

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

CENTURYLINK  
COMMUNICATIONS, LLC,

Respondent.

DOCKET UT-181051

ORDER 07

DENYING MOTION FOR  
PROTECTIVE ORDER

**BACKGROUND**

- 1 On December 22, 2020, the Washington Utilities and Transportation Commission (Commission) on its own motion and through its regulatory staff (Staff)<sup>1</sup> 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). On August 27, 2021, the Commission issued a notice revising the procedural schedule.
- 2 On August 31, 2022, parties pre-filed cross-answering testimony. Included in Staff's filing was the Response Testimony of Dr. Robert Akl, an expert witness that Staff has retained for this proceeding. This was the first of Dr. Akl's exhibits that Staff has filed in this Docket.
- 3 On September 14, 2022, Staff filed a Motion for Protective Order (Motion) to prevent CenturyLink from deposing Dr. Akl, and to limit the Company's discovery related to his testimony to data requests. Staff argues that depositions are uncommon at the

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<sup>1</sup> In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

Commission and that deposing Dr. Akl is unnecessary and would require Staff to incur at least \$25,000 in expenses to prepare Dr. Akl.<sup>2</sup>

4 On September 21, 2022, CenturyLink filed its Opposition to Staff’s Motion for Protective Order (Opposition). CenturyLink maintains that Commission rules allow deposition of any party’s named witness, and Dr. Akl is a person who appears to possess information significant to the case.<sup>3</sup> The Company further points out that Staff has participated in depositions of two of CenturyLink’s technical witnesses conducted by Public Counsel in this case, and thus this form of discovery is not unusual in this proceeding. Because Dr. Akl did not file initial testimony, CenturyLink contends that there is insufficient time before the hearing to properly examine Dr. Akl’s position via data requests. Furthermore, the Company argues this technical testimony may require a significant amount of time to cross, which would be expedited by deposing the witness prior to the hearing.<sup>4</sup>

### **DISCUSSION**

5 We deny Staff’s Motion.

6 Pursuant to WAC 480-07-410(1), a party may depose any person identified by another party as a potential witness. Approval from a presiding officer is only necessary when seeking deposition of a person not identified by a party.<sup>5</sup> WAC 480-07-420(3) nevertheless authorizes the presiding officer to enter a special protective order “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” We find no such circumstances here.

7 Staff has stated that the deposition of Dr. Akl will cost Staff \$25,000, but Staff has not demonstrated how this creates an undue burden or expense. While depositions are not a typical method of discovery in Commission adjudications, the procedural rules authorize them, and Staff was fully aware that expert witnesses were deposed in this case before filing Dr. Akl’s testimony. Staff has also failed to explain how it calculated the \$25,000 or to demonstrate that amount is unduly large or would not be offset at least in part by reducing the costs of preparing Dr. Akl to testify at the hearing.

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<sup>2</sup> Commission Staff Motion for Protective Order, ¶ 9,13-14.

<sup>3</sup> CenturyLink’s Opposition to Commission Staff’s Motion for Protective Order, ¶ 1.

<sup>4</sup> CenturyLink’s Opposition to Commission Staff’s Motion for Protective Order, ¶ 14.

<sup>5</sup> WAC 480-07-410(1).

8 Accordingly, we deny Staff's Motion and allow CenturyLink the opportunity to depose Dr. Akl.

**ORDER**

**THE COMMISSION ORDERS:**

9 The Commission DENIES Commission Staff's Motion for Protective Order.

Dated at Lacey, Washington, and effective September 28, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.**