

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

<p>WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,</p> <p style="text-align: center;">Complainant,</p> <p style="text-align: center;">v.</p> <p>QWEST CORPORATION, d/b/a CENTURYLINK QC,</p> <p style="text-align: center;">Respondent.</p>	<p>DOCKET UT-140597</p> <p>ORDER 04</p> <p>GRANTING, IN PART, MOTION TO AMEND ORDER 02</p>
<p>In the Matter of the Notice of Transaction and Application of</p> <p>CENTURYLINK</p> <p>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.; Global Crossing Local Services, Inc.; and Level 3 Telecom of Washington, LLC, to Centurylink, Inc.</p>	<p>DOCKET UT-170042</p> <p>ORDER 04</p> <p>GRANTING, IN PART, MOTION TO AMEND ORDER 01</p>

BACKGROUND

1 The Washington Utilities and Transportation Commission (Commission) entered its final order in Docket UT-140597 on February 22, 2016, and entered its final order in Docket UT-170042 on July 27, 2017. Qwest Corporation, d/b/a CenturyLink QC and CenturyLink (collectively CenturyLink or Company) has made subsequent compliance filings, but there has otherwise been no substantive activity in these dockets since the Commission entered the final orders.

- 2 On March 8 and 11, 2019, Commission staff (Staff) filed an Exhibit B, Expert Agreement, to the Protective Orders in each of these dockets (Order 02 in Docket UT-140597 and Order 01 in Docket UT-170042) on behalf of Glenn A. Roach.¹ Staff has retained Mr. Roach to assist it in its investigation of an E911 service incident in December 2018 involving the Company.
- 3 On March 15, 2019, CenturyLink filed a motion to enforce the Protective Orders, objecting to allowing Mr. Roach to have access to the confidential information they protect. The Company contends that the protective orders specify that confidential information provided in these dockets may be accessed and used only for purposes of those dockets. CenturyLink, therefore, argues that Staff seeks to violate the protective orders by allowing Mr. Roach to access confidential information in connection with an investigation in a different docket.
- 4 Staff filed its response to CenturyLink's motion on March 22, 2019. Staff does not dispute that allowing Mr. Roach to access confidential information in Docket UT-140597 and UT-170042 for purposes other than those dockets would be inconsistent with the Protective Orders. Staff requests that the Commission modify those orders to permit Mr. Roach to access that confidential information as part of Staff's current E911 investigation. Alternatively, Staff requests that the Commission issue a subpoena for that information and enter a protective order in the new docket.
- 5 The Commission scheduled a hearing on CenturyLink's motion and Staff's requests for April 3, 2019. On April 2, 2019, Staff circulated a list of the documents containing information designated as confidential that Staff currently seeks to allow Mr. Roach to access. CenturyLink, Staff, and the Public Counsel Section of the Washington Attorney General's Office (Public Counsel) appeared and participated in the hearing.
- 6 CenturyLink objects to allowing Mr. Roach to access all but three of the documents on Staff's lists on the grounds that they are unrelated to Staff's investigation. The Company also objected to modifying the Protective Orders or otherwise allowing Mr. Roach to have unfettered access to all confidential information in Dockets UT-140597 and UT-170042, most of which has nothing to do with E911 service.

¹ Staff also filed an Exhibit B to the protective order for Mr. Roach in Docket UT-132234 but subsequently withdrew its request to allow Mr. Roach to access confidential information in that docket.

- 7 Staff counters that Mr. Roach’s review of confidential information in the other dockets will be limited to documents that are useful to Staff’s investigation and that all of his access to such material will come through Staff. Staff states that disallowing Mr. Roach from having such access will be severely detrimental to Staff’s investigation because he has expertise in E911 network issues that Staff otherwise lacks.
- 8 Public Counsel supports Staff’s request but recognizes that Staff’s request to amend the Protective Orders may be problematic. Public Counsel states that it also has faced obstacles in its efforts to allow its experts to review confidential information in nonadjudicative dockets and believes that the Commission’s investigative powers provide Staff with legal authority Public Counsel lacks to obtain the requested access.

