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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint)
Application of) DOCKET NO. UT-090842
)
VERIZON COMMUNICATIONS INC.) Volume V
AND FRONTIER COMMUNICATIONS) Pages 367 to 582
CORPORATION.)
)
For an Order Declining to)
Assert Jurisdiction Over, or,)
in the Alternative, Approving)
the Indirect Transfer of)
Control of Verizon Northwest)
Inc.)
_____)

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A hearing in the above matter was held on
February 3, 2010, from 9:30 a.m to 5:05 p.m., at 1300
South Evergreen Park Drive Southwest, Room 206, Olympia,
Washington, before Administrative Law Judge PATRICIA
CLARK and CHAIRMAN JEFFREY D. GOLTZ and Commissioner
PATRICK J. OSHIE and Commissioner PHILIP B. JONES.

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The parties were present as follows:

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Joan E. Kinn, CCR, RPR
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5 EXHIBIT: MARKED: ADMITTED:

6 TIMOTHY J. MCCALLION

7 TM-24HC 480

8 TM-25HC 480

9 F. WAYNE LAFFERTY

10 FWL-3 W/D

11 FWL-4 W/D

12 FWL-5 W/D

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1 PROCEEDINGS

2 JUDGE CLARK: Good morning, it's
3 approximately 9:30 a.m., February 3rd, 2010. This is
4 the time and the place set for continuation of the
5 hearing in Docket UT-090842. The record should reflect
6 that Commissioner Philip Jones, Commissioner Patrick
7 Oshie, and Chairman Jeffrey Goltz are present for this
8 morning's hearing.

9 When we recessed yesterday afternoon, we had
10 a panel who's already seated for continuation of any
11 cross-examination and then redirect. I just want to
12 advise everyone that I am not turning on the conference
13 bridge this morning because we have tested it and there
14 are already people placed on hold, which of course
15 conveys the lovely music into the hearing room. We will
16 make special accommodation for Public Counsel's witness,
17 Ms. Alexander, to call in on a separate line at the time
18 for her to testify.

19 When we recessed yesterday afternoon, we were
20 anticipating an oral requisition request response, so,
21 Mr. Thompson, if you could update us on that, that would
22 be helpful.

23 MR. THOMPSON: Yes, Your Honor, I was going
24 to ask Mr. Weinman on redirect about this because I'm
25 thinking it might be the best way to clarify it.

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1 JUDGE CLARK: That sounds excellent, and so
2 we will not have the response, we'll await your
3 redirect.

4 Ms. Shifley, have you concluded your
5 cross-examination of this panel?

6 MS. SHIFLEY: Yes, I have, Your Honor, thank
7 you.

8 JUDGE CLARK: And the Commissioners, do you
9 have any additional questions for this panel?

10 CHAIRMAN GOLTZ: Can I ask Mr. Weinman one
11 more question?

12 JUDGE CLARK: Of course.

13

14 Whereupon,

15 DANIEL MCCARTHY, TIMOTHY J. MCCALLION, WILLIAM H.

16 WEINMAN, AND ROBERT T. WILLIAMSON,

17 having been previously duly sworn, were called as

18 witnesses herein and were examined and testified as

19 follows:

20

21 E X A M I N A T I O N

22 BY CHAIRMAN GOLTZ:

23 Q. Mr. Weinman, yesterday I inquired of the

24 company witnesses about the condition in the settlement

25 agreement whereby if there were extra regulatory

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1 conditions placed on the approval of the transaction
2 through a stock transfer mechanism, the burden of that
3 would fall on Frontier; do you recall that?

4 A. (Weinman) Yes.

5 Q. My question is, and you may not know the
6 answer to this, and that's fine if you don't, but in
7 Staff's consideration of suggesting conditions on this
8 transaction or on approval of this transaction, did that
9 provision limit you in any way? That is to say, if that
10 provision had not been in the settlement agreement,
11 might Staff have suggested some additional conditions?
12 The reason I say that is there's been some concern I
13 gather about sort of the financial viability of Frontier
14 in this as the successor here, and basically my question
15 placed another way is would that concern and the
16 knowledge that any new conditions which the financial
17 consequences would be born by Frontier influence your
18 view, your decision making?

19 A. (Weinman) Well, it certainly was a factor,
20 but I believe that at least from my recollection of the
21 process as we went through it, our biggest concern was
22 having a third party verify the IT systems. And since
23 Verizon -- that cost won't be passed along to Frontier,
24 and other than that my answer is no. There was nothing
25 else that I'm aware of that came up in discussions

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1 within our team that caused us to say we might like this
2 but the contract prohibits that.

3 CHAIRMAN GOLTZ: Okay, thank you.

4 JUDGE CLARK: All right, thank you.

5 I'm going to turn first to Mr. Romano to see
6 if you have any redirect for your witness.

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

8

9 R E D I R E C T E X A M I N A T I O N

10 BY MR. ROMANO:

11 Q. Mr. McCallion, do you have any reaction to
12 the discussion yesterday about Frontier being better
13 suited to serve Washington than Verizon?

