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 1 BEFORE THE WASHINGTON

 2 UTILITIES AND TRANSPORTATION COMMISSION

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 4 In the matter of the Joint )

 Application of )

 5 )

 NORTHWEST FIBER, LLC, FRONTIER )DOCKET UT-190574

 6 COMMUNICATIONS CORPORATION, AND )

 FRONTIER COMMMUNICATIONS ILEC )

 7 HOLDINGS LLC, )

 )

 8 For an Order Declining to Assert )

 Jurisdiction Over, or, in the )

 9 Alternative Approving the Transfer)

 of Control of Frontier )

10 Communications Northwest Inc. to )

 Northwest Fiber, LLC, )

11 )

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13 VOLUME I

14 PREHEARING CONFERENCE

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16 PAGES 1-24

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18 BE IT REMEMBERED THAT THE ABOVE ENTITLED CAUSE

19 CAME ON FOR PREHEARING CONFERENCE

20 ON TUESDAY, JULY 23, 2019, AT 1:30 P.M.

21 BEFORE GREG KOPTA, COMMISSIONER

22 at 621 WOODLAND SQUARE LOOP SE, LACEY, WASHINGTON, 98503.

23

24 REPORTED BY: Kandi Kathryn Clark, CCR License #3008

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 1 APPEARANCES (continued):

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16 (Appearing by telephone.)

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 1 WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HAD:

 2 JUDGE KOPTA: Let's be on the record,

 3 Docket UT-190574.

 4 Caption in the matter of the joint

 5 application of Northwest Fiber, LLC; Frontier

 6 Communications Corporation; and Frontier

 7 Communications ILEC Holdings, LLC.

 8 For an order declining to assert jurisdiction

 9 over, or, in the alterative, approving the transfer of

10 control of Frontier Communications Northwest, Inc.,

11 to Northwest Fiber, LLC.

12 My name is Gregory J. Kopta. I am the

13 administrative law judge who will be presiding this

14 proceeding.

15 We are here today for a prehearing conference

16 to establish schedule and care about the matters. And

17 we will begin by taking appearances beginning with the

18 applicants.

19 MR. TRINCHERO: Thank you, your Honor. Mark

20 Trinchero, Davis Wright Tremaine on behalf of

21 Northwest Fiber, LLC.

22 MR. O'CONNELL: Good afternoon, your Honor.

23 Tim O'Connell with Stoel Rives firm on behalf of

24 Frontier.

25 MR. THOMSON: Good afternoon, Judge. George

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 1 Thomson, I'm in house with Frontier.

 2 MR. SAVILLE: Good afternoon, your Honor,

 3 Kevin Saville, and I'm in house with Frontier, as

 4 well.

 5 JUDGE KOPTA: All right. And for commission

 6 staff.

 7 MR. CALLAGHAN: Good afternoon, your Honor.

 8 Nash Callaghan, AAG, on behalf of commission staff.

 9 JUDGE KOPTA: One more.

10 MR. TEIMOURI: Good afternoon, your Honor.

11 Daniel Teimouri, AAG, on behalf of commission staff.

12 MS. SUETAKE: Good afternoon. Nina Suetake

13 on behalf of public counsel.

14 JUDGE KOPTA: On behalf of Charter.

15 MS. RACKNER: Lisa Rackner on behalf of

16 Charter.

17 JUDGE KOPTA: All right. And I believe we

18 have someone on the bridge line who wants to make an

19 appearance.

20 MR. SMITH: Yes, Kyle Smith on behalf of the

21 United States Department of Defense and all other

22 federal executive agencies. I have not filed a formal

23 appearance. I can do that as soon as possible. I

24 would also be orally moving to have the United States

25 Department of Defense and all other federal executive

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 1 agencies intervene in this matter. But if you would

 2 like, I could file something in writing on that, that

 3 would obviously be after today, though.

 4 JUDGE KOPTA: Thank you, Mr. Smith. I don't

 5 think that we will need any subsequent filings, but

 6 we'll see.