DISCUSSION AND DECISION

- 9 The parties present the Commission with a novel dilemma. We agree that the purpose of the Commission’s standard protective order is to enable parties to access information designated as confidential and submitted in a specific docket solely for purposes of that docket. We have no desire to undermine the protection we provide in those orders or to facilitate fishing expeditions among confidential documents by allowing access to information designated as confidential for some other purpose.
- 10 On the other hand, the Commission has a statutory duty to regulate public service companies in the public interest, and we will use all reasonable means within our authority to fulfill that obligation. One such means is Staff investigations of company operations. The Commission has broad investigative authority over the companies it regulates, and we will not readily restrict that authority if the result is a significant diminution of the Commission’s ability to perform its regulatory function.
- 11 To resolve this conflict we first must look to the statute. “[A]ny person employed by the commission, shall have the right, at any and all times, to inspect the accounts, books, papers, and documents of any public service company.”² The statute does not specify the location of that company information, but any reasonable interpretation of the Commission’s authority necessarily includes the right to inspect company documents that the Commission already possesses as part of its records. If such documents contain “valuable commercial information,” however, they “shall not be subject to inspection or

² RCW 80.04.070.

copying under chapter 42.56 RCW,” the Public Records Act, except under certain conditions, and “[n]othing in this section shall prevent the use of protective orders by the commission governing disclosure of proprietary or confidential information in contested proceedings.”³

- 12 Staff seeks access to documents that the Company filed in dockets UT-140597 and UT-170042 that continue to be included in the Commission’s records. Those documents contain information that CenturyLink has designated as confidential, but Staff is not requesting to inspect those documents under the Public Records Act. Rather, Staff wants to inspect those documents as part of an investigation into company operations. The statute authorizes just such an inspection.
- 13 The impediment, however, is the Protective Orders. All parties agree that those orders restrict access to information designated as confidential to purposes of the docket in which it was filed, and Staff’s current investigation is not such a purpose. The issue, then, is whether Staff’s need for access to these documents as part of its investigation outweighs the Company’s interest in limiting the use of its confidential information to the dockets in which it filed those documents. We find under the circumstances presented here that it does.
- 14 Investigating public service company behavior is a core function of this agency. Publicly available information suggests that a large number of Washington consumers were not able to access E911 services for a substantial period of time in December 2018. Access to those services is critically important, and the Commission previously penalized CenturyLink for an E911 service outage in Docket UT-140597. Staff needs access to all data that would have a bearing on whether, and the extent to which, CenturyLink has violated Commission rules and statutes once again in its provision of E911 services.
- 15 We understand that companies have a reasonable expectation that the confidential information they provide pursuant to a protective order will be protected as provided in that order. We certainly do not want to shake that expectation and thereby discourage companies from providing all information on which the Commission relies to resolve contested issues in adjudicated proceedings for fear that the information will be used more broadly. The access to confidential information that Staff has requested here,

³ RCW 80.04.095.

however, is limited to a Commission investigation of a significant incident that potentially affected thousands of Washington citizens.