14 A. (McCallion) Well, Frontier is an excellent
15 company. They've been in the business many years,
16 they've had a number of acquisitions, and we think
17 they're just an excellent operator of telephone lines.
18 However, I don't want that to diminish from the fact
19 that Verizon has provided very good service to its
20 customers, as the Commission can see from the service
21 results that we report to the Commission. We've
22 continued to invest in our network over the years in
23 addition to, for example, in making a very significant
24 investment in fiber to the premise. And the numbers are
25 confidential, but it's in the hundreds of millions of

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1 dollars of investment that we've done just for FiOS for
2 our customers. In addition to that, we've maintained
3 our core network on a very good basis as the service
4 quality results show.

5 Q. There was also a question about the relative
6 size of the Washington territory with respect to Verizon
7 and Frontier. Were you able to look into what the
8 relative percentages were?

9 A. (McCallion) Yes, I looked at those numbers,
10 and as we sit here today Washington switched access
11 lines compared to Verizon total switched access lines
12 are about 1.5%. I performed a similar calculation for
13 what that percentage would be in the new Frontier, and I
14 came up with 8.2%.

15 Q. There was also a discussion about the role of
16 the third party reviewer. Do you have any response to
17 the discussion about whether the third party reviewer
18 will validate the results during production, which is
19 the Paragraph 28 in the Staff settlement?

20 A. (McCallion) Well, the answer is yes, but let
21 me give you some context. You know, throughout the
22 process Verizon's had a very significant interest in the
23 replication process going smoothly and the systems
24 functioning as they're designed to function, because
25 we're going to be using those replicated systems for a

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1 minimum of 60 days to provide service to our customers.
2 In addition to that, Frontier has very much the same and
3 even a greater interest in the success of the
4 replication of the systems. They're going to have the
5 opportunity to validate that the systems are working
6 properly, and then they're going to be running the
7 business using those systems. So we felt there was a
8 very strong interest on the part of both companies.

9 The Staff, however, wanted additional
10 assurances beyond the Verizon and the Frontier
11 assurances that they would be very diligent in ensuring
12 the systems are working properly, so that led to not
13 only Paragraph 27 in the settlement agreement but also
14 to Paragraph 28 in the settlement agreement. And as
15 Mr. Weinman has testified, they were very interested in
16 having the third party reviewer. In addition to that,
17 they wanted some measures that they could look at as a
18 qualitative measure to ensure not only were we saying it
19 was working fine, that the third party reviewer was
20 validating the results, but that they could see an
21 impact on customers, and hence we came up with the four
22 standards that are in Paragraph 28.

23 MR. ROMANO: Thank you, Your Honor, that's
24 all the redirect I have.

25 JUDGE CLARK: Mr. Saville.

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1 MR. SAVILLE: Thank you, Your Honor.

2 Good morning, Commissioners.

3

4 R E D I R E C T E X A M I N A T I O N

5 BY MR. SAVILLE:

6 Q. Mr. McCarthy, yesterday Ms. Shifley asked
7 some questions with respect to Frontier preparing a
8 budget for the Washington operations that are currently
9 controlled by Verizon. Do you recall those questions?

10 A. (McCarthy) Yes, I do.

11 Q. And can you explain to the Commissioners
12 where Frontier is in the process of developing the
13 budget for the state of Washington?

14 A. (McCarthy) Certainly. When we talk about
15 putting a budget together, it's a far more detailed
16 exercise than just saying this is the amount of money
17 that we're going to spend in a period. It means
18 building by line item by project all the different
19 things that we'll be putting into a budget in any single
20 year. So when we responded that we don't have that
21 built, it's because we simply don't own the property at
22 this point, and that exercise would happen in the fixed
23 assets and the operational support systems of the
24 acquired property in Washington.

25 What I can tell the Commission is that at

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1 this point our view is that in the first stub year
2 assuming that we close mid year this year would be about
3 a \$30 Million CapX plan. It would also be about \$55
4 Million to \$60 Million in the next 2 years. You already
5 have heard that we think it's about \$40 Million for the
6 broadband, so that would be on top of those CapX
7 figures. And then obviously we would be finishing our
8 FiOS commitment.

9 Q. Thank you.

10 During Ms. Shifley's questions yesterday
11 there was also reference to the fact that as a part of
12 this transaction Frontier will be financing debt for
13 part of the transaction and that the terms and covenants
14 associated with that financing have not been identified.
15 Can you again explain where Frontier is in the process
16 as far as the financing?