 7 Because our next item of business is

 8 interventions.

 9 We have two petitions to intervene. One

10 written in advance from Charter. And the other, as

11 Mr. Smith just indicated, is from the Department of

12 Defense. I'd like to cut this short and see if there

13 are any objections to either of those entities being

14 granted intervention.

15 Mr. Trinchero.

16 MR. TRINCHERO: Your Honor, on behalf of the

17 joint applicants, we have no objection to

18 intervention.

19 JUDGE KOPTA: Anyone else have an objection?

20 MR. CALLAGHAN: No objection, you Honor.

21 MS. SUETAKE: No objection, your Honor.

22 JUDGE KOPTA: All right. Then we will grant

23 those petitions to intervene.

24 And as I indicated, Mr. Smith, there's no

25 need to make a follow up. I think perhaps a full

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 1 notice of appearance might be in order since normally

 2 we rely upon written pleadings to get that

 3 information. So if you could go ahead and give us

 4 your address and contact information so that the court

 5 reporter has that.

 6 MR. SMITH: Absolutely. Would you like me to

 7 do that orally now or file something?

 8 JUDGE KOPTA: Why don't you go ahead and do

 9 it now so that we have it.

10 MR. SMITH: Okay. My name is Kyle J. Smith.

11 I am with the United States Army Legal Services

12 Agency. That is located at 9275 Gunston Road,

13 G-U-N-S-T-O-N, that's Suite 1300, on Fort Belvoir,

14 Virginia, 22060. And my email address is

15 kyle.j.smith124.cid@mail.mil.

16 JUDGE KOPTA: All right. And do you have a

17 telephone number to go along with that?

18 MR. SMITH: Yes, it's 703-693-1270.

19 JUDGE KOPTA: All right. Thank you. I

20 believe that's the information we need for now.

21 Moving on to the next item on the agenda:

22 Discovery. Do the parties want to have the

23 commission's discovery rules available in this

24 proceeding?

25 Mr. Callaghan.

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 1 MR. CALLAGHAN: Yes, your Honor.

 2 MR. TRINCHERO: Yes, your Honor.

 3 JUDGE KOPTA: All right. Then we will make

 4 the discovery rules available.

 5 The next order of business is a protective

 6 order. I've had some the conversations with

 7 Mr. Trinchero prior to this proceeding in which

 8 there's an indication that there's a need for highly

 9 confidential protective order in this docket. Is my

10 understanding correct, Mr. Trinchero?

11 MR. TRINCHERO: Yes, that's accurate, your

12 Honor. As a matter of fact, we have filed a motion

13 for modified protective order. That was just filed

14 yesterday afternoon. I'm not sure if it has hit your

15 desk yet. We did try to make sure to get electronic

16 service to staff of the public counsel and a courtesy

17 copy to Charter's representative. We did not know

18 that the DOD, FEA would be an intervenor. We could

19 send that to them, as well.

20 We have modeled the requested modified

21 protective order on prior commission modified

22 protective orders. We do believe especially given the

23 that fact that we have intervenors that --

24 We do believe that given the fact that we

25 have an intervenor, who is a direct competitor, that

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 1 there is a need for additional protections on some of

 2 the financial projections and similar planning

 3 documents that may be requested through discovery.

 4 And so, we have moved for additional protections.

 5 JUDGE KOPTA: All right. I notice that the

 6 docket does not yet reflect your motion. So we will

 7 deal with it orally here in the prehearing conference.

 8 And I believe you described the information that you

 9 believe would be highly confidential.

10 Do we have any input from the other parties

11 in the case of the need for highly confidential

12 protections?

13 MR. CALLAGHAN: Thank you, your Honor. The

14 staff has no objection to the protective order

15 proposed by counsel.

16 MS. SUETAKE: Public Counsel does not have

17 any objections.

18 MS. RACKNER: And we have not yet had an

19 opportunity to review the nature of the restrictions

20 to competitors. And we may be able to comment on them

21 if Mr. Trinchero wants to take the opportunity now to

22 outline them or we'd like to the opportunity -- even

23 so we may need the opportunity to respond in

24 writing.

