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1

BEFORE THE WASHINGTON STATE

2 UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint )

3 Application of ) DOCKET NO. UT-090842

)

4 VERIZON COMMUNICATIONS INC. ) Volume IV

AND FRONTIER COMMUNICATIONS ) Pages 116 to 366

5 CORPORATION. )

)

6 For an Order Declining to )

Assert Jurisdiction Over, or, )

7 in the Alternative, Approving )

the Indirect Transfer of )

8 Control of Verizon Northwest )

Inc. )

9 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

10 A hearing in the above matter was held on

11 February 2, 2010 from 9:30 a.m to 4:50 p.m., at 1300

12 South Evergreen Park Drive Southwest, Room 206, Olympia,

13 Washington, before Administrative Law Judge PATRICIA

14 CLARK and Chairman JEFFREY D. GOLTZ and Commissioner

15 PATRICK J. OSHIE and Commissioner PHILIP B. JONES.

16 The parties were present as follows:

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24 Joan E. Kinn, CCR, RPR

25 Court Reporter

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20

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WASHINGTON, LLC, COVAD COMMUNICATIONS COMPANY, MCLEOD

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9 Settlement (10 pp.) (12/22/09)

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21 Settlement (14 pp.) (12/24/09)

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5 Support of Settlement (18 pp.) (12/24/09)

6 WHW-14T Staff - Prefiled Testimony of William H.

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9 3 Public Counsel (Reserved for Public Comment

10 Exhibit)

11 4 Joint Applicants and DoD/FEA - Settlement

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14 DM-83T Frontier - Prefiled Testimony of Daniel

15 McCarthy in support of Settlement (6 pp.)

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17 CWK-7T DoD/FEA - Prefiled Testimony of Charles W.

18 King in support of Settlement (6 pp.)

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22 DM-75 Public Counsel - Excerpt of Prepared

23 Surrebuttal Testimony of Daniel McCarthy,

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25 DM-76 Public Counsel - Prepared Surrebuttal

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14 Public Counsel Data Request No. 539 (1 p.)

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18 WHW-38 Public Counsel - Staff Response to PC Data

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22 TM-1T McCallion - Prefiled Direct Testimony of

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7 CROSS-EXAMINATION EXHIBITS:

8 TM-3HC Public Counsel - Withdrawn by Public Counsel

9 and moved to DM-84HC

10 TM-4C Public Counsel - CONFIDENTIAL Joint

11 Applicants' Response to PC Data Request No. 48

12 (1 p.) (12/8/09)

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6 PC Data Request No. 398 (1 p.) (12/8/09)

7 TM-14 Public Counsel - Joint Applicants' Response to

8 PC Data Request No. 400 (1 p.) (12/8/09)

9 TM-15 Public Counsel - Joint Applicants' Response to

10 PC Data Request No. 403 (1 p.) (12/8/09)

11 TM-16 Public Counsel - Joint Applicants' Response to

12 PC Data Request No. 404 (1 p.) (12/8/09)

13 TM-17 Public Counsel - Joint Applicants' Response to

14 PC Data Request No. 406 (1 p.) (12/8/09)

15 TM-18 Public Counsel - Joint Applicants' Response to

16 PC Data Request No. 408 (1 p.) (12/8/09)

17 TM-19C Public Counsel - CONFIDENTIAL Joint

18 Applicants' Response to UTC Staff data Request

19 No. 13 (1 p.) (12/8/09)

20 TM-20HC Public Counsel - Moved to SES-24

21 TM-21HC Public Counsel - Moved to SES-25

22 TM-22HC Public Counsel - Moved to SES-26

23 TM-23HC Public Counsel - Moved to SES-27

24 WITNESS: VERIZON: STEPHEN EDWARD SMITH

25 SES-1T Smith - Prefiled Rebuttal Testimony of Stephen

0145

1 Edward Smith (37 pp.) (11/19/09)

2 CROSS-EXAMINATION EXHIBITS:

3 SES-2 Public Counsel - Joint Applicants' Response to

4 PC Data Request No. 354 (2 pp.) (12/8/09)

5 SES-3 Public Counsel - Withdrawn by Public Counsel

6 SES-4 Public Counsel - Joint Applicants' Response to

7 PC Data Request No. 356 (1 p.) (12/8/09)

8 SES-5 Public Counsel - Withdrawn by Public Counsel

9 SES-6HC Public Counsel - Withdrawn by Public Counsel

10 SES-7 Public Counsel - Joint Applicants' Response

11 to PC Data Request No. 362 1 p. (1 p.)

12 (12/8/09)

13 SES-8 Public Counsel - Joint Applicants' Response to

14 PC Data Request No. 386 (1 p.) (12/8/09)

15 SES-9 Public Counsel - Joint Applicants' Response to

16 PC Data Request No. 388 () (12/8/09)

17 SES-10 Public Counsel - Joint Applicants' Response to

18 PC Data Request No. 389 (1 p.) (12/8/09)

19 SES-11 Public Counsel - Withdrawn by Public Counsel

20 SES-12 Public Counsel - Withdrawn by Public Counsel

21 SES-13 Public Counsel - Withdrawn by Public Counsel

22 SES-14 Public Counse - Joint Applicants' Response to

23 PC Data Request No. 416 (1 p.) (12/8/09)

24 SES-15 Public Counsel - Joint Applicants' Response to

25 PC Data Request No. 418 (1 p.) (12/8/09)

0146

1 SES-16 Public Counsel - Joint Applicants' Response to

2 PC Data Request No. 420 (1 p.) (12/8/09)

3 SES-17 Public Counsel - Joint Applicants' Response to

4 PC Data Request No. 422 (1 p.) (12/8/09)

5 SES-18 Public Counsel - Withdrawn by Public Counsel

6 SES-19 Public Counsel - Joint Applicants' Response to

7 PC Data Request No. 426 (1 p.) (12/8/09)

8 SES-20 Public Counsel - Joint Applicants' Response to

9 PC Data Request No. 427 (1 p.) (12/8/09)

10 SES-21 Public Counsel - Joint Applicants' Response to

11 PC Data Request No. 430 (1 p.) (12/8/09)

12 SES-22 Public Counsel - Moved to DM-88

13 SES-23 Public Counsel - Withdrawn by Public Counsel

14 SES-24HC Public Counsel - HIGHLY CONFIDENTIAL Joint

15 Applicants' Response to UTC Staff Data Request

16 No. 11 (Verizon-Hart-Scott Rodino Filing

17 Attachment 4(c)41) (28 pp.) (12/8/09) Moved

18 from TM-20-HC

19 SES-25HC Public Counsel - HIGHLY CONFIDENTIAL Joint

20 Applicants' Response to UTC Staff Data Request

21 No. 11 (Verizon Hart-Scott Rodino Filing

22 Attachment 4(c)42) (4 pp.) (12/8/09) (Moved

23 from TM-21HC)

24 SES-26HC Public Counsel - HIGHLY CONFIDENTIAL Joint

25 Applicants' Response to UTC Staff Data Request

0147

1 No. 11 (Verizon Hart-Scott Rodino Filing

2 Attachment 4(c)45) (5 pp.) (12/8/09) (Moved

3 from TM-22HC)

4 SES-27HC HIGHLY CONFIDENTIAL Joint Applicants' Response

5 to UTC Staff Data Request No. 11 (Verizon

6 Hart-Scott Rodino Filing Attachment 4(c)52) (6

7 pp.) (12/8/09) (Moved from TM-23HC)

8 PARTY: JOINT APPLICANTS

9 WITNESS: FRONTIER: DANIEL McCARTHY

10 DM-1T McCarthy - Prefiled Direct Testimony of Daniel

11 McCarthy (57 pp.) (7/6/09)

12 DM-2T McCarthy - Supplemental Direct Testimony of

13 Daniel McCarthy (9 pp) (8/3/09)

14 DM-3 McCarthy - Form 10-K, Frontier Communications

15 (Period December 31, 2008) (Not Paginated)

16 (8/3/09)

17 DM-4 McCarthy - Form 10-Q, Frontier Communications

18 (Period March 31, 2009) (Not Paginated)

19 (8/3/09)

20 DM-5 McCarthy - Moody's Rating Action dated May 13,

21 2009 (Not Paginated) (8/3/09)

22 DM-6 McCarthy - Independent Analyst Report -

23 Raymond James & Associates (Not Paginated)

24 (8/3/09)

25 DM-7 McCarthy - Preliminary SEC Form S-7 dated July

0148

1 24, 2009 (Not Paginated) (8/3/09)

2 DM-8HCT McCarthy - HIGHLY CONFIDENTIAL Prefiled

3 Rebuttal Testimony of Daniel McCarthy (87 pp.)

4 (11/19/09) (Revised 11/25/09)

5 DM-9 McCarthy - Frontier Press Release on

6 California, Nevada, and South Carolina

7 Approval of Transaction (3 pp.) (11/19/09)

8 DM-10 McCarthy - SEC Form S-4 for AT&T (8 pp.)

9 (11/19/09)

10 DM-11 McCarthy - Frontier Communications - Welcome

11 to the New Frontier dated 5/13/09 (27 pp.)

12 (11/19/09)

13 DM-12 McCarthy - Morgan Stanley Article on Merger

14 (10 pp.) (11/19/09)

15 DM-13 McCarthy - Raymond James Article on Frontier

16 (1 p.) (11/19/09)

17 DM-14 McCarthy - Moody's Investor Rating Action (3

18 pp.) (11/19/09)

19 DM-15 McCarthy - Fitch Ratings on Frontier (1 p.)

20 (11/19/09)

21 DM-16 McCarthy - Stifel Nicolaus Article (5 pp.)

22 (11/19/09)

23 DM-17 McCarthy - UBS Investment Research Article (10

24 pp.) (11/19/09)

25 DM-18 McCarthy - Transcript Excerpt of Ohio

0149

1 Deposition of Dr. Trevor Roycroft (6 pp.)

2 (11/19/09)

3 DM-19 McCarthy - Excerpt of SEC Form 10-K for AT&T

4 (2 pp.) (11/19/09)

5 CROSS-EXAMINATION EXHIBITS

6 DM-20 Staff - Withdrawn by Staff

7 DM-21C Staff - Withdrawn by Staff

8 DM-22HC Staff - Withdrawn by Staff

9 DM-23C Staff - Withdrawn by Staff

10 DM-24 Staff - Withdrawn by Staff

11 DM-25C Staff - Withdrawn by Staff

12 DM-26 Staff - Withdrawn by Staff

13 DM-27 Staff - Withdrawn by Staff

14 DM-28 Staff - Withdrawn by Staff

15 DM-29 Staff - Withdrawn by Staff

16 DM-30 Public Counsel - Joint Applicants' Response to

17 PC Data Request No. 062 (1 p.) (12/8/09)

18 DM-31 Public Counsel - Joint Applicants' Response to

19 PC Data Request No. 096 (2 p.) (12/8/09)

20 DM-32 Public Counsel - Joint Applicants' Response to

21 PC Data Request No. 097 (1 p.) (12/8/09)

22 DM-33 Public Counsel - Joint Applicants' Response to

23 PC Data Request No. 103 (1 p.) (12/8/09)

24 DM-34 Public Counsel - Joint Applicants' Response to

25 PC Data Request No. 125 (1 p.) (12/8/09)

0150

1 DM-35 Public Counsel - Joint Applicants' Response to

2 PC Data Request No. 128 (1 p.) (12/8/09)

3 DM-36C Public Counsel - CONFIDENTIAL Joint

4 Applicants' Response to PC Data Request No.

5 156 (Attachments - PC Set 3 FRO156 Attach1

6 2006 MOR (PP. 2-41); PC Set3 FRO156 Attach2

7 2006 MOR (pp.42-92); PC Set3 FRO156 Attach3

8 2006 MOR (pp. 93-145); PC Set3 FRO156 Attach4

9 20006 MOR (pp.146-183) (183 pp.) (12/8/09)

10 DM-37 Public Counsel - Joint Applicants' Response to

11 PC Data Request No. 177 (1 p.) (12/8/09)

12 DM-38 Public Counsel - Joint Applicants' Response to

13 PC Data Request No. 190 (1 p.) (12/8/09

14 DM-39C Public Counsel - CONFIDENTIAL Joint

15 Applicants' Response to PC Data Request No.

16 192 (1 p.) (12/8/09)

17 DM-40 Public Counsel - Joint Applicants' Response to

18 PC Data Request No. 193 (1 p.) (12/8/09)

19 DM-41 Public Counsel - Joint Applicants' Response to

20 PC Data Request No. 196 (1 p.) (12/8/09)

21 DM-42 Public Counsel - Joint Applicants' Response to

22 PC Data Request No. 198 (1 p.) (12/8/09)

23 DM-43 Public Counsel - Joint Applicants' Response to

24 PC Data Request No. 204 (1 p.) (12/8/09)

25 DM-44 Public Counsel - Joint Applicants' Response to

0151

1 PC Data Request No. 205 (1 p.) (12/8/09)

2 DM-45 Public Counsel - Joint Applicants' Response to

3 PC Data Request No. 208 (1 p.) (12/8/09)

4 DM-46 Public Counsel - Joint Applicants' Response to

5 PC Data Request No. 209 (1 p.) (12/8/09)

6 DM-47 Public Counsel - Joint Applicants' Response to

7 PC Data Request No. 236 (1 p.) (12/8/09

8 DM-48 Public Counsel - Joint Applicants' Response to

9 PC Data Request No. 253 (1 p.) (12/8/09)

10 DM-49HC Public Counsel - HIGHLY CONFIDENTIAL Joint

11 Applicants' Response to PC Data Request No.

12 255 (Attachment WA PC Set10 FRO255b C Frontier

13 Pro Forma Model) (20 pp.) (12/8/09)

14 DM-50C Public Counsel - CONFIDENTIAL Joint

15 Applicants' Response to PC Data Request No.

16 256 (1 p.) (12/8/09)

17 DM-51 Public Counsel - Joint Applicants' Response to

18 PC Data Request No. 257 (1 p.) (12/8/09)

19 DM-52 Public Counsel - Joint Applicants' Response to

20 PC Data Request No. 258 (1 p.) (12/8/09)

21 DM-53 Public Counsel - Joint Applicants' Response to

22 PC Data Request No. 294 (1 p.) (12/8/09)

23 DM-54 Public Counsel - Joint Applicants' Response to

24 PC Data Request No. 296 (1 p.) (12/8/09)

25 DM-55C Public Counsel - CONFIDENTIAL Joint

0152

1 Applicants' Response to PC Data Request No.

2 338 (1 p.) (12/8/09)

3 DM-56 Public Counsel - Joint Applicants' Response to

4 PC Data Request No. 347 (1 p.) (12/8/09)

5 DM-57 Public Counsel - Joint Applicants' Response to

6 PC Data Request No. 353 (1 p.) (12/8/098)

7 DM-58 Public Counsel - Joint Applicants' Response to

8 PC Data Request No. 358 (3 pp.) (12/8/09)

9 DM-59 Public Counsel - Joint Applicants' Response to

10 PC Data Request No. 359 (1 p.) (12/8/09)

11 DM-60C Public Counsel - CONFIDENTIAL Joint

12 Applicants' Response to PC Data Request No 372

13 (1 p.) (12/8/09)

14 DM-61 Public Counsel - Joint Applicants' Response to

15 PC Data Request No. 413 (1 p.) (12/8/09)

16 DM-62 Public Counsel - Joint Applicants' Response to

17 PC Data Request No. 480 (1 p.) (12/8/09)

18 DM-63HC Public Counsel - HIGHLY CONFIDENTIAL Joint

19 Applicants' Response to PC Data Request No.

20 483 (3 pp.) (12/8/09)

21 DM-64 Public Counsel - Joint Applicants' Response to

22 PC Data Request No. 491 (1 p.) (12/8/09)

23 DM-65HC Public Counsel - HIGHLY CONFIDENTIAL Joint

24 Applicants' Response to PC Data Request No.

25 492 (2 pp.) (12/8/09)

0153

1 DM-66HC Public Counsel - HIGHLY CONFIDENTIAL Joint

2 Applicants' Response to PC Data Request No.

3 493 (1 p.) (12/8/09)

4 DM-67HC Public Counsel - HIGHLY CONFIDENTIAL Joint

5 Applicants' Response to PC Data Request No.

6 494 (1 p.) (12/8/09)

7 DM-68HC Public Counsel - HIGHLY CONFIDENTIAL Joint

8 Applicants' Response to PC Data Request No.

9 496 (1 p.) (12/8/09)

10 DM-69HC Public Counsel - HIGHLY CONFIDENTIAL Joint

11 Applicants' Response to PC Data Request No.

12 487 (1 p.) (12/8/09)

13 DM-70 Public Counsel - Joint Applicants' Response to

14 PC Data Request No. 107 (1 p.) (12/8/09)

15 DM-71 Public Counsel - Frontier's Internet

16 Acceptable Use Policy (3 pp.) (12/8/09)

17 DM-72 Public Counsel - Verizon's Online Terms of

18 Service (14 pp.) (12/8/09)

19 DM-73 Public Counsel - Excerpt from Frontier

20 Communications Form S-4/A dated 9/14/09 (p.

21 34) (2 pp.) (12/8/09)

22 DM-84HC Public Counsel - HIGHLY CONFIDENTIAL Joint

23 Applicants' Response to PC Data Request No. 35

24 w/Attachments (12/8/09) Pages 1 - 38 withdrawn

25 by Public Counsel (121 pp.)

0154

1 DM-86 Public Counsel - Joint Applicants' Response to

2 PC Data Request No. 539 (1 p.) (2/2/10)

3 DM-87 Public Counsel - Joint Applicants' Response to

4 PC Data Request No 538 (1 p.) (2/2/10)

5 DM-88 Public Counsel - Joint Applicants' Response to

6 PC Data Request No. 431 (1 p.) (12/8/09)

7 (Moved from SES-22)

8 WITNESS: FRONTIER: KIM L. CZAK

9 KLC-1T Czak - Prefiled Rebuttal Testimony of Kim L.

10 Czak (48 pp.) (11/19/09) (Revised 11/25/09)

11 CROSS-EXAMINATION EXHIBITS

12 KLC-2 Staff - Withdrawn by Staff

13 WITNESS: FRONTIER: DAVID R. WHITEHOUSE

14 DW-1T Whitehouse - Prefiled Rebuttal Testimony of

15 David R. Whitehouse (62 pp.) (11/19/09)

16 (Revised 11/25/09)

17 DW-2 Whitehouse - Moody's Rating Action (3 pp.)

18 (11/19/09)

19 DW-3 Whitehouse - Fitch Ratings (1 p.) (11/19/09)

20 DW-4 Whitehouse - Frontier Press Release (3 pp.)

21 (11/19/09)

22 DW-5 Whitehouse - Frontier Communications - Welcome

23 to the New Frontier dated 5/13/09 (27 pp.)

24 (11/19/09)

25 DW-6 Whitehouse - Merger of CenturyTel/Embarq (13

0155

1 pp.) (11/19/09)

2 DW-7 Whitehouse - Frontier-Verizon Spinco Financing

3 (6 pp.) (11/19/09)

4 DW-8 Whitehouse - Morgan Stanley Article on

5 Frontier (9 pp.) (11/19/09)

6 DW-9 Whitehouse - Frontier Press Release (2 pp.)

7 (11/19/09)

8 DW-10 Whitehouse - Frontier Press Release (2 pp.)

9 (11/19/09)

10 DW-11 Whitehouse - Frontier Press Release (1 p.)

11 (11/19/09)

12 DW-12 Whitehouse - Proxy Prospectus (344 pp.)

13 (11/19/09)

14 CROSS-EXAMINATION EXHIBITS

15 DW-13 Staff - Withdrawn by Staff

16 DW-14 Staff - Withdrawn by Staff

17 DW-15 Staff - Withdrawn by Staff

18 DW-16 Staff - Withdrawn by Staff

19 DW-17 Staff - Withdrawn by Staff

20 DW-18 Staff - Withdrawn by Staff

21 DW-19 Public Counsel - Joint Applicants' Response to

22 PC Data Request No. 390 (1 p.) (12/8/09)

23 DW-20 Public Counsel - Joint Applicants' Response to

24 PC Data Request No. 454 (1 p.) (12/8/09)

25 DW-21 Public Counsel - Joint Applicants' Response to

0156

1 PC Data Request No. 455 (1 p.) (12/8/09)

2 DW-22 Public Counsel - Joint Applicants' Response to

3 PC Data Request No. 461 (1 p.) (12/8/09)

4 DW-23C Public Counsel - CONFIDENTIAL Joint

5 Applicants' Response to PC Data Request No.

6 462 (1 p.) (12/8/09)

7 DW-24 Public Counsel - Joint Applicants' Response to

8 PC Data Request No. 465 (Attachment WA PC

9 set28 FRO465 state service data) (3 pp.)

10 (12/8/09)

11 DW-25 Public Counsel - Joint Applicants' Response to

12 PC Data Request No. 469 (1 p.) (12/8/09)

13 DW-26 Public Counsel - Joint Applicants' Response to

14 PC Data Request No. 473 (1 p.) (12/8/09)

15 DW-27 Public Counsel - Joint Applicants' Response to

16 PC Data Request No. 475 (1 p.) (12/8/09)

17 DW-28 Public Counsel - Joint Applicants' Response to

18 PC Data Request No. 476 (1 p.) (12/8/09)

19 DW-29 Public Counsel - Joint Applicants' Response to

20 PC Data Request No. 477 (1 p.) (12/8/09)

21 DW-30HC Public Counsel - HIGHLY CONFIDENTIAL Joint

22 Applicants' Response to PC Data Request No.

23 518 (37 pp.) (1/26/10)

24 DW-31 Public Counsel - Joint Applicants' Response to

25 PC Data Request No. 520 (1 p.) (1/26/10)

0157

1 WITNESS: FRONTIER: BILLY JACK GREGG

2 BJG-1T Gregg - Prefiled Rebuttal Testimony of Billy

3 Jack Gregg (37 pp.) (11/19/09) (Revised

4 11/25/09)

5 BJG-2 Gregg - New York PSC Citizens' Communications

6 Service Quality Report (19 pp.) (11/19/09)

7 BJG-3 Gregg - New York PSC Citizens' Communications

8 Service Quality Report (18 pp) (11/19/09)

9 BJG-4 Gregg - New York PSC Citizens' Communications

10 Service Quality Report (15 pp) (11/19/09)

11 CROSS-EXAMINATION EXHIBITS

12 BJG-5 Staff - Withdrawn by Staff

13 BJG-6 Staff - Withdrawn by Staff

14 BJG-7C Staff - Withdrawn by Staff

15 BJG-8 Staff - Withdrawn by Staff

16 BJG-9 Staff - Withdrawn by Staff

17 BJG-10 Staff - Withdrawn by Staff

18 BJG-11 Staff - Withdrawn by Staff

19 BJG-12 Staff - Withdrawn by Staff

20 BJG-13 Staff - Withdrawn by Staff

21 BJG-14HC Public Counsel - HIGHLY CONFIDENTIAL Joint

22 Applicants' Response to PC Data Request No. 9

23 (Attachment V29, 66 attachment 1 DSL

24 Availability) (4 pp.) (12/8/09)

25 BJG-15C Public Counsel - CONFIDENTIAL Joint

0158

1 Applicant's Response to PC Data Request No. 23

2 (1 p.) (12/8/09)

3 BJG-16C Public Counsel - CONFIDENTIAL Joint

4 Applicants' Response to PC Data Request No. 70

5 (1 p.) (12/8/09)

6 BJG-17 Public Counsel - Joint Applicants'

7 Supplemental Response to PC Data Request No.

8 164 (8 pp.) (12/8/09)

9 BJG-18 Public Counsel - Joint Applicants' Response to

10 PC Data Request No. 342(1 p.) (12/8/09)

11 BJG-19 Public Counsel - Joint Applicants' Response to

12 PC Data Request No. 346 (1 p.) (12/8/09)

13 BJG-20 Public Counsel - Joint Applicants' Response to

14 PC Data Request No. 366 (2 pp.) (12/8/09)

15 BJG-21C Public Counsel - CONFIDENTIAL Joint

16 Applicants' Response to PC Data Request No.

17 433 (Attachment FRO433 High Speed Internet) (4

18 pp.) (12/8/09)

19 BJG-22 Public Counsel - Joint Applicants' Response to

20 PC Data Request No. 436 (1 p.) (12/8/09)

21 BJG-23 Public Counsel - Joint Applicants' Response to

22 PC Data Request No. 437 (1 p.) (12/8/09)

23 BJG-24 Public Counsel - Joint Applicants' Response to

24 PC Data Request No. 438 (1 p.) (12/9/09)

25 BJG-25 Public Counsel - Joint Applicants' Response to

0159

1 PC Data Request No. 439 (1 p.) (12/8/09)

2 BJG-26 Public Counsel - Joint Applicants' Response to

3 PC Data Request No. 441 (Attachment WAS PC

4 SET27 FRO4411L Rebuttal Ex 2 15.0df) (5 pp.)

5 (12/8/09)

6 BJG-27 Public Counsel - Joint Applicants' Response to

7 PC Data Request No. 442 (1 p.) (12/8/09)

8 BJG-28 Public Counsel - Joint Applicants' Response to

9 PC Data Request No. 443 (1 p.) (12/8/09)

10 BJG-29 Public Counsel - Joint Applicants' Response to

11 PC Data Request No. 449 (1 p.) (12/8/09)

12 BJG-30 Public Counsel - Joint Applicants' Response to

13 PC Data Request No. 450 (1p.) (12/8/09)

14 BJG-31 Public Counsel - Joint Applicants' Response to

15 PC Data Request No. 452 (1 p.) (12/8/09)

16 BJG-32 Public Counsel - Verizon Web Page Verizon High

17 Speed Internet Rates (2 pp.) (12/8/09)

18 BJG-33 Public Counsel - West Virginia Commission

19 Order (Case No. 08-0761-T-G1) on Verizon

20 Service Quality (11 pp.) (12/8/09)

21 BJG-34 Public Counsel - West Virginia Discovery

22 Response - Service Quality Services (Q Series)

23 Q54 (2 pp.) (12/8/09)

24 BJG-35 Public Counsel - West Virginia Discovery

25 Response CWA Set 3, Question # 10 (1 p.)

0160

1 (12/8/09)

2 BJG-36 Public Counsel - Excerpt of Billy Jack Gregg

3 Direct Testimony in West Virginia, p. 25 (Case

4 No. 09-0871-T-PC) (2 pp.) (12/8/09)

5 BJG-37C Public Counsel - CONFIDENTIAL Joint

6 Applicants' Response to PC Data Request No.

7 503 (6 pp.) (1/26/10)

8 BJG-38C Public Counsel - CONFIDENTIAL Joint

9 Applicants' Response to PC Data Request No.

10 515 (1 p.) (1/26/10)

11 BJG-39 Public Counsel - Joint Applicants' Response to

12 PC Data Request No. 517 (1 p.) (1/26/10)

13 BJG-40 Public Counsel - Excerpt from Hearing

14 Transcript from PSCWV, dated 1/14/2010, pp.

15 222-225 (5 pp.) (1/29/10)

16 WITNESS: FRONTIER: F. WAYNE LAFFERTY

17 FWL-1T Lafferty - Prefiled Rebuttal Testimony of F.

18 Wayne Lafferty (44 pp.) (11/19/09) (Revised

19 11/25/09)

20 FWL-2 Lafferty - Curriculum Vitae of F. Wayne

21 Lafferty (52 pp)

22 CROSS-EXAMINATION EXHIBITS

23 FWL-3 Public Counsel - Withdrawn by Public Counsel

24 FWL-4 Public Counsel - Withdrawn by Public Counsel

25 FWL-5 Public Counsel - Withdrawn by Public Counsel

0161

1 PARTY: BCAW

2 WITNESS: RON MAIN

3 RM-1T Main - Prefiled Corrected Rebuttal Testimony

4 of Ron Main (8 pp.) (11/19/09)

5 PARTY: COMMISSION STAFF

6 WITNESS: WILLIAM WEINMAN

7 WHW-1T Weinman - Prefiled Responsive Testimony of

8 William H. Weinman (29 pp.) (11/3/09) (Errata

9 11/13/09) (Errata 12/9/09)

10 WHW-2 Weinman - Joint Applicant's Response to Staff

11 Data Request No. 110 (3 pp.) (11/3/09)

12 WHW-3 Weinman - Joint Applicants' Response to Staff

13 Data Request No. 107 (1 p.) (11/3/09)

14 WHW-4 Weinman - Joint Applicants' Response to Staff

15 Data Request No. 7 (1 p.) (11/3/09)

16 WHW-5 Weinman - Joint Applicants' Response to Staff

17 Data Request No. 96 (2 pp.) (11/3/09)

18 WHW-6 Weinman - Joint Applicants' Response to Public

19 Counsel Data Request No. 97 (1 p.) (11/3/09)

20 CROSS-EXAMINATION EXHIBITS

21 WHW-7 Verizon - Withdrawn by Verizon

22 WHW-8 Verizon - Withdrawn by Verizon

23 WHW-9 Verizon - Withdrawn by Verizon

24 WHW-10 Verizon - Withdrawn by Verizon

25 WHW-11 Verizon - Withdrawn by Verizon

0162

1 WHW-12 Frontier - Withdrawn by Frontier

2 WHW-13 Frontier - Withdrawn by Frontier

3 WITNESS: RICK T. APPLEGATE

4 RTA-1T Applegate - Prefiled Responsive Testimony of

5 Rick T. Applegate (10 pp.) (11/3/09)

6 RTA-2 Applegate - Verizon Response to Comcast Data

7 Request 19 (1 p.) (11/3/09)

8 WITNESS: JING LIU

9 JL-1HCT Liu - HIGHLY CONFIDENTIAL Prefiled Responsive

10 Testimony of Jing Liu (20 pp.) (11/3/09)

11 JL-2HC Liu - HIGHLY CONFIDENTIAL Verizon DSL

12 Capability, Take Rate, and FiOS Availability

13 by Wire Center (3 pp.) (11/3/09)

14 CROSS-EXAMINATION EXHIBITS

15 JL-3 Verizon - Withdrawn by Verizon

16 JL-4 Verizon - Withdrawn by Verizon

17 JL-5 Verizon - Withdrawn by Verizon

18 JL-6 Verizon - Withdrawn by Verizon

19 WITNESS: JING Y. ROTH

20 JYR-1HCT Roth - HIGHLY CONFIDENTIAL Prefiled Responsive

21 Testimony of Jing Y. Roth (17 pp.) (11/3/09)

22 JYR-2 Roth - Professional Information (4 pp.)

23 (11/3/09)

24 JYR-3 Roth - Verizon/Frontier Response to UTC Staff

25 Data Request 72 (1 p.) (11/3/09)

0163

1 JYR-4 Roth - Verizon and Frontier Response to Public

2 Counsel Data Request 248 (1 p.) (11/3/09)

3 JYR-5 Roth - TR's State Newswire . . . with

4 TRINSIGHT NEW YORK - Frontier Ordered to

5 Refund Early Termination Fees (1 p.) (11/3/09)

6 JYR-6HC Roth - HIGHLY CONFIDENTIAL HSR Document 4(c)

7 (52), page 1 of 6, Reports the Results of a

8 Verizon Evaluation of Frontier Residential

9 Pricing Strategies (1 p.) (11/3/09)

10 WITNESS: KRISTEN M. RUSSELL

11 KMR-1T Russell - Prefiled Responsive Testimony of

12 Kristen M. Russell (31 pp.) (11/3/09)

13 KMR-2 Russell - WAC 480-120-439 (3 p.) (11/3/3/09)

14 KMR-3 Russell - Service Quality Requirements (3 p.)

15 (11/3/09)

