> <p>18</p> <p>19 FOR PUBLIC COUNSEL:</p> <p>20 LISA W. GAEKEN ARMIKKA BRYANT 21 Attorney General of Washington 800 5th Avenue, Suite 2000, TB-14 Seattle, Washington 98104 206.464.6595 206.380.2055 22 lisa.gaeken@atg.wa.gov armikkab@atg.wa.gov</p> <p>23</p> <p>24</p> <p>25 (Continued...)</p>	<p style="text-align: right;">Page 4</p> <p>1 OLYMPIA, WASHINGTON; FEBRUARY 8, 2017</p> <p>2 1:02 P.M.</p> <p>3 -o0o-</p> <p>4</p> <p>5 JUDGE KOPTA: Let's be on the record in</p> <p>6 Docket UT-170042, captioned briefly In the Matter of the</p> <p>7 Notice of Transaction and Application of CenturyLink.</p> <p>8 We are here for a prehearing conference, and</p> <p>9 my name is Gregory J. Kopta. I'm the administrative law</p> <p>10 judge who will be presiding with the commissioners in</p> <p>11 this proceeding.</p> <p>12 And let's begin by taking appearances,</p> <p>13 beginning with CenturyLink.</p> <p>14 MS. ANDERL: Good afternoon, your Honor. My</p> <p>15 name is Lisa Anderl, and I am in-house counsel for</p> <p>16 CenturyLink located in Seattle. My full contact</p> <p>17 information was contained in the January 17th</p> <p>18 application. Would you like me to state it again?</p> <p>19 JUDGE KOPTA: Nope. That is sufficient.</p> <p>20 MS. ANDERL: Thank you.</p> <p>21 JUDGE KOPTA: Commission Staff?</p> <p>22 MS. CAMERON-RULKOWSKI: Jennifer</p> <p>23 Cameron-Rulkowski, Assistant Attorney General, appearing</p> <p>24 on behalf of Commission Staff. And all of my contact</p> <p>25 information is listed in my Notice of Appearance on</p>

<p style="text-align: right;">Page 5</p> <p>1 file.</p> <p>2 JUDGE KOPTA: Thank you.</p> <p>3 And Public Counsel?</p> <p>4 MR. BRYANT: Armikka Bryant, Attorney</p> <p>5 General's Office, Public Counsel Division. And all of</p> <p>6 my contact information is also listed -- listed in the</p> <p>7 Notice of Appearance.</p> <p>8 JUDGE KOPTA: All right. Thank you.</p> <p>9 And I understand we have representatives</p> <p>10 from Level 3, et al., on the bridge line. Would you</p> <p>11 like to make an appearance at this point?</p> <p>12 MS. BURT (via phone): Yes, your Honor.</p> <p>13 This is Danielle Burt, counsel for Level 3. I work at</p> <p>14 Morgan Lewis. I do have one update to my contact</p> <p>15 information that was provided in the underlying filing,</p> <p>16 and that is, my address is now at 1111 Pennsylvania</p> <p>17 Avenue NW, Washington, DC 20004. The rest of the</p> <p>18 information remains the same.</p> <p>19 JUDGE KOPTA: All right.</p> <p>20 Anyone else?</p> <p>21 MS. HOLLICK (via phone): And your Honor,</p> <p>22 this is Pamela Hollick. I am associate general counsel</p> <p>23 with Level 3 Communications. My business address is</p> <p>24 4625 West 86th Street, Suite 500, Indianapolis, Indiana</p> <p>25 46268.</p>	<p style="text-align: right;">Page 7</p> <p>1 external parties, I think that confidential and highly</p> <p>2 confidential information would be treated the same for</p> <p>3 Public Counsel and Staff, so I think we're going to be</p> <p>4 okay with just the regular designation.</p> <p>5 Which is easier, to get highly confidential</p> <p>6 later or to get it now and never use it?</p> <p>7 JUDGE KOPTA: Well, let's just go with the</p> <p>8 standard protective order for now, and if we need to</p> <p>9 later on, you can ask for the highly confidential</p> <p>10 protection.</p> <p>11 MS. ANDERL: Yeah.</p> <p>12 JUDGE KOPTA: As you say, given that we have</p> <p>13 only Staff and Public Counsel as the other parties, it</p> <p>14 doesn't seem to be necessary at this juncture, at least.</p> <p>15 So I will enter a protective order.</p> <p>16 At this point the proposed procedural rules</p> <p>17 are not yet in place, so I will ask parties if they</p> <p>18 consent to electronic only service from the Commission</p> <p>19 in this docket?</p> <p>20 MS. ANDERL: Yes, we do.</p> <p>21 MS. CAMERON-RULKOWSKI: Yes, Commission</p> <p>22 Staff does.</p> <p>23 MR. BRYANT: Yes, Public Counsel does.</p> <p>24 JUDGE KOPTA: All right.</p> <p>25 MS. BURT: Level 3 does as well.</p>