17 A. (McCarthy) Certainly. First of all, I would
18 just like to say Mr. Whitehouse, our Senior Vice
19 President and Treasurer, is here to give detailed
20 testimony and answer any specific questions you have on
21 that, but from a general perspective, we've said
22 publicly that we are looking to go into the market and
23 raise the debt really in the first, end of the first
24 quarter, early second quarter. There's a very specific
25 window that the information from the SEC perspective

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1 would be fresh from both organizations that would allow
2 us to do that. And so we feel very good about being in
3 the market in that time frame. We think looking at an
4 indication of a recent offering that we just did in
5 conjunction with a debt tender gives you a very good
6 feel for what the interest rates potentially would be
7 and the covenants would be. And we're at 8 3/8 as far
8 as the interest rate, effective interest rate, and the
9 covenants were virtually the same or identical to our
10 current covenants, which are not very restrictive at all
11 with only a simple leverage ratio covenant. At this
12 point we think that there's very strong demand, as
13 Mr. Whitehouse will give you a lot more information on
14 as he's on the stand, and we don't anticipate there
15 being any problem going to market for that debt.

16 Q. Ms. Shifley also asked a series of questions
17 regarding the analysis and projections Frontier's put
18 together with respect to post closing and assumptions
19 based on no synergies being recognized by Frontier as a
20 result of this transaction. Can you comment on the
21 assumption that Frontier will not achieve any synergies
22 as a result of this transaction?

23 A. (McCarthy) Yes. We believe that's very
24 unlikely at this point. We did plan on achieving those
25 synergies over a three year period, but obviously we

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1 expect to achieve some synergies immediately upon close
2 associated with the elimination of any allocated
3 overhead costs from Verizon. So immediately we would
4 achieve those synergies, and then as we move forward
5 with the integration we would achieve the rest of the
6 synergies, and we're still very confident in the \$500
7 Million.

8 Q. And if Frontier was unable to achieve the
9 synergies that are projected, does that cause you as the
10 Chief Operating Officer any concerns about Frontier's
11 future viability?

12 A. (McCarthy) No, it doesn't. Obviously
13 Mr. Whitehouse is here to answer detailed questions on
14 the financial model as well as our pro formas going
15 forward, but from my perspective as the Chief Operating
16 Officer, it does not. I think it still delevers us
17 significantly from where we are today and provisions us
18 with a ratio and our dividend to be comparable to some
19 of the stronger players in the ILEC industry today.

20 Q. Mr. McCarthy, there were several questions
21 both by Ms. Shifley and then the Commissioners regarding
22 the specific settlement agreement that Frontier and
23 Verizon have entered into with Staff. Do you have that
24 document in front of you?

25 A. (McCarthy) I do.

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1 Q. Okay. I want to ask you about some of the
2 specific conditions included in that settlement just as
3 follow up. condition 29, if you could turn to that.
4 There were questions about Frontier's plan to transition
5 from the Verizon replicated OSS systems that are coming
6 over as part of this transaction to Frontier's own
7 systems. Can you discuss what the status of Frontier's
8 plans are with respect to ultimately transitioning the
9 Frontier systems?

10 A. (McCarthy) Certainly. When we've
11 represented that there's no plans at this point to
12 change, there really are no plans to change off the OSS.
13 I think that it does offer an opportunity for us to
14 achieve some additional synergies, but at this point
15 we're going to take control of those systems and operate
16 those systems for the minimum time frames that we have
17 agreed to, and we may determine that those systems are
18 actually the systems we would like to retain and use in
19 these properties for the long run. There is
20 opportunities in our commercial arrangement with Verizon
21 for us to reduce the software maintenance fees in
22 different ways, and we may explore that, but at some
23 point in time we would expect to move to our own fully
24 functioning OSS system, one that we're currently cutting
25 all of West Virginia over to, and we're not anticipating

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1 any problems. We've actually over the last four or five
2 years migrated all of our billing systems where we used
3 to have three or four different billing systems for
4 different components of the company onto a single
5 platform. We've invested heavily in making sure that
6 it's scalable and provides the functionality that would
7 be necessary. And at some point in time we would look
8 to do that, but at this point we're going to take the
9 systems as they are, and we're going to operate them and
10 evaluate whether or not it's the right solution for the
11 long run.

12 Q. In terms of condition 29, if and when
13 Frontier makes that decision to migrate over to its own
14 systems, Frontier is committed to working with the Staff
15 as far as the implementation of that conversion?

16 A. (McCarthy) Absolutely.

17 Q. If I could get you to look at condition 18.
18 Yesterday Ms. Shifley identified some pricing and some
19 speeds associated with stand-alone DSL service that is
20 currently being provided by Verizon and Frontier. Do
21 you recall that?

22 A. (McCarthy) Yes.

23 Q. And you understand that this condition 18,
24 Frontier is making the commitment to continue to offer
25 stand-alone DSL for a minimum of 12 months?

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1 A. (McCarthy) Correct.

2 Q. And can you comment on Frontier's plans as
3 far as discontinuing stand-alone DSL at the expiration
4 of this 12 month period?