16 KMR-4 Russell - General and Local Exchange Tariff (1

17 p.) (11/3/09)

18 KMR-5C Russell - CONFIDENTIAL Service Performance

19 Guarantee Payouts (1 p.) (11/3/09)

20 KMR-6 Russell - Frontier Mission & Values '09 (1 p.)

21 (11/3/09)

22 WITNESS: SUZANNE L. STILLWELL

23 SLS-1T Stillwell - Prefiled Responsive Testimony of

24 Suzanne L. Stillwell (10 pp.) (11/3/09)

25 SLS-2 Stillwell - Verizon and Frontier Responses to

0164

1 Public Counsel data Request Nos. 220 and 221

2 (2 pp.) (11/3/09)

3 WITNESS: ROBERT T. WILLIAMSON

4 RTW-1HCT Williamson - HIGHLY CONFIDENTIAL Prefiled

5 responsive Testimony of Robert T. Williamson

6 (23 pp.) (11/3/09)

7 RTW-2 Williamson - Qualifications (1 p.) (11/3/09)

8 CROSS-EXAMINATION EXHIBITS

9 RTW-3 Verizon - Withdrawn by Verizon

10 RTW-4 Verizon - Withdrawn by Verizon

11 RTW-5 Verizon - Withdrawn by Verizon

12 RTW-6 Verizon - Withdrawn by Verizon

13 RTW-7 Verizon - Withdrawn by Verizon

14 RTW-8 Verizon - Withdrawn by Verizon

15 RTW-9 Verizon - Withdrawn by Verizon

16 RTW-10 Verizon - Withdrawn by Verizon

17 RTW-11 Verizon - Withdrawn by Verizon

18 PARTY: PUBLIC COUNSEL

19 WITNESS: BARBARA R. ALEXANDER

20 BRA-1CT Alexander - CONFIDENTIAL Prefiled Responsive

21 Testimony of Barbara R. Alexander (46 pp.)

22 (11/3/09) (Revised 12/2/09)

23 BRA-2 Alexander - Qualifications (12 pp.) (11/3/09)

24 BRA-3C Alexander - CONFIDENTIAL Service Quality

25 Performance Data (1 p.) (11/3/09)

0165

1 CROSS-EXAMINATION EXHIBITS

2 BRA-4 Verizon - Public Counsel Response to JA DR 124

3 (1 p.) (12/8/09)

4 BRA-5 Verizon - Public Counsel Response to JA DR 126

5 (1 p.) (12/8/09)

6 BRA-6 Verizon - Prefiled Responsive Testimony of

7 Suzanne Stillwell (21 pp.(12/8/09)

8 BRA-7 Verizon - Order 07 in Docket UT-050814 (82

9 pp.) (12/8/09)

10 BRA-8 Verizon - Verizon Response to PC DR 129 (3

11 pp.) (12/8/09)

12 BRA-9C Verizon - CONFIDENTIAL Verizon NW UTC Report

13 Summary December 06 (1 p.) (12/8/09)

14 BRA-10C Verizon - CONFIDENTIAL Verizon NW UTC Report

15 Summary December 07 (1 p.) (12/8/09)

16 BRA-11C Verizon - CONFIDENTIAL Verizon NW UTC Report

17 Summary December 08 (1 p.) (12/8/09)

18 BRA-12 Frontier - Oregon PUC Testimony of Wolodymyr

19 Birko (9 pp.) (12/8/09)

20 WITNESS: STEPHEN G. HILL

21 SGH-1T Hill - Prefiled Responsive Testimony of

22 Stephen G. Hill (52 pp.) (11/3/09)

23 SGH-2 Hill - Education and Employment History (1 p.)

24 (11/3/09)

25 SGH-3 Hill - Frontier Verizon Merger Application:

0166

1 Risk Factors (13 pp.) (11/3/09)

2 SGH-4 Hill - WSJ article - "Two Sides of Verizon's

3 Deal Making" (2 pp.) (11/3/09)

4 SGH-5 Hill - Frontier-Verizon Merger Application

5 Spreadsheet Historical Data (1 p.) (11/3/09)

6 SGH-6 Hill - Verizon Merger Application Spreadsheet

7 Historical Data (1 p.) (11/3/09)

8 SGH-7 Hill - Frontier-Verizon Merger Application

9 Spreadsheet Spinco Historical Data (1 p.)

10 (11/3/09)

11 SGH-8 Hill - Verizon-Wireless Customer Letter dated

12 May 26, 2009 (1 p.) (11/3/09)

13 SGH-28 Hill - NRRI Article, "A New Era in ILEC

14 Transfers; Safeguarding Wireline Telecom

15 Service," Helen F. Golding (44 pp.) (1/26/10)

16 SGH-29 Hill - "Frontier Communications Shares Not

17 Wired for Success", Barrons' (2 pp.) (1/26/10)

18 SGH-30 Hill - Withdrawn by Public Counsel

19 CROSS-EXAMINATION EXHIBITS

20 SGH-9 Verizon - SGH Curriculum vitae (1 p.)

21 (12/8/09)

22 SGH-10 Verizon - Withdrawn by Verizon

23 SGH-11 Verizon - Withdrawn by Verizon

24 SGH-12 Verizon - Fitch Ratings (1 p.) (12/8/09)

25 SGH-13 Verizon- Withdrawn by Verizon

0167

1 SGH-14 Verizon- Moody's (2 pp.) (12/8/09)

2 SGH-15 Verizon - Morgan Stanley (10 pp.) (12/8/09)

3 SGH-16 Verizon - Withdrawn by Verizon

4 SGH-17 Verizon - Withdrawn by Verizon

5 SGH-18 Verizon - Public Counsel's Supplemental

6 Response to JA DR No. 74 (1 p.) (12/8/09)

7 SGH-19 Verizon - Public Counsel's Supplemental

8 Response to JA DR No. 78 (2 pp.) (12/8/09)

9 SGH-20 Verizon - Public Counsel's Supplemental

10 Response to JA DR No. 80 (1 p.) (12/8/09)

11 SGH-21 Verizon - Public Counsel's Supplemental

12 Response to JA DR No. 81 (1 p.) (12/8/09)

13 SGH-22 Verizon - Raymond James (1 p.) (12/8/09)

14 SGH-23HC Verizon - HIGHLY CONFIDENTIAL Public Counsel's

15 Supplemental Response to JA DR No. 79 (2 pp.)

16 (12/8/09)

17 SGH-24 Frontier - Public Counsel's Supplemental

18 Response to JA DR No. 67 (2 pp.) (12/8/09)

19 SGH-25 Frontier - Public Counsel's Supplemental

20 Response to JA DR No. 74 (1 p.)

21 SGH-26 Frontier - Public Counsel's Supplemental

22 Response to JA DR No. 80 (1 p.) (12/8/09)

23 SGH-27 Frontier - Public Counsel's Supplemental

24 Response to JA DR No. 81 (1 p.) (12/8/09)

25 WITNESS: DR. TREVOR R. ROYCROFT

0168

1 TRR-1HCT Roycroft - HIGHLY CONFIDENTIAL Prefiled

2 Responsive Testimony of Dr. Trevor R. Roycroft

3 (106 pp.) (11/3/09) (Revised 11/13/09)

4 TRR-2 Roycroft - Qualifications and Education (15

5 pp.) (11/3/09)

6 TRR-3 Roycroft - Excerpt of Testimony of Daniel J.

7 McCarthy, 9/30/09, Ohio PUC (2 pp.) (11/3/09)

8 TRR-4 Roycroft - Excerpt of Deposition Transcript of

9 Timothy McCallion, 9/30/09, Ohio PUC (5 pp.)

10 (11/3/09)

11 TRR-5 Roycroft - Consumer Advocate Division, State

12 of W. Virginia PSC, Fifth Request for

13 Information (2 pp.) (11/3/09)

14 TRR-27 Roycroft - "The State of the Internet" Akamia

15 report (32 pp.) (1/26/10)

16 TRR-28 Roycroft - Joint Applicants' Response to

17 Public Counsel Data Request No. 538 (1 p.)

18 (2/1/10)

19 TRR-29 Roycroft - Joint Applicants' Response to

20 Public Counsel Data Request No. 539 (1 p.)

21 (2/1/10)

22 CROSS-EXAMINATION EXHIBITS

23 TRR-6 Verizon - Withdrawn by Verizon

24 TRR-7 Verizon - Withdrawn by Verizon

25 TRR-8 Verizon - Frontier Response to PC DR. No. 348

0169

1 (2 pp.) (12/8/09)

2 TRR-9 Verizon - Withdrawn by Verizon

3 TRR-10 Verizon - Withdrawn by Verizon

4 TRR-11 Verizon - Joint Applicants' Response to PC

5 DR. No. 96 (2 pp.) (12/8/09)

6 TRR-12 Verizon - Withdrawn by Verizon

7 TRR-13 Verizon - Withdrawn by Verizon

8 TRR-14 Verizon - Withdrawn by Verizon

9 TRR-15 Verizon - Withdrawn by Verizon

10 TRR-16 Verizon - Withdrwn by Verizon

11 TRR-17 Verizon - Withdrawn by Verizon

12 TRR-18 Verizon - Public Counsel Supplemental Response

13 to JA DR No. 81 (1 p.) (12/8/09)

14 TRR-19 Verizon - Withdrawn by Verizon

15 TRR-20 Verizon - Verizon Response to PC DR No. 394 (1

16 p.) (12/8/09)

17 TRR-21 Verizon - Raymond James (1 p.) (12/8/09)

18 TRR-22HC Verizon - HIGHLY CONFIDENTIAL Public Counsel

19 Response to JA DR. No. 99 (2 pp.) (12/8/09)

20 TRR-23HC Verizon - Withdrawn by Verizon

21 TRR-24HC Verizon - Withdrawn by Verizon

22 TRR-25 Frontier - Withdrawn by Frontier

23 TRR-26 Frontier - Public Version of Dr. Roycroft's

24 Testimony Before Ohio PUC (147 pp.) (12/8/09)

25 PARTY: INTEGRA

0170

1 WITNESS: JAMES HUESGEN

2 JH-1T Huesgen - Prefiled Responsive Testimony of

3 James Huesgen (21 pp.) (11/3/09)

4 JH-2 Huesgen - Proposed Wholesale Conditions (3

5 pp.) (11/3/09)

6 JH-3 Huesgen - Notice to CLECs, et. (1 p.)

7 (11/3/09)

8 JH-4 Huesgen - Impact of NMC Transition of Verizon

9 Average Installation Interval WA (1 p.)

10 (11/3/09)

11 JH-5 Huesgen - Impact of MNC Transition on Verizon

12 Center Responsiveness (1 p.) (11/3/09)

13 JH-6 Huesgen - 2009 Open CUF Issues (8 pp.)

14 (11/3/09)

15 JH-7 Huesgen - PWG Change Request History (48 pp.)

16 (11/3/09)

17 JH-8 Huesgen - Verizon Change Management Meeting

18 (19 pp.) (11/3/09)

19 WITNESS: DOUGLAS DENNEY

20 DD-1T Denney - Prefiled Responsive Testimony of

21 Douglas Denney (28 pp.) (11/3/09)

22 DD-2 Denney - Verizon Response to Comcast Data

23 Request No. 3 (1 p.) (11/3/09

24 PARTY: DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL

25 EXECUTIVE AGENCIES

0171

1 WITNESS: CHARLES W. KING

2 CWK-1T King - Prefiled Responsive Testimony of

3 Charles W. King (34 pp) (11/3/09)

4 Attachment A - Resume (1 p.) (11/3/09)

5 Attachment B - Appearances (15 pp.) (11/3/09)

6 Attachment C - Statement of David Hauser, CEO

7 FairPoint Communications (2 pp.) (11/3/09)

8 Attachment D - Joint Stipulation & Agreement,

9 NYPSE (14 pp.) (11/3/09)

10 Attachment E - Applicant's Response to CWA

11 Data Request No. 19 in W. Virginia (2 pp.)

12 (11/3/09)

13 Attachment F - Ninth Supplemental Order in

14 Docket UT-991358 (2 pp.) (11/3/09)

15 CROSS-EXAMINATION EXHIBITS

16 CWK-2 Verizon - Withdrawn by Verizon

17 CWK-3 Verizon - Withdrawn by Verizon

18 CWK-4 Frontier - Withdrawn by Frontier

19 CWK-5 Frontier - Withdrawn by Frontier

20 CWK-6 Frontier - Withdrawn by Frontier

21

22

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0172

1 P R O C E E D I N G S

2 JUDGE CLARK: Good morning, it's

3 approximately 9:30 a.m., February 2nd, 2010. This is

4 the time and the place set for hearing in the Matter of

5 the Joint Application of Verizon Communications

6 Incorporated and Frontier Communications Corporation for

7 an Order Declining to Assert Jurisdiction Over, or, in

8 the Alternative, Approving the Indirect Transfer of

9 Control of Verizon Northwest Incorporated, given Docket

10 Number UT-090842, Patricia Clark, Administrative Law

11 Judge for the Commission presiding.

12 At this time I'm going to call for the

13 appearances of the parties because the first thing we

14 will address on the record this morning is the

15 objections to the admission of the exhibits and any

16 other procedural matters. Once we have resolved those

17 procedural matters, I will take a brief recess and ask

18 the Commissioners to join us for the substantive portion

19 of today's hearing. I'm going to commence with

20 appearances starting with Verizon.

21 MR. ROMANO: Thank you, Your Honor, Gregory

22 M. Romano on behalf of Verizon, General Counsel of

23 Verizon Northwest.

24 JUDGE CLARK: Thank you.

25 MR. RUGGIERO: Good morning, Your Honor,

0173

1 Joseph M. Ruggiero on behalf of Verizon.

2 JUDGE CLARK: All right, and, Mr. Ruggiero, I

3 don't believe you've entered an appearance for the court

4 reporter earlier, so if you could please spell your last

5 name for her, that would be helpful.

6 MR. RUGGIERO: Sure, it's R-U-G-G-I-E-R-O.

7 JUDGE CLARK: All right, and the record

8 should reflect that he has already filed an entry of

9 appearance in this docket.

10 Appearing on behalf of Frontier.

11 MR. BEST: Your Honor, Charles Best, B-E-S-T,

12 appearing --

13 JUDGE CLARK: Is your microphone on,

14 Mr. Best?

15 MR. BEST: Apparently not, thank you, Your

16 Honor.

17 Charles Best, B-E-S-T, appearing for

18 Frontier.

19 MR. SAVILLE: Good morning, Your Honor, Kevin

20 Saville, Associate General Counsel for Frontier

21 Communications appearing on behalf of Frontier.

22 JUDGE CLARK: Thank you. And if you could

23 spell your last name too, Mr. Saville.

24 MR. SAVILLE: It's Saville, S-A-V-I-L-L-E.

25 JUDGE CLARK: Thank you.

0174

1 Appearing on behalf of the Commission Staff.

2 MR. THOMPSON: Jonathan Thompson, Assistant

3 Attorney General.

4 JUDGE CLARK: Thank you.

5 Appearing on behalf of Public Counsel.

6 MS. SHIFLEY: Sarah Shifley, Assistant

7 Attorney General.

8 JUDGE CLARK: Appearing on behalf of Comcast.

9 MR. KOPTA: Thank you, Your Honor, Gregory J.

10 Kopta of the law firm Davis Wright Tremaine on behalf of

11 Comcast Phone of Washington, LLC.

12 JUDGE CLARK: Thank you.

13 And appearing on behalf the joint CLECs.

14 MR. TRINCHERO: Thank you, Your Honor, Mark

15 Trinchero of the law firm of Davis Wright Tremaine on

16 behalf of XO Communications Services, Inc., Integra

17 Telecom of Washington, Inc., TW Telecom of Washington,

18 LLC, Covad Communications Company, McLeod

19 Telecommunications Services, Inc. d/b/a PAETEC, the

20 joint CLECs.

21 JUDGE CLARK: Thank you.

22 Appearing on behalf of Level 3 and

23 360networks.

24 MR. LOWNEY: Adam Lowney of the law firm of

25 McDowell Rackner & Gibson on behalf Level 3

0175

1 Communications LLC and 360networks.

2 JUDGE CLARK: And, Mr. Lowney, could you

3 spell your last name for the record, please.

4 MR. LOWNEY: It's Lowney, L-O-W-N-E-Y.

5 JUDGE CLARK: Thank you. And the record

6 should reflect that Mr. Lowney has already filed a

7 notice of appearance in this docket.

8 Appearing on behalf of the Department of

9 Defense and all other Federal Executive Agencies.

10 MR. MELNIKOFF: Thank you, Your Honor, this

11 is Stephen S. Melnikoff representing the Department of

12 Defense and all other Federal Executive Agencies.

13 JUDGE CLARK: Thank you.

14 Appearing on behalf of The Broadcast

15 Communications Association of Washington.

16 MR. HARLOW: Good morning, Your Honor, that's

17 Broadband Communications Association of Washington.

18 JUDGE CLARK: I'm sorry.

19 MR. HARLOW: Brooks Harlow with the law firm

20 of Miller Nash LLP.

21 JUDGE CLARK: Thank you. I think I'll stick

22 with BCAW from now on.

23 MR. HARLOW: That's a good acronym.

24 JUDGE CLARK: The record should also reflect

25 that IBEW does not intend to participate in the hearing

0176

1 in this matter.

2 I just have a couple of preliminary

3 housekeeping things first. The first one I'm sure

4 you're all familiar with. If you have a cell phone with

5 you, this is an appropriate time for you to place that

6 cell phone on mute or something else so that it does not

7 ring and become disruptive during the hearing.

8 We do have a number of individuals appearing

9 telephonically today on the Commission's conference

10 bridge, therefore it is necessary for you to speak a

11 little more loudly than you might ordinarily speak and

12 perhaps a little more slowly than you might ordinarily

13 speak so that everyone in the hearing room can hear

14 those appearing telephonically and so that we can hear

15 those who are appearing on the conference bridge.

16 I had established a deadline of last week for

17 the parties to submit objections to the admission of any

18 exhibits. I did distribute a revised exhibit list

19 yesterday, and so we can go through that now. I do have

20 only objections entered by two parties, Verizon and

21 Frontier. Is there anyone else who has objections to

22 the admission of evidence you wish to be entertained at

23 this time?

24 All right, hearing none, I guess I will turn

25 to you first, Mr. Romano, do you still have objections

0177

1 to the admission of some of the exhibits?

2 MR. ROMANO: Yes, Your Honor.

3 JUDGE CLARK: All right.

4 MR. ROMANO: I'll start first with this is

5 more of a clarification with regard to the exhibit

6 that's been marked TM-20HC. My understanding is that

7 this has been reassigned to Mr. McCarthy of Frontier.

8 However, the part that I wanted to clarify and that I

9 have clarified with Ms. Shifley is that the first pages

10 3 through, I'm sorry, it's --

11 JUDGE CLARK: I think you're on the wrong

12 exhibit.

13 MR. ROMANO: Right, this is TM-3HC.

14 JUDGE CLARK: Yes, and that has been moved to

15 Mr. McCarthy (DM-84HC) so I am going to entertain any

16 objections to that exhibit actually from Mr. Best.

17 MR. ROMANO: But just to clarify, Your Honor,

18 pages 3 through 38 it's my understanding are not part of

19 the exhibit that will be used to cross-examine

20 Mr. McCarthy, and I have clarified that with

21 Ms. Shifley, because those are Verizon materials that

22 Mr. McCarthy has not seen.

23 JUDGE CLARK: Ms. Shifley.

24 MS. SHIFLEY: Yes, we had that conversation,

25 I believe that's the understanding.

0178

1 JUDGE CLARK: All right, so is there no

2 longer an objection to the admission of this exhibit?

3 MR. BEST: Your Honor, Chuck Best again for

4 Frontier, we do not object at this point given that

5 clarification.

6 JUDGE CLARK: All right.

7 Now that gets us to TM-20HC.

8 MR. ROMANO: Yes, Your Honor, thank you.

9 TM-20HC includes board materials and other things of

10 which Mr. McCallion does not have personal knowledge

11 other than just simply reviewing them in preparation for

12 this hearing once they were identified. And based on

13 that lack of personal knowledge, we don't think that

14 it's an appropriate cross-examination exhibit for

15 Mr. McCallion.

16 JUDGE CLARK: All right, and the board

17 materials that you're referring to are Verizon board

18 materials, correct?

19 MR. ROMANO: Yes.

20 JUDGE CLARK: All right.

21 Ms. Shifley.

22 MS. SHIFLEY: Thank you, Your Honor. There

23 are actually four exhibits that have been designated

24 TM-20, 21, 22 and 23 that are all attachments to Joint

25 Applicants' response to UTC Staff Data Request Number

0179

1 11, and they pertain to the Verizon's Hart-Scott-Rodino

2 filings, and they were not -- Verizon at no time

3 designated the witness that would be -- that could be

4 identified as asking questions about those, and I

5 believe that since Mr. McCallion is Verizon's only

6 witness to actually ask anybody about this, I don't know

7 who else we would designate it for. If Verizon would

8 like to offer somebody with more knowledge that we could

9 redesignate these exhibits for, I think we could

10 probably do that.

11 JUDGE CLARK: All right.

12 Mr. Romano.

13 MR. ROMANO: Yes, Your Honor, I believe

14 Mr. Smith would be a more appropriate witness on behalf

15 of Verizon to take cross-examination on those exhibits.

16 JUDGE CLARK: All right, so your objection

17 really isn't to the admission of the exhibits but rather

18 to the witness who will address them?

19 MR. ROMANO: Once I heard Public Counsel's

20 explanation, yes, Your Honor.

21 JUDGE CLARK: All right, that's fine, then

22 we're going to leave them with the numbering that we

23 have for them right now, and we'll modify that later so

24 that they will reflect that those are indeed

25 cross-examination exhibits for Mr. Smith.

0180

1 MR. ROMANO: Okay.

2 And then turning now to cross-examination

3 exhibits that have been identified for Mr. Smith.

4 JUDGE CLARK: Yes.

5 MR. ROMANO: There are a number of exhibits

6 that are Frontier responses or data request responses

7 that were prepared by Frontier, specifically SES-3,

8 SES-5, SES-6HC, and Mr. Smith does not have firsthand

9 knowledge of the answers to those particular data

10 request responses, and so we would object to their use

11 with him.

12 JUDGE CLARK: And I'm just going off your

13 E-mail objections, does the same objection apply to

14 SES-11, SES-12, and SES-13?

15 MR. ROMANO: Yes, Your Honor.

16 JUDGE CLARK: All right.

17 Ms. Shifley.

18 MS. SHIFLEY: Your Honor, to expedite this I

19 can say that Public Counsel is willing to withdraw the

20 following Exhibits: SES-3, SES-5.

21 JUDGE CLARK: Slowly.

22 MS. SHIFLEY: So these are all SES, so it's

23 Number 3, Number 5, Number 6HC, Number 11, Number 12,

24 Number 13, Number 18, and Number 23.

25 JUDGE CLARK: All right, so that leaves

0181

1 SES-22.

2 MS. SHIFLEY: That's correct.

3 JUDGE CLARK: All right.

4 MR. ROMANO: And, Your Honor, as to SES-22,

5 that's another one that's focused on the actions of

6 Frontier of which Mr. Smith has no personal firsthand

7 knowledge.

8 JUDGE CLARK: Ms. Shifley.

9 MS. SHIFLEY: This exhibit is Joint

10 Applicants' response to PC Data Request Number 431, and

11 it specifically asks for evidentiary support for

12 statements made by Mr. Smith in his direct testimony, so

13 I -- and again it doesn't identify somebody else who

14 might have answered that who we can ask about, but as

15 far as it having -- is there a better witness for this,

16 or is it that Verizon would prefer that we redesignated

17 this for a Frontier witness?

18 MR. ROMANO: Well, if you look at the actual

19 request and the response, we don't think it's probative.

20 This talks about specific and objective evidence about

21 certain things that Frontier management has done, and we

22 don't think Mr. Smith would be the appropriate witness

23 to take questions. I'm not sure if Frontier has a

24 witness.

25 MR. SAVILLE: Your Honor, this particular

0182

1 data request that's been identified as the exhibit, in

2 looking at it now, it appears that there wasn't a

3 response, a detailed response provided. It just

4 indicates objections with respect to particular

5 questions that were raised by Public Counsel. We can

6 certainly make one of our witnesses, Mr. McCarthy,

7 available to respond to this, but there doesn't appear

8 looking at it that there's any substantive response

9 there that really needs to be put into the record.

10 JUDGE CLARK: Ms. Shifley, did you hear

11 Mr. Saville's response?

12 MS. SHIFLEY: Yes. And just to clarify, this

13 looks like it does actually ask a question of Verizon

14 regarding statements that are made, so this question

15 does seem to go to Verizon's management, if Verizon has

16 a different witness that they would like to have it

17 designated for.

18 MR. ROMANO: Your Honor, just because it

19 refers to a page of testimony, when you actually look at

20 the specific request, again I don't think Mr. Smith

21 would be the appropriate person to try to answer these

22 types of questions, and the response itself doesn't

23 provide a response. It rests on objections that the

24 data request is vague, ambiguous, argumentative, and so

25 it doesn't seem to be probative as a cross-examination

0183

1 exhibit.

2 JUDGE CLARK: And Frontier has offered

3 Mr. McCarthy to address this particular exhibit if you

4 would like to inquire.

5 MS. SHIFLEY: The exhibit itself asks Verizon

6 management to refer to portions of Mr. Smith's testimony

7 and asks for clarification and objective evidence about

8 statements that Mr. Smith made, so I believe that this

9 witness should be or that this exhibit should be

10 addressed to a Verizon witness.

11 JUDGE CLARK: Are you referring to Public

12 Counsel Data Request Number 431?

13 MS. SHIFLEY: Yes.

14 JUDGE CLARK: The copy that I have asks to

15 please provide any and all objective evidence showing

16 that Frontier management tested and approved the

17 specific allocation process, blah, blah. There are four

18 subsets and they seem to be focused on Frontier.

19 MS. SHIFLEY: It's because these are

20 statements that Mr. Smith made in his testimony

21 regarding Frontier.

22 JUDGE CLARK: All right, well, I'm going to

23 sustain the objection and allow inquiry of Mr. McCarthy

24 on this particular topic, because it doesn't appear that

25 Mr. Smith is going to be able to be appropriately

0184

1 responsive to your inquiry. We're not going to let

2 Mr. Smith off the hook. If Mr. McCarthy is unable to

3 respond to your -- and I don't know what your questions

4 are and I don't want to know what your questions are,

5 but if he can not appropriately answer your questions,

6 then we may have to turn back to Mr. Smith.

7 MS. SHIFLEY: Thank you, Your Honor.

8 MR. ROMANO: Thank you, Your Honor.

9 The other two potential exhibits that Verizon

10 had objections to relate to exhibits that were going to

11 be attempted to be used in oral rebuttal testimony.

12 JUDGE CLARK: Yes.

13 MR. ROMANO: The first is SGH-28, and this is

14 a NRRI article.

15 JUDGE CLARK: Yes.

16 MR. ROMANO: And the article as it would be

17 offered here amounts to hearsay in the sense that it is

18 being -- it appears, although it's hard to tell until we

19 get to the rebuttal stage, that it appears to be offered

20 for the truth of the matter asserted, and we have no

21 ability to cross-examine the author of the paper, and it

22 doesn't meet any of the exceptions to the hearsay rule,

23 so we would ask that that exhibit not be admitted.

24 JUDGE CLARK: Ms. Shifley.

25 MS. SHIFLEY: I believe that you just said

0185

1 that that was an SGH exhibit.

2 JUDGE CLARK: Yes.

3 MS. SHIFLEY: But is it actually TRR-27?

4 MR. ROMANO: No, this is SGH-28.

5 MS. SHIFLEY: I don't believe that you

6 previously identified this as one that you had an

7 objection to.

8 JUDGE CLARK: He does. If you look at the,

9 well, I printed it so it's on the second page.

10 MS. SHIFLEY: Okay.

11 JUDGE CLARK: It indicates that there is an

12 objection. I had some difficulty with my superscript,

13 it really isn't Exhibit SGH-283, it's 28, everyone was

14 able to figure that out, and TRR-27.

15 MS. SHIFLEY: Your Honor, this is an article

16 that was actually something that the Commissioners had

17 sent notice that they were looking at. This is

18 background information from a reputable source about

19 transactions of this exact type, and I think that

20 because it's reputable and useful, it will help the

21 Commission properly evaluate the issues that arise in

22 this transaction. And I also, as far as it being

23 hearsay, I think that hearsay would be admissible in

24 administrative proceedings if it is reliable and helpful

25 and will help the Commission in its evaluation of the

0186

1 evidence.

2 JUDGE CLARK: All right. And just for the

3 clarity of the record, the Commission did issue a notice

4 indicating that one Commissioner had read this

5 particular article and that no other Commissioners had

6 read it or intended to read it. That was actually the

7 notice issued by the Commission. That having been said,

8 in administrative proceedings we do allow hearsay

9 evidence to be admitted. The Commission will determine

10 the appropriate weight, if any, to afford to this, and

11 SGH-28 is admitted.

12 MR. ROMANO: Thank you, Your Honor.

13 The other objection Verizon had on the same

14 grounds was to TRR-27, and it was the same objection in

15 the sense that this is an article and amounts to

16 hearsay. I believe Frontier has the same objection, but

17 we're not able for instance to cross-examine the author

18 of the article. It appears to be offered for the truth

19 of the matter asserted, and so we make the same

20 objection here.

21 JUDGE CLARK: Mr. Best, do you also want to

22 be heard on this?

23 MR. BEST: Thank you, Your Honor. Yes, the

24 only other thing I would note is that frankly I think it

25 appears to be more of a marketing piece than anything

0187

1 else. If you look at the very end of it, they actually

2 start selling or trying to sell products. And I'm

3 specifically referring to this is TRR-27, page 31 and

4 32. Again, I don't know this company. If it was the

5 FCC, it might be a different matter. And I also don't

6 know why it's being offered. But not only is it

7 hearsay, I'm not even sure it's reliable hearsay, and I

8 honestly don't know what basis they have to make these

9 statements, and it doesn't say in the article.

10 JUDGE CLARK: All right, well, consistent

11 with my last ruling, the Commission does allow hearsay,

12 and the Commission will determine the appropriate

13 weight, if any, to give to this document. TRR-27 is

14 admitted.

15 There are -- I'm sorry, did you have other

16 objections, Mr. Romano?

17 MR. ROMANO: No, thank you, Your Honor.

18 JUDGE CLARK: All right.

19 Mr. Best.

20 MR. BEST: Thank you, Your Honor. We

21 actually still do have a number of objections, and I

22 guess I would like to start out too with a

23 clarification. I apologize, I'm a little confused about

24 the process I guess. It was my expectation that with

25 respect to data requests that those would be offered

0188

1 while they were being presented to a witness, and I

2 notice that you've admitted them already. At least it

3 appears that that's what's happened. We did not

4 specifically object to data requests thinking we would

5 have that opportunity depending on what the

6 circumstances were. We might have no objection. As

7 Mr. Romano points out, it may have been a foundational

8 issue, so I'm not quite sure kind of where we sit. I

9 generally stated that in my E-mail to you of January 28,

10 so I guess I apologize for my confusion, but we didn't

11 specify other than to say we didn't object to the

12 authenticity, but we just frankly didn't know how they

13 were going to be used.

