

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET UT-121994
)	
FRONTIER COMMUNICATIONS)	ORDER 02
NORTHWEST INC.,)	
)	
To be Regulated as a Competitive)	PREHEARING CONFERENCE
Telecommunications Company)	ORDER; NOTICE OF HEARING
Pursuant to RCW 80.36.320)	(Set for May 23, 2013)
)	
.....)	

1 **NATURE OF PROCEEDING.** On December 24, 2012, Frontier Communications Northwest Inc. (Frontier) filed with the Washington Utilities and Transportation Commission (Commission) a petition for approval of minimal regulation in accordance with RCW 80.36.320 seeking classification as a competitive telecommunications company throughout its current service territory.

2 On January 24, 2013, Frontier filed an amended replacement petition for approval of minimal regulation in accordance with RCW 80.36.320 (Petition). The Petition came before the Commission at its regularly scheduled open meeting on January 31, 2013. By Order 01 entered in this docket, the Commission suspended the competitive classification and set the Petition for hearing.

3 **CONFERENCE.** The Commission convened a prehearing conference in this docket at Olympia, Washington on February 13, 2013, before Administrative Law Judge Gregory J. Kopta.

4 **APPEARANCES.** Timothy J. O’Connell, Seattle, Washington, represents Frontier. Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (Commission Staff or Staff).¹ Simon J. ffitch and Lisa W. Gafken, Assistant Attorney’s General, Seattle, Washington,

¹ 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 the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See*, RCW 34.05.455.

represents the Public Counsel Section of the Washington Office of Attorney General (Public Counsel). Douglas Denney, Portland, Oregon, represents Integra Telecom of Washington, Inc. (Integra), Mark P. Trincherro, Portland, Oregon, represents, tw telecom of washington, llc (tw telecom) and Charter Fiberlink WA-CCVII, LLC (Charter Fiberlink). Gregory T. Diamond, Seattle, Washington, represents Level 3 Communications, LLC (Level 3). Arthur A. Butler, Ater Wynne LLP, Seattle, Washington, represents Cbeyond Communications LLC (Cbeyond), Kyle J. Smith and Stephen S. Melnikoff, General Attorney's, Arlington, Virginia, represents The Department of Defense and All Other Federal Executive Agencies (DoD/FEA). Contact information provided at the conference for the parties' representatives is attached as Appendix A to this order.

5 **PETITIONS FOR INTERVENTION.** On February 6, 2013, Level 3 filed a petition to intervene. Integra and Cbeyond filed petitions to intervene on February 7, 2013, and on February 8, 2013, tw telecom, Charter Fiberlink, and DoD/FEA filed petitions to intervene. No party objected to these petitions.

6 The petitions filed by Level 3, Integra, Cbeyond, tw telecom, Charter Fiberlink, and Dod/FEA are granted. The Commission finds that the petitioners each demonstrated their substantial interest in this proceeding and that their participation will be in the public interest.

7 **PROTECTIVE ORDER.** The parties ask that the Commission enter a protective order in this docket under RCW 34.05.446, RCW 80.04.095, WAC 480-07-420 and WAC 480-07-423 to protect the confidentiality of proprietary information. The Commission grants the request and will enter the standard protective order with provisions governing confidential and highly confidential information.

8 **DISCOVERY.** The Commission authorizes the parties to conduct discovery pursuant to the Commission's discovery rules, WAC 480-07-400 – 425. In addition, the parties have agreed to, and the Commission adopts, the following modifications to those rules for purposes of this proceeding: (1) a party providing responses to data requests must serve those responses on all other parties; (2) responses to data requests served the date the direct testimony is filed to the date responsive testimony is filed are due within seven business days; and (3) responses to data requests served the date the response testimony is filed to the date the evidentiary hearings begin are due within three business days. The Commission urges the parties to work cooperatively together to avoid having to bring discovery matters forward for formal resolution.

- 9 **PROCEDURAL SCHEDULE.** The parties requested three days for evidentiary hearings, and the Commission’s calendar and the need to issue a final order in this docket by July 24, 2013, necessitate scheduling the hearings on May 23, 28, and 29, 2013. To accommodate those dates, the parties developed the remainder of the procedural schedule during the conference. The Commission adopts this procedural schedule, which is attached to this Order as Appendix B.
- 10 **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to file with the Commission all proposed cross-examination exhibits by 3:00 p.m. on May 20, 2013. The Commission requires 6 copies of the fully unredacted version of exhibits. The Commission also requires 2 copies of a redacted set of any confidential or highly confidential exhibits so that these can be made available by the Commission in response to a public records request or posted to the Commission’s web pages. The electronic copies of all cross-examination exhibits and the hard and electronic copies of a redacted set of confidential or highly confidential exhibits must be submitted by 3:00 p.m. on June 5, 2013.
- 11 Cross-examination exhibits need not be served on parties to whom they have been previously furnished during the discovery process or for other reasons during the conduct of this proceeding except that 2 copies must be furnished to the party sponsoring the witness the party intends to cross examine with the exhibits.
- 12 The exhibits must be accompanied by an exhibit list and must be organized into sets that are **tabbed, labeled, and grouped** according to the witness the party intends to cross examine with the exhibits. Cross-examination exhibits not conforming to these requirements may be rejected. Each party’s cross-examination exhibit list must be filed with the Commission and served on all parties by 3:00 p.m. on [May 20, 2013](#).
- 13 **NOTICE OF HEARING.** The Commission schedules a hearing in this matter, to commence on **Thursday, May 23, 2013, at 9:30 a.m.**, in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The hearing shall resume on **Tuesday, May 28, 2013**, and will conclude on **Wednesday, May 29, 2013**, in the same location.