5 A. (McCarthy) Frontier has no plans to
6 discontinue stand-alone DSL. We have found in our
7 markets today that it's a product that customers do
8 want, certain segments of the customer base. And I
9 would just point out that in our legacy markets, we sell
10 really 2 what I would categorize as flavors of
11 stand-alone DSL. One is a max DSL which could be
12 whatever the max speed is available on the market. That
13 could be in certain areas 1 1/2 megabits. It could be
14 up to 9 or 10 megabits or 12 megabits depending upon the
15 market that you're in. We also do offer a light
16 version, but the light product that was referenced
17 yesterday was a product that we created purely because
18 consumers were looking for a scaled down low end version
19 of high speed. It's not purely a stand-alone product.
20 We offer it for any customers who want it in a bundle as
21 well. The feedback that I've gotten from customers
22 around that product is it's someone who's generally
23 looking for basic Internet access, maybe to check
24 E-mails and do basic web surfing, and we found that
25 there was a pretty good demand for that product in our

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1 area.

2 Q. Mr. McCarthy, if I could get you to turn to
3 condition 26. In this condition Frontier has agreed to
4 continue to offer and provide bundled services offered
5 by Verizon Northwest for 12 months following the close
6 of the transaction. Can you comment on whether Frontier
7 has any plans to discontinue these bundled service
8 offerings by Verizon Northwest after the expiration of
9 the 12 month period?

10 A. (McCarthy) We have no plans to discontinue
11 the bundles whatsoever. We may introduce new products,
12 new features, new bundles, but we would not be looking
13 to eliminate the current bundles.

14 Q. Yesterday I believe it was Commissioner Oshie
15 that had some questions about condition number 13 and
16 specifically the mechanics associated with the
17 establishment of the \$40 Million in an account or an
18 escrow fund. Do you recall those questions?

19 A. (McCarthy) I do.

20 Q. Could you I guess explain from your
21 perspective what Frontier envisions as far as the
22 process and how the establishment of this \$40 Million
23 fund would be set up?

24 A. (McCarthy) Certainly. Frontier really had
25 wanted to be open to whichever way the Commission

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1 thought was the correct way to set up that \$40 Million
2 funds, but from our side we had thought of the escrow as
3 probably the single cleanest mechanism. And when we
4 looked at the escrow, I think your points were exactly
5 on point, and that was that it would be set up as an
6 irrevocable escrow account where we would set up the
7 instructions with a third party escrow agent to only
8 allow the disbursement back to Frontier based upon a
9 written instruction from the Commission that it was
10 satisfied that we had met the requirements of the
11 broadband buildout for that period.

12 Q. And under the terms of this condition,
13 Frontier would absorb all the costs associated with
14 establishing that account or paying an escrow agent to
15 monitor the funds?

16 A. (McCarthy) Yes, we would absolutely do that,
17 and we anticipate that we would set that escrow account
18 up out of cash on hand at closing.

19 Q. Mr. McCarthy, if I could get you to turn to
20 condition 19, which is under the heading retail service
21 quality. I apologize, the next condition, condition 20.
22 Are you there?

23 A. (McCarthy) Yes, I am.

24 Q. There was some discussion and questions
25 yesterday by Commissioners regarding the service quality

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1 credits that are contemplated in this condition 20. Do
2 you recall those questions?

3 A. (McCarthy) I do.

4 Q. And can you explain your understanding as far
5 as the potential service quality credits that Frontier
6 would be exposed to under this condition 20 if it failed
7 to meet particular conditions one time or over a series
8 of multiple periods?

9 A. (McCarthy) Certainly. My understanding is
10 it was certainly absolutely correct that it was \$600,000
11 in that first year. But as you look at the second year
12 and the third year, there's an acceleration and the
13 incentive for us to ensure that we're in compliance. So
14 the second year penalty would be \$1.2 Million, and the
15 third year penalty would be \$1.8 Million potentially, so
16 in total at risk of \$3.6 Million.

17 Q. So in other words if Frontier failed to
18 achieve compliance with the standards that are
19 identified in condition 20 and those problems persisted
20 over the three year term that Frontier first operated
21 these properties, would it in that final year be subject
22 to a penalty of or customer credits of \$1.8 Million?

23 A. (McCarthy) Correct.

24 Q. Okay. And so the 3.6 you were referencing
25 would be \$600,000 the first year potentially, \$1.2

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1 Million the second year, and then \$1.8 Million the third
2 year, so in aggregate it would be \$3.6 Million over the
3 three year term?

4 A. (McCarthy) Correct.

5 Q. And can you comment on this service quality
6 plan and, you know, whether or not Frontier has any
7 concerns about being able to maintain high quality
8 service after this transaction closes?

9 A. (McCarthy) We don't have any concerns.
10 We've looked at Washington has been one of the best
11 performers of the properties that we've seen in the
12 Verizon portfolio, and we're confident that we'll be
13 able to meet those metrics.

14 Q. Condition 17, Mr. McCarthy, if I could get
15 you to look at that. This condition 17 indicates that
16 Frontier Northwest will submit an initial plan for
17 broadband deployment and consult with the Commission
18 Staff regarding the specifics of that deployment plan;
19 is that correct?