14 JUDGE CLARK: Right, well, let me just do a

15 little bit of background then. What the Commission

16 ordinarily does in its proceedings, which is unusual for

17 administrative agencies, is to have you not only prefile

18 testimony but also to prefile cross-examination

19 exhibits, and we routinely see responses to data

20 requests being used as cross-examination exhibits. That

21 is not an unusual practice at all. It is also the

22 Commission's practice to sometimes before the hearing

23 find out to which exhibits there are objections so that

24 we're not using valuable hearing time with the

25 Commissioners present to argue about foundational

0189

1 elements and perhaps other objections to these exhibits.

2 So I mean if you have specific exhibits that

3 you want to object to, that's fine. But as a practical

4 matter when a witness takes the stand because those

5 exhibits are prefiled, we're not going to run through

6 the foundational elements of each of those exhibits.

7 And I'm thinking that you're thinking that would be the

8 time that you would object to that, and that's not the

9 Commission's practice. We address them at once. Some

10 of the judges address all of the exhibits at the

11 conclusion of the hearing. Too many years in trial work

12 means that I address those at the onset of the hearing.

13 And if the exhibit isn't admitted, I don't want to hear

14 testimony on it.

15 MR. BEST: Okay, Your Honor, I just want to

16 clarify. For example, the examples that Mr. Romano has

17 just given, let's assume, and I'm not saying this is

18 going to happen, that Public Counsel produces an exhibit

19 that does not at all relate to the witness, the witness

20 has no knowledge of it, I assume I can still object, not

21 I guess to the admission of the exhibit but to the

22 question regarding it?

23 JUDGE CLARK: You can always object to the

24 inquiry that is being posed.

25 MR. BEST: Okay. Now this unfortunately

0190

1 poses yet another dilemma for us. We filed

2 cross-examination exhibits really unsure whether or not

3 we would actually use them depending on how the hearing

4 developed. My question to you is will we be allowed to

5 withdraw some of those exhibits if we do not decide to

6 use them?

7 JUDGE CLARK: Yes.

8 MR. BEST: Okay.

9 JUDGE CLARK: And you don't have to withdraw

10 them. One of the other Commission practices has been to

11 allow a number of exhibits to remain in the record

12 although no inquiry is ever conducted on those

13 documents. The previous argument has been made that

14 those documents should be reserved for use in post

15 hearing briefing, and the Commission has allowed that.

16 That has been their practice. So I will leave that to

17 your discretion.

18 MR. BEST: Great.

19 JUDGE CLARK: After you have concluded your

20 examination whether you actually wish to withdraw or if

21 you wish to leave those documents in evidence for use in

22 post hearing briefing.

23 MR. BEST: Great, thank you very much for the

24 clarification.

25 Now back to the issues at hand with respect

0191

1 to the exhibits we did object to, Your Honor, some of

2 them have been resolved obviously.

3 JUDGE CLARK: Most I think.

4 MR. BEST: Most. Let me first of all go to

5 -- I guess what I would like to do is do this sort of in

6 order of date as to how these things got raised. We

7 first objected on January 28th in the E-mail we sent to

8 you and the other parties to a number of exhibits,

9 specifically SGH-3, which I understand has been

10 withdrawn, and TRR-27, which you just ruled was

11 admitted.

12 JUDGE CLARK: Right.

13 MR. BEST: So that leaves what I believe is

14 DM-74.

15 JUDGE CLARK: Correct.

16 MR. BEST: This document is, purports to be

17 anyway, the prefiled testimony of a John, and I would

18 have no idea how to pronounce that, Puslowski, that was

19 filed in West Virginia. It also says it's an excerpt of

20 that testimony. To my knowledge Mr. Puslowski is not

21 going to be here. We don't know what the context quite

22 frankly of this testimony is, and my understanding is,

23 and I was not there but Mr. Saville was, that

24 Mr. Puslowski corrected a number of the things in the

25 testimony including an item on page 6. And again, I'm

0192

1 referring to DM-74, page 6. He talked about a $2

2 Billion to shareholders and what he really meant was $2

3 a share, so there are a number of issues with this.

4 Mr. Puslowski is not here, he's not subject to

5 cross-examination, we aren't convinced that the

6 testimony in West Virginia is applicable here, the

7 issues were different there, so we would object

8 basically for a wide variety of reasons and largely I

9 guess hearsay.

10 JUDGE CLARK: Ms. Shifley.

11 MS. SHIFLEY: Public Counsel will withdraw

12 this exhibit.

13 MR. BEST: Moving on in date, Your Honor,

14 then we come to the exhibits that Ms. Shifley filed I

15 believe on January 29th, which was past the deadline for

16 exhibits of I believe both cross-examination and direct

17 exhibits. Specifically we do not object to DM-76, this

18 is just an updated version of an earlier exhibit.

19 However, what was designated as DM-85, which is a

20 hearing transcript from West Virginia and also BJG-40,

21 which is also a hearing transcript from West Virginia.

22 We would object to those, number one, as being late

23 filed. You know, we didn't get this until Friday, our

24 witnesses frankly had already done their preparation and

25 were on their way out here, and this puts us at a

0193

1 significant disadvantage. Also with respect to the

2 transcripts, they're transcripts from another state, and

3 without going into too much detail, I would think that

4 it would be important for the offer of the exhibit to

5 prove that these issues are substantially the same or in

6 fact are the same. Our understanding is they are not

7 the same, that the issues in West Virginia are quite

8 different including systems being not replicated and cut

9 over immediately. We know that there were a lot of

10 different issues in that case than there were in this

11 case, and so for those reasons we believe those items

12 are not relevant as well as being late filed, so we

13 would ask that they not be received.

14 JUDGE CLARK: Ms. Shifley.

15 MS. SHIFLEY: Thank you. The transcript

16 materials were not available until after the deadline

17 for prefiling of cross-exhibits, and I believe that it

18 was allowed for parties to identify cross-exhibits after

19 that deadline if they weren't available at the time of

20 the deadline. Also I believe that these statements are

21 made by persons who will be appearing as witnesses in

22 this transaction. And although the issues might be

23 different and some of the facts might be different, I

24 think that some of the statements are relevant to

25 statements that they have already made in testimony here

0194

1 and will again be helpful in evaluating the evidence

2 that they have presented already.

3 JUDGE CLARK: All right, the objection to

4 these exhibits is overruled. First, if you may recall

5 100 years ago or maybe 150 when I issued the prehearing

6 conference order in this matter, I indicated that

7 exhibits would not be allowed after the deadline unless

8 there was good cause presented for late filing. Not

9 receiving documents until after the deadline is

10 certainly good cause. And if I look at the date of the

11 transcript excerpts, I think it would have been

12 impossible for them to have been submitted any earlier.

13 With respect to the content and whether or not that

14 information is relevant, it certainly appears from the

15 content of the exhibits that there is the potential for

16 relevant testimony to be elicited through

17 cross-examination, so I'm going to allow those.

18 MR. BEST: Thank you, Your Honor.

19 JUDGE CLARK: Okay.

20 MR. BEST: Next I'm going to move to the

21 exhibits that were filed on Saturday, January 30th, by

22 Ms. Shifley electronically, which of course was a

23 weekend, those include WH-36, TRR-28, and TRR-29, those

24 are all --

25 JUDGE CLARK: I'm sorry, you have to slow way

0195

1 down.

2 MR. BEST: Sorry, Your Honor. WH-36.

3 JUDGE CLARK: All right.

4 MR. BEST: TRR-28 and TRR-29.

5 JUDGE CLARK: Thank you.

6 MR. BEST: Your Honor, those exhibits again

7 being late filed was one reason for objection, but

8 actually your colloquy here just recently is a great

9 segue into this, these are responses to data requests

10 that Public Counsel did not send to us until five days

11 before their due date, and they were submitted January

12 29th. The reason that these are late is all because

13 Public Counsel chose not to ask them in a timely manner,

14 not because we were late in responding. So again we

15 would ask that these not be received.

16 JUDGE CLARK: Ms. Shifley.

17 MS. SHIFLEY: Thank you. The process of

18 discovery here is that sometimes questions arise based

19 on other discovery responses, and I believe that some of

20 these were issues that our consultants could not have

21 asked questions about any earlier. And again, the

22 reason why they were filed on a weekend was because I

23 was hoping to notify the parties as soon as possible

24 that these were things that we intended to offer as

25 exhibits. And we received them on Friday, and we

0196

1 notified the parties the following day.

2 JUDGE CLARK: All right, then the objection

3 on these is also overruled. Again, I think that we all

4 have to be cognizant of the fact that discovery is an

5 ongoing process and that there is the possibility that

6 documents will be received in a somewhat abbreviated

7 fashion before the hearing. With respect to the

8 relevance of that, again we'll see if the inquiry

9 elicits testimony that the Commissioners will find

10 helpful in making a decision in this case.

11 Are there other exhibits?

12 MR. BEST: Your Honor, I believe that covers

13 it for Frontier.

14 JUDGE CLARK: All right, then I didn't have

15 objections from anyone else; is that correct?

16 All right, I'm seeing people shaking their

17 heads, and the court reporter doesn't pick that up quite

18 as well as an auditory answer, so I think the answer is

19 no.

20 I want to just very briefly go through the

21 schedule before we get the Commissioners to join us.

22 MS. SHIFLEY: Your Honor.

23 JUDGE CLARK: Yes.

24 MS. SHIFLEY: I'm so sorry to interrupt,

25 there are some -- I just want to clarify that Public

0197

1 Counsel would like to redesignate a couple of exhibits

2 for witnesses whom they were not originally designated

3 for, and Public Counsel also has three additional

4 exhibits that are responses to data requests that we

5 would like to offer at this time, and we have hard

6 copies of those, sufficient copies.

7 JUDGE CLARK: All right, first I would like

8 to know which exhibits you would like to redesignate,

9 and again slowly, please.

10 MS. SHIFLEY: DM-63HC, which is response to

11 Public Counsel Data Request 483. It was originally

12 designated for McCarthy, and it should be redesignated

13 for Mr. McCallion.

14 And what is originally labeled WHW-3 should

15 be redesignated for Mr. McCarthy.

16 MR. BEST: I'm sorry, counsel, what exhibit

17 number would that be, or we've not assigned it yet?

18 MS. SHIFLEY: It's currently Exhibit Number

19 WHW-3, and we would like to designate that for

20 Mr. McCarthy.

21 MR. BEST: Right, is there a number that goes

22 with that?

23 JUDGE CLARK: Not yet.

24 MR. BEST: Thank you.

25 JUDGE CLARK: All right.

0198

1 MS. SHIFLEY: And response to Public Counsel

2 Data Request 538 that we were just discussing was

3 originally designated as an exhibit for Dr. Roycroft,

4 and we would like to also in addition designate it for

5 Mr. McCarthy.

6 JUDGE CLARK: Okay.

7 MS. SHIFLEY: Those are all the

8 redesignations, thank you.

9 JUDGE CLARK: All right, I have a couple

10 questions regarding that. The three documents that you

11 would like to redesignate, are these in conjunction with

12 examination on one of these settlement agreements or on

13 the broader issues?

14 MS. SHIFLEY: Your Honor, I believe that

15 they're all on the underlying testimony and the broader

16 issues.

17 JUDGE CLARK: All right, is there an

18 objection to having Mr. McCarthy address these

19 particular documents?

20 MR. SAVILLE: Your Honor, could I ask could

21 we just have a minute, I'm trying to find these

22 particular exhibits at this time and look.

23 JUDGE CLARK: Absolutely, we'll take a moment

24 off record.

25 (Discussion off the record.)

0199

1 JUDGE CLARK: All right, has Frontier had an

2 adequate opportunity to investigate these exhibits to

3 determine if you have an objection?

4 MR. SAVILLE: Your Honor, with respect to the

5 two exhibits that Ms. Shifley identified as exhibits she

6 would like to question Mr. McCarthy on, we have no

7 objection to either of those two. With respect to the

8 first one with Mr. McCallion, I think Mr. Romano will

9 address that.

10 JUDGE CLARK: Right, and I was going to get

11 to him in just a minute. The other thing I want to say

12 with respect to Mr. McCarthy is I hope everyone recalls

13 that we're really going to have two sets of examination

14 here. One is with respect to the settlement agreements

15 that have been reached, and after we've concluded that,

16 there will be an opportunity for examination on the

17 broader issues. And the reason I asked that was I

18 wanted to ensure that Mr. McCarthy has an adequate

19 opportunity to look at these documents and review them

20 before he is subject to cross-examination on those. Now

21 I'm not enough of an optimist to think that we're going

22 to get to that today, so I believe that Mr. McCarthy

23 will have an adequate opportunity, but we need to ensure

24 he has that, because he didn't have previous notice.

25 MR. SAVILLE: Thank you, Your Honor, I think

0200

1 we will be prepared for that.

2 JUDGE CLARK: All right.

3 Now, Mr. Romano, do you have an objection to

4 moving the exhibit from Mr. McCarthy to Mr. McCallion?

5 MR. ROMANO: Thank you, Your Honor. That

6 particular exhibit is a data request response that was

7 prepared by Frontier, but we don't object to it being

8 used with Mr. McCallion. We'll just have to see how

9 useful it is at the time since it was not a Verizon

10 prepared answer.

11 JUDGE CLARK: I understand. And again, the

12 reason I was inquiring about this was to ensure that

13 Mr. McCallion has an adequate opportunity to review this

14 and determine whether or not he can respond to any

15 inquiry proposed on that.

16 MR. ROMANO: Thank you, Your Honor.

17 JUDGE CLARK: All right.

18 And now you have additional documents you

19 wish to distribute as cross-examination. Let me ask

20 again first if these are documents that you intend to

21 use in examination regarding the settlement panels.

22 MS. SHIFLEY: Yes, Your Honor, these are two

23 responses to data requests that we received after the

24 deadline for prefiling exhibits, and we would like to

25 designate them for Mr. Weinman regarding the settlement

0201

1 agreement with Staff. They are the responses, Staff's

2 responses to Public Counsel Data Requests 37 and 38.

3 And we have sufficient hard copies at this time for the

4 Bench and all parties.

5 JUDGE CLARK: All right. Of concern to me,

6 and I'm going to let Mr. Thompson respond to these

7 additional exhibits, but again the first panels that

8 will be presenting evidence today will be the panels

9 regarding the settlements, and I want to ensure that the

10 witnesses who are examined on those have an adequate

11 opportunity to review those.

12 So, Mr. Thompson, do you need a minute, and

13 would you like to confer with your witness?

14 MR. THOMPSON: Yes, thank you, Your Honor.

15 JUDGE CLARK: We will take a brief moment off

16 record.

17 (Discussion off the record.)

18 JUDGE CLARK: All right, Mr. Thompson, have

19 you had an adequate opportunity to confer?

20 MR. THOMPSON: Yes, we have reviewed those,

21 and we have no objection to those additional exhibits.

22 JUDGE CLARK: All right, then I'm going to

23 have you distribute those when we take a recess, which

24 will be perhaps momentarily.

25 MS. SHIFLEY: Thank you, Your Honor. Also I

0202

1 would just like to note that Mr. Thompson identified

2 that there was an error in an exhibit that we had

3 designated for Mr. Weinman, and we also have

4 replacements to correct for that error. I believe that

5 Mr. Thompson can explain.

6 MR. THOMPSON: Yes, it was the exhibit marked

7 as WHW-32HC, and it was a response by Staff to a Public

8 Counsel Data Request Number 27, but the attachment, and

9 I think it was the highly confidential portion, was not

10 the appropriate attachment to that data request

11 response. It was an attachment to a different data

12 request response.

13 MS. SHIFLEY: Yes, and that was an error on

14 Public Counsel's part.

15 JUDGE CLARK: All right, so you want to file

16 a substitution which would correct that error?

17 MS. SHIFLEY: That's correct, Your Honor,

18 thank you.

19 JUDGE CLARK: And is the correction also

20 highly confidential?

21 MS. SHIFLEY: The correction is confidential,

22 not highly confidential.

23 JUDGE CLARK: All right.

24 Are there any other preliminary matters that

25 we should address?

0203

1 MR. MELNIKOFF: Your Honor, this is Steve

2 Melnikoff.

3 JUDGE CLARK: Yes, Mr. Melnikoff.

4 MR. MELNIKOFF: I was just inquiring as to

5 the procedures and timing of the admissions of prefiled

6 testimony specifically in support of the settlement and

7 the settlement for DoD/FEA and the Joint Applicants, I

8 believe at least the supplemental testimony in support

9 of Charles King has been marked as CWK-7T.

10 JUDGE CLARK: That is correct. On the

11 exhibit list I distributed yesterday, the first heading

12 is the exhibits that are in support of settlement

13 agreements. The Joint Applicant and DoD/FEA settlement

14 has been designated Exhibit Number 4, Frontier's

15 testimony in support thereof is DM-83T, and the

16 testimony of Mr. King in support thereof is CWK-7T.

17 MR. MELNIKOFF: Have they been admitted, Your

18 Honor?

19 JUDGE CLARK: There has been no objection to

20 their receipt.

21 MR. MELNIKOFF: I'm sorry, all I heard was a

22 beep.

23 JUDGE CLARK: Yes, because someone was either

24 connecting or disconnecting to the bridge line.

25 Is there any objection to the receipt of the

0204

1 DoD/FEA settlement and the documents in support thereof?

2 Hearing none, they are admitted.

3 MR. MELNIKOFF: Thank you, Your Honor.

4 JUDGE CLARK: Are there any other preliminary

5 matters?

6 MR. ROMANO: Yes, Your Honor.

7 JUDGE CLARK: Mr. Romano.

8 MR. ROMANO: We may take this off the record

9 to discuss, but one question I had was if it's necessary

10 to go into closed session to address at various times

11 highly confidential or confidential information, is

12 there a way you would like to handle that?

13 JUDGE CLARK: Yes. If it is necessary to

14 disclose the content of any exhibits that have been

15 filed either confidential or highly confidential, we

16 will conduct an in camera session of that portion of the

17 proceeding. And it is my practice to require counsel to

18 verify that no one is present in the hearing room who is

19 not allowed to hear that testimony rather than having me

20 rely on who's allowed to be in the hearing room for

21 that.

22 We will separately segregate the in camera

23 portion of the hearing from the public transcript, and

24 should it become necessary for the Commissioners to

25 refer to either confidential or highly confidential

0205

1 material in an order, it may also be necessary for the

2 Commission to issue a redacted version of some portions

3 of that order.

4 MR. ROMANO: Thank you, Your Honor.

5 JUDGE CLARK: To the extent it is possible

6 for the parties to ask questions regarding confidential

7 and highly confidential material that do not require the

8 disclosure of that material, it is helpful so that we're

9 not shuffling witnesses and other individuals in and out

10 of the hearing room, it's very disruptive.

11 MR. ROMANO: Thank you, Your Honor.

12 JUDGE CLARK: Any other preliminary matters?

13 Okay, I just have one more short matter, and

14 I just want to confirm when I had inquired of the

15 parties regarding the order of the presentation of

16 witnesses, there was dead silence on the topic of the

17 order in which we would be taking witnesses on the

18 broader issues and Public Counsel's witnesses, so I am

19 assuming that when we get to that portion of the

20 testimony we'll take Verizon's witnesses first, Frontier

21 witnesses second, and finally Public Counsel. I'm also

22 assuming we will take Mr. McCallion and then Mr. Smith.

23 MR. ROMANO: Yes, Your Honor.

24 JUDGE CLARK: Mr. McCarthy and then

25 Mr. Whitehouse and Mr. Gregg.

0206

1 MR. SAVILLE: That's correct, Your Honor. We

2 also do have Ms. Czak and she is here and available to

3 the extent that there are questions for her, and

4 Mr. Lafferty is here as well.

5 JUDGE CLARK: All right. There was no

6 cross-examination or Commissioner inquiry for either

7 Ms. Czak or Mr. Lafferty.

8 MR. SAVILLE: I understand, Your Honor.

9 Those witnesses are here in the event that during the

10 live or rebuttal that is presented by Public Counsel

11 they may need to respond with surrebuttal testimony. At

12 the conclusion of that, if there are no questions for

13 either Ms. Czak or Mr. Lafferty, we would ask that their

14 testimony be admitted and that they be excused.

15 JUDGE CLARK: Okay, the testimony has already

16 been admitted without objection, but yes, I do

17 appreciate the clarification that they are available in

18 the event it's necessary for them to testify on oral

19 surrebuttal, appreciate that.

20 And then, Ms. Shifley, I'm assuming that we

21 will hear from Ms. Alexander telephonically, Mr. Hill,

22 and finally Dr. Roycroft.

23 MS. SHIFLEY: Yes, Your Honor, that would be

24 correct.

25 JUDGE CLARK: That would be the appropriate

0207

1 order, all right.

2 If there are no other preliminary matters,

3 I'm going to take a recess. During that recess I would

4 like the exhibits to be distributed so that I can offer

5 them to the Commissioners, and then they will join us in

6 the hearing room.

7 We're at recess until further call.

8 (Recess taken.)

9 JUDGE CLARK: This is continuation of the

10 hearing in Docket UT-090842.

11 We're at recess.

12 (Recess taken.)

13 JUDGE CLARK: All right, the first thing I

14 would like to do is let the record reflect that having

15 addressed all the procedural and preliminary matters,

16 the Commissioners have now joined us, and present for

17 the hearing is Chairman Jeffrey Goltz, Commissioner

18 Patrick Oshie, and Commissioner Philip Jones.

19 The next item on our agenda is for each party

20 to make a brief opening statement. I'm going to

21 commence with the opening statement of Verizon, and so,

22 Mr. Romano, would you or Mr. Ruggiero be making opening?

23 MR. ROMANO: Thank you, Your Honor, I will be

24 making the opening, but if it's okay with you, we would

25 like to have Mr. Saville go first.

0208

1 JUDGE CLARK: That's fine.

2 MR. SAVILLE: Thank you, Your Honor,

3 Commissioners. My name is Kevin Saville, I am Associate

4 General Counsel for Frontier Communications Corporation.

5 Frontier is very excited to have the opportunity to

6 appear before the Commission today to answer any

7 questions that the Commissioners may have regarding the

8 proposed transaction that is before you, the transaction

9 involving Frontier's transfer of the Verizon operations

10 in the state of Washington. There are a couple of

11 issues that I want to touch on briefly over the course

12 of my opening statement. I want to give you a little

13 bit more background on Frontier Communications, and I

14 want to touch on the settlement agreements that are

15 before the Commission, some of the specific benefits

16 that are included in those agreements and that were also

17 identified in the testimony that we filed in this

18 proceeding.

19 To begin with, we're obviously aware that

20 Frontier Communications does not currently provide

21 telephone service in the state of Washington, so I would

22 like to give you just a bit of a background on our

23 company. Frontier is currently one of the largest

24 ILEC's in the country. We provide service in 24 states,

25 serve more than 2 million access lines. Our company

0209

1 provides service in very rural areas ranging from the

2 Navaho Nation Reservation down in the Four Corners area

3 of Arizona and New Mexico to Rochester, New York and to

4 suburban areas like my home town, Minneapolis/Saint

5 Paul, suburban areas around that community.

6 Frontier has employed a business strategy

7 which is to expand the availability of broadband

8 services in the areas that we serve. We currently

9 provide broadband service to over 90% of the households

10 in our 24 state footprint that we currently serve. In

11 addition to traditional broadband services or DSL, we

12 also provide a number of other enhanced services that

13 complement broadband, things ranging from making a

14 technician available when a customer orders broadband

15 service, going out and installing the service at the

16 customer's home, helping them set up their computer so

17 that they can actually utilize that broadband service.

18 We also offer another line of products which we refer to

19 as peace of mind services that provide customer support

20 on how to use their computer to do very simple things

21 like backing up what's on their hard drive so they don't

22 lose the information to being able to set up a printer

23 or set up an iPod, all those things that enhance the

24 customer experience associated with the use of the

25 broadband product that we supply.

0210

1 In addition, Frontier is a financially strong

2 company. Today our revenues exceed more than $2

3 Billion, and we generate free cash exceeding $500

4 Million a year. Following the close of this proposed

5 transaction, Frontier will have an even stronger balance

6 sheet and greater cash flow generation abilities. As

7 we've indicated in our testimony, Frontier's revenues

8 are expected to exceed $6 Billion a year. We expect to

9 generate more than $1.3 Billion of free cash flow on an

10 annual basis following the conclusion of this

11 transaction. As we explain in our testimony, and

12 specifically the testimony of our Treasurer and Senior

13 Vice President David Whitehouse, Frontier believes that

14 this stronger financial structure and increased cash

15 flow capability will enhance its ability to expand

16 services to customers not only in the state of

17 Washington but the other territories that we're

18 acquiring as a part of this transaction.

19 I'm going to touch briefly on the settlements

20 that are before the Commission. As the Commission is

21 aware, Frontier has entered into settlement agreements

22 with the Commission Staff, with the Department of

23 Defense and the Federal Executive Agencies, and with all

24 the CLECs that have intervened in this proceeding. In

25 fact, the Commission has five settlements in total

0211

1 before it, which I understand is an unusual situation

2 for this Commission to address. At this point in time

3 we have settlements with all of the parties with the

4 exception of The Broadband Coalition and Public Counsel.

5 Now I don't have time in this opening to go through all

6 those settlements in detail, but there are a couple of

7 specific points included in the settlements that I would

8 like to touch on.

9 First, Frontier has made a number of

10 commitments in those settlement agreements to ensure

11 that Washington rate payers are not subject to any harm

12 as a result of this transaction. For example, Frontier

13 will honor all of the existing tariffs and obligations

14 that Verizon Northwest currently has in the state of

15 Washington, and as part of the settlements we have

16 agreed to cap certain retail services for a period of

17 time. In addition, Frontier has agreed to very specific

18 service quality performance measures. Under the

19 settlement with the Staff, the company will

20 significantly augment the service quality credits that

21 are available to customers and will be subject to

22 significant financial consequences if it fails to

23 fulfill those service quality commitments.

24 Frontier's witness Billy Jack Gregg has

25 testified and will be available through this proceeding.

0212

1 He has explained that Frontier has undertaken a number

2 of transactions in other states, and following those

3 transactions there has not been any evidence that

4 Frontier's service quality has caused a deterioration of

5 service quality that existed prior to the completion of

6 the transaction. He has also testified that Frontier

7 has very favorable service quality in the other states

8 where it provides service.

9 Frontier is also confident in its ability to

10 provide high quality service because it will continue to

11 utilize the same operation support systems that Verizon

12 is currently using to serve customers in Washington

13 today. As we explained in our testimony, Verizon is in

14 the process and will complete the separation and

15 replication of its operational support systems that are

16 used to serve Washington customers. Those operational

17 support systems will be separated and stood up on an

18 independent basis by April 1st, and those systems will

19 be thoroughly tested and will be utilized for at least

20 60 days prior to the closing of this transaction. That

21 will provide safeguards to ensure that those systems are

22 fully functioning before the transaction closes.

23 One of the benefits of this transaction and

24 the way it was structured is what I just described, the

25 fact that the existing systems will continue to be

0213

1 utilized after the transaction closes by Frontier. This

2 distinguishes this transaction from some of the other

3 transactions this Commission may be familiar with where

4 companies that acquired lines or properties had to

5 establish brand new operational support systems from

6 scratch and utilize them for the first time. That will

7 not be the case here, because again Verizon's

8 operational support systems will be transitioned over to

9 Frontier, and we will use those after the close.

10 In addition, Frontier has taken some other

11 steps to ensure that the transition from Verizon to

12 Frontier goes smoothly. We will continue to utilize the

13 same employees that Verizon has in place in Washington

14 today to operate those systems to provide service to

15 customers in the state. Those employees will come over

16 to Frontier and continue as employees for our company.

17 In addition, as Dan McCarthy, our Chief Operating

18 Officer, identified in his prefiled testimony, one of

19 the things that Frontier does from its business model

20 perspective is it employs what it calls a local general

21 manager model. With that what we do is we actually

22 place general managers, local general managers in the

23 communities that we serve in the state. And what that

24 means is that there will be a local general manager that

25 will be located in the markets we serve in Washington

0214

1 that will be responsible for day-to-day oversight and

2 operations. They will have decisionmaking authority,

3 and they will be close to the customer and in a position

4 to make sure that there is a positive customer

5 experience, that they can address service quality

6 issues, and that they are close to the customer and can

7 communicate throughout the corporation the particular

8 needs that may arise in Washington in a particular

9 market. We believe that this local manager presence,

10 which we've employed in the other states in which we

11 operate, allows us to prevent significant service

12 quality issues from arising.

13 Another firm benefit that's included in the

14 settlement agreement with the Staff relates to expanded

15 broadband availability. As part of the settlement with

16 the Staff, Frontier has committed to provide broadband

17 service in 33 wire centers that Verizon currently does

18 not provide broadband service in today and to

19 significantly expand the availability of broadband

20 service in an additional 64 wire centers. As part of

21 that broadband commitment that's included in the Staff

22 settlement, Frontier will expand the availability as far

23 as the number of households that have access to

24 broadband from the current level up to approximately

25 89%. In addition, as a part of that commitment, we've

0215

1 made very specific commitments with respect to the speed

2 of that broadband service. By the end of the year 2011,

3 75% of the households in the service territory currently

4 operated by Verizon will be able to access broadband at

5 speeds of 1.5 megabits. By the end of 2014, 80% of the

6 households will have broadband available at 3 megabits.

7 As a further and I think significant commitment to

8 demonstrate, you know, that Frontier is serious about

9 making this broadband service available in Washington,

10 as part of settlement with the Staff we've agreed to

11 place $40 Million in an account or an escrow fund to in

12 effect ensure that we've fulfilled that broadband

13 commitment that we've included in the Staff settlement

14 agreement.

15 The last point I want to briefly address is

16 the wholesale service issues involving the competitive

17 local exchange carriers. As the Commission is aware, we

18 have entered into three different settlement agreements

19 with the CLECs in this state, with Comcast, with Level

20 3, and then with a group of CLECs that are referred to

21 as the Joint CLECs. Those settlement agreements

22 identify a number of issues that were of importance to

23 those CLECs. Frontier worked closely with the CLECs to

24 address their concerns, and I won't go into detail with

25 respect to those particular settlement agreements. I

0216

1 guess the two points that the Commission should be aware

2 of with respect to those settlement agreements is they

3 ensure that Frontier will continue with the legal and

4 contractual obligations that Verizon currently has with

5 the CLECs today. In addition to that, there's several

6 provisions within those CLEC settlement agreements that

7 ensure that there is no disruption to the CLECs'

8 existing business that they do in the state of

9 Washington today. Frontier is optimistic that this

10 settlement agreement is just an indication that it will

11 effectively be able to continue to work with the CLECs.

12 Both Frontier and Ms. Kim Czak, who is our Vice

13 President of Carrier Relations who filed testimony and

14 who is here today, are committed to ensuring that we

15 continue to work with the CLECs on a

16 business-to-business basis to resolve whatever issues or

17 concerns they may identify.

18 In conclusion, Frontier is very excited about

19 the opportunity to expand its footprint into the state

20 of Washington. We believe that with the settlement

21 agreements we've reached a resolution that ensures that

22 there will not be any harm to the rate payers in the

23 state of Washington. In addition, we think with the

24 settlement agreements and the other things that Frontier

25 plans to bring to the state of Washington that there

0217

1 will be very positive and affirmative customer benefits

2 associated with the broadband commitment that I

3 identified, our local manager model, and a variety of

4 other things that are identified in the settlement

5 agreement and in the testimony we've filed. Again,

6 thank you for the opportunity to address the Commission

7 today, and with your indulgence I would like to just

8 introduce our witnesses if that would be appropriate.

