

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

CENTURYLINK COMMUNICATIONS,
LLC,

Respondent.

DOCKET NO. UT-181051

**CENTURYLINK COMMUNICATIONS,
LLC’S MOTION FOR LEAVE TO
REPLY TO STAFF’S RESPONSE TO
PUBLIC COUNSEL’S MOTION TO
STRIKE**

1 Pursuant to WAC 480-07-370(d) and WAC 480-07-375, CenturyLink Communications, LLC (“CLC”) respectfully requests leave to file a reply to Staff’s response to Public Counsel’s Motion to Strike Certain Testimony and Exhibits filed by CenturyLink Communications, LLC (“Motion”). Because Staff misstates important facts and (rather than filing its own motion) improperly seeks to reframe the relief requested by Public Counsel, CLC requests leave to file a brief reply to Staff’s response. CLC provides its proposed reply with this motion.

2 On June 16, 2022, Public Counsel filed its Motion. On June 21, 2022, the Administrative Law Judge issued a notice extending the response date to July 7, 2022. On July 7, 2022, Staff filed its response in support of Public Counsel’s Motion. Staff offered no independent explanation for its support (apart from one sentence that states its reiteration

of Public Counsel's arguments; see Staff's response at ¶(6). Instead, Staff (which did not file its own motion to strike over the three months it has been in possession of CLC's response testimony) focuses almost entirely on reframing the Motion and the relief it seeks. Staff's arguments are premised on factual inaccuracies. CLC should be able to correct the record before the Commission rules on the Motion.

3 Good cause supports leave for CLC to file a reply. Given Staff's attempt to revise the relief requested by Public Counsel, especially when based on factual misstatements, it would be inequitable for CLC to not have the opportunity to briefly reply. For the reasons set forth above, CLC respectfully requests leave to file a reply in response to Staff's arguments. A proposed reply is attached to this motion.

Respectfully submitted this 11th day of July 2022.

CENTURYLINK



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**CENTURYLINK COMMUNICATIONS,
LLC’S REPLY TO STAFF’S
RESPONSE TO PUBLIC COUNSEL
MOTION TO STRIKE**

CenturyLink Communications, LLC (“CLC”) submits a reply to Commission Staff’s Response to Public Counsel’s Motion to Strike certain testimony and exhibits filed by CLC for the reasons set forth below. Staff’s reply inappropriately reframes Public Counsel’s motion and relies on factual inaccuracies.

INTRODUCTION

I On June 16, 2022, Public Counsel filed a Motion to Strike the Affidavit of Thomas McNealy appended to the testimony of Marin Valence, as well as certain testimony referencing the Affidavit. On July 8, 2022, CLC responded to the motion. More specifically, Public Counsel asks the Commission to strike the McNealy Affidavit and associated testimony unless the McNealy Affidavit is converted to testimony and Mr. McNealy is made available for cross examination at hearing. After CLC submitted

its response, Commission Staff responded as well, which means CLC has never had an opportunity to respond to Staff's positions.

- 2 Staff joins in Public Counsel's primary arguments, although it offers no independent thoughts or explanation. But Staff, relying on several factual inaccuracies, asks the Commission to deny the alternative relief requested by Public Counsel in the event the Commission does not strike the Affidavit and associated testimony. Staff Response at ¶ 2. Staff has not filed its own motion to strike, although it certainly could have at any time over the past three months. Instead, it is reframing Public Counsel's motion in all or nothing terms.
- 3 CLC has already responded to the merits urging the Commission to deny Public Counsel's motion altogether; CLC will not repeat those arguments here. This reply is necessary to correct factual inaccuracies in Staff's Response.
- 4 At the outset, the alternative relief Public Counsel sought was to require "CenturyLink to call McNealy as a witness *and submit the affidavit as testimony.*" Public Counsel Motion at ¶ 1 (emphasis added). Staff misapprehends the alternative relief requested, suggesting that if the Commission grants the alternative relief, CLC would be required to submit new testimony for Mr. McNealy. Staff Response at ¶ 2 ("Staff disagrees with Public Counsel's alternative requested relief, specifically that the Commission to order the Company to file additional testimony from McNealy and make McNealy available for hearing.").
- 5 If the Commission were to grant the alternative relief requested by Public Counsel, that only means that the Affidavit Mr. McNealy submitted on March 31, 2022 will be considered Mr. McNealy's pre-filed testimony, and Mr. McNealy would be made available for cross-examination at hearing about that Affidavit. Thus, the alternative

relief requested will not “delay the proceeding” as Staff argues.

6 Staff claims that a delay will occur “in order to provide the cross-answering parties time to review the new testimony and issue discovery.” Staff Response at ¶ 7. Given that the alternative relief Public Counsel requested is that McNealy Affidavit *be considered testimony*, Staff and Public Counsel have had Mr. McNealy’s Affidavit for over three months. They still have almost two more months from today to craft their responsive testimony. Likewise, they have had the ability to propound discovery about the content of the Affidavit since March 31; indeed, *Staff itself has propounded several data requests specific to the McNealy Affidavit*. In April 2022, Staff issued data requests 44, 48, 49 and 52, all of which pertained explicitly to Mr. McNealy’s Affidavit. Thus, since March 31, 2022, Staff has had everything it needs to propound discovery (and has done so) and to craft responsive testimony. No additional delay to the schedule is necessary.

7 Finally, it is ironic that Staff raises concerns about delays in the procedural schedule. The schedule has already been extended twice: both at Staff’s request. Those delays have postponed the evidentiary hearing approximately eleven months, as hearing was originally set for January 2022. Initially, Staff had two months to reply to CLC’s testimony. With the most recent extension, Staff and Public Counsel now have five months to reply, including almost two months from the date of this filing. If two months was adequate time to reply to CLC’s testimony under the original schedule, it is hard to understand why Staff takes the position that the alternative schedule will lead to delays. Staff’s arguments about Public Counsel’s alternative relief and the impact it would have on this dispute are simply inaccurate.

8 While CLC remains firmly of the view that the Commission should deny the Motion to Strike in its entirety for the reasons set forth in CLC’s Response to Public Counsel’s Motion, if the Commission decides to grant the alternative relief, it should grant the

alternative relief actually requested by Public Counsel: namely, to consider the McNealy Affidavit as testimony and require Mr. McNealy to make himself available for cross-examination at hearing.

Respectfully submitted this 11th day of July 2022.

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