20 A. (McCarthy) That is correct.

21 Q. And as this is drafted, it only contemplates
22 that Frontier would consult with the Commission Staff.
23 Does Frontier have any concerns about also providing
24 this plan and consulting with Public Counsel with
25 respect to Frontier's plans to deploy broadband?

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1 A. (McCarthy) We have absolutely no problem
2 consulting with Public Counsel. We have agreed to do
3 that in other states, and we would be happy to welcome
4 their input in the right places for us to move forward
5 as quickly as possible on broadband.

6 Q. And, Mr. McCarthy, this is my last question,
7 Mr. McCallion did touch on this, but I just would like
8 you to confirm it in response to Chairman Goltz's
9 question yesterday. Chairman Goltz had asked us to
10 identify from Frontier's perspective Washington's size
11 relative to Frontier on a total basis, have you
12 completed that analysis?

13 A. (McCarthy) Yes. It would be as
14 Mr. McCallion represented, 8.2%.

15 MR. SAVILLE: Thank you, I have no further
16 questions.

17 JUDGE CLARK: Thank you.

18 Mr. Thompson.

19 MR. THOMPSON: Thank you.

20

21 R E D I R E C T E X A M I N A T I O N

22 BY MR. THOMPSON:

23 Q. Mr. Weinman, Ms. Shifley yesterday asked you
24 if Staff had done any analysis of Frontier's pro forma
25 results of operations if it were to experience line loss

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1 at various levels going forward into the future, and you
2 indicated that Staff had done some analysis, and then
3 that resulted in a records requisition. Would you like
4 to amend your answer to that question?

5 A. (Weinman) Yes, I would. I think yesterday I
6 used the phrase done on the back of an envelope. We
7 looked at the data that we were going to provide to
8 Public Counsel, and it had a significant error in the
9 logic. We put new stuff together at the last minute
10 trying to get ready for cross. And so I guess because
11 of the error, I would change my answer to no, we really
12 haven't done any calculation with reliable data on line
13 loss.

14 Q. Ms. Shifley also asked you about Frontier's
15 double B bond rating and whether a company with a double
16 B bond rating has a greater risk of default than a
17 company with an investment grade rating. What's your
18 opinion about the probability of default by Frontier if
19 the transaction is consummated?

20 A. (Weinman) I think the probability of that
21 happening is low. If you look at the telephone industry
22 in general, there are only three companies, AT&T,
23 Verizon, and CenturyLink, that have investment grade
24 bonds. The transaction substantially improves
25 Frontier's balance sheet in terms of debt and equity.

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1 Two rating agencies, Moody's and Fitch, have put them on
2 watch for upgrades, and so it appears that -- extremely
3 low. Staff has put in the provision in the AFOR that
4 when we're looking at results of operations, the cost of
5 capital, cost of debt, will be considered investment
6 grade. So the customers really shouldn't see any effect
7 in the short term while we go through that first period
8 of results of operations and cost of money with
9 Frontier.

10 Q. Another question that Ms. Shifley asked you
11 about was whether the various bill credits provided for
12 in condition 20 of the service quality program were,
13 well, there was a discussion about whether those were
14 sufficient to give the company an incentive to meet
15 service quality standards, and Mr. McCarthy actually
16 just addressed the amount that's at stake there, but is
17 there -- are there also existing Commission rules that
18 would apply as well?

19 A. (Weinman) Yes, the Commission does have
20 service quality rules, and I agree with Mr. McCarthy
21 with the escalating the total amount. Those to my
22 knowledge weren't around when Qwest got in trouble, but
23 -- and also the Department of Defense has kind of beat
24 this up. If there will be an issue with any billing,
25 then Frontier has agreed to go forward and resolve the

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1 issue and budget for whatever need to make the system
2 fix or whatever is my understanding.

3 Q. Similarly Commissioner Oshie I believe asked
4 you what was the difference between when Qwest was put
5 under its service quality program and Frontier in this
6 case. Do you have anything you would like to add to
7 your answer on that?

8 A. (Weinman) Yes, I would. At the time Qwest
9 was suffering from poor quality of service, we did not
10 have service quality rules. And by -- in comparison,
11 Verizon's service quality has been very good, very low
12 trouble indexes, and there's no reason to believe that
13 Frontier won't continue on with maintaining that type of
14 performance. There has been some issues with the FCC
15 ARMIS data of high trouble reports, and I think Billy --
16 witness Mr. Gregg has addressed that for Frontier. The
17 other thing that we did early on in this process is we
18 contacted other commissions on Frontier's service
19 quality, specifically Minnesota, Oregon, New York,
20 Missouri, and Wisconsin, and the staff people that we
21 talked to gave good -- a good report that Frontier does
22 have good quality of service and that they haven't had
23 any quality of service issues in those states.

24 Q. Chairman Goltz asked you about the -- asked
25 some questions about the magnitude of the Yellow Pages

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1 imputation, is that explained anywhere in Staff
2 testimony?