<p style="text-align: right;">Page 6</p> <p>1 JUDGE KOPTA: All right. Thank you.</p> <p>2 Anyone else wishing to make an appearance?</p> <p>3 Hearing none, we will proceed.</p> <p>4 The first order of business is petitions to</p> <p>5 intervene. The Commission has not received any written</p> <p>6 petitions to intervene. Is there anyone that wishes to</p> <p>7 make an oral petition to intervene? Hearing none, we</p> <p>8 will now have the parties as they have appeared.</p> <p>9 The next issue, discovery. Do the parties</p> <p>10 feel the need to have the Commission's discovery rules</p> <p>11 available?</p> <p>12 MS. CAMERON-RULKOWSKI: Yes, your Honor.</p> <p>13 Commission Staff would like to have the discovery rules</p> <p>14 available.</p> <p>15 MR. BRYANT: Yes, your Honor.</p> <p>16 JUDGE KOPTA: All right.</p> <p>17 MS. ANDERL: No objection.</p> <p>18 JUDGE KOPTA: We will make the discovery</p> <p>19 rules available to the parties.</p> <p>20 Do we need a protective order, Ms. Anderl?</p> <p>21 MS. ANDERL: Yes.</p> <p>22 JUDGE KOPTA: All right.</p> <p>23 The standard protective order with</p> <p>24 confidential provisions only?</p> <p>25 MS. ANDERL: Given that there are no</p>	<p style="text-align: right;">Page 8</p> <p>1 JUDGE KOPTA: Great. Thanks.</p> <p>2 MS. ANDERL: Your Honor, could we seek</p> <p>3 clarification then? With filings made by parties, is</p> <p>4 that -- there's still paper copies required?</p> <p>5 JUDGE KOPTA: I'm hopeful that we will have</p> <p>6 the procedural rules in place in short order, but let's</p> <p>7 say, for purposes of this proceeding, unless there's an</p> <p>8 objection, then parties would only need to file their</p> <p>9 documents and serve them electronically.</p> <p>10 Is that acceptable to all the parties?</p> <p>11 MS. ANDERL: That's great.</p> <p>12 MS. BURT: Yes for Level 3.</p> <p>13 MS. ANDERL: Was that Pamela or Danielle?</p> <p>14 MS. BURT: Oh, this is Danielle.</p> <p>15 JUDGE KOPTA: Commission Staff?</p> <p>16 MS. CAMERON-RULKOWSKI: Commission Staff</p> <p>17 says yes, we're getting there.</p> <p>18 JUDGE KOPTA: I understand it's a</p> <p>19 transition. I appreciate your cooperation.</p> <p>20 And for Public Counsel?</p> <p>21 MR. BRYANT: Public counsel agrees with</p> <p>22 Commission Staff.</p> <p>23 JUDGE KOPTA: All right. Then we will be</p> <p>24 all electronic.</p> <p>25 That's everything on my list except for the</p>

<p style="text-align: right;">Page 9</p> <p>1 schedule. Before we get to that, because I understand</p> <p>2 there will be some disagreement, is there any other</p> <p>3 issue that we can address -- that we need to address at</p> <p>4 this point? No?</p> <p>5 All right. Then let's -- oh, yes.</p> <p>6 MS. CAMERON-RULKOWSKI: Yes, your Honor. It</p> <p>7 may be best to try to address this before we get into</p> <p>8 the specifics of the schedule. It looks like we're</p> <p>9 going forward now to set a procedural schedule for this</p> <p>10 matter.</p> <p>11 And what Staff would be interested in</p> <p>12 learning, and hopes that the Commission would also be</p> <p>13 interested in learning, is whether CenturyLink is</p> <p>14 conceding jurisdiction under the -- under RCW 80.12 and</p> <p>15 under the A4 order.</p> <p>16 And I'm asking this question because this</p> <p>17 filing was originally styled as a notice and request for</p> <p>18 an order declining to assert jurisdiction.