

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,  Complainant,  v.  CENTURYLINK COMMUNICATIONS, LLC,  Respondent.	DOCKET UT-181051  ORDER 05  DENYING MOTION TO STRIKE TESTIMONY; GRANTING MOTION FOR LEAVE TO FILE LATE TESTIMONY; AND DENYING MOTION TO AMEND COMPLAINT
--	--

**BACKGROUND**

- 1 On December 22, 2020, the Washington Utilities and Transportation Commission (Commission) on its own motion and through its regulatory staff (Staff) issued a complaint against CenturyLink Communications, LLC, (CenturyLink or Company) regarding interruptions in 911 service on December 27, 2018. The Commission convened a prehearing conference on February 9, 2021, and on February 24, entered Order 01, Prehearing Conference Order; Notice of Hearing (Order 01).<sup>1</sup> On August 27, 2021, the Commission issued a notice revising the procedural schedule.<sup>2</sup>
- 2 Pursuant to the procedural schedule, the Public Counsel Unit of the Washington Attorney General’s Office (Public Counsel) and other parties filed initial testimony on December 15, 2021.
- 3 On December 20, 2021, Public Counsel filed a Motion for Leave to File Revised Testimony, explaining that it discovered an error in the recommended penalty amount. On December 28, 2021, the Commission granted Public Council’s Motion for Leave to File Revised Testimony, finding good cause with no objecting parties.
- 4 On March 31, 2022, CenturyLink filed Response Testimony, the day after Response Testimonies and Exhibits were due as outlined in the September 3, 2021, Notice of Errata to Notice Revising Procedural Schedule.

---

<sup>1</sup> Errors in Order 01 were corrected by a Notice of Erratum issued on February 25, 2021.

<sup>2</sup> Errors in the Notice were corrected by a Notice of Erratum issued on September 3, 2021.

5 On April 1, 2022, Public Counsel filed a Motion to Strike Untimely Response Testimonies of CenturyLink Communications, LLC. (Motion to Strike). Public Counsel argued that CenturyLink violated WAC 480-07-365 when the Company filed Responsive Testimony after the established deadline and violated WAC 480-07-385 when the Company didn't file and serve a motion for continuance at least five days prior to the deadline.

6 Also on April 1, 2022, CenturyLink filed a Motion for Leave to Accept Late-Filed Testimony (Motion for Leave). In its Motion for Leave, the Company stated a calendaring error as the reason for untimely filing and lack of proper filing for a continuance. CenturyLink states that it promptly filed its Motion for Leave when it became aware of the error.

7 On April 7, 2022, CenturyLink filed its opposition to Public Counsel's Motion to Strike, and Public Counsel filed its opposition to CenturyLink's Motion for Leave. These parties essentially repeat the arguments they made in their respective motions. No other party filed a response to either motion.

8 On April 6, 2022, Commission staff (Staff), filed a Motion to Amend Complaint (Motion to Amend), requesting the Commission allow an amendment to the original complaint in these proceedings to include CenturyLink's affiliates, Qwest Corporation d/b/a CenturyLink QC (Qwest), CenturyTel of Washington, Inc., CenturyTel of Inter Island, Inc., CenturyTel of Cowiche, Inc., and United Telephone Company of the Northwest (Affiliates). Staff argues that while the original complaint can be read to include the Affiliates and the investigation report demonstrates an intent to allege violations against the Affiliates, amending the complaint will clarify this position.

9 On April 13, 2022, CenturyLink filed its opposition to Staff's Motion to Amend. The Company argues that Staff had every opportunity to name the Affiliates in the original complaint and failed to do so, and now the statute of limitations has long since expired. CenturyLink further contends that naming the Affiliates at this stage of the proceedings would prejudice the Affiliates and unreasonably disrupt the current proceedings. No other party filed a response to Staff's Motion to Amend.

## **DISCUSSION**

10 **Motion for Leave and Motion to Strike.** WAC 480-07-385 permits parties to seek leave from the presiding officer by written motion if they wish to request a continuance. The Commission will grant a continuance if the requesting party demonstrates good cause and that the continuance will not prejudice any party or the Commission. WAC 480-07-

385(3)(a) further requires parties to file and serve any written motion for continuance other than an agreed request at least five business days prior to the deadline the party requests to continue.