3 A. (Weinman) Yes, Ms. Russell on page 29 shows
4 that the or testifies that the annual imputation of
5 Yellow Pages revenues would be about \$37.5 Million.
6 That equates to about \$6 per customer.

7 Q. Per month, correct?

8 A. (Weinman) Correct.

9 Q. The \$37.5 Million is an annual figure?

10 A. (Weinman) Yes.

11 Q. Chairman Goltz asked you a question to get
12 into sort of the theoretical question of whether risk
13 equals harm under the Commission's no harm standard.
14 Would you like to, I think you said that risk does equal
15 harm, do you want to explain your answer further?

16 A. (Weinman) Yeah, I believe I misspoke. That
17 was towards the end of the day. Risk is -- needs to be
18 assessed in terms of probabilities. And so if it's --
19 if there's a high probability that the risk will occur,
20 then we should consider that as harm. The risk needs to
21 be analyzed and -- with evidence and not just speculated
22 in terms of the issue. One thing that the risk can be
23 there regardless of the entity that is providing the
24 service. In other words, probably the simplest example
25 for me is one of the risks listed in Frontier's S-4 is

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1 labor contracts. Well, those labor contracts really
2 aren't a risk for Verizon, so it's an example where
3 Frontier discloses it, but it doesn't necessarily shift
4 -- it is really only the one that suffers that portion
5 of the risk. So some of the risks identified are common
6 to both companies.

7 MR. THOMPSON: Thank you very much, that's
8 all I have for redirect.

9 JUDGE CLARK: Thank you.

10 MS. SHIFLEY: Your Honor, based on some of
11 the testimony that we just heard, I may want to require
12 recross, could I have a moment off the record?

13 JUDGE CLARK: Well, I am a little bit
14 concerned about the pace of the hearing, and we're way
15 behind schedule, and I do understand that Public Counsel
16 is going to be given the opportunity for oral rebuttal.
17 Are these matters that you can handle on oral rebuttal
18 rather than having recross, reexamination by
19 Commissioners, and reredirect?

20 MS. SHIFLEY: I believe that our recross
21 questions would be very brief and just go to one or two
22 matters.

23 JUDGE CLARK: Very brief?

24 MS. SHIFLEY: Yes, I believe so.

25 JUDGE CLARK: All right, I'll allow it.

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1 MS. SHIFLEY: Thank you. I just need one
2 moment.

3 JUDGE CLARK: Ms. Shifley.

4 MS. SHIFLEY: Thank you, Your Honor.

5

6 R E C R O S S - E X A M I N A T I O N

7 BY MS. SHIFLEY:

8 Q. Mr. McCarthy, you were just asked some
9 questions regarding capital spending in Washington and
10 the fact that Frontier has no capital budget, and you
11 gave some dollar amounts for capital spending. In all
12 the responses to our data requests prior to today,
13 Frontier has said that it has no capital budget for
14 Washington and hasn't provided any numbers, and today
15 you did just provide some multimillion dollar CapX
16 spending estimates on the record. Could you please
17 clarify what those numbers were that you stated?

18 A. (McCarthy) Certainly. And I think we have
19 been consistent all along that we do not have the budget
20 developed, and I think I explained that. Are you asking
21 me just to restate what those numbers are?

22 Q. Yes, please.

23 A. (McCarthy) I said that in the first year,
24 assuming that we would close at the end of June that it
25 would be approximately \$30 Million and that in the next

0396

1 two years it would be \$55 Million to \$60 Million and
2 that there would be \$40 Million above that that's
3 involved with the broadband commitment that we've made
4 to the Commission as well as completion of the FiOS
5 buildout.

6 Q. Mr. McCarthy, what data support do you have
7 for these numbers?

8 A. (McCarthy) I'm not sure I understand your
9 question.

10 Q. Do you have any data support showing that
11 this is an appropriate level of funding or backing up
12 these numbers or showing how you calculated these
13 numbers?

14 A. (McCarthy) Certainly. We have been very
15 forthright throughout all of our presentations to the
16 public as well as to the Commission saying that during
17 the first several years we were going to increase
18 capital spending to approximately 12% of revenue as a
19 way of working on the plant that we are taking over, and
20 then the \$40 Million is detailed in our broadband model.

21 Q. So the numbers that you just stated, the \$30
22 Million, \$55 Million and \$60 Million, are just based on
23 a 12% calculation from your expected revenues?

24 A. (McCarthy) Yes, and we would use that to
25 develop the detailed budgets that we would use to

0397

1 operate the properties.

2 Q. So those weren't developed on a Washington
3 specific basis, the numbers that you just stated on the
4 record?

5 A. (McCarthy) That would be 12% of the expected
6 revenues in Washington.

7 MS. SHIFLEY: Thank you, that's all.

8 JUDGE CLARK: All right.

9 Redirect?

10 MR. SAVILLE: No, Your Honor.

11 JUDGE CLARK: All right, thank you.

12 Any further questions for this panel?

13 Commissioner Jones.

14

15 E X A M I N A T I O N

16 BY COMMISSIONER JONES:

17 Q. Just a quick, quick clarifying question.
18 Mr. McCallion, 27(b), is the Verizon paying for the
19 third party reviewer?