9 JUDGE CLARK: Actually, it would be better if

10 you can hold and do that when the witnesses take the

11 stand, but thank you for the offer, Mr. Saville.

12 MR. SAVILLE: Thank you.

13 JUDGE CLARK: All right, before we proceed,

14 two things. First, everyone needs to slow down

15 considerably when you're making your opening statement

16 so that the court reporter can get a transcript. And

17 secondly, I have muted the call so that we don't have

18 music in the hearing room right now, and I am going to

19 try taking that off and see if we can clear the bridge

20 line. We have been informed that clearing the bridge

21 line and having everyone dial back in may not resolve

22 the problem according to our media management folks, but

23 we're going to attempt that. So with great trepidation

24 I'm going to take off the mute.

25 No, I'm not.

0218

1 All right, Mr. Romano.

2 MR. ROMANO: Thank you, Your Honor. Good

3 morning, Chairman Goltz, Commissioner Oshie,

4 Commissioner Jones. Verizon welcomes the opportunity to

5 be here this week as the Commission considers the

6 Verizon/Frontier transaction under the property transfer

7 statute, RCW Chapter 80.12. WAC 480-143-170 specifics

8 that the applicable standard for reviewing a

9 telecommunications transaction is if the transaction is

10 in the public interest. The Commission has held that

11 the public interest standard requires a demonstration

12 that there will be no harm done as a result of the

13 transaction. This standard is different than the one

14 that now applies to transactions of gas and electrical

15 companies. Under 2009 legislation, those types of

16 transactions may be approved only upon a showing that

17 there will be a net benefit to customers involved as a

18 result of the transaction. We think this transaction

19 will indeed bring benefits to Washington customers, but

20 that is not required, and we respectfully submit that

21 the Commission now has everything before it that it

22 needs to determine that the Verizon/Frontier transaction

23 will cause no harm and thus will be in the public

24 interest.

25 Much has gone on in this docket since the

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1 application was filed on May 29, 2009. There have been

2 multiple rounds of prefiled testimony, extensive

3 discovery, a public hearing, technical workshops

4 presented by the applicants, and numerous settlement

5 discussions. As Mr. Saville indicated, as a result of

6 all that input and work, the Commission has before it

7 now a number of settlement agreements among the

8 applicants, Staff, CLEC interveners, and the Department

9 of Defense that include specific commitments to

10 conditions that prompt the settling parties to recommend

11 that the Commission approve the transaction. The

12 extensive process in this docket has allowed the

13 applicants to focus and resolve specific issues raised

14 by other parties. Mr. Saville touched on a number of

15 those, and I will just highlight two.

16 A number of parties had concerns about the

17 systems replication process that is being undertaken by

18 Verizon. Staff in particular had some concerns, and we

19 worked with them to include system testing provisions

20 both before and during the time period during which the

21 replicated systems will be used by Verizon with

22 validation of results by a third party reviewer prior to

23 closing. And, for instance, Comcast had a specific

24 concern about having the ability to submit test orders

25 prior to when Verizon starts using the replicated

0220

1 systems. We were able to work out a settlement with

2 Comcast to allow them to do that.

3 Tim McCallion, President of the West Region

4 of Verizon, is here, and with Dan McCarthy of Frontier

5 they have prefiled testimony explaining the terms of the

6 various settlement agreements and why they're in the

7 public interest. And Mr. McCallion will be available

8 along with Mr. McCarthy to present these settlements

9 today as well as take any questions the Commission may

10 have about them.

11 Again, the Commission now has before it a

12 voluminous record and the extensive commitments and

13 conditions in the settlements involving numerous parties

14 that we respectfully submit should prompt it to

15 expeditiously approve the transaction as doing no harm

16 and thus one that is in the public interest. Thank you.

17 JUDGE CLARK: Thank you, Mr. Romano.

18 Opening statement on behalf of Comcast.

19 MR. KOPTA: Thank you, Your Honor. Good

20 morning Mr. Chairman, Commissioners. Comcast has a

21 limited interest in this proceeding. Comcast is a

22 facilities based provider of telecommunications services

23 in Washington and has an interconnection agreement with

24 Verizon Northwest and submits thousands of orders to

25 Verizon Northwest on an annual basis in terms of being

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1 able to convert customers from Verizon to Comcast and

2 vice versa. So our concern has always been to ensure

3 that the proposed transaction did not have any negative

4 impact on our ability to serve our customers or on our

5 ability to obtain new customers, and that's been the

6 driving force in our participation in this proceeding.

7 We are glad to say that we have been able to

8 work out a settlement agreement with Verizon and with

9 Frontier that addresses those concerns, allows us to

10 test the systems that Frontier will eventually be using

11 prior to their implementation to ensure that the

12 continuity will be the same, that we will have the same

13 order receipt and processing tomorrow that we do today,

14 and also to ensure that the terms and conditions under

15 which we have dealings with Verizon Northwest remain the

16 same after the proposed transaction closes.

17 So at this point, we are certainly hopeful

18 that we will be able to continue to work with Verizon

19 and Frontier as the process continues and with Frontier

20 if the transaction is consummated and the Commission

21 approves. So at this point, we thank you for the

22 opportunity to address our concerns and to have the

23 Commission act as a facilitator to ensure that our

24 customers are able to continue to obtain service from us

25 and to have the full ability to make their choice of

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1 telecommunications providers in the service territories

2 currently served by Verizon Northwest. Thank you.

3 JUDGE CLARK: Thank you, Mr. Kopta.

4 I've gotten the thumbs up on the sound

5 system, so I'm going to test that again, and if we're

6 able to get participation on the bridge without music,

7 I'm going to turn to Mr. Trinchero for his opening

8 statement.

9 MR. KOPTA: Your Honor, if I might just make

10 one clarifying statement, I apologize.

11 JUDGE CLARK: Yes, you may.

12 MR. KOPTA: Comcast is a member of The

13 Broadband Association, who is another party in this

14 proceeding, but I just wanted to clarify that we are not

15 participating in The Broadband Association's

16 participation in this particular proceeding, that we

17 recused ourselves from any discussion among The

18 Broadband Association members in terms of process or how

19 they will proceed in this particular case and wanted to

20 make sure that the Commission is aware that Comcast is

21 completely separate in this proceeding from The

22 Broadband Association.

23 JUDGE CLARK: Thank you, Mr. Kopta, I

24 appreciate that clarification.

25 Mr. Trinchero, are you on line?

0223

1 All right, I'm going to turn to the

2 individuals who are present in the hearing room to give

3 opening first, and then we will recontact Mr. Melnikoff

4 and Mr. Trinchero.

5 Level 3 and 360networks.

6 MR. LOWNEY: Good morning, thank you, Your

7 Honor. I'm going to provide -- first I should introduce

8 myself, my name is Adam Lowney, and I'm here on behalf

9 of Level 3 Communications as well as 360networks. For

10 the purposes of my opening statement, I will only be

11 addressing Level 3's independent settlement agreement.

12 360networks signed on to what we've termed the Joint

13 CLECs agreement, and Mr. Trinchero I believe will be

14 addressing that issue.

15 So with respect to Level 3, Level 3

16 Communications LLC is a competitive local exchange

17 carrier here in Washington. Coming into this docket,

18 Level 3's primary objectives in this docket were to

19 maintain, number one, the network that it had built with

20 Verizon, and number two, the terms and conditions of its

21 interconnection agreement with Verizon. Level 3 also

22 wanted to ensure that it worked well with Frontier and

23 allow sufficient time to commence negotiations and

24 arbitrate a new interconnection agreement when it became

25 necessary to do so. The terms of the stipulation Level

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1 3 has reached with Verizon/Frontier satisfy these

2 concerns. The interconnection agreements and network

3 will remain in place for 30 months, and amendments to

4 the interconnection agreement will be filed with the

5 Commission to reflect this extension. In addition, the

6 agreement calls for the parties to commence negotiations

7 on a new interconnection agreement at least 1 year

8 before the termination of the existing agreement. The

9 stipulation between Level 3 and the Joint Applicants

10 satisfies the no harm standard required by Washington

11 law and for that reason should be approved by the

12 Commission. Thank you.

13 JUDGE CLARK: Thank you.

14 BCAW.

15 Let me again remind everyone to please ensure

16 that you deliver your opening statement as slowly as

17 possible.

18 MR. HARLOW: Thank you, Your Honor. Good

19 morning, Commissioners.

20 JUDGE CLARK: Very good.

21 MR. HARLOW: I do have a challenge with

22 speaking too fast sometimes.

23 The Broadband Communications Association of

24 Washington, which we can more easily say as BCAW, also

25 has a limited interest in this proceeding. BCAW does

0225

1 not have any position on the transfer per se, but as our

2 testimony reflects, we are very concerned with

3 originally the Staff recommended conditions, some of

4 which have been withdrawn, and the Public Counsel

5 recommended conditions if the transaction is approved.

6 The conditions effectively regulate, would regulate

7 rates as well as mandate entry, so regulate rates and

8 entry as to services this Commission does not regulate.

9 So our concern, we have several, but primarily our

10 concern is that these recommendations of Public Counsel

11 would put additional financial pressure on the

12 transferee, Frontier, if the transaction is approved

13 subject to those conditions. In other words, it would

14 increase the risk for the regulated rate payers in

15 attempting to extend regulation beyond the Commission's

16 jurisdiction. So that increases the risk of phone

17 customers including wholesale customers. We don't think

18 it's in the public interest, we don't think the record

19 supports the need for the Commission to extend its

20 regulation into these unregulated areas because of the

21 competition that exists, and in addition raises serious

22 jurisdictional questions for the Commission. Thank you,

23 Commissioners.

24 JUDGE CLARK: Thank you, Mr. Harlow. It's my

25 understanding that having given your opening statement,

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1 there is no cross-examination for your witness,

2 Mr. Main, and that Mr. Main wishes to forfeit his

3 opportunity for oral rebuttal, and therefore does BCAW

4 wish to be excused from further participation in this

5 proceeding at this juncture?

6 MR. HARLOW: Yes. Mr. Main's expected oral

7 rebuttal is really in the nature of a position statement

8 and doesn't change our position that we don't take a

9 position on the transaction per se, so I think we can

10 effectively address that just fine in the closing

11 briefs, and I've addressed it a little bit in the

12 opening statement, so oral rebuttal is waived by

13 Mr. Main, and we would request to be excused. Probably

14 stay in the room until lunch hour and then leave after

15 that if it's acceptable to Your Honor.

16 JUDGE CLARK: That request is granted.

17 MR. HARLOW: Thank you.

18 JUDGE CLARK: All right, I'm going to turn

19 now to you, Mr. Thompson for your opening statement.

20 MR. THOMPSON: Good morning, Commissioners,

21 Jonathan Thompson on behalf of Commission Staff. I want

22 to address my opening statement to sort of the process

23 by which we arrived at our settlement that we're

24 presenting to you today. Back in July, the Joint

25 Applicants, the two companies, filed testimony in

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1 support of the proposed transaction, and not

2 surprisingly it was pretty much focused on the asserted

3 benefits of that transaction. I think it was somewhere

4 in the neighborhood of probably 80 pages total,

5 something like that. At that point, we commenced our

6 discovery phase along with Public Counsel issuing quite

7 a number of data requests and exploring possible harms

8 that the transaction might pose to consumers in

9 Washington state. We also had a couple of workshops

10 with the company to discuss operational support systems

11 issues because of concerns regarding prior transactions.

12 Verizon transactions in Hawaii and with FairPoint in New

13 England obviously prompted us to take that line of

14 inquiry. We also had workshops on financial issues, and

15 in November we filed testimony through seven Staff

16 witnesses on various issues, financial operations,

17 support systems, retail rates, services, retail service

18 quality, broadband, wholesale, CLEC issues, and

19 Washington telephone assistance program issues. We at

20 that time sort of took a critical view toward the

21 transaction based partly on what we felt was

22 insufficient information at that time.

23 Our testimony and the testimony of Public

24 Counsel prompted very extensive rebuttal testimony from

25 the companies in the hundreds of pages, and we found

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1 that a lot of the analysis presented there was -- in

2 fact did ease our chief concerns about Frontier's

3 fitness from a financial and an operational standpoint.

4 And the companies did also volunteer to accept some of

5 our proposed conditions from our testimony. That

6 allowed us to move forward to negotiate with the

7 companies toward the settlement agreement that you have

8 before you today in order to get additional conditions

9 to guard against specific harms that we still had

10 concerns about and to get the companies to commit

11 primarily in the area of broadband and service quality

12 to definite quantifiable benefits as generally promised

13 in their testimony.

14 So we believe that the settlement that we

15 have reached together with the complementary settlements

16 that the companies have reached with the CLECs and with

17 the Department of Defense and the Federal Executive

18 Agencies presents a package of conditions that meets the

19 no net harm standard that the Commission has previously

20 articulated and therefore should be accepted. I won't

21 repeat again the terms of the settlements, it's been

22 covered in Mr. Weinman's testimony and in previous

23 comments, but Mr. Weinman will be available on the panel

24 to answer questions, and also Mr. Williamson will be

25 available for questions of a more technical nature on

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1 the operations support system issues. So thank you very

2 much.

3 JUDGE CLARK: Thank you, Mr. Thompson.

4 Ms. Shifley.

5 MS. SHIFLEY: Good morning, Chairman Goltz,

6 Commissioner Oshie, and Commissioner Jones. I'm pleased

7 to be here today to present Public Counsel's

8 recommendation on the proposed sale of Verizon's long

9 distance and local telephone service in Washington

10 state. On November 3rd, Public Counsel and Commission

11 Staff filed testimony recommending that you reject the

12 proposed sale, and today Public Counsel must come before

13 you and make that same recommendation.

14 Washington law charges the Commission with

15 the duty of approving proposed sales of public

16 utilities, and the Commission must find that the

17 proposed sale is in the public interest, in other words

18 that it will do no harm. The burden of showing that the

19 proposed sale is in the public interest rests solely on

20 the applicants. In this case Verizon and Frontier have

21 not met this burden. The companies have not provided in

22 their initial, rebuttal, or settlement testimonies, nor

23 through discovery, sufficient information to find that

24 the numerous potential harms identified by Commission

25 Staff and Public Counsel will not come to pass.

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1 Moreover the conditions in the settlement do not remedy

2 those potential harms. Instead of reasonable

3 evidentiary support, the applicant companies have relied

4 on empty assurances and a continuing mantra of just

5 trust us, we've done this before.

6 The transaction allows Verizon to walk away

7 without having to stand behind the functionality of

8 their operating systems or the condition of the

9 essential plant. Frontier will be left with operations

10 that Verizon has underfunded for years and are yielding

11 lower and lower revenues, and Frontier will be paying a

12 very high price based on a hypothetical valuation

13 created by Verizon that no party has been able to

14 confirm.

15 A central issue is whether Frontier has

16 demonstrated that it has the financial capability to

17 complete this transaction. Unfortunately, the Joint

18 Applicants have failed to provide any party the

19 necessary information to evaluate their financial

20 projections. On repeated occasions Public Counsel

21 requested a complete and working financial model, and we

22 never received one.

23 Another critical issue is whether Frontier

24 has a reasonable plan to operate in Washington state.

25 On numerous separate occasions Public Counsel requested

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1 and sought from Frontier a capital expenditure budget

2 for Washington. In each response Frontier confirmed

3 that it had no capital budget for this state, and as

4 recently as last Friday Frontier again confirmed that

5 indeed they have no capital budget for Washington state.

6 In addition, Frontier has also expressed that

7 it has no certain plan for the integration of the

8 replicated systems into its existing operations even

9 though it has confirmed that it will not be able to

10 obtain the hundreds of millions of dollars of synergies

11 that it has promised its investors absent integration.

12 So we are left with little reliable evidence

13 and more questions than answers. This is an $8 Billion

14 transaction with vague and incomplete financial

15 projections that no party has been able to examine in

16 detail. Moreover after watching not one, not two, but

17 three previous Verizon sales end in bankruptcy, Public

18 Counsel remains justifiably worried that a similar

19 result will occur here. The evidence that Public

20 Counsel will present at hearing along with the evidence

21 that we have provided in our testimony will show that

22 there is simply not enough information to conclude that

23 the proposed transaction is in the public interest.

24 Thank you.

25 CHAIRMAN GOLTZ: Can I ask a question?

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1 JUDGE CLARK: Yes.

2 CHAIRMAN GOLTZ: I have one question for

3 Ms. Shifley. I heard you say and I noticed it was in I

4 believe Ms. Alexander's testimony basically setting the

5 standard, the standards and the regulations in the

6 public interest and by Commission precedent that's been

7 interpreted to be a no harm standard, but you're

8 agreeing that that is not a standard? I guess I was

9 thinking that perhaps you might make the argument that

10 it's still a net benefit, would be a net benefit

11 standard.

12 MS. SHIFLEY: No, Chairman Goltz, we

13 understand that the precedent sets it as a no harm

14 standard.

15 CHAIRMAN GOLTZ: So you're acquiescing that

16 standard?

17 MS. SHIFLEY: Yes.

18 CHAIRMAN GOLTZ: Thank you.

19 JUDGE CLARK: Thank you.

20 Is Mr. Trinchero on line?

21 MR. TRINCHERO: Yes, Your Honor.

22 JUDGE CLARK: Fabulous. Since I have

23 Mr. Trinchero on line and perhaps other individuals on

24 the bridge line, I would like to remind everyone that

25 you can not place your phone on hold or you will have

0233

1 music playing in the hearing room during the hearing,

2 and I thank you for your cooperation.

3 Mr. Trinchero, if you could proceed with your

4 opening statement, please.

5 MR. TRINCHERO: Thank you, Your Honor, thank

6 you, Commissioners. My name is Mark Trinchero and I

7 represent a group of competitive local exchange carriers

8 commonly referred to in this proceeding as the Joint

9 CLECs. My clients are both wholesale customers of

10 Verizon and also Verizon's competitors. After this

11 merger is completed, my clients will be wholesale

12 customers and competitors of Frontier. We had raised a

13 number of concerns related to this transaction, and

14 following lengthy negotiations we were able to reach the

15 compromise that is reflected in the settlement agreement

16 with a number of conditions. While no settlement is

17 ever perfect, these conditions are reasonable, and they

18 do ensure both a period of stability with respect to

19 rates, terms, and conditions, and operational process

20 needs relating to the wholesale services that my clients

21 currently purchase from Verizon and will be purchasing

22 from Frontier and also the commitment from Frontier to

23 participate in the development of service quality

24 standards for wholesale services which will also ensure

25 that the transition from Verizon to Frontier does not

0234

1 negatively impact the wholesale services that my clients

2 purchase in order to provide competitive services in the

3 state. And it also ensures that the transfer of

4 operations support systems is smooth and does not

5 disrupt the services that my clients ultimately provide

6 to customers in the state. And with that, we urge the

7 Commission to approve the settlement. Thank you.

8 JUDGE CLARK: Thank you, Mr. Trinchero.

9 Mr. Melnikoff.

10 MR. MELNIKOFF: Yes.

11 JUDGE CLARK: We're ready for your opening

12 statement, Mr. Melnikoff.

13 MR. MELNIKOFF: Thank you. Good morning, I'm

14 Steve Melnikoff representing the Department of Defense

15 and all other Federal Executive Agencies. I appreciate

16 the opportunity to address the Commission on this

17 matter. The interests of DoD/FEA in this proceeding is

18 that of a customer of telecommunications services

19 provided by Verizon Northwest in the exchanges that are

20 to be sold to Frontier Communications Corporation. We

21 have numerous offices, both military and civilian.

22 These offices and installations vary in size, and the

23 business telecommunications services purchased range

24 from large complex systems to small office services. In

25 addition to the services procured directly from Verizon,

0235

1 DoD/FEA purchases services through competitive bidding

2 procedures whenever possible to obtain the best

3 available services at the lowest possible cost.

4 DoD/FEA's interest thus encompasses the issue of

5 Frontier's ability to provide both wholesale service to

6 competitive carriers as well as to compete fairly for

7 DoD/FEA's business.

8 We have fully participated in this

9 proceeding. While DoD/FEA did not necessarily oppose

10 the transaction, our concern was that Verizon's and

11 Frontier's mere assurances in its application that the

12 transaction would be harmless, transparent, and seamless

13 to customers was no more than just trust us words. Any

14 approval of the transaction should contain as needed

15 sufficient conditions and safeguards, consequences and

16 penalties, incentives and importantly reporting

17 requirements to assist the Commission's ability to

18 monitor the aftermath and react if necessary to ensure

19 that harmlessness, transparency, and seamlessness would

20 be a reality. To this end, DoD/FEA filed the testimony

21 of its expert, Charles W. King, which pointed out areas

22 of concern about the transaction and buyer, Frontier,

23 and suggested potential remedial conditions.

24 After the Staff/Verizon/Frontier settlement

25 which addressed many concerns expressed by DoD/FEA, we

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1 negotiated and recently reached a settlement with

2 Frontier and Verizon which from our perspective building

3 upon the Staff settlement -- builds upon the Staff

4 settlement in two important aspects. First, it

5 strengthens the monitoring of the service quality

6 performance by adding quarterly rather than annual

7 service quality metrics and reporting, a shortened

8 reporting cycle providing a quicker reward and a more

9 timely remedial response. In addition, it also added a

10 focused remedial response by Frontier, a clearly

11 specified plan to resolve any service inadequacy

12 complete with a committed detailed budget, and finally

13 the tracking of remedial funding and expenditures on a

14 monthly basis until any problems have been or any

15 problems have been resolved.

16 And secondly, we strengthened that foundation

17 by expanding the three year rate cap from residential

18 basic service to basic services used by all business

19 customers. If only residential rates are capped, then

20 Frontier could likely seek to resolve any perceived

21 revenue deficiencies by increasing unprotected business

22 service rates. This provision ensures that during a

23 three year transition period business customers will

24 remain unharmed, receiving the same stability and

25 protection from rate increases that residential

0237

1 customers would enjoy.

2 The DoD/FEA settlement was the product of

3 gives and takes of the negotiation process and was

4 generally coordinated with Staff. The overall results

5 add certainty and protection building on the significant

6 foundation of the Staff settlement and resolve all

7 issues raised by DoD/FEA in this proceeding. This

8 settlement is in the public interests and should be

9 approved. To deny the transaction would effectively

10 require Verizon to continue to operate in a state it

11 wishes to exit and serve customers it would prefer not

12 to have. This would not be a prescription for reliable,

13 efficient, responsive telecommunications service.

14 While there are legitimate risks in

15 transferring Verizon's service territory to Frontier and

16 its customers, that company appears eager to expand the

17 scope of services offered in Washington, particularly

18 high speed Internet service, broadband, however DoD

19 believes on balance the risk is minimized with

20 Frontier's experience of providing rurally oriented

21 local exchange carrier services and particularly with

22 the safeguard conditions of the Staff, DoD/FEA, and the

23 wholesale market settlements, plural. It is the

24 beneficial result of all the reporting requirements to a

25 vigilant Commission as well as the potential penalties

0238

1 and remedies available. Thus we believe the approval of

2 the Verizon/Frontier transaction in Washington with the

3 agreed upon conditions of those settlements is in the

4 public interest. Thank you.

5 JUDGE CLARK: Thank you, Mr. Melnikoff. The

6 settlement between the Joint Applicants and DoD/FEA as

7 well as the testimony filed in support thereof has

8 already been received by the Commission. There is no

9 cross-examination for your witness, Mr. King, and there

10 is no Commissioner inquiry for your witness, Mr. King.

11 Therefore, does DoD/FEA wish to be excused from the

12 remainder of this proceeding?

13 MR. MELNIKOFF: I intend to recede into

14 listening mode and reserve a right to jump back in if I

15 need to participate.

16 JUDGE CLARK: All right, then I'm not going

17 to excuse you under the sole condition that you don't

18 place your phone on hold.

19 MR. MELNIKOFF: Agreed.

20 JUDGE CLARK: All right.

21 The next order of business will be calling

22 the panel for the Joint CLECs settlements. Given other

23 Commission business, I am not going to be able to do

24 that regrettably before the lunch recess, and so we are

25 going to be at recess until approximately 1:15. When we

0239

1 come back, I would like to have empanelled for

2 Commissioner inquiry those witnesses presenting

3 testimony regarding all three of the CLEC settlements,

4 including Mr. McCarthy, Mr. Timothy McCallion,

5 Mr. Robert Munoz, who I understand is appearing

6 telephonically, Mr. Rick Thayer, whom I understand will

7 be appearing telephonically, and Mr. Doug Denney, whom I

8 understand will be appearing telephonically.

9 We are at recess until approximately 1:15.

10 (Luncheon recess taken at 11:45 a.m.)

11

12 A F T E R N O O N S E S S I O N

13 (1:15 p.m.)

14 JUDGE CLARK: Just a reminder, we do have a

15 number of individuals appearing telephonically via the

16 bridge line, both counsel and witnesses, and individuals

17 who have elected to listen in. Do not place your phone

18 on hold, or you will play music in the hearing room. If

19 you are either counsel or a witness for a party, please

20 identify yourself before you speak so that the court

21 reporter can accurately make a transcript of this

22 proceeding. And a reminder again that when you're

23 appearing telephonically it is important that you speak

24 considerably more loudly than you would ordinarily speak

25 and perhaps more slowly so that we can get an

0240

1 appropriate transcript.

2 I have requested that the Joint Applicants as

3 well as the CLECs who have entered into settlement

4 agreements with the Joint Applicants sit on one panel

5 this afternoon, and so I am going to ask counsel for

6 each of those parties to call their witnesses to the

7 stand.

8 I'll commence with you, Mr. Romano.

9 MR. ROMANO: Thank you, Your Honor, Verizon

10 calls Timothy McCallion.

11 JUDGE CLARK: Thank you.

12 And Frontier.

13 MR. SAVILLE: Good afternoon, Your Honor,

14 Frontier calls Daniel McCarthy.

15 JUDGE CLARK: Thank you.

16 Comcast.

17 MR. KOPTA: Thank you, Your Honor, Comcast

18 calls Robert Munoz.

19 JUDGE CLARK: Thank you.

20 Mr. Munoz, can you verify that you're

21 appearing telephonically?

22 MR. MUNOZ: Yes, I can, I'm on the phone.

23 JUDGE CLARK: And can you spell your last

24 name for the record, please.

25 MR. MUNOZ: M-U-N-O-Z.

0241

1 JUDGE CLARK: Perfect.

2 Level 3.

3 MR. LOWNEY: Level 3 calls Rick Thayer.

4 JUDGE CLARK: Mr. Thayer, can you verify that

5 you're on the line?

6 MR. THAYER: Yes, I am appearing on -- I am

7 on the line, and my last name is spelled T-H-A-Y-E-R.

8 JUDGE CLARK: Perfect.

9 And Mr. Trinchero for the Joint CLECs.

10 MR. TRINCHERO: Yes, Your Honor, the Joint

11 CLECs call Douglas Denney.

12 JUDGE CLARK: Thank you.

13 Mr. Denney, can you verify that you're on the

14 line?

15 MR. DENNEY: Yes, I am.

16 JUDGE CLARK: And spell your last name,

17 please.

18 MR. DENNEY: D-E-N-N-E-Y.

19 JUDGE CLARK: All right, I'm going to

20 administer the oath to all the individuals who will be

21 serving on this afternoon's panel. It is my convention

22 to stand up and raise my right hand and ask the

23 witnesses to do the same. I am going to break from that

24 convention so that I can speak into the microphone and

25 actually be heard by those individuals on the bridge

0242

1 line. If you would stand and raise your right hand

2 please.

3 (Witnesses DANIEL MCCARTHY, TIMOTHY J.

4 MCCALLION, ROBERT MUNOZ, RICHARD THAYER, and

5 DOUGLAS DENNEY were sworn.)

6 JUDGE CLARK: Thank you, please be seated.

7 All right, Mr. Romano.

8

9 Whereupon,

10 DANIEL MCCARTHY, TIMOTHY J. MCCALLION, ROBERT MUNOZ,

11 RICHARD THAYER, and DOUGLAS DENNEY,

12 having been first duly sworn, were called as witnesses

13 herein and were examined and testified as follows:

14

15 D I R E C T E X A M I N A T I O N

16 BY MR. ROMANO:

17 Q. Mr. McCallion, do you have testimony in front

18 of you that's marked as DM/TM/RM-1T, which is joint

19 testimony in support of the Comcast settlement

20 agreement?

21 A. (McCallion) I do.

22 Q. And do you also have testimony marked as

23 DM/TM/DD-1T, which is joint testimony in support of the

24 settlement agreement with the Joint CLECs?

25 A. (McCallion) I do.

0243

1 Q. Do you have any changes or corrections to

2 that testimony?

3 A. (McCallion) No, I do not.

4 MR. ROMANO: Thank you.

5 JUDGE CLARK: Thank you.

6 Mr. Saville.

7

8 D I R E C T E X A M I N A T I O N

9 BY MR. SAVILLE:

10 Q. Mr. McCarthy, can you just state your name

11 and title for the record.

12 A. (McCarthy) My name is Daniel McCarthy, I'm

13 the Executive Vice President and Chief Operating Officer

14 of Frontier Communications.

15 Q. Mr. McCarthy, do you have in front of you an

16 exhibit which was prefiled joint testimony in support of

17 the Comcast settlement that's been marked as

18 DM/TM/RM-1T?

19 A. (McCarthy) I do.

20 Q. And do you also have in front of you the

21 prefiled testimony in support of the settlement with

22 Level 3 that is marked DM/RT-1T?

23 A. (McCarthy) I do.

24 Q. And do you also have in front of you the

25 prefiled testimony in support of the settlement with the

0244

1 Joint CLECs which is DM/TM/DD-1T?

2 A. (McCarthy) I do.

3 Q. And do you have any changes to make to any of

4 that prefiled testimony?

5 A. (McCarthy) No, I do not.

6 MR. SAVILLE: Thank you.

7 JUDGE CLARK: Mr. Lowney.

8

9 D I R E C T E X A M I N A T I O N

10 BY MR. LOWNEY:

11 Q. Mr. Thayer, do you have before you an exhibit

12 marked DM/RT-1T, joint testimony of McCarthy and Thayer?

13 A. (Thayer) I do.

14 Q. And do you have any changes to that testimony

15 today?

16 A. (Thayer) No, I don't.

17 MR. LOWNEY: Thank you.

18 JUDGE CLARK: Thank you.

19 Mr. Kopta.

20 MR. KOPTA: Thank you, Your Honor.

21

22 D I R E C T E X A M I N A T I O N

23 BY MR. KOPTA:

24 Q. Mr. Munoz, do you have before you a document

25 that's entitled prefiled joint testimony of Daniel

0245

1 McCarthy, Timothy McCallion, and Robert Munoz in support

2 of settlement, Number DM/TM/RM-1T?

3 A. (Munoz) I do.

4 Q. Do you have any changes or corrections to

5 make to that testimony?

6 A. (Munoz) I do not.

7 MR. KOPTA: Thank you.

8 JUDGE CLARK: Thank you.

9 Mr. Trinchero.

10 MR. TRINCHERO: Thank you, Your Honor.

11

12 D I R E C T E X A M I N A T I O N

13 BY MR. TRINCHERO:

14 Q. Mr. Denney, do you have the document in front

15 of you entitled testimony in support of settlement by

16 the parties to the Joint CLEC settlement marked as

17 Exhibit DM/TM/DD-1T?

18 A. (Denney) Yes, I do.

19 Q. And do you have any changes or corrections to

20 make to that testimony?

