

Docket No. UT-190574 - Vol. I

In the Matter of Northwest Fiber, LLC, et al.

July 23, 2019



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the matter of the Joint)
Application of)
))
NORTHWEST FIBER, LLC, FRONTIER) DOCKET UT-190574
COMMUNICATIONS CORPORATION, AND)
FRONTIER COMMUNICATIONS ILEC)
HOLDINGS LLC,)
))
For an Order Declining to Assert)
Jurisdiction Over, or, in the)
Alternative Approving the Transfer)
of Control of Frontier)
Communications Northwest Inc. to)
Northwest Fiber, LLC,)
))
))

VOLUME I
PREHEARING CONFERENCE

PAGES 1-24

BE IT REMEMBERED THAT THE ABOVE ENTITLED CAUSE
CAME ON FOR PREHEARING CONFERENCE
ON TUESDAY, JULY 23, 2019, AT 1:30 P.M.
BEFORE GREG KOPTA, COMMISSIONER
at 621 WOODLAND SQUARE LOOP SE, LACEY, WASHINGTON, 98503.

REPORTED BY: Kandi Kathryn Clark, CCR License #3008

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APPEARANCES (continued):

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(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

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. Trincherro.

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

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. Trincherro 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. Trincherro?

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

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. Trincherro 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 recent
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

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

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.

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

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. Trincherro.

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

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

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.

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
3 and for the State of Washington, residing at Olympia,
4 authorized to administer oaths and affirmations pursuant
5 to RCW 5.28.010, do hereby certify:

6 That the foregoing proceedings transcribed by me by
7 means of computer-aided transcription is a full, true, and
8 complete transcript of the testimony of said witness
9 consisting of pages 1 through 24;

10 That as a CCR in this state, I am bound by the Rules
11 of Conduct as Codified in WAC 308-14-130; that court
12 reporting arrangements and fees in this case are offered
13 to all parties on equal terms;

14 That I am not a relative, employee, attorney, or
15 counsel of any party to this action or relative or
16 employee of any such attorney or counsel, and I am not
17 financially interested in the said action or the outcome
18 thereof;

19 IN WITNESS WHEREOF, I have hereunto set my hand this
20 6th day of August, 2019.

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22
23
24
25

Kandi Kathryn Clark
CCR License #3008