- 11 Public Counsel is technically correct that CenturyLink did not comply with the procedural schedule in this docket and with Commission rules authorizing deviations from that schedule. We agree that the Company is a sophisticated party and as such should take care to respect the timeline set by the Commission, as well as the time of the other parties involved in this case. Failure to comply with superior court deadlines often result in the harsh penalty that Public Counsel proposes here.
- 12 On the other hand, CenturyLink missed the deadline for filing its response testimony by only one day, and no party has claimed that this error results in any prejudice. Indeed, no party other than Public Counsel and CenturyLink has taken a position on the motions. CenturyLink, however, will be greatly prejudiced if its testimony is stricken, and the Commission would be deprived of information necessary to resolve the issues presented in this proceeding. On this same basis, the Commission permitted Public Counsel to file revised testimony after the filing deadline.
- 13 Pursuant to WAC 480-07-110 the Commission on its own initiative, may grant an exemption from, or modify the application of, any of its rules in individual circumstances if the exemption or modification is consistent with the public interest, the purposes underlying regulation, and applicable statutes. We do not lightly grant after-the-fact variations from procedural schedules in adjudicative proceedings, particularly based on excuses as thin as the one CenturyLink proffers. Under the unique circumstances presented here, however, the Commission on its own initiative exempts CenturyLink from the five-day filing and service requirement under WAC 480-07-385(3)(a), grants the Motion for Leave, and denies the Motion to Strike. We trust that we will not need to do so again.
- 14 **Motion to Amend.** We deny Staff's Motion to Amend as seeking relief that is not available under the applicable statute of limitations. Our decision, however, does not preclude Staff or any other party from contending that CenturyLink is legally responsible for any failure by its affiliates to comply with the statutes and rules at issue in this proceeding.
- 15 RCW 4.16.100 applies a two-year limitation to actions for statutory penalties applied by the state. The events alleged in the Complaint all occurred in 2018, more than four years ago and long past the two-year limitations period. Washington courts have permitted the

addition of new parties to a proceeding to relate back to the original date of the complaint under the following conditions: 1) the new party received notice of the institution of the action so that it is not prejudiced in making a defense on the merits; 2) the new party knew or should have known that but for a mistake concerning the proper party's identity, the claimant would have brought the action against it; and 3) the claimant's delay was not due to inexcusable neglect.<sup>3</sup>

16 Staff has not demonstrated that these conditions have been met in this case. Staff points to the investigation report to demonstrate an intent to allege violations against the Affiliates, but Staff does not adequately show that this constitutes sufficient notice to the Affiliates that any of the allegations in the Complaint applied to them so that the Affiliates would not be prejudiced in making a defense on the merits. Nor has Staff shown any other reason why the Affiliates knew or should have known that but for a mistake concerning their identities, they would have been named in the original Complaint. To the contrary, the investigation report reflects no confusion as to the identity of the parties Staff believes is responsible for the violations alleged in the Complaint. Finally, Staff offers no explanation for not having named the Affiliates in the original Complaint. Staff claims that naming CenturyLink necessarily includes its Affiliates, but past complaints have listed named only the CenturyLink entity alleged to be responsible for alleged violations.<sup>4</sup>

17 Accordingly, we deny the Motion to Amend. However, our decision should not be construed to deny Staff or any other party the opportunity to demonstrate that the relationship between CenturyLink and its Affiliates is such that the Company acted as a single entity when undertaking the actions alleged in the Complaint or that in any other respect CenturyLink is responsible for such actions attributable to its Affiliates. We take no position on such issues at this point in the proceeding.

---

<sup>3</sup> *Segaline v. State, Dep't of Lab. & Indus.*, 238 P.3d 1107, 1112 (Wash. 2010) (en banc).  
CR 15(c): Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the original party, the party to be brought in by amendment (1) has received such notice of the institution of the action that the new party will not be prejudiced in maintaining her or his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the new party.

<sup>4</sup> See, e.g., *WUTC v. Qwest Corporation, d/b/a CenturyLink QC*, Docket UT-140597.

**ORDER**

18 **THE COMMISSION ORDERS:**

- 19 (1) Public Counsel's Motion to Strike Testimony is DENIED.
- 20 (2) CenturyLink Communications, LLC's Motion for Leave to File Late Testimony is  
GRANTED.
- 21 (3) Commission staff's Motion to Amend Compliant is DENIED.

Dated at Lacey, Washington, and effective April 26, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

*/s/ Samantha Doyle*  
SAMANTHA DOYLE  
Administrative Law Judge