25 JUDGE KOPTA: All right. Since we're just

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 1 getting to this now and a standard protective order is

 2 a matter of course in these kinds of proceedings.

 3 Highly confidential provisions the commission takes a

 4 little more caution with and certainly would want to

 5 make sure that all parties are comfortable, if

 6 possible, with having that extra layer of protection

 7 being applicable in this proceeding. So let's table

 8 that for now and perhaps, because I understand there's

 9 not yet agreement on the schedule, we will take a

10 break. And Ms. Rackner will be able to review what

11 the applicants are requesting and to see if you have

12 any concerns that you want to voice at this point.

13 Let's see. I don't think that we have

14 anything else except for the schedule at this point.

15 I have two different schedules: One proposed by staff

16 and the other proposed by the applicants. Why don't

17 you, beginning with the applicants, let me know what

18 your thinking is in terms of why your schedule is

19 preferable.

20 MR. THOMSON: Yes, your Honor. We base this

21 schedule in part on looking at schedules in resent

22 commission proceedings regarding mergers and

23 acquisitions in the telecom industry, especially with

24 respect to the recent CenturyLink Level 3 schedule.

25 We tried to build in enough time. Our schedule is

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 1 actually a little bit longer than what was originally

 2 adopted in the CenturyLink Level 3. And we are

 3 seeking to, in large part, get a commission decision

 4 as early as possible so that we can close this

 5 transaction and deliver the benefits of the

 6 transaction to the consumers of the State of

 7 Washington. In particular we have a situation where

 8 the existing ILEC is losing lines. We believe that

 9 with an infusion of capital as proposed by the

10 purchasers, that we can stem that line loss, in effect

11 grow the company, and deliver benefits especially high

12 speed broadband to more consumers within the state.

13 And so, the longer we delay commission decision and

14 the closing of the transaction, the longer it will

15 take to get those benefits to consumers in the state

16 of Washington.

17 So we've tried to build in time enough for

18 settlement conferences. And the real sticking point I

19 think between the two sets of schedules is the time

20 allotted between when the applicants would file their

21 direct testimony, which we propose July 31st, and the

22 time that staff, public counsel, and intervenors would

23 file their testimony, we have proposed mid-September.

24 In negotiations with staff, we have offered to extend

25 that to early October. The staff proposal, on the

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 1 other hand, would have their staff, public counsel,

 2 and intervenor response testimony not coming in until

 3 mid to late November, a near four months after the

 4 applicants file their testimony. We believe that is

 5 an inordinately long amount of time to get their

 6 testimony. We believe that we can get them the

 7 information they need where we've offered to shorten

 8 discovery schedules to the extent necessary to turn

 9 around data to the staff, public counsel, and

10 intervenors.

11 And we're just urging your Honor to adopt

12 a -- at least a slightly more condensed schedule than

13 what the staff has proposed.

14 JUDGE KOPTA: Is there an application before

15 the FCC for approval of this transaction?

16 MR. THOMSON: Yes, your Honor. And

17 Mr. Saville is closely monitoring that and probably

18 has a better feel for the estimated time to decision

19 the FCC.

20 JUDGE KOPTA: That would be my next question.

21 MR. SAVILLE: Your Honor, Kevin Saville.

22 Yes, we did file a joint application with the FCC back

23 at the end of June. We received just a couple of

24 basic follow-up inquiries with the FCC, which we

25 provided. And the next step in their process will be

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 1 to release a notice seeking public comments on that

 2 application. We're expecting that notice to come out

 3 as early as this week or next week with, you know,

 4 approximately a 30-day comments with an opportunity

 5 for reply comments. So at this point it's our

 6 expectation that we would have an FCC decision in the

 7 November time frame.

 8 JUDGE KOPTA: Okay. Any other jurisdictions

 9 that need to weigh in on this proposed transaction?