</p> <p>19 JUDGE KOPTA: Well, my interpretation of the</p> <p>20 filing is, as is often the case in acquisition or merger</p> <p>21 proceedings, that the company is asking that the</p> <p>22 Commission either disclaim jurisdiction, or in the</p> <p>23 alternative, approval.</p> <p>24 And Ms. Anderl can correct me if my</p> <p>25 interpretation is incorrect. So if it is, then I don't</p>	<p style="text-align: right;">Page 11</p> <p>1 Commission -- this is new ground, because this A4 order</p> <p>2 has not been asked to be interpreted prior to this. And</p> <p>3 it is a significant transaction with a fairly large</p> <p>4 dollar amount at stake. We understand that, and we're</p> <p>5 not -- we understand that the Commission may want, you</p> <p>6 know, to have some chance to review the transaction and</p> <p>7 ask questions about it.</p> <p>8 We had originally suggested that the</p> <p>9 appropriate process would be to set this over for a</p> <p>10 recessed open meeting and give the Commission an</p> <p>11 opportunity to do that at that time.</p> <p>12 It now appears as though the Commission has</p> <p>13 chosen to do something a little more formal than that,</p> <p>14 and that's fine. We're happy to participate in that.</p> <p>15 That does not constitute a waiver of our jurisdictional</p> <p>16 arguments, but rather a position that we will go forward</p> <p>17 preserving that jurisdictional argument and hope that</p> <p>18 the proceeding comes out the way we want it to.</p> <p>19 JUDGE KOPTA: Fair enough.</p> <p>20 MS. ANDERL: That -- is that as direct as I</p> <p>21 need to be?</p> <p>22 JUDGE KOPTA: I get your message, yes.</p> <p>23 Thank you. And that is fully within my expectation of</p> <p>24 what the company's position would be, and certainly is</p> <p>25 consistent with positions that your predecessor company</p>
<p style="text-align: right;">Page 10</p> <p>1 know that we need anything else at this juncture, but I</p> <p>2 will let you respond and let me know what you think.</p> <p>3 MS. ANDERL: Well, you've characterized the</p> <p>4 filing correctly, and I don't know if what I'm about to</p> <p>5 say will illuminate things any further or not, but</p> <p>6 we'll give it a shot.</p> <p>7 I think it's clear that our position is that</p> <p>8 the A4 order and the statutes read together, and looking</p> <p>9 at this transaction and the nature of this transaction,</p> <p>10 it is a transaction that is exempt from Commission</p> <p>11 approval under the A4 because it is neither a sale of</p> <p>12 exchanges, nor is it a sale of access lines.</p> <p>13 And the A4 carved out a pretty narrow</p> <p>14 exception from the transfer of property statutes. The</p> <p>15 whole point of the A4 was to recognize the intense</p> <p>16 competition which the industry is subject to, and to</p> <p>17 regulate CenturyLink in a manner consistent with how its</p> <p>18 competitors were regulated, at least its regulated</p> <p>19 competitors -- many of our competitors aren't even</p> <p>20 regulated -- but as if we were a CLEC.</p> <p>21 As a CLEC, no CLEC entities in the state</p> <p>22 would have to seek approval for a transaction of this</p> <p>23 type, and we believe that we fall squarely within that</p> <p>24 as well.</p> <p>25 That said, we recognize that the</p>	<p style="text-align: right;">Page 12</p> <p>1 and others have taken, and I would expect that that's</p> <p>2 what -- how this proceeding will be framed.</p> <p>3 I will -- I will observe that, to the extent</p> <p>4 that the A4 essentially treats CenturyLink like a CLEC</p> <p>5 in many regards, that the Commission has in the past</p> <p>6 effectively revoked the waiver of transfer of property</p> <p>7 requirements when the transaction has been sufficiently</p> <p>8 large, I guess. I'm thinking specifically of one MCI</p> <p>9 and Sprint who are going to merge.