20 A. (McCallion) Yes, that's part of the cost of
21 replicating the system, so we are paying for that.

22 Q. And what is your budget estimate of that
23 obligation on Verizon?

24 A. (McCallion) We are now discussing with Staff
25 which firm to select, but it's in the, to give you a

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1 general idea, it's above half a million dollars and
2 could be upwards closer to \$1 Million.

3 Q. Okay.

4 A. (McCallion) But we haven't selected in
5 consultation with the Staff the actual firm that's going
6 to do that.

7 Q. And is that the -- is that the only monetary
8 commitment that you have on closing other than the
9 delivery of -- I mean the OSS on April 1st, the delivery
10 and the testing of the OSS, but is that the primary
11 monetary commitment you have on closing to pay for
12 something?

13 A. (McCallion) Well, the monetary commitment
14 that we have is all of the costs associated with setting
15 up what we refer to as SpinCo as a separate entity. So
16 it would be any real estate costs that might be
17 associated with that, rearrangements of the network that
18 are associated with that, and also the costs of
19 replicating the systems. I know that the numbers are
20 confidential, but it's a very high number in the
21 hundreds of millions of dollars.

22 COMMISSIONER JONES: Thank you.

23 JUDGE CLARK: Anything further?

24 Commissioner Oshie.

25 COMMISSIONER OSHIE: Thank you.

1 E X A M I N A T I O N

2 BY COMMISSIONER OSHIE:

3 Q. I just have a question for Mr. McCarthy, and,
4 you know, I'm -- in your redirect you talked about, you
5 know, synergies and used an explanation of what those --
6 you believe the synergies may be, and you made the
7 comment that at least -- and I don't recall whether you
8 said that the real -- most of the synergies received --
9 and that's what I don't remember quite, the adjective
10 here defined, would be from eliminating the overhead,
11 Verizon's overhead from the -- in the takeover. Is that
12 my understanding, is that what you said?

13 A. (McCarthy) I'm not sure what the transcript
14 would show, Commissioner, but what I was trying to
15 illustrate was that initially at close there is a
16 certain allocation that is from Verizon for their
17 corporate structure, whether it's real estate to operate
18 all the different divisions around the United States,
19 around the world for that matter, and that allocation
20 would be eliminated day one. So that would be a synergy
21 we would see, and we're pretty confident that that will
22 happen immediately at close.

23 Q. Yes, and that's how I really took it. And I
24 guess my question then is, isn't, you know, won't
25 Frontier's allocation to overhead be, you know, isn't

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1 that going to be calculated in its place? In other
2 words, isn't there going to be a cost that is similar?
3 I mean I know it won't be exact, but you're just
4 replacing Verizon's overhead with Verizon's overhead,
5 now is that -- I mean is that the synergy you're talking
6 about?

7 A. (McCarthy) Well, first of all, this is just
8 one of the synergies, and I was using that as an example
9 of day one.

10 Q. No, I understand.

11 A. (McCarthy) But I would say that our overhead
12 levels would be potentially significantly less than
13 Verizon's.

14 Q. Significantly means what? I mean by -- on a
15 percentage basis are you expecting it to be 25% less or
16 -- I mean can you make a calculation, at least a rough
17 calculation?

18 A. (McCarthy) I don't have that figure here
19 with me, I apologize. But when you think about Frontier
20 and you would see -- and I'm certainly not trying to be
21 evasive. We move all of our operations as close to the
22 customer as possible. We have very few people that are
23 in our corporate headquarters for instance. So when you
24 look at our headquarters in Stamford, Connecticut, it's
25 only about 200 people that are actually there compared

0401

1 to potentially an allocation from the Verizon
2 headquarters and everything that they have in running a
3 very, very large corporation today. So I think it's
4 safe to say that we would see some synergies from that
5 as we close the transaction.

6 COMMISSIONER OSHIE: All right, and so you
7 used the term significant, but you don't know what -- I
8 mean I guess I'm -- and you'll see some synergies from
9 that, okay, all right, thank you.

10 JUDGE CLARK: Anything further?

11 Thank you for your testimony, Mr. McCarthy,
12 Mr. McCallion, Mr. Weinman, and Mr. Williamson.

13 We're going to take a moment off record to
14 allow Public Counsel to call their witnesses in oral
15 rebuttal. As everyone will recall, there was a very
16 brief period between the time when the Commission
17 rescheduled the hearing and when this -- when the
18 hearing was originally set. There was insufficient time
19 for the parties to prefile rebuttal testimony regarding
20 the settlements, so oral rebuttal and oral surrebuttal
21 will be strictly limited to the settlement agreements.

22 We're off record.

23 (Recess taken.)