10 MR. TRINCHERO: Yes, your Honor. We have

11 filed an application with the Oregon Public Utilities

12 Commission. We have a jurisdictional argument in that

13 proceeding that has yet to be resolved. If, in fact,

14 that case were to move forward, we would be setting

15 the schedule probably in August.

16 JUDGE KOPTA: Okay.

17 MR. TRINCHERO: We also have an application

18 before the Montana Public Services Commission. My

19 understanding is that public notification of that

20 application should be going out this week. And there

21 is, I believe it's a 20-day period for interventions

22 to come in in the state of Montana.

23 JUDGE KOPTA: Okay. At this point we still

24 don't have a firm grasp of what schedules would be in

25 the other jurisdictions?

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 1 MR. TRINCHERO: That's correct.

 2 JUDGE KOPTA: Mr. Saville, did you have

 3 something?

 4 MR. SAVILLE: Your Honor, I was just going to

 5 add to that. The parties also did file with the

 6 Department of Justice on Hart-Scott-Rodino filing.

 7 We've already received that clearance. So that

 8 regulatory approval requirement has been met. Also

 9 because of some of the ownership interests of the

10 buyer, we will be filing -- we've already filed the

11 joint draft application with the CFIUS review, which

12 is the Committee on Foreign Investment. They will

13 review the transaction, as well. But it's a little

14 different process. It's not as much of a public

15 process as the other proceedings. But, you know, just

16 for purposes of full disclosure, those are the other

17 regulatory filings that are pending.

18 JUDGE KOPTA: Okay. I appreciate that.

19 Staff, what's your take on scheduling?

20 MR. CALLAGHAN: Thank you, your Honor.

21 Before I forget, staff was going to inquire whether

22 your Honor would like to hear argument on the

23 jurisdictional question today?

24 JUDGE KOPTA: Not at this point.

25 MR. CALLAGHAN: Okay.

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 1 JUDGE KOPTA: No, I'm --

 2 MR. CALLAGHAN: Thank you. So, your Honor --

 3 JUDGE KOPTA: Mr. Saville.

 4 MR. SAVILLE: Your Honor, again, just for

 5 purposes of full disclosure, we have also filed 394

 6 applications with the local franchise authorities

 7 associated with some of the video applications. But

 8 those have a federal statutory time frame of 120 days.

 9 So we don't expect those to be, you know, effective.

10 JUDGE KOPTA: Okay.

11 MR. TRINCHERO: Your Honor, those were filed

12 at the end of last week.

13 JUDGE KOPTA: All right, Mr. Callaghan,

14 proceed with the scheduling.

15 MR. CALLAGHAN: Thank you, your Honor.

16 So, your Honor, I begin by noting that the

17 application in this case was filed June 28th. Under

18 the statute, the commission has 11 months to resolve a

19 transaction like this under 80.12.030(2). And that

20 can additionally be extended for four months. So that

21 would put the statutory deadline in this case at May

22 28th of next year.

23 So, your Honor, when staff received the

24 proposed procedural schedule from the company, the

25 staff was taking into consideration the deadlines and

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 1 the goals that the company has for resolving these

 2 matters and getting the transaction done. However, as

 3 you're well aware, the telecom staff at the commission

 4 is dealing with a number of issues, rule makings,

 5 adjudications during this time frame. And so, the

 6 comparison to past cases and past transactions doesn't

 7 really apply because in those cases, the workload for

 8 telecom staff was not nearly as high as it is today.

 9 So the question is not is how fast can staff get their

10 testimony ready once the company has filed their

11 testimony; it's how fast can staff get this done

12 considering all the other workload issues that staff

13 is dealing with.

14 So given the statutory deadline, staff

15 proposed a February 28th deadline for the post hearing

16 briefs. And staff's position was that that was a

17 compromise. That was us trying to work with the

18 company to find a solution that would balance both

19 interests.

20 At the end of the day, your Honor, procedural

21 schedules can be shortened, they can be lengthened.