</p> <p>10 So I'm not making any decision at this point</p> <p>11 on behalf of the Commission. That's something that the</p> <p>12 commissioners will have to determine, but I'm prepared</p> <p>13 to schedule the -- so I'm prepared to schedule the</p> <p>14 proceeding in a manner that will enable the Commission</p> <p>15 to have the information that it needs to make a decision</p> <p>16 either way.</p> <p>17 Ms. Cameron-Rulkowski, did you want to say</p> <p>18 something at this point, or would you prefer to hold</p> <p>19 your fire until that issue is posed more formally?</p> <p>20 MS. CAMERON-RULKOWSKI: I would like to</p> <p>21 comment, your Honor.</p> <p>22 One of the issues that the question affects</p> <p>23 is the filing's compliance with WAC 480-143, which is</p> <p>24 the transfer of control chapter, and there are some</p> <p>25 aspects in which this filing is not in compliance.</p>

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<p>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.</p> <p>6 The other issue, of course, is if we're 7 briefing jurisdiction, then we need to plan for that in 8 the schedule.</p> <p>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.</p> <p>13 Mr. Bryant, did you have anything on behalf 14 of Public Counsel?</p> <p>15 MR. BRYANT: Not at this time.</p> <p>16 JUDGE KOPTA: Thank you. All right.</p> <p>17 I think we've gotten as far with that as 18 we're going to today, so let's discuss schedule.</p> <p>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.</p> <p>23 Ms. Anderl, I understand that you have a 24 different schedule in mind.</p> <p>25 MS. ANDERL: Yes. Not surprisingly,</p>	<p>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.</p> <p>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.</p> <p>7 MS. ANDERL: Yeah. Then we would say that 8 March 10th would be a good settlement conference date.</p> <p>9 JUDGE KOPTA: Okay.</p> <p>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.</p> <p>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.</p> <p>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</p>
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<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p>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.</p> <p>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.</p> <p>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</p>

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<p>1 transaction uncertainty.</p> <p>2 I'm not saying that I know for sure that</p> <p>3 every single state and the FCC will be in by then. I</p> <p>4 just don't want Washington to be not in.</p> <p>5 JUDGE KOPTA: Understood.</p> <p>6 When is the target date for closing the</p> <p>7 transaction?</p> <p>8 MS. ANDERL: Right now the closing date per</p> <p>9 the agreement of merger is September 30th. It's the end</p> <p>10 of the third quarter. Typically --</p> <p>11 JUDGE KOPTA: Is that --</p> <p>12 MS. ANDERL: -- transactions of this nature</p> <p>13 want to close on a quarter end because of the -- the</p> <p>14 accounting issues that make it a lot easier to do it</p> <p>15 that way. So I was just talking to Staff and Public</p> <p>16 Counsel. It's not like we can just move things up</p> <p>17 30 days and it helps. It's kind of like it's all or</p> <p>18 nothing.</p> <p>19 JUDGE KOPTA: Are there any penalties or</p> <p>20 other issues that would arise if you are not able to</p> <p>21 close the transaction by September 30th?</p> <p>22 MS. ANDERL: There's, I believe, an</p> <p>23 extension available for one month, and then I'd have to</p> <p>24 double-check and see what the termination provisions are</p> <p>25 in the agreement by then, after that point.