21 A. (Denney) No.

22 MR. TRINCHERO: Thank you.

23 JUDGE CLARK: All right, and we also have the

24 settlement agreement marked DM/TM/DD-2, and I'm assuming

25 there's no corrections to that either.

0246

1 MR. DENNEY: That's correct, Your Honor.

2 JUDGE CLARK: Thank you, Mr. Denney.

3 All right, the parties indicated that they do

4 not have any cross-examination for these witnesses,

5 therefore the purpose of empanelling these individuals

6 is to allow the Commissioners to inquire on the three

7 settlement agreements reached with the CLECs. I'm going

8 to start with Commissioner Jones and see if you have any

9 inquiry.

10 COMMISSIONER JONES: No questions.

11 JUDGE CLARK: Commissioner Oshie.

12 COMMISSIONER OSHIE: No questions.

13 CHAIRMAN GOLTZ: I haven't either.

14 JUDGE CLARK: Thank you very much for your

15 testimony.

16 Would Comcast, Level 3, and the Joint CLECs

17 like to be excused from further participation in this

18 proceeding?

19 MR. KOPTA: Speaking on behalf of Comcast,

20 yes, we would.

21 JUDGE CLARK: All right, you're excused,

22 thank you.

23 MR. TRINCHERO: On behalf of the Joint CLECs,

24 yes, Your Honor.

25 JUDGE CLARK: Thank you, you're excused.

0247

1 MR. LOWNEY: And on behalf of Level 3, yes,

2 Your Honor.

3 JUDGE CLARK: Thank you, you're excused.

4 All right, why don't we take just a moment to

5 empanel the next witnesses who will be appearing and

6 allow those individuals who are no longer participating

7 to leave the hearing room.

8 The next panel will be the Joint Applicant

9 and Staff settlement. We've already empanelled

10 Mr. McCarthy and Mr. McCallion, and we need Mr. William

11 Weinman, please.

12 Mr. McCarthy, Mr. McCallion, I'm just going

13 to remind you that you remain under oath.

14 Mr. Weinman, please rise.

15 (Witness WILLIAM H. WEINMAN was sworn.)

16 JUDGE CLARK: Thank you, please be seated.

17 Mr. Thompson.

18

19 D I R E C T E X A M I N A T I O N

20 BY MR. THOMPSON:

21 Q. Staff calls Mr. Weinman, and I would ask

22 Mr. Weinman to indicate, did you cause to be filed the

23 testimony in support of the settlement that is marked as

24 WHW-14T?

25 A. (Weinman) I did.

0248

1 Q. And do you have any changes or corrections to

2 that today?

3 A. (Weinman) No, I don't.

4 JUDGE CLARK: All right, thank you.

5 Ms. Shifley, cross-examination.

6 MS. SHIFLEY: Thank you, Your Honor.

7

8 C R O S S - E X A M I N A T I O N

9 BY MS. SHIFLEY:

10 Q. I would like to start by asking Mr. McCarthy

11 a couple of questions. Could you please turn to what

12 has been marked Exhibit DM-75.

13 MR. SAVILLE: Ms. Shifley, may I ask, can you

14 just identify what that exhibit is.

15 MS. SHIFLEY: Certainly, it is Mr. McCarthy's

16 prefiled surrebuttal testimony before the Illinois

17 Commission.

18 A. (McCarthy) Yes, I have it.

19 BY MS. SHIFLEY:

20 Q. Mr. McCarthy, this exhibit is your prefiled

21 surrebuttal testimony before the Illinois Commission

22 regarding the proposed transaction, correct?

23 A. (McCarthy) Correct, an excerpt from it I

24 believe.

25 Q. I would like to just ask you a few brief

0249

1 questions about two points that you made in this

2 testimony. These questions should be pretty quick, just

3 simple yes or no questions. In your Illinois testimony

4 you state that Frontier will accept a number of service

5 quality conditions proposed by Illinois staff that are

6 different and in some respects more onerous than those

7 included in the proposed settlement in this state; is

8 that correct?

9 A. (McCarthy) If you would just give me a

10 second just to review.

11 Could you just repeat the question, I'm

12 sorry.

13 Q. In the Illinois testimony you state that

14 Frontier will accept a number of service quality

15 conditions that are different and in some respects more

16 onerous than those included in the proposed settlement

17 in this state, correct?

18 MR. SAVILLE: Ms. Shifley, can I ask you are

19 you pointing to a particular line item of the testimony

20 in this exhibit?

21 MS. SHIFLEY: Certainly.

22 BY MS. SHIFLEY:

23 Q. You might turn to page 11 of the testimony,

24 which I believe is the second page of the exhibit.

25 A. (McCarthy) And which line item, I'm sorry?

0250

1 Q. Beginning on line 212, and specifically on

2 line 214 you talk about how the service quality

3 performance standards will be tied to Verizon's current

4 performance averages?

5 A. (McCarthy) Correct.

6 Q. And those averages go beyond the Illinois

7 Commission's existing service quality performance

8 standards?

9 A. (McCarthy) I believe I said that they were

10 stricter than the commission's current performance

11 averages, I'm sorry, standards, yes.

12 Q. And in this state, is it your understanding

13 that Public Counsel made a similar recommendation to

14 base future standards on Verizon's recent performance in

15 Washington?

16 A. (McCarthy) Well, first off, the -- from the

17 Illinois, just to clarify, this was part of a settlement

18 negotiated with staff. It was a comprehensive

19 settlement that was looking at broadband additions in

20 the state going from approximately 61% up into the 80's.

21 There were a number of different components, so. The

22 first part of the settlement was conditioned around

23 service standards in the state, and there were penalties

24 if we missed the majority of the service metrics.

25 Q. So just again just to clarify, did you accept

0251

1 as a condition in Washington state the recommendation to

2 tie Frontier service quality standards going forward to

3 Verizon's historical performance in Washington?

4 A. (McCarthy) I believe the standards were set

5 as part of the settlement at different answer times for

6 toll assistance, information answer time, repair office

7 answer time, business office answer time, installation

8 requests over 5 business days, interruption of service

9 over 24 hours, and trouble reports for 1-800 lines, so

10 it was, as I recall in the settlement, it was detailed

11 actual targets set and laid out in the settlement.

12 Q. But were the standards that Frontier has to

13 meet, they were not based on Verizon's historical

14 performance, were they?

15 A. (McCarthy) The standards that are in the

16 settlement were agreed upon by the parties in the

17 settlement, and I just highlighted what those items

18 were. There's very specific targets in each one of the

19 settlement parameters.

20 Q. But again, I just want to clarify that in

21 Washington state the standards that are set for service

22 quality are not based on Verizon's performance in

23 Washington state; is that correct?

24 A. (McCarthy) Correct.

25 Q. And would you please now turn to Exhibit

0252

1 DM-76, which is an attachment to your Illinois

2 testimony.

3 A. (McCarthy) Which page?

4 Q. The second page, please. And under 1(d) of

5 that exhibit, it states that Frontier agrees that

6 service quality conditions should remain in effect until

7 Frontier meets certain credit ratings or five years,

8 whichever is earlier, and that the condition will be

9 reinstated if the credit rating's dropped; is that

10 correct?

11 A. (McCarthy) That is exactly what was

12 negotiated with staff. It has not been adopted by the

13 commission at this point.

14 Q. And does the settlement that is before this

15 Commission in Washington state include service quality

16 durations that go beyond three years?

17 A. (McCarthy) One second, just one second.

18 Correct, it was three years.

19 Q. Okay. And does the settlement here in

20 Washington tie the duration of any service quality

21 standards to any relevant event or occurrence such as

22 reaching a specified credit rating?

23 A. (McCarthy) No, it doesn't. However, I would

24 say that the negotiation with Staff here was very

25 different from Illinois, and there are self effecting

0253

1 penalties that are associated there in addition to the

2 service protection guarantees that are related by

3 Verizon today, so it was a very different situation than

4 it was in Illinois.

5 Q. Certainly. But just to clarify again that

6 the duration is not tied to any event?

7 A. (McCarthy) Correct.

8 Q. And also would you just clarify,

9 Mr. McCarthy, that you accepted in Illinois that

10 Frontier would tie service quality to potential dividend

11 restrictions?

12 A. (McCarthy) It was we tied jurisdictional

13 dividend restrictions from the LEC to the majority -- of

14 hitting the majority of the service quality metrics.

15 Q. Thank you.

16 And now I believe that these -- I'm going to

17 move to a different subject now, and I believe that

18 these are for Mr. McCallion.

19 Mr. McCallion, where is Verizon Northwest

20 located?

21 A. (McCallion) What states are we located in?

22 Q. The corporate headquarters for Verizon

23 Northwest, where is that?

24 A. (McCallion) Everett, Washington.

25 Q. Thank you.

0254

1 And Verizon Northwest is a subsidiary of

2 Verizon; is that correct?

3 A. (McCallion) That's correct.

4 Q. Okay. So it's a separate subsidiary

5 corporation?

6 A. (McCallion) Yes, totally owned subsidiary of

7 Verizon.

8 Q. And Verizon Northwest has its own income

9 statements, balance sheets, cash flow statements, et

10 cetera?

11 A. (McCallion) Yes.

12 Q. And, Mr. McCarthy, could you just clarify for

13 me where Frontier Northwest will be located if this

14 transaction proceeds?

15 A. (McCarthy) It will be located in Everett as

16 well.

17 Q. Okay. And it will also be a stand-alone

18 corporation, or will it be a division of Frontier, or

19 not a stand-alone, excuse me, a subsidiary corporation?

20 A. (McCarthy) I'm just not sure on the subtle

21 difference you're asking right now.

22 Q. Would you just explain what type of corporate

23 entity Frontier Northwest will be?

24 A. (McCarthy) Frontier Northwest will be the

25 same as it is today, so to the extent that it is that

0255

1 entity for Verizon Northwest, we will just be acquiring

2 that, so it will remain the same.

3 Q. Okay. And just like Verizon Northwest it

4 will have its own books, income statements, balance

5 sheets, et cetera?

6 A. (McCarthy) Yes.

7 Q. And I believe that the bulk of my questions

8 will be for Mr. Weinman this afternoon. I would like to

9 ask you a couple of questions regarding your testimony

10 in support of the settlement which has been marked

11 Exhibit number WHW-14T1. Have you got that in front of

12 you?

13 A. (Weinman) I do.

14 Q. On page 1 you state that your original

15 recommendation to the Commission was that they should

16 deny the transfer of control from Verizon to Frontier,

17 in essence reject the deal, correct?

18 A. (Weinman) I'm sorry, my settlement

19 testimony?

20 Q. Oh, no, excuse me, I would like to ask you on

21 page 1 of your rebuttal testimony, your first direct

22 filed testimony, I'm sorry.

23 A. (Weinman) Oh.

24 Q. Have you got that?

25 JUDGE CLARK: No, you need to wait just a

0256

1 minute.

2 A. (Weinman) Actually I do not.

3 COMMISSIONER JONES: Judge, is that labeled

4 WHW-1T?

5 JUDGE CLARK: Yes.

6 COMMISSIONER JONES: Okay.

7 BY MS. SHIFLEY:

8 Q. Actually, Mr. Weinman, you do state or I

9 believe that you state on page 1 of your testimony in

10 support of the settlement agreement that in your direct

11 testimony you recommended that they deny the

12 transaction, is that correct, on lines 18 and 19 on page

13 1 of your settlement testimony?

14 A. (Weinman) Yes, that's true.

15 Q. I don't think I'll need to be referring too

16 often to your previous testimony, but I would keep it

17 handy.

18 MR. THOMPSON: Could we get Mr. Weinman a

19 copy of that testimony maybe? I've got a copy here, but

20 then I wouldn't be able to look at it.

21 JUDGE CLARK: Mr. Weinman, do you have

22 WHW-1T?

23 MR. WEINMAN: Excuse me, are you talking

24 about my original testimony?

25 MS. SHIFLEY: Do you have a copy of your

0257

1 original testimony with you?

2 MR. WEINMAN: I do, yes.

3 BY MS. SHIFLEY:

4 Q. Okay, so I just want to confirm that you did

5 in your direct testimony recommend that the Commission

6 deny the sale?

7 A. (Weinman) Yes, I did.

8 Q. And on page 1 and the top of page 2 of your

9 settlement testimony, you say that your recommendation

10 to reject the deal was based on the fact that the

11 applicants had not provided enough information in their

12 direct testimony or in response to data requests to meet

13 the burden of proof that the transaction would be in the

14 public interest; is that correct?

15 A. (Weinman) That's correct.

16 Q. And continuing on page 2, you state that

17 additional information that the applicants provided

18 along with the conditions in the proposed settlement

19 provide all the assurance necessary for Staff to

20 conclude that the deal is in the public interest. Do

21 you see that?

22 A. (Weinman) That's true.

23 Q. Would you now turn to Exhibit WHW-15.

24 A. (Weinman) Are we back on original testimony

25 now?

0258

1 Q. WHW-15 is Staff's response to Data Request

2 Number 2 from Public Counsel.

3 A. (Weinman) Oh, okay.

4 I'm there.

5 Q. And here you identify the additional

6 information that you referred to in your testimony as

7 the applicants' rebuttal testimony; is that correct?

8 A. (Weinman) I'm sorry, what data request

9 number is that?

10 Q. I believe it's Data Request Number 2.

11 A. (Weinman) Yes.

12 Q. Okay. I would now like to ask you some

13 questions about the financial concerns that Staff

14 originally had, and I just hope that you can explain how

15 the company's rebuttal testimony addresses these

16 concerns, so now I'll be referring to your previously

17 filed testimony, your direct testimony that you filed in

18 November.

19 JUDGE CLARK: And that's WHW-1T?

20 MS. SHIFLEY: That is correct, Your Honor.

21 A. (Weinman) I'm there.

22 BY MS. SHIFLEY:

23 Q. And on page 8 of that testimony you state

24 that one of Staff's concerns was that Frontier is a

25 double B rated company, a below investment grade

0259

1 company, and Verizon is A rated, an investment grade; is

2 that correct?

3 A. (Weinman) Correct.

4 Q. Mr. Weinman, companies that are below

5 investment grade are financially weaker than those above

6 investment grade; would you agree?

7 A. (Weinman) Yes.

8 Q. And companies with a low bond rating are more

9 likely to default than companies with investment grade

10 bond ratings, are they not?

11 A. (Weinman) That's true.

12 Q. And you're aware, are you not, that this

13 Commission has in the past gone to great lengths to

14 prevent utilities under its purview from dropping into

15 below investment grade territory?

16 A. (Weinman) Yes.

17 Q. Mr. Weinman, will the settlement change the

18 fact that Frontier has a below investment grade bond

19 rating?

20 A. (Weinman) It could. I don't know that for

21 sure.

22 Q. Does the settlement by its terms, it does not

23 change the investment grading or the investment grade

24 bond rating?

25 A. (Weinman) No, it does not.

0260

1 Q. Would the settlement protect rate payers from

2 the consequences of a bankruptcy?

3 A. (Weinman) I don't know.

4 Q. Now turning to page 9 of your direct

5 testimony, just which was filed in November again,

6 that's WHW-1T. Are you there?

7 A. (Weinman) I am.

8 Q. You state that based on your review of the

9 financial projections presented to Frontier's board on

10 May 12, 2009, the day before the merger was approved by

11 the board, the financial projections showed that

12 Frontier estimates that it will continue to pay 60% to

13 70% of its free cash flow in dividends; is that correct?

14 A. (Weinman) That is true.

15 Q. In that same portion of your testimony, you

16 also state that the practice of paying out a high

17 percentage of cash flow is inconsistent with the

18 company's capital expenditure program and improving its

19 financial position.

20 A. (Weinman) I did make that statement.

21 Q. The company has not changed its financial

22 projections since it filed its rebuttal testimony, has

23 it?

24 A. (Weinman) No, it really hasn't.

25 Q. Okay. So Frontier still intends to pay out a

0261

1 high percent of its free cash flow in dividends,

2 correct?

3 A. (Weinman) Yes, based on its free cash flow

4 it will pay out a high percentage. I believe it starts

5 to taper down as time goes on.

6 Q. The proposed settlement does not contain any

7 restrictions on dividend payments, conditional or

8 otherwise, does it?

9 A. (Weinman) No, because there's no use to

10 restrict the dividend at the operating company level.

11 Q. And over the past few years, Frontier has

12 continued to pay out more in dividends than it has

13 earned, correct?

14 A. (Weinman) That's true.

15 Q. And the company's financial projections show

16 that it will continue to do so, correct?

17 A. (Weinman) Yes, primarily because it's

18 throwing up a lot of cash from depreciation expense.

19 Q. And would it be accurate to say that a

20 company's financial condition deteriorates if it

21 continues to pay dividends greater than earnings for a

22 long period of time?

23 A. (Weinman) It certainly can do it for a short

24 period of time. And if it did it forever, then it would

25 have to look at some other means like issue more equity

0262

1 or something else to keep its capital structure at an

2 optimal level.

3 Q. Okay. Just a few more questions about some

4 of the dividend issues. In your direct testimony, again

5 that's the November testimony, one of the reasons you

6 originally provided for rejecting the deal was that

7 Frontier's dividend payments exceed its earnings per

8 share; is that correct?

9 A. (Weinman) Mm-hm.

10 Q. Okay. Would you please now turn to Exhibit

11 WHW-18, which is Staff's response to Public Counsel Data

12 Request Number 7. Are you there?

13 A. (Weinman) Yes.

14 Q. And specifically subsection E, you indicate

15 that this concern was answered by Mr. Whitehouse's

16 rebuttal testimony when he stated that Frontier could

17 reduce the amount of dividends.

18 A. (Weinman) That's true.

19 Q. And in his rebuttal testimony, Mr. Whitehouse

20 stated that Frontier could reduce dividends but that it

21 does not plan to do so; is that correct?

22 A. (Weinman) Yes, I believe it is, but we have

23 to recognize they have reduced dividends.

24 Q. Certainly.

25 JUDGE CLARK: Ms. Shifley, are you on a

0263

1 particular page of WHW-18 that we can follow?

2 MS. SHIFLEY: Sure, it's the second of the

3 three pages, and it's --

4 JUDGE CLARK: Subsection.

5 MS. SHIFLEY: -- subsection E of the

6 response, 3 lines down, Staff believes the company can

7 maintain its dividend payout amount without -- excuse

8 me.

9 BY MS. SHIFLEY:

10 Q. But just to clarify my understanding of

11 Mr. Whitehouse's rebuttal testimony, it doesn't address,

12 really address the fact that Frontier is currently

13 paying dividends in excess of its earnings and that --

14 and it states that in fact the company will continue to

15 do so?

16 A. (Weinman) Well, I think the fact that the

17 company's balance sheet will be significantly improved

18 with equity, that it puts it in a better position to

19 continue to look at cash flow issues in terms of

20 declaring dividends to the shareholders.

21 Q. Okay. I'm just going to move on to a

22 different issue now. Going back to Exhibit WHW-14T1,

23 which is your settlement testimony, on page 2, lines 17

24 and 18, are you there?

25 A. (Weinman) I am.

0264

1 Q. You cite as one reason for Staff's change in

2 position as that the applicants have given workshops

3 regarding OSS issues, correct?

4 A. (Weinman) That's true.

5 Q. And those OSS workshops took place in August

6 and October?

7 A. (Weinman) Correct.

8 MR. THOMPSON: This may be a little late, but

9 I want to object to the form of the prior question. I

10 think -- I'm not sure there was a change of position on

11 Staff's OSS -- on the OSS issue, just for the record.

12 Maybe if Ms. Shifley could point to a place in

13 Mr. Weinman's testimony where it indicates where he's

14 saying there was a change in position with regard to the

15 OSS issues.

16 Q. I believe that Mr. Weinman identifies that

17 OSS concerns were one of the primary areas of concern

18 about the transaction, and then he changed his position

19 on the transaction as being one that should be rejected

20 because of these primary concerns to one that should be

21 approved because those primary concerns were no longer

22 an issue.

23 A. (Weinman) That's true.

24 Q. And you just stated that the workshops took

25 place in August and October, correct?

0265

1 A. (Weinman) Correct.

2 Q. And those workshops actually took place

3 before you filed your direct testimony proposing or

4 recommending that the transaction be rejected?

5 A. (Weinman) Yes, they did take place. I would

6 point out that the workshop in October was I believe

7 towards the middle or the latter part of the month, and

8 by that time we had kind of firmed our position, so

9 those are two primary things that helped us make the

10 decision on OSS, but there's been numerous discussions

11 between my staff and the company that also accompanied

12 this decisionmaking to go to -- and validate and

13 recommend that the OSS systems will work and the

14 replication will work.

15 Q. Okay. But just to clarify again, you do

16 state in your settlement testimony that the OSS issues

17 were addressed in these workshops?

18 A. (Weinman) They were addressed in the

19 workshop, as with many other conversations that have

20 taken place along the way before we came to the

21 settlement, and as well the settlement has conditions

22 that further gave us comfort that the OSS replication

23 process will work.

24 Q. Thank you.

25 I would just like to go back to your direct

0266

1 testimony to talk about a different concern that you

2 originally had, so if you would please turn to pages 5

3 and 6 of your direct testimony.

4 A. (Weinman) I'm there.

5 Q. And here you summarize the concerns about the

6 financial aspects of the transaction that caused you to

7 recommend rejection; is that correct?

8 A. (Weinman) That's true.

9 Q. And in Data Request Number 7 that we were

10 looking at earlier, which is labeled WHW-18, Public

11 Counsel asked you about some of these items, correct?

12 A. (Weinman) Yes.

13 Q. Okay, I just want to ask you some

14 clarification questions on these items. If you could

15 now focus on item number 3 on page 5 of your direct

16 testimony.

17 A. (Weinman) Okay.

18 Q. Here you state as one of the reasons to

19 reject the deal as that Verizon has a broader product

20 line that helps offset land line losses, correct?

21 A. (Weinman) That's true.

22 Q. And in response to sub part A of data request

23 number 7, which starts on the first page of that data

24 request, you confirm that this condition has not

25 changed; is that correct?

0267

1 A. (Weinman) Yes.

2 Q. Turning now to page 6 of your direct

3 testimony at line 12, you note that Frontier is unable

4 to provide a capital budget for Washington.

5 JUDGE CLARK: Where are we, WHW-1?

6 MS. SHIFLEY: Direct testimony, WHW-1T.

7 JUDGE CLARK: Line 12 or item 12?

8 MS. SHIFLEY: Item 12.

9 MR. WEINMAN: Oh, thank you.

10 BY MS. SHIFLEY:

11 Q. You noted that Frontier was unable to provide

12 a capital budget for Washington; is that correct?

13 A. (Weinman) I think at least on my direct

14 testimony item 12 states that Frontier discloses

15 numerous risk factors, Securities and Exchange form S-4,

16 none of which are addressed. It has nothing to do with

17 capital budgets for Washington.

18 Q. Okay. So would you please look at item 9.

19 A. (Weinman) I'm there.

20 Q. Would it be possible to say that at some --

21 in conjunction with this item you had concerns that

22 Verizon or Frontier had not provided a capital budget

23 for Washington?

24 A. (Weinman) Item 9 talks about interest rate

25 costs and estimates of additional debt.

0268

1 Q. Okay, I might come back to that in just a

2 moment.

3 Could you just confirm for me though that

4 Staff was never provided a capital budget?

5 A. (Weinman) That's true, and that's one of the

6 reasons we have the escrow payment so we really don't

7 have to address the buildout of the DSL condition.

8 Q. But they don't have any sort of budget for

9 any other type of expenditures, the escrow payment is

10 only for broadband; is that correct?

11 A. (Weinman) It is.

12 Q. So I'm now going to move to another one of

13 your previous reasons. I believe that this was the one

14 that I was asking about earlier, and that was that we do

15 not yet know what the debt covenant, of the projected

16 $3.3 Billion debt issues are going to be?

17 A. (Weinman) No, we do not.

18 Q. Okay. And that is in your original direct

19 testimony that you filed in November?

20 A. (Weinman) Yes, it is.

21 Q. And then when Public Counsel asked you about

22 this issue in its Data Request 7, which we were just

23 looking at which is WHW-18, subsection 8, or excuse me,

24 subsection H on page 2, you indicate that not knowing

25 the debt covenants for the debt won't be an issue

0269

1 because of the condition in the settlement that Frontier

2 will not encumber the assets of the Washington operating

3 company; is that correct?

4 A. (Weinman) That's true.

5 Q. By encumber, do you mean that the assets of

6 the operating company will not be pledged as security

7 for debt?

8 A. (Weinman) Yes.

9 Q. As in first mortgage debt?

10 A. (Weinman) Yes.

11 Q. Okay. And are you aware that telephone

12 company debt is not mortgage debt but debentures; is

13 that correct?

14 A. (Weinman) I don't know.

15 Q. So discussing also the debt agreement, is it

16 possible for Frontier to issue more than $3.3 Billion of

17 debt when the transaction closes?

18 A. (Weinman) I guess it would be, but I still

19 think we have the materiality issue in the settlement

20 agreement that if they start changing the terms of what

21 is expected with the transaction that we are going to

22 know about it and there will be additional discussion

23 about that, whether it's an issue or not.

24 Q. Okay. So what if prior to the close of the

25 transaction Frontier's stock price fell to $5 a share,

0270

1 and as the merger agreement specifies the company issued

2 750 million shares, that would raise $3.75 Billion, but

3 as you understand the merger agreement calls for a

4 closing equity of $5.25 Billion, right?

5 A. (Weinman) Correct.

6 Q. And would Frontier have to issue more than

7 $3.3 Billion in debt to make the difference between

8 those two amounts?

9 A. (Weinman) I don't know, I can't answer that

10 question.

11 MR. MCCARTHY: Your Honor, can I just help

12 with that?

13 JUDGE CLARK: Certainly.

14 A. (McCarthy) There's a collar set on stock

15 price that would limit the amount of shares that we have

16 to issue, and anything below the collar price Verizon

17 has essentially accepted that as risk in the

18 transaction, so there would be not borrowing any

19 additional debt to make up a difference between a

20 hypothetical equity shortfall.

21 BY MS. SHIFLEY:

22 Q. Okay.

23 Mr. Weinman, I would just like to go back,

24 I'm sorry, I had to clarify something on the questions

25 that I was asking you about before, would you please

0271

1 turn to page 16 of your original direct testimony,

2 WHW-1T.

3 A. (Weinman) I'm there.

4 Q. And at line 12 of page 16 you state that you

5 had not received Frontier's five year capital budget

6 showing its projected capital additions in Washington;

7 is that correct?

8 A. (Weinman) That's true.

9 Q. And again, I was just asking you before, has

10 such a capital budget ever been provided?

11 A. (Weinman) No.

12 Q. All right. I'm going to go back to another

13 one of the reasons you listed for rejecting the

14 transaction in your direct testimony, and on page 6,

15 number 11, you state that merger synergies will not

16 provide any benefit to Washington rate payers; is that

17 correct?

18 A. (Weinman) That's true.

19 Q. Okay. And in your response to Data Request

20 Number 7, subsection I, which is on the last page; are

21 you there?

22 A. (Weinman) I am.

23 Q. You indicate that while Frontier has promised

24 broadband deployment could provide benefits, you still

25 admit that merger synergies resulting from this

0272

1 transaction will provide no benefit to Washington rate

2 payers?

3 A. (Weinman) I think when you look at it in

4 total, it will not provide a benefit to rate payers

5 because of the economies of scale for Verizon. But the

6 problem we have with Verizon is they're not deploying

7 broadband services, they're losing lines, and that in

8 effect will also increase the cost of -- to the

9 Washington rate payers over time.

10 Q. Okay. I would now like to ask you a couple

11 questions about Staff's analysis of the financial

12 aspects of the transaction. Could you please turn to

13 page 4 of your testimony supporting the proposed

14 settlement, specifically lines 7 to 11. Would it be a

15 fair summary to say that from a financial perspective

16 that either with or without synergy savings you stated

17 in this testimony that you believe Frontier will have a

18 reasonable projected financial performance?

19 A. (Weinman) Yes.

20 Q. Do you know the level of synergies that

21 Frontier is telling its investors it is expecting from

22 this transaction?

23 A. (Weinman) $500 Million. They have mentioned

24 up to $700 Million, and we also looked at it with no

25 synergies whatsoever in our workpapers.

0273

1 Q. Okay. Does Staff have an opinion as to

2 whether Frontier will have reasonable financial

3 performance if it does not achieve synergies and it

4 experiences line losses that are either equal to or

5 greater than the level of line losses associated with

6 the to be acquired territories currently?

7 A. (Weinman) Could you repeat that.

8 Q. Does Staff have an opinion as to whether

9 Frontier will continue or will have a reasonable

10 financial performance if it does not realize synergies

11 and it experiences a similar level of line loss as is

12 currently occurring in the territories that it's going

13 to acquire?

14 A. (Weinman) We have looked at line loss up to

15 10%, but I don't believe we've looked at that in

16 combination with a synergy calculation.

17 Q. So you did look at 10% but only if they were

18 going to be achieving the synergies that they had

19 anticipated?

20 A. (Weinman) Yes.

21 Q. And where is that information about Staff's

22 analysis?

23 A. (Weinman) Where is it?

24 Q. Do you have any sort of workpapers or

25 documentation of that analysis?

0274

1 A. (Weinman) We've done analysis after we

2 responded to your data request getting ready for cross.

3 I mean we're talking about issues, and so one of those

4 things came up.

5 Q. And where is the line loss information that

6 you -- have you got any information on the line loss?

7 A. (Weinman) No, actually we just took 10% and

8 believed that that was in the range of what Verizon is

9 currently losing and left it at that.

10 MS. SHIFLEY: I'm sorry, Your Honor, could I

11 have a moment.

12 JUDGE CLARK: We'll take a moment off record.

13 MS. SHIFLEY: Thank you.

14 (Discussion off the record.)

15 BY MS. SHIFLEY:

16 Q. So, Mr. Weinman, you state that Staff did an

17 analysis of 10% line loss; where is that analysis?

18 A. (Weinman) What I stated was we took the pro

19 forma and looked at what would happen if it was a 10%

20 loss and still concluded that the company could --

21 Frontier would be able to handle that kind of loss

22 remain at that level.

23 Q. Was that in a workpaper that you provided to

24 Public Counsel?

25 A. (Weinman) No, because it was produced after.

0275

1 We were getting ready for cross, we were looking at

2 where were you guys going to come after us, and that was

3 one question that popped up, and so we took a shot at

4 trying to do a thumbnail back of the envelope

5 calculation.

6 Q. Would it be possible for us to get that

7 analysis?

8 A. (Weinman) Yes.

9 Q. When are we going to be able to see that?

10 A. (Weinman) At a break or something.

11 Q. Thank you.

12 Does Staff have an opinion as to whether

13 Frontier will have a reasonable financial performance if

14 it does not achieve synergies and it can not increase

15 DSL subscription above the current levels associated

16 with the territories it hopes to acquire?

17 A. (Weinman) We didn't look at that.

18 Q. Does Staff have an opinion as to whether

19 Frontier will have a reasonable financial performance if

20 it experiences unexpected costs associated with making

21 necessary upgrades to outside plant in the areas to be

22 acquired?

23 A. (Weinman) No again, but let me explain that,

24 because for us with the evaluation of the plant we know

25 that Verizon's central offices are up to the most

0276

1 current generics under switches, and their Verizon

2 troubles at least for the past year have been primarily

3 below 1%. And with the line loss and then recovering

4 pairs, we believe that also lends credibility to the

5 fact that their plants' in good shape. Whether it can

6 -- it needs to have some upgrades for a DSL broadband

7 product, that probably will happen. I would imagine

8 there's bridged taps on those lines, and so that is

9 something that happens with normal telecommunications

10 when you're deploying that product.