- 16 As a practical matter, moreover, the issue is when, not if, Staff will be able to access the requested documents. Staff is investigating the December 2018 incident to determine whether probable cause exists to take action against the Company. Without access to those documents, Staff may be compelled to file a complaint based on available information and belief and seek the documents through discovery. Such a process would be needlessly inefficient and could result in an adjudication that otherwise would not have been initiated.
- 17 We conclude that these unique circumstances warrant allowing Staff to access information designated as confidential in Dockets UT-140597 and UT-170042 for purposes of its investigation in Docket UT-181051.
- 18 A remaining issue is whether the consultant that Staff has retained to assist with its investigation may have access to the confidential information in Dockets UT-140597 and UT-170042. Staff previously has rarely, if ever, retained an outside expert to assist with performing its investigative function, but we see no real practical distinction between Commission employees and Commission consultants with respect to their ability to review company data. We make no such distinction in granting access to information designated as confidential in adjudications pursuant to Commission protective orders, and we see no reason to do so here. Staff has retained Mr. Roach because it lacks expertise in E911 network operations, and allowing Staff personnel but not Mr. Roach to review the data would not be useful.
- 19 Pursuant to WAC 480-07-875, therefore, the Commission will modify the Protective Orders to allow Staff and its consultant to access information designated as confidential in Dockets UT-140597 and UT-170042 for purposes of Staff's investigation in Docket UT-181051.⁴ Such access, however, will be strictly limited to documents that (a) have been filed with the Commission and thus are part of the Commission's records; and (b) are included on the list of documents that Staff provided just prior to the hearing on this matter.

⁴ Because we grant Staff's request to modify the Protective Orders, we do not address Staff's alternative request that the Commission enter a protective order in Docket UT-181051.

20 CenturyLink objects to all but four of the documents to which Staff has requested access
on the grounds that they are not relevant to the E911 incident Staff is investigating.⁵
Without access to those documents, however, Staff cannot know whether they are useful
to its investigation. The Commission, moreover, already has the documents in its files,
and the standard for seeking documents in an investigation is broader than discovery. The
Commission is satisfied based on the titles of the documents that Staff's request to review
these documents, which are part of the Commission's records, is reasonable.

21 Our decision here is both narrow and limited to the unique facts before us. This Order
does not reflect a decision by the Commissioners, has no precedential value,⁶ and does
not reflect any alteration beyond this case of the Commission's practice with respect to
entering and enforcing protective orders in Commission adjudications.

ORDER

22 THE COMMISSION ORDERS:

23 (1) The Commission modifies Order 02 in Docket UT-140597 and Order 01 in
Docket UT-170042 to add the following paragraph 23:

Notwithstanding any other provision of this Order, Commission Staff, its
attorneys, and its consultant may access documents that have been filed

⁵ On April 15, 2019, Staff counsel notified the Commission that Staff and CenturyLink reached an agreement regarding Mr. Roach's access to four CenturyLink confidential documents: (1) the Root Cause Analysis filed on February 12, 2019, (2) The NORS report for December 27-29 filed on January 3, 2019, (3) Washington State Military Department Amendment M filed on August 10, 2017, and (4) Network Diagram and Transition Explanation filed on April 12, 2019 in Docket UT-170042. Commission Staff, counsel for Staff, and Mr. Roach have agreed that the four documents to be disclosed will be used solely for the purpose of the investigation in Docket UT-181051, and will be treated as confidential as if they were protected under the standard Commission protective order, with CenturyLink retaining full rights to enforce the confidentiality as though a protective order were in place. At such time as a protective order is entered in the docket, CenturyLink will file those documents as confidential pursuant to the protective order. The documents could be resubmitted in the same manner as a confidential response to a data request. Staff has confirmed that the Washington State Military Department has agreed to allow Mr. Roach to review Amendment M. The Commission amends this agreement among the parties only to clarify that these documents will continue to be protected under the revised protective orders.

⁶ WAC 480-07-825(1)(c).

with the Commission in this docket and contain information designated as confidential for purposes of Staff's investigation in Docket UT-181051. Such access, however, is limited to the documents specified in Attachment A to Order 04 in this docket.

- 24 (2) Access to information designated as confidential in Dockets UT-140597 and UT-170042 for purposes of Commission staff's investigation in Docket UT-181051 shall be limited to the documents identified in Attachment A to this Order. Staff must request an amendment to that Attachment and this Order if Staff wishes to allow Mr. Roach to review any additional documents filed in those dockets that contain information designated as confidential.

Dated at Olympia, Washington, and effective April 24, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA

Administrative Law Judge