</p>	<p>1 opposed to closed is harmful if everything else is ready</p> <p>2 to go.</p> <p>3 JUDGE KOPTA: Understood. And obviously the</p> <p>4 Commission's interest both is in having a prompt</p> <p>5 resolution and in making sure that we have sufficient</p> <p>6 information that we can make a determination that's</p> <p>7 consistent with the public interests. So there's always</p> <p>8 that balancing of interests.</p> <p>9 MS. ANDERL: Right. And then that is why we</p> <p>10 are willing to compress the discovery responses and, you</p> <p>11 know, cooperate fully, as we always do --</p> <p>12 JUDGE KOPTA: Of course.</p> <p>13 MS. ANDERL: -- in getting the staff the</p> <p>14 information they need.</p> <p>15 JUDGE KOPTA: All right.</p> <p>16 Mr. Bryant, your turn.</p> <p>17 MR. BRYANT: So I believe your Honor has the</p> <p>18 schedule that Staff provided in front of you.</p> <p>19 JUDGE KOPTA: I do.</p> <p>20 MR. BRYANT: So we can just pick up at the</p> <p>21 response testimony. There, Public Counsel, it says two</p> <p>22 months in between -- between the events in the timeline.</p> <p>23 Public Counsel will agree to just five days there with</p> <p>24 response testimony and rebuttal.</p> <p>25 JUDGE KOPTA: So why don't you give me</p>
Page 18	Page 20
<p>1 JUDGE KOPTA: All right. I'm just trying to</p> <p>2 get a sense for how hard that deadline is in terms of</p> <p>3 what the companies are -- have agreed to. So --</p> <p>4 MS. ANDERL: I might defer to my Level 3</p> <p>5 colleagues, if any of them know of the -- if there is a</p> <p>6 financial penalty or an automatic termination after the</p> <p>7 October 31st extension date. I'm sorry. I just don't</p> <p>8 have that at the tip of my fingers.</p> <p>9 JUDGE KOPTA: And this is purely to -- in</p> <p>10 terms of me deciding on a schedule, just to see what the</p> <p>11 ramifications are both from the Commission standpoint</p> <p>12 and from the company standpoint.</p> <p>13 MS. BURT: This is Danielle again for Level</p> <p>14 3. I am not aware of something concrete. As Lisa was</p> <p>15 saying, there are provisions in the agreement. There</p> <p>16 could be something more there. We have to look. I just</p> <p>17 don't have it at my fingertips.</p> <p>18 JUDGE KOPTA: Okay. Thank you.</p> <p>19 MS. ANDERL: As I said, it's just the</p> <p>20 synergies can't start to be realized until we can</p> <p>21 actually close and begin the integrations. Those</p> <p>22 synergies are significant, financially very significant</p> <p>23 and valuable to the companies.</p> <p>24 And as I said, if there -- you know, three</p> <p>25 additional months of having the transaction pending as</p>	<p>1 dates. I think that would make it easier for me to see</p> <p>2 what exactly it is that you're proposing.</p> <p>3 MR. BRYANT: Okay. So that would be, after</p> <p>4 the response testimony, five days for discovery. I</p> <p>5 don't have a calendar in front of me, so I don't know</p> <p>6 what day of the week that is, if that would fall on the</p> <p>7 weekend, but it's looking around March -- or I'm sorry,</p> <p>8 April 30th.</p> <p>9 JUDGE KOPTA: All right. I'm a little</p> <p>10 confused. Right now Staff proposes direct testimony on</p> <p>11 February 28th and response testimony on April 25th. Are</p> <p>12 you proposing to change either of those dates?</p> <p>13 MR. BRYANT: The response testimony.</p> <p>14 JUDGE KOPTA: And you would change that to</p> <p>15 what date?</p> <p>16 MS. GAFKEN: Sorry. I'll just jump in real</p> <p>17 quick.</p> <p>18 JUDGE KOPTA: Sure.</p> <p>19 MS. GAFKEN: So the proposal there is to</p> <p>20 insert kind of a standard ratcheting down of the</p> <p>21 response time for discovery after the responsive</p> <p>22 testimony comes in. So we have the ratcheting down to</p> <p>23 seven, so although it sounds like we may also ratchet it</p> <p>24 down to five at the start. But if it starts out at</p> <p>25 seven, then we would propose that it then shrinks down</p>