11 Q. Okay. So but just to confirm, Staff didn't

12 do any analysis of what would happen if Frontier has to

13 make unexpected or if Frontier sees unexpected costs

14 associated with upgrading?

15 A. (Weinman) We did not.

16 Q. Okay. And now just going back to any of the

17 analyses that Staff did do, particularly the information

18 on line loss, is that Washington specific, or is that

19 for the entire SpinCo VSTO area?

20 A. (Weinman) It's the entire pro forma pro

21 formed to SpinCo.

22 Q. But you didn't look at Washington alone?

23 A. (Weinman) No.

24 Q. Okay. Mr. Weinman, in response to Staff Data

25 Request Number 4, you stated that the Oregon settlement

0277

1 agreement was one piece of information that helped you

2 change your recommendation on the transaction; is that

3 correct?

4 JUDGE CLARK: Ms. Shifley, if you can let us

5 know where you are, it's a lot easier for us to follow

6 your cross.

7 MS. SHIFLEY: Thank you, Your Honor, this is

8 Exhibit WHW-16.

9 JUDGE CLARK: Thank you.

10 BY MS. SHIFLEY:

11 Q. In the middle of the paragraph labeled A of

12 the response, Mr. Weinman, here you state that the

13 Oregon settlement was one piece of information that

14 helped change your mind regarding Frontier's fitness?

15 A. (Weinman) Yes.

16 Q. Are you aware of a bench request that was

17 issued in the Oregon proceeding?

18 A. (Weinman) I am now.

19 Q. And that bench request has been marked

20 WHW-35; is that correct?

21 A. (Weinman) I have the bench request, but I'm

22 not sure what exhibit number it was marked, I didn't get

23 that down. I mean it's dated January 8, 2010, the bench

24 request that I'm looking at.

25 Q. That's correct.

0278

1 A. (Weinman) Okay.

2 Q. While the bench request speaks for itself, is

3 it fair to say that this document seeks information

4 beyond what was provided by the settling parties in

5 Oregon?

6 A. (Weinman) Yes.

7 Q. Okay. Question 1(a) of the bench request

8 which appears on page 2 asks for pro forma financial

9 statements for 2010, 2011, 2012, and 2015 under 3

10 different scenarios for future annual national access

11 line losses of 4%, 8%, and 12%. Did Staff conduct a

12 review or any similar analysis prior to settling with

13 the joint applicants?

14 A. (Weinman) No.

15 Q. Okay. Question 1(c) which also appears on

16 page 2 requests that a sensitivity analysis be conducted

17 on the financials associated with higher and lower costs

18 of DSL deployment across Frontier's service territory.

19 Did Staff conduct a review or similar analysis prior to

20 settling?

21 A. (Weinman) No.

22 Q. Question 1(d) of the Oregon bench request

23 asks for a sensitivity analysis on financials assuming

24 variation in take rates for DSL. Did Staff conduct a

25 review or similar analysis prior to settling?

0279

1 A. (Weinman) No.

2 Q. Okay.

3 All right, I would like to now turn to the

4 issue of broadband starting with some questions on

5 availability currently and under the settlement

6 agreement.

7 JUDGE CLARK: And, Ms. Shifley, I do want to

8 caution you that there are some portions of the

9 settlement agreement with Staff that have been

10 designated highly confidential, and if you're going to

11 be inquiring into that particular area, we need to

12 conduct an in camera proceeding.

13 MS. SHIFLEY: Thank you, Your Honor.

14 BY MS. SHIFLEY:

15 Q. Would you please turn to Exhibit WHW, this is

16 Staff's response -- or WHW-22 which is Staff's response

17 to Public Counsel Data Request Number 11.

18 A. (Weinman) Did you say Data Request Number

19 22?

20 JUDGE CLARK: 11.

21 MR. WEINMAN: Oh, 11.

22 JUDGE CLARK: WHW-22, Data Request Response

23 11.

24 A. (Weinman) Okay, I'm there.

25 BY MS. SHIFLEY:

0280

1 Q. And in this response you state that Staff

2 believes it is likely that the FCC will apply the same

3 conditions to this merger as it applied to the

4 CenturyTel/Embarq merger, i.e., that the FCC will

5 require 100% broadband availability?

6 A. (Weinman) That's true.

7 Q. What support do you have for this statement?

8 A. (Weinman) The order for the

9 CenturyTel/Embarq merger.

10 Q. But nothing beyond that?

11 A. (Weinman) No. I mean personally once you

12 get to 90%, I believe the rest of the buildout of 10% is

13 extremely difficult to justify economically.

14 Q. Okay.

15 Would you now turn to condition 18 of the

16 proposed settlement. Are you there?

17 A. (Weinman) I am.

18 Q. And this condition requires Frontier to make

19 stand-alone DSL available under Verizon's current terms

20 and rates for 12 months; is that correct?

21 A. (Weinman) That's correct.

22 Q. Is it correct that Staff is uncertain whether

23 Frontier will continue to make stand-alone DSL available

24 at any price or speed after one year as specified in the

25 settlement?

0281

1 A. (Weinman) That's true, although Frontier

2 does offer stand-alone DSL.

3 Q. Is there anything in the settlement

4 obligating Frontier to provide stand-alone DSL at any

5 price or any speed for more than one year?

6 A. (Weinman) No.

7 Q. And you're aware that Verizon currently

8 offers stand-alone DSL in Washington?

9 A. (Weinman) I am.

10 Q. Okay. Subject to check, is it your

11 understanding that Verizon currently charges $19.99 for

12 its stand-alone DSL?

13 A. (Weinman) I will take that subject to check.

14 Q. And its download and upload speeds are about

15 1 megabyte per second and 384 kilobytes per second

16 respectively?

17 A. (Weinman) Could you repeat those?

18 Q. 1 megabyte and 384 kilobytes?

19 A. (Weinman) 384 up?

20 Q. Yes.

21 A. (Weinman) Okay, I'll take that subject to

22 check.

23 Q. And also subject to check is it your

24 understanding that where Frontier currently offers DSL

25 it charges between $29 and $35?

0282

1 A. (Weinman) That sounds in the range of

2 reasonableness.

3 Q. And that's with stand-alone DSL with lesser

4 download and upload speeds?

5 A. (Weinman) That part I do not know.

6 Q. Okay. Would you accept subject to check that

7 their download speeds are 768 and 128 respectively?

8 A. (Weinman) 758 down and 128 up?

9 Q. 768 and 128.

10 MR. ROMANO: Your Honor, perhaps the company

11 witnesses could help with this.

12 JUDGE CLARK: Yes, I was just going to say it

13 seems that maybe some of these questions could be

14 further clarified by inquiring of either Mr. McCallion

15 or Mr. McCarthy.

16 MS. SHIFLEY: Thank you, Your Honor. I would

17 like -- some of these questions I am trying to establish

18 Staff's own review and analysis of some of its -- some

19 of the terms in the settlement condition and issues in

20 this case, so for some of those I would like

21 Mr. Weinman's testimony on.

22 JUDGE CLARK: That's fine.

23 Then you'll be given the opportunity for

24 redirect, Mr. Romano.

25 MR. ROMANO: Thank you.

0283

1 BY MS. SHIFLEY:

2 Q. So would you say as a general matter that

3 where Frontier offers stand-alone DSL it has lesser

4 download and upload speeds than Verizon's stand-alone in

5 Washington?

6 A. (Weinman) It would appear so, but there may

7 be a reason for that.

8 Q. Okay. Does Staff have any evidence that

9 Frontier would not charge the maximum price that demand

10 allows for DSL service if and when allowed, in other

11 words after any regulatory price caps lapse?

12 A. (Weinman) I don't understand your question.

13 Q. Would there be any reason why Frontier

14 wouldn't charge the maximum price that it could after

15 any price caps lapse?

16 A. (Weinman) There could.

17 Q. There could be some reasons why it wouldn't?

18 A. (Weinman) Market pressure might be one.

19 Q. But you would agree that Frontier would

20 charge the maximum price that demand allows, demand and

21 market pressure?

22 MR. BEST: Your Honor, I'm going to object to

23 that question. That does not characterize what the

24 witness just said I don't believe.

25 JUDGE CLARK: Response, Ms. Shifley.

0284

1 MS. SHIFLEY: I will withdraw the question.

2 JUDGE CLARK: All right.

3 BY MS. SHIFLEY:

4 Q. Turning now to the general matter of funding

5 for broadband deployment, are you aware of whether there

6 is or was anything prohibiting Verizon or Frontier from

7 applying for federal stimulus funds on behalf of

8 Frontier Northwest?

9 A. (Weinman) I believe Verizon made a decision

10 not to apply for stimulus, but I don't know about

11 Frontier. They indicated they may when we've had

12 discussions with them.

13 Q. But there was nothing prohibiting Verizon, it

14 was Verizon's own choice?

15 A. (Weinman) Not that I'm aware of, no.

16 Q. And is there any barrier to creating a

17 settlement that includes a condition requiring

18 application for stimulus funding?

19 A. (Weinman) No.

20 MS. SHIFLEY: Your Honor, may I have a

21 moment?

22 JUDGE CLARK: You may, we'll take a moment

23 off record.

24 (Discussion off the record.)

25 JUDGE CLARK: Ms. Shifley.

0285

1 MS. SHIFLEY: Thank you.

2 BY MS. SHIFLEY:

3 Q. I would now like to ask you a couple of

4 questions about the retail services conditions in the

5 proposed settlement starting with condition number 26.

6 Are you there?

7 A. (Weinman) I am.

8 Q. This paragraph states that Frontier must

9 provide bundled services as offered by Verizon today for

10 12 months; is that correct?

11 A. (Weinman) That's true.

12 Q. Does this provision of the settlement

13 agreement cover Verizon's, excuse me if I pronounce this

14 incorrectly, IOBI service?

15 A. (Weinman) I don't know.

16 Q. Does --

17 MR. ROMANO: Your Honor, if it would be

18 helpful, the Verizon witness could --

19 JUDGE CLARK: Well, I've offered that to

20 Ms. Shifley, and it appears that she's exploring at this

21 juncture what Mr. Weinman is aware of, and so if there

22 are topics like that that you want to cover, we'll cover

23 those on redirect.

24 MR. ROMANO: Okay.

25 A. (Weinman) I mean to the extent that there

0286

1 are bundles that Verizon has, they would be included in

2 the 12 month period.

3 BY MS. SHIFLEY:

4 Q. Perhaps one of the company witnesses would

5 like to clarify whether or not this provision covers the

6 IOBI service that Verizon currently offers?

7 A. (McCallion) To be clear, IOBI's a

8 non-regulated service. It's basically just an

9 information service that you can put in your computer

10 and identify incoming calls. I use it myself. We are

11 not giving that service to Frontier, so therefore it

12 would be -- it wouldn't be covered. It's not part of

13 Verizon Northwest, it's a separate non-regulated

14 information service.

15 Q. Currently is IOBI offered bundled with

16 regulated services?

17 A. (McCallion) I don't recall that it is or

18 isn't. I just don't recall if it's included in any of

19 our bundles.

20 Q. Okay. And if it is included in a bundle, it

21 will stay with Verizon, and the regulated portion of

22 that bundle will then go to Frontier?

23 A. (McCallion) That's correct.

24 Q. Back to Mr. Weinman, do you know if this

25 provision number 26 in the proposed settlement covers

0287

1 Verizon's one bill service where customers get one bill

2 for Verizon wireless and wire line together?

3 A. (Weinman) I do not know. I would believe it

4 doesn't, because Frontier isn't offering the wireless

5 service. I believe -- well, never mind.

6 Q. Okay. So is it your understanding then that

7 the terms offere and provide in number 26 means that

8 Frontier must charge the same prices as those currently

9 charged by Verizon?

10 A. (Weinman) I believe that that is the

11 commitment from the company.

12 Q. Okay. And after 12 months, the settlement

13 agreement's pricing provisions then no longer apply to

14 bundled services; is that correct?

15 A. (Weinman) Yes.

16 Q. Thank you.

17 Would you turn now to condition 11. Have you

18 got that?

19 A. (Weinman) I do.

20 Q. If Frontier can increase bundled services

21 prices after 12 months, how can consumers be held

22 harmless from increases in overall management costs that

23 result from this transaction?

24 A. (Weinman) Well, I think it's to their

25 benefit not to have had this provision in for 12 months.

0288

1 I mean you need -- you want them to be held harmless

2 while all of the integration goes forward so that when

3 we start looking at the AFOR we're looking at a company

4 that's integrated and experienced whatever synergies

5 it's going to have.

6 Q. And is that integration going to take place

7 in 12 months?

8 A. (Weinman) No, I would imagine it would take

9 at least three years.

10 Q. Okay, would you now please turn to condition

11 23 of the proposed settlement.

12 A. (Weinman) I'm there.

13 Q. Okay. And this states that Frontier is

14 allowed to seek recovery from the impact of exogenous

15 events that materially impact the operations of Verizon

16 Northwest transferred exchanges including but not

17 limited to orders of the FCC and the Commission,

18 correct?

19 A. (Weinman) That's true.

20 Q. Does this condition provide that Frontier

21 will be allowed to petition for rate relief outside of a

22 general rate case?

23 A. (Weinman) No, it doesn't.

24 Q. Okay. I would now like to ask you a couple

25 of questions about condition number 28, which has to do

0289

1 with systems replication. This condition governs the

2 process that would occur or will occur during Verizon's

3 operations of the replicated systems prior to closing;

4 is that correct?

5 A. (Weinman) Yes.

6 Q. Under this condition, the Staff will have 60

7 days worth of service quality reports on four specific

8 metrics with which to evaluate the replicated systems;

9 is that correct?

10 A. (Weinman) That's true.

11 Q. And you would agree that service quality

12 performance varies from month to month for any telephone

13 utility including Verizon?

14 A. (Weinman) Certainly do.

15 Q. So it may be difficult or impossible to see

16 trends or reach a definitive conclusion when comparing

17 the average of two months' data to the data from a

18 longer period?

19 A. (Weinman) Actually I don't think we're

20 looking for a trend. What we want to ensure is that

21 when that system comes in that the replication that it's

22 performing at a level that gives us confidence that the

23 replication is working correctly.

24 Q. Okay. But you also just said that, did you

25 not, just to go back to your other statement which was

0290

1 that performance can vary greatly from month to month;

2 is that correct?

3 A. (Weinman) I said it can.

4 Q. Okay. On what grounds did Staff determine

5 that 60 days' worth of data will be sufficient to make

6 the judgment that you just described?

7 A. (Weinman) For the purposes that we're

8 looking at this, it gives us one full billing cycle, and

9 then it gives us 30 days beyond to see if the trouble or

10 whatever metric we're looking at here starts to become a

11 problem or an issue for us.

12 Q. Okay. And condition 28 lists four metrics

13 for review, but these four metrics aren't reflective of

14 all the Commission's performance standards, are they?

15 A. (Weinman) No, they're not.

16 Q. For example, you didn't include all the

17 metrics that are governed by the SQI that appear in

18 condition 20 of the proposed settlement, did you?

19 A. (Weinman) I mean those will kick in after

20 close, but not for this particular piece of the analysis

21 or the data that we're looking for.

22 Q. And one of the four metrics in condition 28

23 is billing error complaints. Is there a definition for

24 billing error that has been developed to implement this

25 provision?

0291

1 A. (Weinman) I think I'm at the point where if

2 you want to continue with this that we need Bob

3 Williamson to come up and talk. He's the guy that has

4 done most of the work on the OSS system and what we were

5 trying to achieve.

6 Q. But is there -- there's no definition in the

7 settlement for a billing error complaint?

8 MR. THOMPSON: Your Honor, if I could ask,

9 Mr. Williamson might be able to provide a more

10 definitive answer to that question.

11 MS. SHIFLEY: That's fine, Your Honor.

12 JUDGE CLARK: Ms. Shifley, would you like to

13 pose your inquiry to Mr. Williamson?

14 MS. SHIFLEY: Certainly, Your Honor.

15 JUDGE CLARK: Mr. Williamson, if you would

16 come forward, please. We're going to take a moment off

17 record because we will need to squeeze another chair in,

18 and this is relatively close to when we take an

19 afternoon break, so we're going to be at recess for 10

20 to 15 minutes, we'll do all those things during recess.

21 (Recess taken.)

22 JUDGE CLARK: All right, Mr. Thompson.

23 MR. THOMPSON: At this time Staff would call

24 Mr. Bob Williamson.

25 JUDGE CLARK: Thank you.

0292

1 Mr. Williamson, if you would raise your right

2 hand, please.

3 (Witness ROBERT T. WILLIAMSON was sworn.)

4 JUDGE CLARK: Thank you, please be seated.

5 MR. ROMANO: Your Honor.

6 JUDGE CLARK: Just a second.

7 Mr. Thompson, do you want to go ahead and

8 identify your witness, have him spell his name, et

9 cetera. We have no prefiled testimony for

10 Mr. Williamson, so I think a little clarification for

11 the record would be helpful.

12

13 Whereupon,

14 ROBERT T. WILLIAMSON,

15 having been first duly sworn, was called as a witness

16 herein and was examined and testified as follows:

17

18 D I R E C T E X A M I N A T I O N

19 BY MR. THOMPSON:

20 Q. Okay, Mr. Williamson, could you please state

21 your name and I guess spell your last name for the

22 record.

23 A. (Williamson) Robert Williamson,

24 W-I-L-L-I-A-M-S-O-N.

25 Q. And you've submitted prefiled testimony on

0293

1 operational support systems issues in the case?

2 A. (Williamson) Yes, I did.

3 MR. THOMPSON: If that's all you require,

4 Your Honor, then the witness is available for

5 cross-examination.

6 JUDGE CLARK: Well, I would just like, you

7 know, a little clarity in the record indicating that

8 Mr. Williamson didn't actually file testimony in support

9 of the settlement but that he may have some

10 qualifications that would aid in the inquiry being

11 conducted by Ms. Shifley.

12 MR. THOMPSON: Indeed.

13 JUDGE CLARK: Or not, in which case you might

14 be swearing someone else in.

15 MR. WILLIAMSON: Or just swearing.

16 BY MR. THOMPSON:

17 Q. Mr. Williamson, could you just I guess

18 briefly state what your involvement has been in the OSS

19 aspects of the settlement and -- well, just if you could

20 do that, please.

21 A. (Williamson) I'm an engineer for the Utility

22 Commission, and I was asked at the beginning of this

23 process to analyze the operational support system issues

24 and to write testimony on what I found.

25 JUDGE CLARK: Thank you.

0294

1 Now, Mr. Romano.

2 MR. ROMANO: Thank you, Your Honor. We would

3 like to offer to put up Mr. Smith since he's an

4 operation support system expert on behalf of Verizon and

5 could also help with these particular subjects relating

6 to the testing and the systems.

7 JUDGE CLARK: Ms. Shifley, would it aid your

8 examination to also have Mr. Smith available to respond

9 to your inquiry regarding this topic?

10 MS. SHIFLEY: I think my questions go more to

11 again Staff's understanding of these conditions and its

12 review of the service quality conditions, so at this

13 time I wouldn't have any questions for Mr. Smith.

14 JUDGE CLARK: All right.

15 Thank you for the offer, Mr. Romano.

16 MR. ROMANO: Thank you.

17

18 C R O S S - E X A M I N A T I O N

19 BY MS. SHIFLEY:

20 Q. Good afternoon, Mr. Williamson.

21 A. (Williamson) Good afternoon.

22 Q. So we were just talking about condition 28 in

23 the proposed settlement and the four metrics that are

24 listed in condition 28, and one of those metrics is

25 billing error complaints. Is there a definition of

0295

1 billing error that has been developed to implement this

2 provision?

3 A. (Williamson) Not that I'm aware of.

4 Q. And would you agree that there is no reported

5 metric for billing errors now in existence?

6 A. (Williamson) I would agree.

7 Q. Okay. And these, I don't know if Mr. Weinman

8 would like to respond to any of these as well, they are

9 still about condition 28 but they might be a little bit

10 more broad than very technical information on OSS. With

11 regard to Staff's review of the data, you'll have 5 days

12 before close to review this data; is that correct?

13 A. (Williamson) That is correct by this, but I

14 would like to mention that we're not going to go through

15 this blindly without talking to the companies during the

16 process. We're also talking to at least three other

17 commission staffs, Oregon and Ohio, because they have

18 similar conditions, and we've reached out to other state

19 staffs. So we also have an agreement with the company

20 that if we have a question at any time that we can

21 contact them and discuss it with them.

22 Q. Is there any process laid out in the

23 settlement agreement showing that you will -- what will

24 happen between Staff and the company during the other

25 period of time that the systems are running?

0296

1 A. (Williamson) Nothing officially.

2 Q. So in those -- but -- and I would also like

3 to clarify that the company is not going to turn over

4 this data until 5 days before close; is that correct?

5 In fact, it probably couldn't because it would take the

6 60 days for the data to be developed?

7 A. (Williamson) Officially by this I think

8 you're correct, but I believe having seen the RFP or RFQ

9 that the company put out for the third party that there

10 will be reports available at different intervals during

11 that period. So you are correct that officially the

12 official report to Staff is 5 days before finish, but we

13 don't expect to be surprised by what's in the report.

14 We should know before it gets to us if there's any

15 issues.

16 Q. And the data that is going to be in the

17 report, that's data that you believe can be developed in

18 less than 60 days or 1 billing cycle, are these the

19 types of things you can measure more frequently?

20 A. (Williamson) The issues I threw --

21 Q. The 4 metrics.

22 A. (Williamson) The 4 metrics. Billing is a

23 difficult one to do, I believe we'll see 1 full billing

24 cycle in that 60 day period where a customer has a

25 chance to look at their bill, and if they have an issue

0297

1 it usually is 3, 4, 5, 10 days before they will call, so

2 we'll probably really only see complaints from 1 billing

3 cycle.

4 Q. And --

5 A. (Williamson) It --

6 Q. Sorry.

7 A. (Williamson) That's all right.

8 Just as a follow up to that, we would be

9 happy of course to have six months to look at data

10 before we said it was okay, but that's unreasonable. We

11 chose items that having looked at the past failures that

12 would be indicative of a problem, and we think if

13 there's a problem it would happen more immediately, so

14 we would know way before the 60 days was up.

15 Q. And there's nothing in the settlement that

16 would guaranty that Staff would have any more than 5

17 days to look at this data; is that correct?

18 A. (Williamson) That's correct.

19 Q. And in those 5 days, Staff will be able to

20 make or will have to make a determination as to whether

21 the difference between the 60 days worth of data shows a

22 material degradation compared to the prior 12 months of

23 data; is that correct?

24 A. (Williamson) That would be correct.

25 Q. And condition 28 does not contain any

0298

1 definition of material degradation; is that correct?

2 A. (Williamson) That's correct.

3 Q. And the condition also contains no provisions

4 for what will happen if Staff has concerns; is that

5 correct?

6 A. (Williamson) That is correct.

7 Q. And now, Mr. Williamson, I think that that's

8 all the questions that I would have for you, and I will

9 just turn back to Mr. Weinman now for a couple of

10 questions. I do have some more questions about service

11 quality though, so it might be -- you might want to

12 stick around just for a few other questions about other

13 commitments.

14 And still discussing condition 28,

15 Mr. Weinman, would you please turn to what has been

16 marked as Public Counsel or WHW-38.

17 JUDGE CLARK: Just for the clarity of the

18 Bench, that's one of the new exhibits that was

19 identified today, so that's in a little pile in front of

20 your portion of the Bench, and that exhibit is already

21 marked, yes, sir.

22 MR. THOMPSON: Just for clarification, is

23 that a response to a --

24 MS. SHIFLEY: Yes, it is Staff's response to

25 Public Counsel Data Request Number 38.

0299

1 BY MS. SHIFLEY:

2 Q. Have you got that in front of you,

3 Mr. Weinman?

4 A. (Weinman) I do.

5 Q. And this data request asked what the

6 Commission would do if Verizon issued a report that

7 didn't show that OSS are operational in accordance with

8 the terms of the merger agreement, and the response in

9 the last paragraph states that the Commission might

10 petition for a declaratory order that the transaction is

11 void, consider penalties or a petition for injunctive

12 relief.

13 JUDGE CLARK: All right, we're going to take

14 a moment off record.

15 (Discussion off the record.)

16 JUDGE CLARK: The record should reflect that

17 we are experiencing the same interruptions this

18 afternoon that we experienced this morning, and we have

19 no other parties who are appearing telephonically, so I

20 have requested that the bridge be turned off so we don't

21 have further interruptions.

22 Ms. Shifley.

23 MS. SHIFLEY: Your Honor, one of our expert

24 witnesses, Barb Alexander, who is actually our witness

25 for service quality issues, is listening in on the

0300

1 bridge line.

2 JUDGE CLARK: I understand that, but she's

3 not testifying yet, and I can't have tunes in the

4 hearing room.

5 MS. SHIFLEY: Thank you, Your Honor.

6 BY MS. SHIFLEY:

7 Q. So this data request, in your response to

8 this data request you listed a number of things that

9 Staff would do if it did not receive a report that the

10 OSS systems were operational in accordance with the

11 terms of the merger; is that correct?

12 A. (Weinman) I think we list a number of things

13 that could be done.

14 Q. Is there anything in the settlement agreement

15 that lays out what might trigger any of these actions by

16 Staff?

17 A. (Weinman) No.

18 Q. And there's nothing in the settlement

19 agreement that actually lists any of these possible

20 remedies for if Staff does find a material degradation

21 or the OSS operation systems are not operational in

22 accordance with the merger agreement?

23 A. (Weinman) No, I mean we have the neutral

24 third party looking at the replication as it moves

25 along. I think we have a firm commitment from the

0301

1 company that they will be working diligently if

2 something should come to light. But specifically in the

3 settlement agreement itself, the answer is no.

4 Q. And also just to clarify on the third party

5 reviewer, is it your understanding that that third party

6 reviewer will as far as condition 28 and the replicated

7 systems only be validating the accuracy of the data and

8 is actually not providing anything but a validation of

9 accuracy?

10 A. (Weinman) I believe in terms of validating

11 the accuracy of the data, they're also validating the

12 systems are working properly.

13 A. (Williamson) Could I?

14 Q. Mr. Williamson.

15 A. (Williamson) Part of the validation is that

16 the test plan as written by Verizon and the test scripts

17 that are being used are the correct types of tests to

18 run and that the answer to those tests is accurate, so

19 there's a little more than just the accuracy.

20 Q. But as far as the metrics listed in 28 and

21 not just the testing plans, I believe that the third

22 party verifier is only listed in condition 27 which goes

23 to a different part of the replication process; is that

24 correct?

25 A. (Williamson) In this document that appears

0302

1 to be true.

2 Q. Okay.

3 A. (Williamson) But in agreement with the

4 company, conversations with the company and with a

5 document that's been given to the third party provider,

6 the company has agreed that the third party provider

7 will also validate the metrics in 28.

8 Q. Okay, thank you.

9 But just to go back, nothing is laid out in

10 the settlement agreement about the third party

11 verifier's work on condition 28 or any of the potential

12 consequences or triggers for Staff action, correct?

13 MR. THOMPSON: I'm going to object to that in

14 that it calls for a legal conclusion about the

15 interpretation of the agreement.

16 JUDGE CLARK: Response, Ms. Shifley.

17 MS. SHIFLEY: I don't think that I'm asking

18 for a legal conclusion, I'm just trying to understand

19 how condition 28 will work, and I believe that Staff

20 would be in the position to answer that since they

21 negotiated this condition.

22 JUDGE CLARK: The objection is sustained. If

23 you want to inquire on this line, you need to restate

24 your question.

25 MS. SHIFLEY: Thank you, Your Honor.

0303

1 BY MS. SHIFLEY:

2 Q. I'm just going to move on to some questions

3 about other service quality conditions.

4 Would you first turn to page 10 of your

5 testimony supporting the settlement. Are you there,

6 Mr. Weinman?

7 A. (Weinman) Yes.

8 Q. At this point in your testimony, you stated

9 that the settlement terms provide assurance that the

10 local exchange company's basic service quality metrics

11 will not deteriorate following the transaction.

12 A. (Weinman) I do.

13 Q. So provision number 19 in the settlement

14 agreement doesn't reflect Verizon's actual historical

15 performance in Washington but reflects the Commission's

16 minimum standard?

17 A. (Weinman) I'm sorry, could you repeat that,

18 I finally found it.

19 Q. Certainly. Looking actually at condition 19,

20 does condition 19 reflect Verizon's actual historical

21 performance in Washington or the Commission's minimum

22 standards?

23 A. (Weinman) Are you talking about like the --

24 MR. THOMPSON: Your Honor, I have to object

25 to the question. The condition requires Frontier to

0304

1 increase a credit available to customers for missed

2 appointments. I'm not sure how that can reflect

3 anything in terms of existing performance.

4 JUDGE CLARK: Okay, I --

5 MS. SHIFLEY: Can I just have a minute?

6 JUDGE CLARK: Yes.

7 MS. SHIFLEY: Thank you.

8 Thank you, Your Honor, I can proceed at any

9 time.

10 JUDGE CLARK: All right, you may go ahead.

11 BY MS. SHIFLEY:

12 Q. I'm just going to ask you a couple of

13 questions about condition number 19 specifically.

14 A. (Weinman) Okay.

15 Q. How did Staff determine that it was

16 appropriate to have the increased customer credits in

17 place for only two years?

18 MR. THOMPSON: I'm going to object to that

19 too. It says Frontier may petition the Commission for

20 elimination of these conditions after 24 months. I'm

21 not sure that it's necessarily the case that they would

22 only exist for 24 months.

23 JUDGE CLARK: Ms. Shifley, do you want to

24 rephrase your question.

25 MS. SHIFLEY: Yes, I will, thank you, Your

0305

1 Honor.

2 BY MS. SHIFLEY:

3 Q. Mr. Weinman, how did Staff determine that it

4 was appropriate to potentially remove the increased

5 customer credits after two years?

6 A. (Weinman) Staff believes that the two year

7 period will give us data that indicates Frontier's

8 performance, and if they're performing well, then they

9 have an option to come in and request that this

10 provision be removed.

11 Q. Is the two year period tied to any external

12 event or Frontier's compliance with any service

13 standards?

14 A. (Weinman) No.

15 Q. Is this period linked at all to the timeline

16 for future integration of the replicated systems into

17 Frontier's systems?

18 A. (Weinman) No. Well, wait, let's back up a

19 second. It's going to be done on the replicated system.

20 If during a three year period Frontier wants to migrate

21 the replication over to their own internal systems, then

22 they have to inform Staff, and we have discussions about

23 why is it appropriate with them to -- and what the

24 migration policies and procedures will be before they

25 actually go forward and do the migration to their

0306

1 internal Frontier system.

2 Q. It's possible, is it not, Mr. Weinman, that

3 this increase in the customer credit is removed before

4 the integration takes place; is that correct?

5 A. (Weinman) It's conceivable, but that wasn't

6 the purpose for the two year period and allowing the

7 company to provision to petition that the two year

8 period would be removed. I'm sure that if you guys

9 don't like it, you'll probably be in having some

10 conversations about that exemption petition.

11 Q. Does the stipulation provide any criteria

12 that would be used to determine whether Frontier could

13 eliminate the credits?

14 A. (Weinman) Only by petition.

15 Q. But there's no criteria for what would be

16 looked at in that petition?

17 A. (Weinman) No.

18 Q. I'm going to move on to condition 20 now.

19 Condition 20 includes a number of penalties. What was

20 the basis for Staff's agreement to the penalty amounts

21 reflected in this condition?