22 But the question is what is the default? And the

23 default here, I think, should be a balance between

24 these interests and staff's interest in ensuring that

25 they have enough time to do their due diligence in

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 1 this case. Thank you.

 2 JUDGE KOPTA: Okay.

 3 Public counsel.

 4 MS. SUETAKE: Thank you, your Honor. I

 5 wanted to say a public counsel is incredibly sensitive

 6 to staff's timing and staffing needs with regard to

 7 all of their applications. And I had understood

 8 through conversations with both parties that this

 9 February date was staff's compromise to the original

10 statutory deadline of May 28th. Public counsel, we

11 had our own constraints being also part of the state

12 government with our contracting requirements. So we

13 are still in the process of getting our expert witness

14 on board.

15 Shortening the schedule more than February

16 creates difficulties, given we don't even have their

17 testimony yet. So while I am sensitive to speeding

18 the schedule up, I believe that the February 28th

19 deadline would be -- final deadline would be a good

20 compromise.

21 JUDGE KOPTA: Okay. Ms. Rackner.

22 MS. RACKNER: Charter doesn't have a position

23 on the schedule other than to ensure that our -- we

24 are available on the specific days that are ultimately

25 selected.

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 1 JUDGE KOPTA: Mr. Smith, does the Department

 2 of Defense have any position on this having heard this

 3 for the first time this afternoon?

 4 MR. SMITH: (No audible response.)

 5 JUDGE KOPTA: You're on mute if you're

 6 talking.

 7 MR. SMITH: Yes, I was. Excuse me. I said,

 8 "No, I would just echo what Charter's counsel said."

 9 JUDGE KOPTA: Okay. So it sounds to me as if

10 taking a recess for the parties to discuss this would

11 not be productive; is that a fair assessment?

12 Mr. Trinchero.

13 MR. TRINCHERO: We have attempted to work out

14 a compromise on the schedule, and to date that has not

15 been productive. I don't know whether additional

16 discussions may help. Perhaps with some direction

17 from your Honor on your thoughts on the schedule, we

18 might be able to have a fruitful discussion.

19 JUDGE KOPTA: Well, I'm not really in a

20 position to strong-arm either party. I understand the

21 desire to close this transaction as soon as reasonably

22 possible. But I also understand that resources are

23 limited, and that may not be that possible as quickly

24 as the company would like. So at this point I'm not

25 prepared to take a position either way. I will take

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 1 this under advisement and consult with the

 2 commissioners, and see what their preference is since

 3 ultimately it's their decision.

 4 And then since we're not going to take a

 5 break, then we will allow Charter to review the motion

 6 for a protective order. And if you can, within the

 7 next few days, file something, whether it's a we have

 8 no objection or stating any concerns that you have

 9 with highly confidential. And I wouldn't necessarily

10 look at the proposed order that they have submitted.

11 The commission has its own standard protective order

12 for both normal protective and highly confidential

13 protective protections.

14 MS. RACKNER: May I ask a clarification on

15 that point?

16 JUDGE KOPTA: You may.

17 MS. RACKNER: So, Judge Kopta, are you

18 suggesting that both the scope of the highly

19 confidential designation and the restrictions on who

20 that information is available to, that we should be

21 looking to the commission's standard highly

22 confidential order instead of the proposal by

23 Frontier?

24 JUDGE KOPTA: I don't know what the proposal

25 is and how different it is, if at all from the

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 1 commission's standard protective order. I would focus

 2 on the standard protective order unless the company is

 3 asking for something substantively different than what

 4 we've done in the past.

 5 MS. RACKNER: Okay. And if they are, I may

 6 be able to work with Mr. Trinchero to come to a

 7 reasonable compromise if we aren't in exactly the same

 8 place.

 9 JUDGE KOPTA: Okay. I will note that we try

10 and keep the highly confidential information as

11 contained as possible because it does post extra

12 burdens on the parties and the commission in terms of

13 making sure that it's protected appropriately.