<p style="text-align: right;">Page 21</p> <p>1 to five days after the responsive testimony comes in.</p> <p>2 JUDGE KOPTA: But at this point you're</p> <p>3 still -- you're in agreement with Staff of that deadline</p> <p>4 for the response testimony to be filed?</p> <p>5 MS. GAFKEN: Correct.</p> <p>6 JUDGE KOPTA: Okay.</p> <p>7 And any further revisions that you would</p> <p>8 propose, Mr. Bryant, to Staff's --</p> <p>9 MR. BRYANT: Yes. So with the rebuttal,</p> <p>10 cross-answering testimony, I believe Lisa proposed that</p> <p>11 that be oral at the hearing. We prefer written</p> <p>12 briefing -- briefing in writing.</p> <p>13 JUDGE KOPTA: You would prefer to have</p> <p>14 written pre-filed rebuttal testimony?</p> <p>15 MR. BRYANT: Yes.</p> <p>16 JUDGE KOPTA: And would you change the date?</p> <p>17 MR. BRYANT: We are looking at, instead of</p> <p>18 one month to get that in, three weeks is fine with</p> <p>19 Public Counsel.</p> <p>20 JUDGE KOPTA: So a week earlier than what</p> <p>21 Staff has proposed?</p> <p>22 MR. BRYANT: Yes, correct.</p> <p>23 JUDGE KOPTA: And do you have a different</p> <p>24 hearing date in mind?</p> <p>25 MR. BRYANT: Hearing date, no.</p>	<p style="text-align: right;">Page 23</p> <p>1 conflicts through April, which Ms. Anderl stated</p> <p>2 earlier, this schedule does not conflict with our</p> <p>3 current schedule.</p> <p>4 JUDGE KOPTA: Okay. Understood.</p> <p>5 And with respect to the schedule that</p> <p>6 CenturyLink has proposed, do you have conflicts with</p> <p>7 that schedule?</p> <p>8 MR. BRYANT: It would kind of put us -- we'd</p> <p>9 be burning the candle at both ends with respect to the</p> <p>10 different filings we have due in April. And to meet</p> <p>11 this compressed timeline for a March 29th hearing would</p> <p>12 be a bit burdensome given our current staffing.</p> <p>13 JUDGE KOPTA: Okay.</p> <p>14 MS. ANDERL: And your Honor --</p> <p>15 JUDGE KOPTA: Did you have something</p> <p>16 further, Mr. Bryant?</p> <p>17 MR. BRYANT: Yes, I did. We also are -- we</p> <p>18 are reaching out to several different consultants, and</p> <p>19 to have their availability in front of us before</p> <p>20 committing to this compressed timeline would be</p> <p>21 something that we would greatly appreciate. We don't</p> <p>22 have any experts lined up at this particular time.</p> <p>23 JUDGE KOPTA: Okay.</p> <p>24 Ms. Anderl, did you want to say something?</p> <p>25 MS. ANDERL: May I hold my fire until after</p>
<p style="text-align: right;">Page 22</p> <p>1 JUDGE KOPTA: Okay.</p> <p>2 So as I read this, you're -- Public Counsel</p> <p>3 basically is supportive of Staff's proposed schedule; is</p> <p>4 that correct?</p> <p>5 MR. BRYANT: I'm sorry. And -- I'm sorry.</p> <p>6 Reply briefs. CenturyLink's proposed schedule says to</p> <p>7 eliminate that step in the process, and we would prefer</p> <p>8 to have reply briefs filed.</p> <p>9 JUDGE KOPTA: Okay. So you're still in</p> <p>10 accord with Staff?</p> <p>11 MR. BRYANT: Yes.</p> <p>12 JUDGE KOPTA: Okay.</p> <p>13 Yes, Ms. Cameron-Rulkowski.</p> <p>14 MS. CAMERON-RULKOWSKI: I just wanted to be</p> <p>15 sure that I'll get a chance to talk about our proposed</p> <p>16 schedule.</p> <p>17 JUDGE KOPTA: Well, I will certainly give</p> <p>18 you that opportunity because I will want to understand</p> <p>19 why Staff and Public Counsel believe that a schedule</p> <p>20 that is this lengthy is necessary in this proceeding.</p> <p>21 So unless Mr. Bryant has anything further, I</p> <p>22 will let Ms. Cameron-Rulkowski give her explanation.