22 MR. THOMPSON: Just another point of

23 clarification, they're actually better characterized as

24 bill credits I think than penalties, but minor point.

25 A. (Weinman) I mean as far as setting -- are

0307

1 you talking about the $100,000 or how did we arrive at

2 that or the progression or --

3 Q. How did Staff determine that the amounts of

4 these bill credits were appropriate?

5 A. (Weinman) Well, we have knowledge of other

6 states that actually have that amount. We believe that

7 amount is high enough that it creates the incentive to

8 make sure that the company doesn't experience -- does

9 everything possible not to experience those problems.

10 Q. So you believe that it's high enough to

11 create a disincentive?

12 A. (Weinman) I believe it's high enough it

13 creates an incentive for the company to do everything

14 possible to make sure that they don't get in trouble

15 with poor performance.

16 Q. Subject to check, Mr. Weinman, would you

17 agree that the maximum penalty in one year if Frontier

18 fails to meet every single standard would be $600,000?

19 A. (Weinman) Yes.

20 Q. And is it true that Staff recommended in its

21 direct testimony to have an annual maximum penalty of $5

22 Million, meaning that Staff now supports a maximum

23 penalty that's about 12% of what it first proposed,

24 subject to check?

25 A. (Weinman) I'm sorry, I don't know what

0308

1 you're talking about the $5 Million.

2 JUDGE CLARK: Are we still on the bill

3 credits?

4 MS. SHIFLEY: Yes, we are.

5 Okay, I will return to that.

6 One moment, Your Honor.

7 A. (Weinman) Oh, I'm sorry, I guess that is

8 correct. My service quality person is sitting in the

9 back of the room, they agree with your number.

10 MS. SHIFLEY: Okay, so just --

11 JUDGE CLARK: Do you want to talk to your

12 witness about coaching, Mr. Thompson.

13 BY MS. SHIFLEY:

14 Q. So just to clarify, Mr. Weinman, Staff

15 initially recommended a maximum penalty of $5 Million?

16 A. (Weinman) Correct.

17 Q. And it's now supporting a maximum penalty for

18 one year if Frontier fails to meet, or excuse me, a

19 maximum bill credit if Frontier fails to meet every

20 single standard that would be $600,000 or about 12% of

21 what was first proposed?

22 A. (Weinman) That's true. We believe that it's

23 significant enough and fair and that it will create

24 incentives for the company not to -- to do everything it

25 possibly can not to get into that situation.

0309

1 Q. And just for clarification, the $5 Million

2 number appears in the direct testimony of Kristen M.

3 Russell, Exhibit Number KMR-1T on page 27 at line 1.

4 And you mentioned a little bit that you had

5 looked at some other states, but did Staff do any

6 research to determine whether a bill credit of $600,000

7 in one year is sufficient to deter deterioration in

8 service?

9 A. (Weinman) Could you repeat that?

10 Q. Did Staff do any research to determine

11 whether the $600,000 maximum bill credit would be enough

12 and would be sufficient to deter deterioration of

13 service?

14 A. (Weinman) We believe so.

15 Q. Did you -- my question was did you do any

16 research?

17 A. (Weinman) External research?

18 Q. Or any analysis to determine whether that

19 penalty amount was sufficient?

20 A. (Weinman) We believe it is sufficient. Did

21 we do any external research? I think we relied on logic

22 and experience of our Staff service quality person.

23 Q. Still on condition number 20, as to the three

24 year timeline for the standards, what future event is

25 that tied to? Or maybe I can rephrase the question so

0310

1 it's a little more clear.

2 It's correct that it's not tied to any future

3 event, true?

4 A. (Weinman) Correct.

5 Q. So what is the reason for why three years is

6 the appropriate length of time for these standards to be

7 in place?

8 A. (Weinman) I believe it's appropriate because

9 we will have had things fairly well settled out during

10 this transition period and that by the time we get into

11 the fourth year I do not believe we're going to be

12 having any significant problems with service standards,

13 not that I perceive we have any significant problems

14 from the get go. But there are always some issues when

15 you have a conversion of systems to new companies that

16 there will be some potential for a miss, if you will,

17 that could cause customers inconvenience, and that's the

18 purpose of this.

19 Q. Okay. And but would it be accurate to say

20 that it is uncertain that the condition 20 standards

21 will be in place if and when Frontier integrates the

22 replicated systems into its existing systems?

23 A. (Weinman) That could be true, and I mean

24 they certainly don't have to convert the replicated

25 systems to -- within a certain time specific period. So

0311

1 it could happen outside that, but by that time the

2 operations people will -- should be fairly well in tune

3 with their new territories, and we perceive it as a

4 combination of a lot of things, new people with -- even

5 though there's a lot of Verizon people, they have

6 Frontier's philosophies versus the acquired company's

7 philosophies, and that offers some potential for things

8 to fall through the cracks that normally once the

9 company's fairly well established and in tune with

10 itself won't happen.

11 Q. Okay. Would it be accurate to say that

12 there's a potential that there might be some service

13 quality problems that would arise during the integration

14 process?

15 A. (Weinman) That there may be some? I say

16 that's accurate. I mean there's -- it's just as

17 accurate to say Qwest could have a major problem

18 integrating a new software package into their existing

19 operations today. It's just a fact of life when you're

20 changing IT systems that there is potential, and that's

21 why we want to make sure with the replication that it is

22 done and the data is scrutinized as much as it possibly

23 can be and have some financial penalty after the

24 properties are turned over to give them additional

25 incentive to want to make sure that their system's up to

0312

1 form.

2 Q. Mr. Weinman, you just made reference to

3 penalties, and I believe that Staff counsel also said

4 that these are bill credits.

5 A. (Weinman) I'm sorry, you're right.

6 Q. So it would be accurate to say that there are

7 no additional penalties besides the bill credits that

8 are reflected in the settlement?

9 A. (Weinman) I consider that if the company

10 lost $600,000 to bill credits a penalty.

11 MS. SHIFLEY: Your Honor, could I have one

12 more moment, I would like to revisit one subject with

13 Mr. Weinman.

14 JUDGE CLARK: All right, we'll take a few

15 moments off record.

16 (Discussion off the record.)

17 JUDGE CLARK: Ms. Shifley.

18 BY MS. SHIFLEY:

19 Q. A couple minutes ago we were asking you about

20 Staff's analysis regarding line loss; is that correct?

21 A. (Weinman) Correct.

22 Q. And I believe that I've -- when asking Staff

23 counsel it was confirmed that you can't produce

24 workpapers on that; is that correct?

25 A. (Weinman) Oh, we can, we're in that process,

0313

1 I'm considering next break we'll have it ready for you.

2 Q. But at this point in time, you did this

3 informally, and you don't have anything that you can

4 produce right now?

5 A. (Weinman) It's sitting in electronic record.

6 I mean actually I do have the paper here. I mean if

7 that's what you're looking for.

8 Q. Yes, I think that's what we're looking for.

9 JUDGE CLARK: All right, Mr. Thompson, is

10 this a document that Mr. Weinman is prepared to

11 distribute?

12 MR. THOMPSON: Well, I frankly hadn't

13 discussed it with him, so if I could maybe have a couple

14 of minutes to do that.

15 JUDGE CLARK: Yeah, we're going to take a

16 moment off record.

17 (Discussion off the record.)

18 JUDGE CLARK: All right, have the parties had

19 an adequate opportunity to confer regarding this

20 document?

21 MS. SHIFLEY: I believe so, Your Honor.

22 JUDGE CLARK: And how do you wish to proceed,

23 Ms. Shifley?

24 MS. SHIFLEY: I would like to make an oral

25 records requisition at this time for the document

0314

1 dealing with line loss analysis that Staff has done.

2 JUDGE CLARK: Referenced in their testimony,

3 all right.

4 MS. SHIFLEY: Referenced in the testimony

5 that was just given.

6 JUDGE CLARK: All right, thank you.

7 And, Mr. Thompson.

8 MR. THOMPSON: And we can endeavor to get

9 that to Public Counsel probably by the end of the day

10 today, but --

11 JUDGE CLARK: So the end of the day today

12 meaning 5:00?

13 MR. THOMPSON: Or, you know, a few, well,

14 let's say after Mr. Weinman has had an opportunity to

15 talk with --

16 JUDGE CLARK: After the conclusion of the

17 hearing?

18 MR. THOMPSON: Yes.

19 JUDGE CLARK: All right. The reason I'm

20 asking all these sort of little mundane procedural

21 questions is this is our one opportunity to inquire of

22 Mr. Weinman and Mr. Williamson. They will not be taking

23 the stand again. And so I am a little bit concerned if

24 we have an oral records requisition that you aren't able

25 to see and confer with your witness until after the

0315

1 hearing is over and until Mr. Weinman has an opportunity

2 to confer with his counsel and other Staff until after

3 the conclusion of the hearing, that perhaps we would be

4 best to recall these individuals for inquiry on this

5 sometime tomorrow rather than pursuing this now. I'm

6 thinking it might be a more fruitful discussion.

7 MS. SHIFLEY: Yes, Your Honor, I agree, I

8 think that that would be a good idea.

9 JUDGE CLARK: All right, fine, then that's

10 what we're going to do. Staff has taken note of the

11 request, and that will give everyone an opportunity to

12 confer, and we can recall if we need to.

13 MR. BEST: Your Honor, Chuck Best for

14 Frontier, I just want to make sure, I assume that the

15 other parties will also have a chance to look at this?

16 JUDGE CLARK: Absolutely. An oral records

17 requisition response, there's just too many R's in that

18 sentence, will go to everyone including the Bench.

19 MR. BEST: Just out of curiosity, do we know

20 whether this is confidential, highly confidential, or

21 just --

22 MR. WEINMAN: Highly confidential.

23 JUDGE CLARK: All right.

24 MS. SHIFLEY: Thank you, Your Honor. At this

25 time I have no more cross-examination for the panel.

0316

1 JUDGE CLARK: All right.

2 Do the Commissioners have inquiry for any of

3 the individuals on this panel, and I'm going to start

4 with you, Commissioner Jones, and see if you do.

5

6 E X A M I N A T I O N

7 BY COMMISSIONER JONES:

8 Q. Good afternoon, panel. I understand that

9 Mr. McCallion and Mr. McCarthy will be available for

10 questions later, so, at a later time in the proceeding,

11 so since this is my last opportunity for Mr. Weinman and

12 Mr. Williamson, I will have some questions, and I'll

13 start with Mr. Williamson. In your responsive testimony

14 labeled RTW-1HCT, I don't know if you have that in front

15 of you or can get that.

16 A. (Williamson) I do have it.

17 Q. Could you turn to page 21 there. And my

18 questions are going to be concerning not the first

19 cutover but the second cutover, so I'm not going to have

20 any questions on the first cutover. But page 21 on

21 lines 2 and 3, could you just read that first sentence.

22 A. (Williamson)

23 Staff is very concerned about the second

24 conversion. It is disconcerting that

25 Frontier has no plan or apparently any

0317

1 idea what the costs would be to convert

2 to its legacy systems, and there is no

3 guaranty that Verizon will maintain

4 support for the OSS after five years.

5 Q. Okay, that's enough of your testimony. So

6 now we have a settlement agreement, and we have 27,

7 merger commitments 27 through 31 that deal with OSS

8 issues, correct?

9 A. (Williamson) Yes, that's correct.

10 Q. So I'm just trying to get your process first

11 at a high level as why you are comfortable now with the

12 provisions in the settlement agreement that satisfy the,

13 quote, strong concerns that you have on the second

14 cutover. And by second cutover, I mean the eventual

15 integration into the legacy OSS system of Frontier.

16 A. (Williamson) Well, first there's no guaranty

17 that that will happen at all. They may choose to

18 convert some or all at some future date after a year.

19 With any conversion there's always concern, but in 29 --

20 Q. I was going to get to that.

21 A. (Williamson) In 29 of the agreement, within

22 three years if they decide to convert one or all of

23 their systems, they will provide Staff the details in an

24 operation support system integration plan, tell us which

25 system or systems they plan to change out, which system

0318

1 they will replace it with, and the reasons why, and any

2 experience they have with the new system.

3 Q. Right. Mr. Williamson, if I could just

4 interrupt for a minute.

5 A. (Williamson) Sure.

6 Q. I was going to get to 29 and the enforcement

7 mechanism associated with that, but before we get to

8 that, tell me a little bit about the process that gives

9 you comfort. For example, there were workshops, and

10 this Commissioner of course because of the ex parte rule

11 I could not participate in the workshops, so how many

12 workshops did you have on these OSS issues?

13 A. (Williamson) We had two official workshops

14 where everybody was there. We've had a number since we

15 started negotiating this. We've had a number of

16 meetings that Public Counsel was at a number of them.

17 Q. Okay.

18 A. (Williamson) With the company, and continued

19 in more detail as we've gotten closer to the hearings.

20 If I might?

21 Q. Sure.

22 A. (Williamson) I testified of course of being

23 nervous, I'm always a little nervous when you talk about

24 converting systems.

25 Q. You're an engineer, aren't you?

0319

1 A. (Williamson) Yes, engineers are always

2 nervous. I've reached a comfort level because the level

3 of expertise that I've found at the company and the

4 planning following the second meeting in September gives

5 me comfort. I've gone through some of these same issues

6 with replication. In fact, did it in Hawaii when you

7 allowed me to go there for a year and a half. And I've

8 looked at the questions they've answered and the issues

9 that they've looked at in detail, and that gives me

10 comfort that they're moving in the right direction.

11 Q. Was Public Counsel and its expert witness at

12 these workshops on OSS?

13 A. (Williamson) Yes, they were.

14 Q. Okay. And did you look in detail at the, I'm

15 not going to use -- I have to be careful with the

16 adjective here -- with the lack of success in the two

17 other conversion processes in the spinoffs of this

18 particular company, Verizon Communications?

19 A. (Williamson) Yes, obviously that was our

20 main concern with operation support systems when we

21 first looked at this possible deal.

22 Q. Okay. So let's go back into some of these

23 detailed commitments, and let's refer, as you started,

24 to merger commitment 29. And I think you probably have

25 this memorized and hard wired into your memory now, so I

0320

1 will just ask you a couple of questions. What -- have

2 you seen any preliminary plan that Frontier has

3 provided, either a previous plan for example with

4 Commonwealth Telephone or Rochester, previous

5 integration plans that they had done with other

6 acquisitions, or have they submitted any outline or any

7 preliminary plan on the second conversion to you?

8 A. (Williamson) No, they have not, and I have

9 not looked at any detailed plans that they had for other

10 conversions, although they provided in their testimony

11 some general things that they did. In fact, I believe

12 in response to DR's they've said they have no plan at

13 this time to do a second.

14 Q. Right. And that last sentence where it says

15 that the integration plan has to be prepared by IT

16 professionals with detailed experience and knowledge, I

17 assume that that means an engineer such as yourself?

18 A. (Williamson) Yes, such as myself or someone

19 with more knowledge.

20 Q. So does that provide you comfort as well? I

21 don't mean to be denigrating other professions, but that

22 gives you other professions a little more assurance as

23 well that this integration process is going to be done

24 by professionals who have done work in this area?

25 A. (Williamson) I think the operative word is

0321

1 IT professional, not a switch engineer.

2 Q. Right.

3 A. (Williamson) But a person who works with IT

4 systems all the time, and that's the kind of person or

5 group that you want looking at it. That's the kind of

6 people that I've been discussing it with.

7 Q. So hardware and software?

8 A. (Williamson) Yes.

9 Q. What happens, Mr. Williamson, with this plan,

10 and what is the enforcement mechanism to let's say you

11 don't like the plan or you find the plan insufficient,

12 what does Staff do with it?

13 A. (Williamson) There's nothing in the plan

14 that gives us a hammer. It's our belief that this

15 company, the company Frontier, understands that they're

16 going to have to deal with Staff and this Commission and

17 Commissioners for a long time into the future, and to

18 purposefully put forth a bad plan that fails will not

19 work well for them the next time they need a rate

20 increase or come to us with an issue.

21 Q. And let's say -- they have to submit this

22 plan 180 days prior to the second conversion

23 integration, correct?

24 A. (Williamson) Yes.

25 Q. So if Staff has some concerns with the plan

0322

1 at that time, that gives you six months to address them

2 and resolve them, correct?

3 A. (Williamson) Yes.

4 Q. And what would be your plan or what would be

5 your thoughts about informing the Commission as to any

6 large concerns that you might have if there were

7 concerns?

8 A. (Williamson) It would be my belief and my

9 understanding from conversations we've had dealing with

10 that kind of issue for the first go round that if Staff

11 was very concerned and thought that the company was not

12 providing the information correctly or had provided a

13 bad plan but would not listen to Staff about slowing

14 down or providing more information, that with counsel's

15 assistance we would want to bring that sort of issue to

16 the Commissioners if we thought we needed to to stop it

17 if we really thought there was going to be an issue.

18 Q. Thank you, I think that's all I have on OSS,

19 thank you.

20 Mr. Weinman, I have a few questions for you

21 on the financial conditions, specifically merger

22 commitment number 1. Now you are familiar of course

23 with the dividend restrictions or the dividend

24 conditions that were included in the CenturyTel/Embarq

25 merger, are you not?

0323

1 A. (Weinman) Yes.

2 Q. Were you the primary Staff lead on that or on

3 the financial conditions in that merger?

4 A. (Weinman) I was.

5 Q. Okay. And just explain to the Bench how,

6 refresh my memory on how those dividend limitations

7 were?

8 A. (Weinman) In the CenturyTel/Embarq merger,

9 basically we took the dividend restrictions from the

10 spinoff of Embarq out of Sprint previously testified to

11 I believe by Will Saunders and put those conditions

12 forth again, which have certain market day averaging in

13 order for them to go forward to declare the dividend.

14 We -- I put it in, and I was reluctant to do it at the

15 time and so have not done it at this point in time,

16 because from my opinion, a dividend coming out of an

17 operating company up to a parent, while it has an effect

18 on the equity in the operating company, it doesn't do

19 anything in terms of disturbing cash flow. Cash flow

20 for the parent and the operating company is continually

21 changing. In other words, the -- for example, customer

22 pays their bill, ultimately that gets pretty much into

23 the parent fairly quickly, and it sets up a receivable

24 on the operating company, and then at the parent company

25 they have a payable for that cash. Likewise, the parent

0324

1 buys equipment for the operating company because most of

2 those are done at that -- at least the purchasing is

3 done at that level, then the parent's going to be

4 essentially billing the operating company to get it into

5 its expense structure or capital structure, and so it

6 will set up another intercompany receivable and payable.

7 So the cash is flowing back and forth between

8 the operating company and the parent all the time, so

9 just to say that you've restricted the dividend in my

10 opinion doesn't necessarily restrict the cash. And so

11 that's why we thought it was better to have a good

12 handle on the intercompany receivables and payables and

13 whatever dividend they might put up to the parent rather

14 than look at trying to have some sort of a ring fenced

15 kind of scenario that we do with these energy companies.

16 And the problem, it works well in the energy

17 company because it's a stand-alone encased business that

18 has all the functions, executive, accounting, customer

19 service, everything is sitting at quote/unquote the

20 operating company like it is with Puget Sound or

21 PacifiCorp. But when you get to telco companies,

22 they're so heavily integrated into corporate and other

23 affiliate operations that a ring fence really doesn't do

24 much. If you're going to ring the fence and make some

25 dividend restriction, you almost have to do it at the

0325

1 parent level, and I don't really believe that's

2 appropriate, and I don't know if it's legal or illegal.

3 I mean honestly I haven't looked at that aspect of it.

4 So we're looking at looking at the cash flow flowing

5 between the entities and trying to make it some --

6 derive an opinion that whether or not the cash is going

7 appropriately.

8 The other thing is this $40 Million escrow is

9 going to set up a loss payable to the parent, because

10 the cash is going to come down, the cash is going to sit

11 at the operating company, and it only gets released once

12 the -- on a quarterly basis with the performance of

13 providing the promise of DSL equipment and getting it in

14 service before we release it back to the company.

15 Q. I'm familiar with intercompany accounts and

16 how they operate, but let's go through the working of

17 merger commitment number 1, at least Staff's

18 understanding of this. So your understanding of the

19 corporate structure of Verizon, of Frontier, is it is a

20 fully integrated company with Frontier Northwest

21 operating as a pretty closely integrated division within

22 a corporate structure; is that correct?

23 A. (Weinman) I think that's --

24 Q. And there's free cash flow, there's cash

25 coming back and forth, you'll have centralized

0326

1 operations like procurement as you said?

2 A. (Weinman) Correct.

3 Q. Payroll perhaps, other operations, so there's

4 a lot of intra or intercompany accounting that has to be

5 done.

6 A. (Weinman) I mean with the telcos, most of

7 the what we would call general administration expenses,

8 you know, executive, personnel, HR, customer service,

9 accounting, billing the customer, most of those

10 functions are really done at a corporate level.

11 Q. Right.

12 A. (Weinman) What's left in the operating

13 company is the people that do what I would call more or

14 less the hands-on day-to-day work with techs and other

15 personnel that really need to be down closer to the

16 company to provide service.

17 Q. So is it fair to say that this quarterly

18 report on intercompany receivables and payables that's

19 going to be done and the authority to actually control

20 the cash flow, is it correct to say that that is more at

21 the parent level than the operating company level based

22 on what you just said?

23 A. (Weinman) My opinion, yes.

24 Q. So the primary authority or role, if you

25 will, if there is a question about what is intercompany

0327

1 and the way cash flowed back and forth, it's going to be

2 made by the parent, correct?

3 A. (Weinman) Yes, I believe it will.

4 Q. So I guess my question is I understand your

5 concerns about dividends and dividend limitations in the

6 CenturyTel/Embarq merger commitment, but what

7 specifically gives you the assurance that this

8 intercompany reporting mechanism is going to provide

9 this Commission just for the state of Washington more

10 clarity on how the free cash flow is being used for

11 intrastate revenues generated in this state from our

12 rate payers?

13 A. (Weinman) I mean I think we start with

14 better initial data than what we have with or would have

15 had with the Embarq restrictions when we set up the ring

16 fence. And so watching those cash flows on a quarterly

17 basis gives us some sense of which way that there is an

18 interchange between a parent and the operating company

19 rather than the parent just trying to suck too much cash

20 out of the operating company for whatever purpose they

21 might think. But at least we have our eyeballs on it

22 and are able to make some judgment. And then if we need

23 to come before the Commission, I assume there's some

24 mechanism that will allow us to do that.

25 Q. Sure. And just one last, this is more of a

0328

1 technical question on dividend regarding the last two

2 sentences in the merger commitment number 1, so even

3 though Frontier Northwest is an operating company within

4 a large parent, Frontier, isn't it true that Frontier

5 the parent company pays the dividend to shareholders of

6 record?

7 A. (Weinman) Yes.

8 Q. So what is this dividend amount, this really

9 isn't a dividend amount that is declared to shareholders

10 from the operating company, Frontier Northwest, to

11 Frontier the parent, is it?

12 A. (Weinman) That's correct.

13 Q. It's just a cash flow?

14 A. (Weinman) It's a dividend up to the parent.

15 Q. It's a dividend up to the parent?

16 A. (Weinman) Not out to the stockholders

17 itself.

18 Q. Correct, okay. And again, that is subject to

19 intercompany discussion and debate, negotiation, but

20 ultimately that is probably more controlled by the

21 parent than the operating company, correct?

22 A. (Weinman) I would agree with that.

23 Q. And just my final question is this last

24 question that I posed to Mr. Williamson on merger

25 commitment number 29, what's the -- I mean what do you

0329

1 do with these reports? Let's say the report comes to

2 you on a quarterly basis, and is your answer the same as

3 Mr. Williamson's that you will consult with counsel if

4 you are concerned about something in the report or want

5 to involve the Commission, and if you're concerned you

6 will find a way to brief the Commission on any concerns

7 with merger commitment number 1 and how it actually

8 functions?

9 A. (Weinman) I mean I'm sure since it will be

10 part of a compliance issue we will be looking at it, and

11 we will be having discussion with the company if the

12 cash flows look like they are not flowing back and forth

13 appropriately. I mean we have to use judgment with

14 that, but we have analysts that can do that. And then

15 if we ultimately have disagreement with the company, at

16 least you guys are pretty much the referees as far as

17 I'm concerned.

18 COMMISSIONER JONES: Yeah, referee with a

19 capital R. Thank you, Mr. Weinman.

20 JUDGE CLARK: Commissioner Oshie.

21 COMMISSIONER OSHIE: Yes, thank you, Judge.

22 E X A M I N A T I O N

23 BY COMMISSIONER OSHIE:

24 Q. Mr. Weinman, a few questions, let's start

25 with the merger condition number 2. I would like to --

0330

1 for Staff to respond or you on behalf of Staff, what's

2 the Staff's affinity, if you will, in this circumstance

3 for an AFOR?

4 A. (Weinman) I personally believe that we need

5 to infuse more flexibility into the telecommunications

6 process because prices are changing, they're losing

7 access lines. And while they don't have perfect market

8 conditions, to the extent that there are areas where we

9 can allow flexibility so they can react quicker to the

10 market, it's appropriate to do that. It benefits the

11 customers, and it benefits the company in allowing them

12 to compete.

13 Q. And under what conditions do you think that

14 the Staff would require of a company should the --

15 should -- well, it's going to be required to file an

16 AFOR, how do we determine, if you will, in an AFOR if,

17 assuming that it would come up, what the proper rate

18 should be for, let's just take an easy one, residential

19 customers?

20 A. (Weinman) Well, at that time we may have to

21 look at pricing issues somewhat like we do with cost of

22 service on the energy side. I think traditionally

23 residential service has been underpriced in this

24 business, and so at some point if there's market forces

25 that are driving business away from the company and it's

0331

1 purely price, we need to consider that. It's -- I mean

2 we have some obligation, at least Staff does or I do, to

3 want to be able to give the company flexibility to react

4 to the market.

5 Q. Well, in that flexibility I'm assuming from

6 at least your answer that that kind of flexibility

7 usually results in higher rates for at least residential

8 customers?

9 A. (Weinman) It could, and certainly we've seen

10 that happen in other areas where this has happened. But

11 again, I think most people believe that residential has

12 been underpriced and subsidized for quite some time.

13 Q. And what about the business customers,

14 Mr. Weinman, is that in your opinion the class of

15 customer that usually subsidized or subsidizes

16 residential customers?

17 A. (Weinman) Well, certainly part of it in

18 terms of the difference between the local rate piece,

19 but there are other access subsidies that happen along

20 the way.

21 Q. In your experience with other companies that

22 have pricing flexibility for the business class of

23 customer, as a general rule have rates to the business

24 class gone down in reaction to the competitive

25 environment in which the companies are faced?

0332

1 A. (Weinman) The companies that I've personally

2 worked with, the answer is no. I can't tell you at the

3 general overall market level. I mean certainly there's

4 data that shows that residential rates have gone up, but

5 how it's interacting with the business customer I don't

6 know.

7 Q. And with -- are you familiar with Qwest's

8 pricing under its AFOR in which it currently operates?

9 A. (Weinman) Somewhat, yes.

10 Q. Although it doesn't come up before us, I mean

11 my general sense of that is that the business customers

12 are paying at least the same, if not more, than they had

13 under regulation?

14 A. (Weinman) I believe their rates are capped,

15 right, and --

16 Q. They're capped for residential, but I'm not

17 sure for business.

18 A. (Weinman) Oh. I don't know.

19 Q. All right. There's just, this is a technical

20 issue with number 2, and that we have a three year stay

21 out for residential customers, and you have an AFOR

22 within five years, is there any, you know, small window

23 there where the company could raise rates after the

24 three year cap?

25 A. (Weinman) Not in my opinion, because if they

0333

1 want to raise rates, I believe they have to file results

2 of operation, costs of capital, in order to do it.

3 Q. What if they filed -- if they wanted to,

4 could they file a general rate case before they would

5 file an AFOR?

6 A. (Weinman) I believe they could.

7 Q. In your opinion, rates would go up for

8 residential customers under that kind of general rate

9 case kind of analysis?

10 A. (Weinman) It's conceivable that that could

11 happen, but when we get to the end of the three year

12 period and you get into this process of them filing a

13 rate case, if they -- if the stay out provision's three

14 years and they filed a rate case, now we're starting to

15 get into four years because we really want the

16 integrations, whatever they're going to be, so it looks

17 like a unit that is not being forced to use estimates of

18 what their ultimate cost would be filing it, that's why

19 this is historical, but at that point if they were to

20 file in that fourth year, I would think they would bring

21 AFOR in it, because I don't think they would want to

22 turn around, it's costly to come back within the next

23 year to make that piece of the filing.

24 Q. Well, I think it seemed rather far fetched,

25 but it seemed like there was a small window there, so I

0334

1 wanted to explore whether, you know, the Staff had

2 considered, you know, at least the possibility?

3 A. (Weinman) We had considered it, but

4 regardless if they decide to stay out, we still believe

5 that they're going to be coming in with a full blown

6 rate case.

7 Q. I would like to turn now to this maybe in

8 some kind of chronological order here I think, and that

9 would be your -- the DSL broadband deployment provisions

10 in the settlement agreement.

11 A. (Weinman) Starting at item 13 in the

12 settlement agreement?

13 Q. Yes.

14 A. (Weinman) Okay.

15 Q. Now what I'm trying to get my arms around

16 here is the -- is this $40 Million payment into escrow

17 and the -- whether or not that would be protected from

18 any kind of financial difficulties that the company may

19 be in, the conditions of the escrow, if we would be

20 deciding if the provisions at least stayed there, if I

21 can find it here, will use its best efforts to approve

22 the release of the funds, we're not acting as the escrow

23 agent in this circumstance, are we?

24 A. (Weinman) No.

25 Q. And why would -- why did this, at least

0335

1 Staff, look at this -- require that these funds be put

2 into escrow?

3 A. (Weinman) I'm sorry, one more time?

4 Q. Why did Staff believe it was necessary for

5 the company to place this $40 Million fund into escrow?

6 A. (Weinman) Oh. I think that from the filing

7 itself with the combination of the company's pretty much

8 a total company overall before Frontier and then after

9 Frontier with SpinCo that in order for the Commission

10 and Staff to be assured that the DSL broadband

11 deployment was going to happen, we wanted a substantial

12 commitment from the company to escrow the money so that

13 it was there to provide the broadband services it's

14 stated that they're going to provide.

15 Q. But I thought from the testimony that -- I

16 mean I read that and I thought perhaps that the escrow

17 would be held by a third party with conditions that,

18 when met, the money would be released?

19 A. (Weinman) I believe --

20 Q. But just --

21 A. (Weinman) Oh, okay.

22 Q. Excuse me.

23 But then from the testimony, it seemed as if

24 the money is going to be held by the company.

25 A. (Weinman) No.

0336

1 Q. And would be -- okay.

2 A. (Weinman) It's a third party escrow.

3 Q. All right.

4 A. (Weinman) And they're paying the costs for

5 the escrow maintenance, whatever the account is, and it

6 doesn't get disbursed unless this Commission releases

7 it. So we have, at least in my opinion, the Commission

8 has pretty much absolute control over the disbursement

9 of the funds, and it builds into the process a reason

10 for the company to accelerate DSL in Washington so that

11 it can get that escrow money out and quicker back to the

12 -- through the deployment of the DSL.

13 Q. Is the funds placed in escrow in any way

14 revocable?

15 A. (Weinman) I don't know.

16 Q. Okay. It would seem -- is Staff concerned

17 about whether the funds could be revoked by the company

18 under whatever condition it chooses to do so?