- 14 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file an original plus six (6) copies of all pleadings, motions, briefs, and other prefiled materials. These materials must conform to the format and publication guidelines in WAC 480-07-395 and WAC 480-07-460. The Commission prefers that materials be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.
- 15 All filings must be mailed or delivered to the Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.
- 16 An electronic copy of all filings must be provided through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail delivery to records@utc.wa.gov. Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette or CD including the filed document(s). Parties must furnish electronic copies in MS Word 6.0 (or later) supplemented by a separate file in .pdf (Adobe Acrobat) format. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files.
- 17 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Parties may submit documents electronically to the Commission on the filing deadline to expedite the filing process, but must file an original, plus six (6) paper copies, of the documents with the Commission by 12:00 noon on the first business day following the filing deadline established in the procedural schedule. WAC 480-07-145(6). Parties may submit documents electronically through the Commission's Web Portal (www.utc.wa.gov/efiling) or by e-mail to records@utc.wa.gov. Finally, to perfect filing, parties must simultaneously provide e-mail courtesy copies of filings to the presiding administrative law judge as well as to the parties to the proceeding.
- 18 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission does have limited ability to provide dispute resolution services; if you wish to explore those services, please call the Director, Administrative Law Division, at 360-664-1355.

19 **NOTICE TO PARTIES:** A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.

Dated at Olympia, Washington, and effective February 15, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA
Administrative Law Judge

APPENDIX A

**PARTIES' REPRESENTATIVES
DOCKET UT-121994**

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
Frontier Communications Northwest Inc.	1800 41 st Street Everett, WA 98201			
	Timothy J. O'Connell Stoel Rives, LLP One Union Square 600 University St., 36 th Fl. Seattle, WA 98101	206-386-7562	206-386-7500	tjoconnell@stoel.com
	Kevin Saville Vice President & Associate General Counsel			Kevin.saville@ftr.com
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Level 3 Communications LLC	Gregory T. Diamond Regulatory Counsel 1505 5 th Avenue Suite 501 Seattle, WA 98101	206-652-5608		Greg.diamond@level3.com
Integra Telecom of Washington, Inc.	Douglas Denney Vice President, Costs & Policy 1201 NE Lloyd Blvd. Suite 500 Portland, OR 97232	503-453-8285	503-453-8223	dkenney@integratelecom.com
	Kim Isaacs			kdisaacs@integratelecom.com
	Kim Wagner			kim.wagner@integratelecom.com

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
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	Arthur A. Butler Ater Wynne LLP 601 Union Street Suite 1501 Seattle, WA 98101-3981	206-623-4711	206-467-8406	aab@aterwynne.com
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	Stephen J. Kennedy			sjk@aterwynne.com
United States Department of Defense (DOD)	Kyle J. Smith, Esq. General Attorney Regulatory Law Office (JALS-RL) U.S. Army Legal Services Agency 9275 Gunston Rd. Suite 1300 Fort Belvoir, VA 22060	703-693-1274	703-808-0123	Kyle.j.smith124.civ@mail.mil
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PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
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	Mark Trincherro Davis Wright Tremaine 1300 SW Fifth Avenue Suite 2400 Portland, OR 97201-5630	503-241-2300	503-778-5299	marktrincherro@dwt.com
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	Stefanie Johnson, Regulatory Analyst			stefaniej@atg.wa.gov
	Carol Williams, Legal Assistant			carolw@atg.wa.gov

APPENDIX B
PROCEDURAL SCHEDULE
DOCKET UT-121994

EVENT	DATE
Company Direct Testimony and Exhibits	February 28, 2013
Motions to Dismiss	March 7, 2013
Responses to Motions to Dismiss	March 14, 2013
Settlement Conference (parties only)	March 18, 2013
Replies to Responses to Motions to Dismiss	March 21, 2013
Public Comment Hearing	To Be Determined
Staff, Public Counsel, and Intervenor Response Testimony and Exhibits	April 11, 2013
Company Rebuttal Testimony and Exhibits; Other Parties Cross-Answering Testimony and Exhibits	April 30, 2013
Filing and Distribution of Hard Copies of Cross Examination Exhibits; Provide witness and exhibit lists and time estimates of cross to parties & ALJ	May 20, 2013
Evidentiary Hearing	May 23 and 28-29, 2013
Filing of Electronic Copies of Cross Exhibits	June 5, 2013
Simultaneous Post-Hearing Briefs	June 20, 2013
Simultaneous Reply Briefs (limit of 20 pages)	June 27, 2013
Deadline for Commission Action	July 24, 2013