BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. CENTURYLINK COMMUNICATIONS, LLC, Respondent.	DOCKET UT-181051 MOTION FOR PROTECTIVE ORDER ON BEHALF OF COMMISSION STAFF

I. INTRODUCTION

1 Pursuant to WAC 480-07-400, Commission staff (Staff) files this motion to respectfully request a protective order preventing CenturyLink Communications, LLC (CenturyLink or Company) from taking a deposition of Staff witness Dr. Robert Akl, and instead requiring the Company to seek discovery through the less expensive and less burdensome method of issuing data requests directed to Dr. Akl.

II. RELIEF REQUESTED

2 Staff respectfully requests that the Commission issue a protective order preventing the Company from taking a deposition of Staff witness Dr. Robert Akl, and instead require the Company to seek any discovery through the issuance of data requests directed to Dr. Akl.

III. STATEMENT OF FACTS

3 On May 17, 2022, the Commission issued a Notice Revising Procedural Schedule and Notice of Virtual Evidentiary Hearing in Docket UT-181051. The notice set the dates for the virtual evidentiary hearing in this matter for December 5 and December 6, 2022.

4 On August 31, 2022, Staff filed cross-answering testimony and exhibits provided by Dr. Akl. Dr. Akl offered testimony relating to CenturyLink's actions leading up to the December 2018 911 outage across Washington state.

5 Since August 31, 2022, the Company has issued no data requests directed at Dr. Akl regarding any aspect of his testimony.

6 On September 9, 2022, counsel for the Company contacted counsel for Staff, seeking dates on which to schedule a deposition of Dr. Akl.

IV. STATEMENT OF ISSUES

7 Should the Commission issue a protective order preventing the Company from taking a deposition of Dr. Akl, and instead require the Company to seek discovery through the issuance of data requests?

V. EVIDENCE RELIED UPON

8 Staff relies on the documents on file with the Commission in this docket, as well as the Declaration of Daniel J. Teimouri.

VI. ARGUMENT

9 WAC 480-07-410 provides that "[a] party may depose any person identified by another party as a potential witness."[1] However, deposition practice is "decidedly uncommon in Commission proceedings" and "[d]epositions . . . are not a common part of discovery practice in Commission proceedings."[2] "[D]epositions are infrequently authorized in Commission adjudicative proceedings and generally are reserved for circumstances in

[1] WAC 480-07-410(1).
[2] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UE-130137 & UG-130138, Order 05, 3, ¶ 6; 7 ¶ 16 (Apr. 16, 2013).

which that form of discovery is the most efficient and least burdensome means of obtaining relevant information."[3]

10 WAC 480-07-400 provides in part:

> Parties must not seek discovery that is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. A discovery request is inappropriate when the party seeking discovery has had ample opportunity to obtain the information the party seeks or the discovery is unduly burdensome or expensive, taking into account the needs of the adjudicative proceeding, limitations on the parties' resources, scope of the responding party's interest in the proceeding, and the importance of the issues at stake in the adjudicative proceeding.[4]

11 The Administrative Procedures Act, codified at 34.05 RCW, provides:

> Except as otherwise provided by agency rules, the presiding officer may decide whether to permit the taking of depositions, the requesting of admissions, and all other procedures authorized by rules 26 through 36 of the superior court civil rules. The presiding officer may condition use of discovery on a showing of necessity and unavailability by other means. In exercising such discretion, the presiding officer shall consider: (a) Whether all parties are represented by counsel; (b) whether undue expense or delay in bringing the case to hearing will result; (c) whether the discovery will promote the orderly and prompt conduct of the proceeding; and (d) whether the interests of justice will be promoted.[5]

12 Washington Superior Court Civil Rule 26 provides in part:

> Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery . . .[6]

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[3] *In re Application of Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions of Washington for an Extension of Certificate G-237 for a Certificate of Convenience and Necessity to Operate Motor Vehicles in Furnishing Solid Waste Collection Service*, Docket TG-120033, Order 06, 2, ¶ 5 (Nov. 5, 2012).
[4] WAC 480-07-400(3).
[5] RCW 34.05.446(3).
[6] Wash. Super. Ct. Civ. R. 26(c).

13 Permitting the Company to take a deposition of Dr. Akl as its very first and, to date, only discovery directed to him would impose unnecessary and great expense on Staff, considering the broad availability of more inexpensive means of obtaining the same information from Dr. Akl, namely, through data requests. Given the time needed for Dr. Akl to prepare for and attend a prospective deposition, the deposition would cost Staff, at least $25,000 in Dr. Akl's time alone.[7]

14 Limiting CenturyLink's discovery regarding Dr. Akl to data requests is consistent with WAC 480-07-400's requirement that a party not "seek discovery that is . . . available from some other source that is more convenient, less burdensome, or less expensive."[8] Using data requests would allow CenturyLink to obtain information regarding Dr. Akl's testimony and analysis would afford the Company a comparable avenue for discovery while imposing less burden and expense on Staff. Furthermore, the Company will be afforded the opportunity to conduct live cross-examination of Dr. Akl at the evidentiary hearing in this matter on December 5 and December 6, 2022. Therefore, the Commission should issue a protective order that prohibits CenturyLink from deposing Dr. Akl.

VII. CONCLUSION

15 For the reasons discussed above, the Commission should issue a protective order preventing the Company from taking a deposition of Dr. Robert Akl, and instead require the Company to seek any discovery through the issuance of data requests.

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[7] Declaration of Daniel J. Teimouri at ¶ 4.
[8] *See also* Wash. Super. Ct. Civ. R. 26(c) (authorizing a protective order to protect a party from undue burden or expense).

DATED this 14th day of September, 2022.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

/s/ *Harry Fukano*, WSBA No. 52458
Assistant Attorney General
Office of the Attorney General
Utilities and Transportation Division
P.O. Box 40128
Olympia, WA 98504-0128
(360) 995-2818
harry.fukano@utc.wa.gov

/s/ *Daniel J. Teimouri*, WSBA No. 47965
Assistant Attorney General
Office of the Attorney General
Utilities and Transportation Division
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1189
daniel.teimouri@utc.wa.gov