14 I'm not saying that anyone here would do it,

15 but we have had people in the past that are generous,

16 shall we say, with their designation. And we just as

17 soon keep them as restrained as possible.

18 MS. RACKNER: And one thing I would note is

19 that very quickly reviewing the proposal, it looks

20 like the proposal is to -- not to restrict the

21 information only to outside counsel and outside

22 consultants. And I would guess that that could be a

23 sticking point, and in particular that the company

24 might wish to have inside regulatory counsel be in a

25 position to review the information as well, but

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 1 without having an opportunity to consult which my

 2 client, I don't really know. They may be comfortable

 3 with the proposed restrictions.

 4 JUDGE KOPTA: Well, and that's always an

 5 issue in these kinds of situations. And it has been

 6 the commission's practice in the past to agree with

 7 that restriction, which is all the more reason why

 8 anything that's designated as highly confidential

 9 needs to be very closely constrained because we want

10 the parties to have the maximum amount of information.

11 And not everyone has the resources to have only

12 outside counsel and outside experts review pertinent

13 information that may affect their positions or their

14 take on the issues.

15 MS. RACKNER: Understood. Thank you.

16 JUDGE KOPTA: All right. Mr. Callaghan.

17 MR. CALLAGHAN: And, your Honor, I just

18 wanted to make a small amendment. I believe both

19 proposed procedural schedules have an initial

20 settlement conference on August 30.

21 Ms. Rackner informed me earlier that she

22 would not be available on that day. And I had not had

23 time to discuss with the parties. But we were hoping

24 that something earlier that week, either the 28th or

25 the 27th would be available.

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 1 JUDGE KOPTA: Well, as you know, the

 2 commission always includes in its procedural schedules

 3 at least one settlement conference. And to my mind

 4 it's just merely to make sure that the parties have

 5 such a settlement conference. I am agnostic as far as

 6 what the date happens to be. So if you all can get

 7 together and come up with a different date, I'm happy

 8 to adopt that. And if it needs to change, again that

 9 is something that all you would need to do is notify

10 me. You don't need to ask permission to change it

11 because that's really a date for the parties and not

12 for me.

13 MR. CALLAGHAN: Thank you, your Honor.

14 JUDGE KOPTA: All right. Well, I think

15 that's everything on my list. Does anyone else have

16 any other issues that we need to address at this

17 point?

18 MR. SMITH: This is Mr. Smith on the phone.

19 I need to clean something up for the record. I gave

20 one incorrect numerical value for my phone number.

21 The correct phone is 703-693-1274.

22 JUDGE KOPTA: All right. Thank you for that

23 correction. The phone company that I know of will

24 make that automatically so you don't have to have the

25 right one.

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 1 All right. I think that's it for this

 2 afternoon.

 3 I will be entering a prehearing conference

 4 order, including a schedule in hopefully short order,

 5 and as well as a protective order, whether it includes

 6 highly confidential provisions or not.

 7 And with that we are adjourned.

 8 (Proceedings concluded at 2:00 p.m.)

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 1 C E R T I F I C A T E

 2 I, KANDI CLARK, a duly authorized Court Reporter in

 and for the State of Washington, residing at Olympia,

 3 authorized to administer oaths and affirmations pursuant

 to RCW 5.28.010, do hereby certify:

 4

 That the foregoing proceedings transcribed by me by

 5 means of computer-aided transcription is a full, true, and

 complete transcript of the testimony of said witness

 6 consisting of pages 1 through 24;

 7 That as a CCR in this state, I am bound by the Rules

 of Conduct as Codified in WAC 308-14-130; that court

 8 reporting arrangements and fees in this case are offered

 to all parties on equal terms;

 9

 That I am not a relative, employee, attorney, or

10 counsel of any party to this action or relative or

 employee of any such attorney or counsel, and I am not

11 financially interested in the said action or the outcome

 thereof;

12

 IN WITNESS WHEREOF, I have hereunto set my hand this

13 6th day of August, 2019.

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 Kandi Kathryn Clark

20 CCR License #3008

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