</p> <p>23 MR. BRYANT: I'm sorry. I will jump back</p> <p>24 in. It's not that we are concurring or agreeing with</p> <p>25 the schedule. Our -- it's just that, other than the</p>	<p style="text-align: right;">Page 24</p> <p>1 Ms. Cameron-Rulkowski speaks?</p> <p>2 JUDGE KOPTA: I think that probably makes</p> <p>3 more sense.</p> <p>4 MS. CAMERON-RULKOWSKI: That doesn't bode</p> <p>5 well.</p> <p>6 So first I'd like to clarify. I have all of</p> <p>7 the dates in the schedule to provide the most</p> <p>8 information that I can. It was not the intent of Staff</p> <p>9 that the Commission would not get an order out until</p> <p>10 December. In fact, with our schedule, it looked</p> <p>11 perfectly reasonable to get that order out in time for</p> <p>12 the company's preferred closing date of September 30th.</p> <p>13 I understand that they'd like to close earlier than</p> <p>14 that, but that is their closing date.</p> <p>15 I will also note that I did take a look at</p> <p>16 the agreement and plan of merger which is footnoted in</p> <p>17 the filing, and I have the termination date in this</p> <p>18 schedule, which is October 31st, but I do recall reading</p> <p>19 that the closing could be extended, and I can't remember</p> <p>20 if it was three or four months if State approvals had</p> <p>21 not been received by that time. So that's something, of</p> <p>22 course, that we can all go and read ourselves.</p> <p>23 I'm -- we're pleased to hear CenturyLink</p> <p>24 willing to compress discovery. Staff has a lot of</p> <p>25 concerns about getting the information that they need.</p>

<p style="text-align: right;">Page 25</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 27</p> <p>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.</p> <p>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?</p> <p>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?</p> <p>17 JUDGE KOPTA: That would be my anticipation, 18 yes.</p> <p>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.</p> <p>23 JUDGE KOPTA: Okay.</p> <p>24 And Public Counsel, I'll pose the same 25 question to you.</p>
<p style="text-align: right;">Page 26</p> <p>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.</p> <p>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 --</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>25 JUDGE KOPTA: All right.</p>	<p style="text-align: right;">Page 28</p> <p>1 MS. GAFKEN: I'll jump in, just because I 2 have a pretty good grasp on everything that's before 3 Public Counsel.</p> <p>4 JUDGE KOPTA: I would expect so, yes.</p> <p>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.</p> <p>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 --</p> <p>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.</p> <p>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.</p>



<p style="text-align: right;">Page 29</p> <p>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.</p> <p>9 So there's a lot of competing components 10 when it comes into developing the schedule. Lots of 11 things to balance.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 31</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>18 JUDGE KOPTA: All right.</p> <p>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.</p>
<p style="text-align: right;">Page 30</p> <p>1 that you may not like it.</p> <p>2 Ms. Anderl?</p> <p>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.</p> <p>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?</p> <p>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.</p> <p>25 But we do feel as though, like I said, with</p>	<p style="text-align: right;">Page 32</p> <p>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.</p> <p>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.</p> <p>11 Ms. Cameron-Rulkowski?</p> <p>12 MS. CAMERON-RULKOWSKI: Thank you, 13 your Honor. Do you know that there are hearing dates 14 available in May?</p> <p>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.</p> <p>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.</p> <p>24 We would much rather set a date that is 25 going to work, however uncomfortably, with the parties'</p>