19 A. (Weinman) No.

20 Q. Staff's not concerned, and that's because you

21 believe it to be irrevocable?

22 A. (Weinman) Well, maybe I'm getting mixed up

23 on my revs, but --

24 Q. Maybe I'm mixing you up, I don't intend to.

25 A. (Weinman) I think Staff believes that the

0337

1 company will be financially solvent, and so that, you

2 know, could bankruptcy affect that escrow? I don't

3 know. It may. I don't believe that that's a option

4 that is going to play out in this transaction. All I do

5 know is that we want to be able to assure the Commission

6 that the company has financial wherewithal that they can

7 make this kind of commitment to put out their DSL

8 product up front and give us some assurance that along

9 -- that they have the funds and are willing and able to

10 go forth and deploy the product.

11 Q. But it sounds as if Staff really doesn't --

12 Staff doesn't have a preference for escrow, it was

13 looking for a vehicle in which to place the money so

14 that it would be available for rate payers or available

15 to the company after -- in meeting certain conditions?

16 A. (Weinman) Correct.

17 Q. And to reimburse it for its expenditures?

18 A. (Weinman) That's correct.

19 Q. For providing this particular service. And

20 so escrow is just -- it could be any other vehicle?

21 A. (Weinman) Yeah, I used that in the generic

22 term.

23 Q. And I assume then from our back and forth

24 that in Staff's opinion that vehicle, the funds should

25 be irrevocable, in other words that they are installed

0338

1 there in whatever mechanism for the purpose of

2 delivering these services and that they would not be --

3 they can not be reached by the company. I accept your

4 testimony that bankruptcy might be another event, but

5 under any other condition perhaps those funds would not

6 be available to the company other than through the

7 operation of the mechanism?

8 A. (Weinman) That's true. I mean they would

9 have to show that they've bought the equipment, placed

10 it, it's in service, before the funds would be reversed

11 back to them.

12 Q. And that's done on a quarterly --

13 A. (Weinman) We put it on a quarterly basis

14 just to I guess incent the company to do Washington

15 before some of these other states.

16 Q. Are there any carrying charges envisioned for

17 the funds that have been expended but not reimbursed?

18 A. (Weinman) No, not that I'm aware of.

19 Q. Okay. Now let's get to the role of the

20 Commission, because it's really -- it's not clear to me

21 under what conditions other than, you know, very I would

22 call them generic, in other words the expenditures have

23 been made, I believe that somehow that would be

24 demonstrated, that the equipment installed has been

25 tested, that that would be demonstrated. Perhaps that's

0339

1 just done in the usual course of business, that the

2 engineers aren't going to install equipment and then not

3 have it work. I'm looking at Mr. Williamson there, he's

4 shaking his head let the record show. I just want, you

5 know, is there anything that the Commission, were we to

6 accept this, are there other conditions, are there

7 conditions that Staff recommends that be placed upon the

8 withdrawal of funds from this particular, you know,

9 fund, and I just wanted -- so that's the first question.

10 A. (Weinman) Well, I -- my -- what I envision

11 is that we will work out a process with the company so

12 that we can validate the cost and the fact that it is in

13 service before we make a recommendation to go forward

14 and disburse the funds to them.

15 Q. So there -- this would -- there would be a

16 process post order where really the terms and conditions

17 of the construction and the disbursement of funds from

18 the escrow account would be made?

19 A. (Weinman) Yes.

20 Q. And who do you envision would sit at the

21 table in developing, and I will just call this a plan,

22 the DSL plan?

23 A. (Weinman) I mean for the DSL plan, I

24 consider it to be Staff and the company, but obviously

25 we would want to put it before the Commissioners to make

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1 sure that they agree that it's appropriate since they're

2 the ones saying yes to disburse it.

3 Q. Well, and I guess we would have to understand

4 what the -- we would have to decide perhaps first what

5 -- whether the conditions of disbursement and

6 development are appropriate?

7 A. (Weinman) Yes.

8 Q. Okay. And Public Counsel would be present at

9 the table as well, or is this just between Staff and the

10 company?

11 A. (Weinman) Well, it's written I guess with

12 Staff and the company in mind since Public Counsel

13 didn't enter the settlement, but I don't see any reason

14 Public Counsel, we won't seek their opinion also in the

15 process. We just haven't discussed this, so I'm kind of

16 flying by the seat of my pants at the moment.

17 Q. Well, I suppose we are too looking at the

18 Staff for some direction here. I mean there are

19 different ways to do it, and I just, you know, if Staff

20 really doesn't have a process in mind other than what's

21 on paper, that's a fair answer. And, you know, the --

22 what we do with this, I'm sure that will figure in to

23 certainly our discussion.

24 I want to turn to an area that Ms. Shifley

25 spent some time with, and that is the service quality

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1 credits. And I believe the point of her

2 cross-examination was, if nothing else, that $600,000 in

3 potential bill credits was not only significantly

4 smaller than what Staff had originally recommended, but

5 certainly as a matter of percentage much, much smaller

6 than what was imposed, if you will, upon Qwest when

7 those same bill credits were in place with that company.

8 And my question to you is, when I do the math, and

9 that's always suspect for an attorney to do the math,

10 especially in their head, that the 12% of the potential

11 I believe it's $20 Million in potential, you know, bill

12 credits that Qwest was on the hook for, and we're

13 talking about, you know, $2.4 Million, that's using the

14 12% figure which was taken from the different, you know,

15 the ratio between the $600,000 and the $5 Million in

16 Staff's testimony, and having, you know, been on the

17 Commission during that -- during the years in which the

18 bill credits were in place, I frankly don't remember

19 Staff ever taking the position before us, if it ever

20 came up, that we should reduce the bill credits to

21 customers even by 50%. And my recall is that those

22 issues did come up, and Staff's position was they

23 thought that the bill credits were appropriate. And

24 they're appropriate for the reason of, whether you call

25 it an incentive or disincentive, that the amount of

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1 money at stake for the company was enough to influence

2 its behavior. And so while you may have responded

3 before to Ms. Shifley's testimony, you tell me the

4 difference between this company and its operations, at

5 least in Staff's mind, and that of Qwest, and why should

6 we treat the two companies differently with regard to

7 this one identical issue?

8 A. (Weinman) I can not tell you why it should.

9 I can only reiterate that we believed that it was enough

10 of a disincentive or incentive, whichever way you want

11 to look at it, for the company to do its absolute very

12 best. It's a transitional period mostly because of

13 integration issues for us and that our team and during

14 the settlement conference we believe $600,000 was

15 adequate.

16 COMMISSIONER OSHIE: All right.

17 I don't have any other questions, Judge,

18 thank you.

19 JUDGE CLARK: Thank you, Commissioner Oshie.

20 Chairman Goltz.

21 CHAIRMAN GOLTZ: Thank you.

22

23

24

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0343

1 E X A M I N A T I O N

2 BY CHAIRMAN GOLTZ:

3 Q. I will have some questions for all the

4 panelists, although they all relate basically to the

5 settlement, or they are sort of precursors to questions

6 I want to direct to Mr. Weinman.

7 So first, Mr. McCallion, are you familiar

8 with the proceedings in the other jurisdictions where

9 this transaction is pending?

10 A. (McCallion) Yes.

11 Q. And same with you, Mr. McCarthy?

12 A. (McCarthy) Yes, I am.

13 Q. Okay. Can you tell us how many proceedings

14 or in how many -- in which jurisdictions there are still

15 decisions pending?

16 A. (McCallion) Well --

17 Q. Mr. McCallion, I will ask you.

18 A. (McCallion) I'll start, then Mr. McCarthy

19 can add to that or correct me. This is the last state

20 in which we have a hearing, an evidentiary hearing.

21 They've been concluded in the other states. We have

22 received approval from the California and South Carolina

23 Commissions as well as from the Nevada Commission.

24 There is a administrative law judge's proposed decision

25 that is out in Arizona that is on that commission's

0344

1 agenda for February 18th. And then we expect a decision

2 based upon the statutory rules in Ohio actually on

3 February 11th I believe, at some time, some time within

4 the next couple weeks in Ohio. So we recently concluded

5 hearings in West Virginia and Illinois, and those are

6 still open. Now there were some petitions that were

7 filed in a number of states that don't have ILEC

8 operations in them asking the commissions to assert

9 jurisdiction over the transaction, I believe that was

10 New York, Minnesota, and Pennsylvania, and all of those

11 commissions have determined that they were not going to

12 exert jurisdiction over the transaction.

13 Q. So you still have a pending proceeding in

14 Oregon as well?

15 A. (McCallion) Yes.

16 A. (McCarthy) Yes.

17 Q. And at the FCC?

18 A. (McCallion) Yes.

19 A. (McCarthy) yes.

20 Q. So what I'm going to get at is so when do you

21 view is the window for closing the transaction?

22 A. (McCallion) We hope to close the transaction

23 by late in the second quarter of this year.

24 Q. So June ish, in there?

25 A. (McCallion) Yes.

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1 Q. And that is later than the original hope, is

2 that not correct?

3 A. (McCallion) The merger agreement indicates

4 that it could close no sooner than April 30th, but we're

5 looking later in the quarter than April 30th.

6 Q. And what were some, I believe even in this

7 proceeding in some of the settlement provisions there

8 was some testing that's going to go on that's going to

9 in effect ensure that the closing is going to be toward

10 the end of the second quarter?

11 A. (McCallion) Yes.

12 Q. And what are those provisions?

13 A. (McCallion) Well, there's a provision in

14 this agreement and actually in the CLEC agreements that

15 say that Verizon will actually use, for the states that

16 are being spun off to Frontier, they will use the

17 replicated systems in those states that are operating

18 under those systems for a minimum of 60 days. So

19 therefore we have to have the replication completed, and

20 we have to be up and operating for a minimum of 60 days.

21 Right now we anticipate that period to begin April 1st,

22 but, you know, that's our best estimate at this time.

23 Q. Mr. McCarthy wants to add to that.

24 A. (McCarthy) I just wanted to add, Chairman,

25 that during that time period we at Frontier are very

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1 busy actually verifying the replication that's happened,

2 the realignment that's happened, so -- and we're

3 committed not to close on the transaction until we're

4 satisfied that the replication and the realignment has

5 been fully completed.

6 Q. Right. And the replication and all the

7 testing, that's going forward even without all the

8 approvals being completed?

9 A. (McCarthy) That's correct.

10 Q. So different subject now, Mr. McCarthy, if

11 you could turn to your rebuttal testimony at page 10, on

12 line 10 you say, I'm sorry, starting at line 9 you said:

13 Furthermore, the Commission should

14 understand that diversified carriers

15 such as Verizon have made strategic

16 business decisions to direct their

17 capital resources toward growth

18 objectives like wireless.

19 And I gather that you're using this as an

20 example of why we should approve this transaction,

21 because you would not direct your capital resources to

22 anything other than the regulated company?

23 A. (McCarthy) I think that's fair, Chairman. I

24 think the -- what I was trying to really say is that

25 there's no conflict, we are very strategically aligned

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1 on being in the ILEC business. We've made commitments

2 expanding broadband because that's in alignment with

3 where we want to take the business in the long term.

4 And Verizon has been conflicted, they've had other

5 strategic imperatives, whether it was wireless or FiOS

6 in certain urban areas. We on the other hand are

7 focused on investing in infrastructure to serve the

8 traditional ILEC as well as broadband.

9 Q. But I also read that statement as maybe

10 having the implication or your belief that Verizon in

11 fact has directed resources away from the wire line

12 company to wireless?

13 A. (McCarthy) Well, I think it's fair to say

14 when you look at the VSTO across the entire company that

15 we're acquiring, their investment has not been as great

16 as say, you know, FiOS or their wireless.

17 Q. I don't recall, Mr. McCarthy, if you were at

18 the public hearing in Everett some time ago?

19 A. (McCarthy) I apologize, I was not there.

20 Q. No, and there -- your counsel, or I think

21 counsel was there, and I'm -- and the record there or

22 the testimony there will speak for itself, and so I may

23 -- it's possible I'll mischaracterize it, I don't mean

24 to, but there was some citizen testimony of some,

25 including some people who worked for Verizon, who worked

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1 or currently work for Verizon, that were somewhat

2 skeptical about the quality of the facilities and the

3 physical plant needing a great deal of maintenance, and

4 I was wondering if you have done any evaluation of the

5 quality of what you're buying?

6 A. (McCarthy) Well, during the process of

7 diligence, we had spent -- we had whole teams looking at

8 the information that was provided to us through both the

9 data room as well as meeting telephonically with the

10 subject matter experts from Verizon. We got very

11 comfortable, especially in Washington, because the

12 investment level has been higher as there's been FiOS,

13 and the network statistics and the trouble instances

14 have been very good in this area. Subsequent to signing

15 the transaction and developing our broadband model on

16 how we would deploy broadband in Washington, we actually

17 sent individuals out to do physical verifications to

18 verify that our assumptions around the broadband model

19 was correct, and we found generally our conclusions were

20 correct. Central offices were in pretty good shape.

21 There were, as Staff said, latest revs in software on

22 switching, and outside plant was in pretty good shape as

23 well. We didn't see anything that would inhibit us from

24 rolling out broadband.

25 Q. So I'll ask Mr. Weinman, or Mr. Williamson,

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1 if you want to defer to Mr. Williamson on this that's

2 fine, in your review of this application, did you have

3 reason to sort of make any assessment of the overall

4 sort of maintenance quality of the physical plant?

5 A. (Weinman) I guess from my perspective is

6 that we did several things. One, we did put out data

7 requests to ensure that the CO's were up to the latest

8 software release. We didn't know, I mean so we were

9 searching for information. Was not quite so concerned

10 about outside plant because Verizon's statistics are so

11 good. I mean I think in the last 12 months there's only

12 1 month where the trouble index was 1.1%, and it's been

13 under 1, and that indicates to me that they're not

14 having a lot of problems, which a lot of times is caused

15 by plant, bad plant.

16 Q. Were you at the public hearing as well?

17 A. (Weinman) I was, yes.

18 Q. Is my memory correct that there were some

19 people that testified about some maintenance issues?

20 A. (Weinman) There were. There was actually a

21 couple of techs that testified that Verizon was not

22 maintaining their plant and that they were just swapping

23 pairs if a plant went in trouble and that their splicers

24 weren't going in and doing maintenance. I think the

25 company's witness really kind of put that into

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1 perspective. They still have good statistics, and they

2 are losing lines, so that is freeing pairs so to speak

3 within their existing cable. And as long as they're --

4 whether or not it -- whatever get -- you know, so

5 there's more capacity for them to work within their

6 existing plant. They certainly still do have to routine

7 their plant, but they have more flexibility because they

8 have more cable pairs available.

9 Q. So do you have an opinion as to whether or

10 not the physical plant facilities there are adequate and

11 sufficient or antiquated or modern?

12 A. (Weinman) Certainly the switching is modern.

13 They actually do have a couple soft switches within the

14 territory. We didn't do physical inspections but relied

15 more on generic data to see if there was trouble spots.

16 In other words, if the trouble reports were jumping all

17 over the place going up and down, then we would be a

18 little more concerned than what we are with the trouble

19 reports and the percentages that they're reporting to us

20 monthly.

21 Q. Mr. Williamson, did you have any other -- did

22 you do any evaluation on that aspect?

23 A. (Williamson) No, I didn't, I did the same.

24 Q. Okay.

25 A. (McCallion) Chairman Goltz.

0351

1 Q. Sure.

2 A. (McCallion) Would you like me to add? I was

3 at those public participation hearings.

4 Q. Sure, Mr. McCallion, that's fine.

5 A. (McCallion) There were a couple specific

6 concerns that were brought up, and I believe all of the

7 witnesses were members of the IBEW and company employees

8 who spoke with the exception of one customer and two

9 people representing chamber of commerces, that's my

10 general recollection. And there was some

11 generalizations made by the company employees, but there

12 were two specific issues that were brought up, and I

13 directed that they be investigated right away. One had

14 to do with a floor in a central office, and the witness

15 testified that there was a slippage in the floor in one

16 of our central offices.

17 Q. That's the kind of detail we get into with

18 this Commission.

19 A. (McCallion) What we did, Chairman Goltz, is

20 we actually sent someone out to look at it. Indeed

21 there was slippage in the floor, and we contracted with

22 a professional engineer to look at it, and it was in the

23 part of the work area that we're not actually utilizing.

24 We're not actually utilizing that particular section,

25 and what we did is we got an assessment from the

0352

1 professional engineer that basically indicated that it

2 probably was an issue related to the soil compaction

3 during the construction and that it was unlikely that

4 there would be additional slippage that was there. But

5 it's a situation that we are monitoring, so we actually

6 have that report of the professional engineer.

7 Another issue that was brought up which we

8 also took -- had great concern with was a issue of some

9 facilities not being properly grounded. And we actually

10 employ a couple technicians full time just to look at

11 the grounding of our facilities. And indeed, the

12 particular facility he referred to was not grounded. We

13 got that corrected just within a couple days of the

14 public participation hearing and then just redoubled our

15 efforts to make sure that the grounding was taken care

16 of. But we certainly have been maintaining our plant,

17 and I think as Mr. Weinman had indicated, if you look at

18 our service quality statistics, especially the trouble

19 reports because I think that's very telling, it shows

20 that the quality of service we're delivering to our

21 customers is very high.

22 Q. Thank you.

23 Now for Mr. Weinman, do you recall the last

24 or when Verizon Northwest's last rate case was finalized

25 with the Commission?

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1 A. (Weinman) It was before my time.

2 Q. So it was before when?

3 A. (Weinman) It was early '90's I want to say.

4 Q. Well --

5 A. (Weinman) I don't know, it was in the '90's,

6 it was before I came to the Commission, I don't know.

7 Q. Okay, that's fine, we can probably take

8 notice of that in any event.

9 You responded to Commissioner Oshie's

10 questions about rates and a potential AFOR or an AFOR,

11 and as I understand it there's a rate cap for three

12 years on residential rates, and in your view after that

13 time the rates would remain as they are now until such

14 time as the company came forward and filed for a rate

15 increase?

16 A. (Weinman) Correct.

17 Q. And then also there's a requirement that they

18 file for an AFOR within five years?

19 A. (Weinman) Correct.

20 Q. And accompanying that would be I gather

21 information that would be sort of the functional

22 equivalent of that which they would need to file for a

23 rate case?

24 A. (Weinman) Correct.

25 Q. So that would enable the Staff to do an

0354

1 earnings review in conjunction with the AFOR?

2 A. (Weinman) Yes. I mean it provides that when

3 they come that they will use investment quality debt and

4 equity, which would put them in the cost of capital area

5 of Verizon for this first one, and final complete

6 results of operations, historical, using pro forma

7 restating adjustments such as we see in our energy and

8 gas.

9 Q. Now I wasn't at the Commission during the

10 last rate proceeding with Verizon, but I understand that

11 at that time there was either by -- it may have been by

12 agreement that there was to be imputed to Verizon

13 Northwest revenues from the Yellow Pages operation that

14 had been sold to a different party.

15 A. (Weinman) Yes, the Yellow Page gain is being

16 amortized 10 years I think, I'm not sure.

17 Q. Is it 2016, Mr. McCallion, can you answer

18 that?

19 A. (McCallion) That's correct. That was

20 actually a -- the rate case was in -- the decision on

21 the rate case, and it was a settlement, was issued in

22 2005. I actually mentioned that in my direct testimony.

23 Q. Okay.

24 A. (McCallion) And then the proceeding and the

25 settlement and the Commission decision on the spinoff of

0355

1 the Yellow Page business was subsequent to that, and it

2 did provide for a 10 year amortization.

3 Q. So that 10 year amortization would expire at

4 the end of 2015 about?

5 A. (McCallion) That's consistent with my

6 recollection.

7 Q. So any, am I correct, Mr. Weinman, that any

8 rate case filed by Verizon, pardon me, by Frontier

9 Northwest subsequent to the three year stay out would be

10 subject to the same imputation?

11 A. (Weinman) Same kind of imputation

12 requirement in the settlement.

13 Q. And --

14 A. (Weinman) And also it's still the same legal

15 entity, so I think they're still bound to the Commission

16 order, but it is in the settlement itself.

17 Q. Okay. So but if they file for an AFOR after

18 that three year stay out, and I gather there's nothing

19 in the settlement that would prohibit them from filing

20 it, it just requires them to do it within five years?

21 A. (Weinman) Correct.

22 Q. They could do it at the end of three years?

23 A. (Weinman) They could.

24 Q. Okay. And how would the rate payers continue

25 to derive the benefit of a imputed Yellow Pages revenue

0356

1 in an AFOR?

2 A. (Weinman) Well, the AFOR they have to file

3 complete results of operations, and that will include

4 the imputation of the Yellow Pages gain as long as it's

5 until the year 2015.

6 Q. And, Mr. Weinman, do you know the amount of

7 computed revenue each year on in the last rate case?

8 Mr. McCallion, do you know that?

9 A. (McCallion) I don't recall. I was very

10 familiar with what the number was, but I don't recall

11 sitting here on the stand.

12 Q. I bet a Public Counsel witness can answer

13 that question down the road.

14 I just have some concern about how to make

15 sure that rate payers continue to make the benefit of

16 that amount as we go through this.

17 Let me ask Mr. McCarthy about so-called

18 synergy savings. I gather the synergy savings that you

19 anticipate would be because of economies of scale?

20 A. (McCarthy) Generally speaking, yes. It

21 would be taking advantage of the fact that corporate

22 overhead, I want to use that in a lovingly term, it

23 would be finance accounting, you know, the traditional

24 corporate functions are duplicative, and those

25 allocations from Verizon would disappear essentially,

0357

1 and we would be using our own infrastructure for that.

2 There's also synergies associated with network

3 operations that we see. There's synergies as we put the

4 business together from a purchasing power perspective,

5 not to mention we do see obviously some opportunity on

6 the revenue side as we roll out broadband and implement

7 the FiOS product.

8 Q. But just looking at benefits because of

9 economies of scale for Washington state rate payers in

10 Verizon's territory under Verizon and for Washington

11 state rate payers under a Frontier Northwest, what's --

12 why are your economies of scale better than Verizon's

13 preexisting economies of scale?

14 A. (McCarthy) Well, I think it's when you look

15 at us as a company, you would see when you look at our

16 for instance EBITDA margins, you would see --

17 Q. I'm sorry, what?

18 A. (McCarthy) Our EBITDA margins are some of

19 the highest in the industry because we operate in a very

20 efficient and very effective manner.

21 Q. Better than Verizon you're saying?

22 A. (McCarthy) Yes. In a loving way.

23 So we actually think that with our focus on

24 how we do things and we push decisionmaking as local as

25 possible, we don't have probably as many people in

0358

1 corporate doing different functions as Verizon does,

2 thus we think we actually can operate much more

3 efficiently.

4 Q. So in the reports on settlement condition

5 number 3 reporting your synergy savings, you expect

6 there -- and as I understand this, there will be reports

7 both on companywide and also those attributable to

8 Verizon Northwest?

9 A. (McCarthy) That's correct.

10 Q. Okay. And you're saying that in your belief

11 we will see synergy savings for both the whole and also

12 just Verizon Northwest?

13 A. (McCarthy) We believe most of the synergies,

14 if not all the synergies, are really more with the

15 corporate functions, so. But we did agree that if there

16 were synergies that were derived in the state

17 specifically that were attributable in Washington, we

18 would capture those and report them.

19 Q. So if the synergy savings show X savings

20 corporate and zero for just Verizon Northwest, will the

21 rate payers under Verizon Northwest, not Verizon

22 Northwest, Frontier Northwest benefit from that?

23 A. (McCarthy) Well, our understanding as we

24 went through the settlement discussions was that that

25 was one of the reasons that Staff really wanted us to

0359

1 come in for the AFOR so that you would have a chance to

2 do that review, see if there were synergies in a test

3 year, make those necessary pro forma adjustments and

4 take advantage of that benefit for customers. Of

5 course, there's all sorts of other moving parts in any

6 income statement associated with, you know, a

7 communications company, so it would be up to you at that

8 time to assess that, whether or not synergies translate

9 into real savings or the business has changed and

10 fundamentally just from customer losses or different

11 revenue characteristics.

12 Q. Right. But are the synergies for the

13 Frontier Northwest report simply an allocated amount of

14 the total company, or is there some other methodology?

15 A. (McCarthy) I think there's really the total,

16 which would be the allocated that you're talking about.

17 And I think our commitment was if we found synergies in

18 Washington, we would capture a report on those. But at

19 this point, we really don't see that as a huge

20 opportunity.

21 Q. So what you're saying is that rate payers in

22 the Northwest should be able to take advantage of a

23 portion of the overall synergies and maybe in addition

24 some region specific synergies?

25 A. (McCarthy) If there was.

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1 Q. Is that your understanding as well,

2 Mr. Weinman?

3 A. (Weinman) Yes.

4 Q. Mr. McCarthy, can you tell us, or maybe this

5 is probably in the record, if it is, just say so, the

6 approximate percentage of access lines in Washington to

7 the total Frontier, this is after the transaction,

8 percentage of access lines in Washington compared to the

9 total access lines for the resulting Frontier companies?

10 A. (McCarthy) I don't have the percentage right

11 off the top of my head, but I think that is in the

12 record. It would be approximately 550,000, 560,000

13 lines.

14 Q. In Washington?

15 A. (McCarthy) versus the total.

16 Q. And the total amount for Frontier is in the

17 record as well?

18 A. (McCarthy) Yes.

19 Q. Maybe in closing brief your counsel can make

20 that representation tomorrow.

21 And, Mr. McCallion, what about for the

22 Washington access lines of Verizon Northwest compared to

23 the overall Verizon land line business?

24 A. (McCallion) I haven't done that calculation

25 recently. I believe it would be in the range of 5%, but

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1 I would rather do a precise calculation.

2 Q. Okay, well, maybe, I think you'll be back in

3 sort of a non-settlement panel capacity, so we can ask

4 that.

5 Mr. Weinman, a number of the, oh, I'm sorry,

6 go back Mr. McCarthy, in your rebuttal testimony at

7 pages 8 to 10, I believe you character -- you were

8 critical of Mr. Weinman's at that point opposition to

9 the agreement and criticizing him by saying that he

10 raises a number of risks, but risks don't equal harms.

11 I mean do you really mean that if we view this

12 transaction as there's a number of risks post

13 transaction to the company Frontier Northwest and its

14 rate payers that wouldn't exist without the transaction

15 that that's not harm?

16 A. (McCarthy) My point was merely that risk,

17 you need to take into account probability of whether the

18 risk actually would equate to a harm, and I think the

19 conditions that we've agreed to with Staff were designed

20 to mitigate some of those potential risks.

21 Q. But you would agree there's still some

22 residual risks here, I mean you hear a lot of people

23 concerned about them?

24 A. (McCarthy) I've certainly heard a lot of

25 people have concern about risks, and there's risks

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1 associated with any, as Staff has said, with any

2 transaction, but I think the conditions that we've

3 agreed to go a long way toward solving a lot of risk

4 issues that the Staff had raised at the time.

5 Q. And, Mr. Weinman, I gather that you would

6 agree there's still risks?

7 A. (Weinman) Yes.

8 Q. And so are you saying though that -- and you

9 would say that risks is a -- that risks is a form --

10 risks are a form of harm?

11 A. (Weinman) They can be. I mean --

12 Q. And so are you saying that there -- that

13 there are kind of benefits in this transaction that

14 overcome the risks?

15 A. (Weinman) We believe the settlement does

16 mitigate.

17 Q. That's not what I asked. I asked -- I meant

18 not about just mitigating of risks, but are there -- I

19 mean are there benefits to this transaction that

20 overcome the whatever risks may still exist?

21 A. (Weinman) Yes.

22 Q. And those would be -- and what are the major

23 benefits then?

24 A. (Weinman) DSL deployment to what, 30 some

25 wire centers that don't have it or are underserved.

0363

1 Q. And does one benefit, as counsel to the -- I

2 think it was counsel for the Federal Agencies said this

3 morning was Verizon just doesn't want to be here any

4 more, and we now have a company that wants to be here?

5 A. (Weinman) I mean certainly there's risk, and

6 I believe Verizon has explained that they're not as

7 anxious to deploy products as what Frontier has

8 expressed, and that is a benefit to the Washington

9 customers.

10 Q. One of the numbered here financial conditions

11 are basically reporting conditions, and one thing you

12 did not include was a requirement that Frontier submit

13 budgets to the Commission for approval as is authorized

14 in Title 80.04 and 80.04.300, did you consider that at

15 all?

16 A. (Weinman) Actually I didn't personally.

17 Working the energy side, they do submit budgets

18 annually, and I honestly don't know if Verizon -- I

19 don't know.

20 Q. No, my question was whether or not that is a

21 form or financial condition that should be imposed?

22 A. (Weinman) It should be, yes.

23 Q. Because what we heard from Public Counsel,

24 and I'm guessing we're going to hear more, is that, you

25 know, there's no budget for 2010 or beyond for Frontier

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1 Northwest, and that's a concern, and couldn't we resolve

2 that concern?

3 A. (Weinman) We certainly can.

4 Q. And then one of the other -- the -- my last

5 question really is for Mr. McCallion or Mr. McCarthy

6 that the -- there's a provision in the agreement that

7 Frontier in fact will hold Verizon harmless for any

8 costs that arise out of conditions that are placed on

9 the transaction by any regulatory body. Am I correct on

10 that?

11 A. (McCallion) There is a condition in the

12 merger agreement that indicates that if there are costs

13 that are imposed by a regulatory body, what that will do

14 is that will impact the number of shares that Verizon

15 shareholders would get in the transaction. So to the

16 extent that Verizon was required to pay out additional

17 dollars, then Verizon shareholders would get a

18 equivalent value back in the terms of the number of

19 shares.

20 Q. So is that just another way of saying yes?

21 A. (McCallion) I guess the answer -- I guess

22 the answer would be yes, but I wanted to put it in the

23 context that it's not a cash payment, but rather it's

24 part of the risk allocation and the total merger

25 agreement. There's certain things that Verizon took the

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1 risk on responsibility, certain things Frontier did as

2 we came up with the total merger agreement.

3 Q. In your experience in other states, has that

4 provision been a concern by any other regulatory body?

5 A. (McCallion) I haven't been asked any

6 questions on it. I was the witness in every state

7 except for West Virginia, and I just -- I wasn't the

8 witness there, so I don't --

9 Q. Okay.

10 Mr. McCarthy, anything to add?

11 A. (McCarthy) I was the witness in every state,

12 and the only state that I recall it coming up in was

13 West Virginia.

14 Q. And they haven't resolved it yet?

15 A. (McCarthy) No, but the hearings are complete

16 at this point.

17 Q. Okay. And so you haven't agreed to waive or

18 limit that condition in any jurisdiction?

19 A. (McCarthy) No, we haven't.

20 CHAIRMAN GOLTZ: Okay, that's all I have,

21 thank you.

22 JUDGE CLARK: All right, what I'm going to

23 do, what I'm going to propose to the parties is this,

24 because we have the outstanding oral records requisition

25 and we do not yet have the response, to recess basically

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1 now, allow the parties to pursue that, get the response

2 to the other parties and the Bench, and give you an

3 adequate opportunity to confer, hold this panel over to

4 tomorrow and see if there is inquiry regarding these

5 topics before I turn to redirect. Does anyone have an

6 objection with that process?

7 All right, hearing none, is there anything

8 else we should consider on the record before we recess

9 for the evening?

10 All right, then we will reconvene tomorrow

11 morning at 9:30 a.m. We are at recess until then.

12 (Hearing adjourned at 4:50 p.m.)

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