

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

CENTURYLINK COMMUNICATIONS,
LLC,

Respondent.

DOCKET UT-181051

COMMISSION STAFF’S RESPONSE
TO CENTURYLINK’S MOTION FOR
LEAVE TO REPLY

I. INTRODUCTION

1 Staff of the Washington Utilities and Transportation Commission (Commission) hereby responds to CenturyLink Communications, LLC’s (CLC or Company) Motion for Leave to Reply (Motion for Leave to Reply) filed on July 11, 2022. Commission Staff (Staff) requests that the Commission deny the Motion for Leave to Reply because CLC fails to demonstrate a showing of good cause.

II. LEGAL STANDARD

2 “A party must not file a reply without permission from the commission, which the commission will grant only upon a showing of good cause.”¹ “A party that wishes to reply to an answer or response must file a motion requesting permission to reply within five business days after the respondent serves the answer or response. The motion must explain why a reply is necessary including, but not necessarily limited to, whether the answer or response raises new facts or legal argument requiring a reply. A party should file a proposed reply as

¹ WAC 480-07-370(5)(a).

an attachment to its motion. The motion is deemed denied unless the commission grants the motion within five business days after the movant files it.”²

III. ARGUMENT

3 CLC fails to demonstrate good cause to grant CLC leave to file a reply. CLC moves this Commission for leave to respond to Staff’s response to Public Counsel’s Motion to Strike. CLC primarily claims that good cause exists because Staff purportedly “misstates important facts and (rather than filing its own motion) improperly seeks to reframe the relief requested by Public Counsel.”³

4 CLC fails to demonstrate good cause to file a reply to Staff’s response to Public Counsel’s Motion to Strike. This is because both Staff and CLC advocate for the same Commission action—to deny Public Counsel’s alternative relief. In its response to Public Counsel’s Motion to Strike, CLC requested that the “Commission deny the Motion to Strike in its entirety.”⁴ In other words, CLC requested that the Commission deny *both* components of Public Counsel’s Motion to Strike: (1) the request to strike Exh. MDV-3C and portions of testimony that rely on Exh. MDV-3C; and (2) the alternative relief to refile Exh. MDV-3C as testimony and to make Mr. McNealy available for cross-examination at hearing. Staff argued in its response dated July 7, 2022, that the Commission should grant the first relief sought by Public Counsel, but should deny the second.⁵ As noted by the Company, “Staff offered no independent explanation for its support” for Public Counsel’s primary relief.⁶ Consequently, CLC fails to provide any sufficient reason “why a reply is necessary

² WAC 480-07-370(5)(b).

³ CLC Motion for Leave to Reply at ¶ 1 (July 11, 2022).

⁴ CLC Response to Motion to Strike at ¶ 5, 26 (July 7, 2022) (“CLC respectfully requests that the Commission deny the Public Counsel’s Motion to Strike Mr. McNealy’s Affidavit in its entirety.”).

⁵ Staff Response to Motion to Strike at ¶ 2 (July 7, 2022).

⁶ CLC Motion for Leave to Reply at ¶ 2 (July 11, 2022).

including, but not necessarily limited to, whether the answer or response raises new facts or legal argument requiring a reply.”⁷

5 CLC’s only argument in its motion to establish good cause seems to be that Staff purportedly “attempt[ed] to revise the relief requested by Public Counsel.”⁸ Perplexingly, CLC seems to take issue with Staff’s characterization that making McNealy a testifying witness would result in “new” testimony.⁹ CLC’s argument fails to comprehend that making McNealy a witness at this late hour would indeed result in newly filed testimony. In other words, granting this relief would result in new testimony filed to this docket—to which Staff would need to propound new data requests, directed to McNealy as a newly available CLC witness, and produce testimony in response (i.e., responsive testimony). Staff explained why permitting the McNealy affidavit to now enter the case as newly filed testimony would be exceedingly prejudicial.¹⁰

6 Then within its proposed reply, CLC goes on to misleadingly represent that Staff “had the ability to propound discovery about the content of the Affidavit since March 31.”¹¹ In a gross omission, CLC fails to mention that the Company refused to make McNealy available to answer Staff’s Data Requests throughout the pendency of this case. Rather than provide the substantive evidence from McNealy to support his affidavit as plainly requested in UTC Staff Data Request No. 52, CLC threw up its hands, asserted it was unaware of any documents in his possession supporting the affidavit (the affidavit that it, *the Company*

⁷ WAC 480-07-370(5)(b).

⁸ CLC Motion for Leave to Reply at ¶ 3 (July 11, 2022).

⁹ See CLC [Proposed] Reply to Staff’s Response at ¶ 4 (July 11, 2022) (“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.”).

¹⁰ See Staff Response to Motion to Strike at 3-4, ¶¶ 7-9 (July 7, 2022).

¹¹ CLC [Proposed] Reply to Staff’s Response at ¶ 6 (July 11, 2022).

itself, filed), and directed Staff to reach out to outside counsel for Infinera, a CLC vendor, who is not a party to this case.¹²

7 As such, while Staff has technically been able to issue discovery regarding the McNealy Affidavit (Exh. MDV-3C), it has yet to receive a response *from McNealy*.¹³ Staff relied on CLC’s representation that the Company could not obtain any evidence from McNealy to support his affidavit in its decision to not propound additional data requests pertaining to the affidavit. CLC’s proposed reply ignores this important distinction and attempts to minimize the clear prejudice that will result to Staff if McNealy now becomes a new testifying witness over three months after the Company filed testimony.

IV. CONCLUSION

8 CLC fails to provide any sufficient reason “why a reply is necessary including, but not necessarily limited to, whether the answer or response raises new facts or legal argument requiring a reply.”¹⁴ Accordingly, Staff requests that the Commission deny the Motion for Leave to Reply.

DATED this 18th day of July 2022.

Respectfully submitted,

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¹² Suetake Decl. Exh. B at 12 (June 16, 2022) (Supplemental Response to UTC Staff Data Request No. 52) (“CLC is unaware if Mr. McNealy has any documents in his possession, custody, or control related to Docket UT-181051. Mr. McNealy can be reached via Infinera’s outside counsel.”).

¹³ Public Counsel’s Motion to Strike provides a description of CLC’s inadequate discovery practices related to the McNealy Affidavit (Exh. MDV-3C). Motion to Strike at ¶ 10-11 (June 16, 2022).

¹⁴ WAC 480-07-370(5)(b).