<p style="text-align: right;">Page 33</p> <p>1 schedules. But at the same time, when there's</p> <p>2 disagreement, we have to resolve it.</p> <p>3 MS. ANDERL: Your Honor -- I'm sorry. Go</p> <p>4 ahead.</p> <p>5 JUDGE KOPTA: I wasn't going to say</p> <p>6 anything. Ms. Cameron-Rulkowski?</p> <p>7 MS. CAMERON-RULKOWSKI: Just to make sure, I</p> <p>8 was assuming that the commissioners will be sitting on</p> <p>9 the hearing. Is that your understanding as well?</p> <p>10 JUDGE KOPTA: That is my understanding, yes.</p> <p>11 MS. CAMERON-RULKOWSKI: Thank you,</p> <p>12 your Honor.</p> <p>13 MS. ANDERL: Oh, I just wanted to clarify</p> <p>14 and make sure that we were in agreement with Staff and</p> <p>15 Public Counsel in terms of what -- besides our testimony</p> <p>16 to be filed on Friday, what they believe is necessary</p> <p>17 for compliance with those provisions of the Washington</p> <p>18 Administrative Code that Ms. Cameron-Rulkowski cited. I</p> <p>19 have in mind what I think we're going to file. I'd</p> <p>20 rather not hear in three weeks that they didn't think it</p> <p>21 was enough.</p> <p>22 JUDGE KOPTA: Well, why don't we do this.</p> <p>23 Rather than hash that out right now, as part of your</p> <p>24 discussions about a potential agreed schedule, if you</p> <p>25 would address that issue.</p>	<p style="text-align: right;">Page 35</p> <p>1 and off the record. Thank you.</p> <p>2 (Hearing concluded at 1:44 p.m.)</p> <p>3 -o0o-</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 34</p> <p>1 And if there are disagreements, then you can</p> <p>2 present that to me and I can make a determination.</p> <p>3 Hopefully you can see eye to eye on what you need -- on</p> <p>4 what CenturyLink and Level 3 need to file in Staff's</p> <p>5 view.</p> <p>6 MS. ANDERL: We'll be happy to discuss that.</p> <p>7 JUDGE KOPTA: All right.</p> <p>8 MS. CAMERON-RULKOWSKI: Yes, your Honor.</p> <p>9 JUDGE KOPTA: All right. Well, I think</p> <p>10 that's where we are.</p> <p>11 Is there anything else that we need to</p> <p>12 discuss while we're here and on the record?</p> <p>13 MS. CAMERON-RULKOWSKI: Yes, your Honor.</p> <p>14 There was one item that I did not mention yet. Under</p> <p>15 WAC 480-143-210, customer notices are generally</p> <p>16 required. And we don't have to get that settled today,</p> <p>17 but I did want to mention it and -- so that that can be</p> <p>18 discussed among the parties.</p> <p>19 JUDGE KOPTA: And I would expect that the</p> <p>20 parties will discuss that. And again, if there's an</p> <p>21 issue, you will bring it to my attention.</p> <p>22 MS. CAMERON-RULKOWSKI: Thank you,</p> <p>23 your Honor.</p> <p>24 MS. ANDERL: Thank you.</p> <p>25 JUDGE KOPTA: All right. Then we're done</p>	<p style="text-align: right;">Page 36</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3 STATE OF WASHINGTON )</p> <p>4 ) ss. ) COUNTY OF KING )</p> <p>5</p> <p>6</p> <p>7 I, ANITA W. SELF, a Certified Shorthand Reporter</p> <p>8 in and for the State of Washington, do hereby certify</p> <p>9 that the foregoing transcript is true and accurate to</p> <p>10 the best of my knowledge, skill and ability.</p> <p>11 IN WITNESS WHEREOF, I have hereunto set my hand</p> <p>12 and seal this 15th day of February, 2017.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17 ANITA W. SELF, RPR, CCR #3032</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>