24 JUDGE CLARK: The record should reflect that
25 during the recess we were able to successfully engage a

0402

1 call with Public Counsel, I believe Public Counsel's
2 first witness, so I'm going to call on you, Ms. Shifley,
3 and ask you to call your witness, please.

4 MS. SHIFLEY: Thank you, Your Honor.

5 Good morning, Ms. Alexander, would you please
6 state your name, title, --

7 JUDGE CLARK: Oh, no, no, no. All right, so
8 your next witness is Barbara Alexander.

9 MS. SHIFLEY: Yes, I now call Ms. Barb
10 Alexander.

11 JUDGE CLARK: Thank you, and I'll administer
12 the oath.

13 Ms. Alexander, if you could raise your right
14 hand, please.

15 (Witness BARBARA R. ALEXANDER was sworn.)

16 JUDGE CLARK: Thank you.

17 Ms. Shifley.

18 MS. SHIFLEY: Thank you, Your Honor.

19

20 Whereupon,

21 BARBARA R. ALEXANDER,
22 having been first duly sworn, was called as a witness
23 herein and was examined and testified as follows:

24

25

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1 D I R E C T E X A M I N A T I O N

2 BY MS. SHIFLEY:

3 Q. Good morning, Ms. Alexander, would you please
4 state your name, title, and business address for the
5 record.

6 A. Yes, my name is Barbara Alexander,
7 A-L-E-X-A-N-D-E-R. I use the title of Consumer Affairs
8 Consultant. My business address is 83 Wedgewood Drive,
9 Winthrop, Maine 04364.

10 Q. Thank you. Ms. Alexander, have you
11 previously filed any testimony or exhibits in this
12 proceeding?

13 A. Yes, I did file testimony on behalf of the
14 Public Counsel.

15 Q. And on whose behalf are you testifying today?

16 A. The Public Counsel.

17 Q. Could you please briefly summarize the
18 purpose of your testimony?

19 A. My testimony today is in response to two
20 stipulations that have been filed that are pending
21 before the Commission. The first is between the Joint
22 Applicants and the Department of Defense and Federal
23 Agencies. The second is the stipulation between the
24 Staff and the Joint Applicants.

25 Q. Okay. I'll just begin by asking you whether

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1 you've had a chance to review the recently filed
2 settlement between the Joint Applicants and the
3 Department of Defense?

4 A. Yes.

5 Q. Would you please identify any concerns that
6 you have with the settlement?

7 A. Yes, I will. The provisions of this
8 settlement add some minor improvements to the previously
9 filed stipulation between the Staff and the Joint
10 Applicants. I certainly approve of the notion of
11 quarterly service quality reports, and I certainly
12 understand why a remedial plan might be an appropriate
13 response if there is any indication of failure to meet
14 the standards that are set forth in the previous
15 stipulation that I mentioned between the Staff and the
16 Joint Applicants. However, I do not view these
17 advantages as significant, nor do I believe that they
18 improve what I consider to be significant defects in the
19 stipulation between the Staff and the Joint Applicants.
20 The notion that submitting a plan is a sufficient
21 response to incent the company to actually comply with
22 service quality standards is not in my opinion
23 sufficient. Frontier under this provision would
24 basically have sole control over the development of the
25 plan, the development of its budget to achieve the plan,

0405

1 the time period during which the plan will be operative,
2 and how it will in fact ensure compliance in the future.

3 (Discussion off the record.)

4 A. Taking up where I left off that you just
5 indicated, and sole control over the procedures or steps
6 that it will recommend to achieve the purpose of the
7 plan. In my opinion, this approach is not a
8 particularly useful incentive to the company. If
9 there's an objection to the plan for example, that would
10 have to be handled either informally or formally by the
11 Commission, and by the time any kind of proceeding is
12 completed with regard to the nature of the plan, the
13 sufficiency of the plan, another quarter or more will
14 have passed. Second, under this provision if the
15 remedial plan does not achieve its purpose, the only
16 result is another plan. I do not feel that these
17 provisions are over all likely to provide any
18 significant benefit to the underlying settlement, which
19 in a moment I will describe as deficient in a number of
20 ways.

21 BY MS. SHIFLEY:

22 Q. Thank you, Ms. Alexander.

23 I would now like to ask you a few questions
24 regarding the proposed settlement reached between Staff
25 and the Joint Applicants. First, Staff witness

0406

1 Mr. Weinman stated in his testimony in support of the
2 settlement that the retail service quality provisions of
3 the settlement provide assurance that the local exchange
4 company's basic service quality metrics will not
5 deteriorate following the transaction. Is Mr. Weinman's
6 statement correct in your opinion?

7 A. No, I'm afraid it is not correct. The main
8 reason why it is not correct is that the settlement does
9 not prevent deterioration in performance where that
10 performance by Verizon is already better than the
11 minimum standards in the Commission's regulations. As a
12 result, Frontier's performance could be less than
13 currently delivered by Verizon without any impact on its
14 earnings or financial standing. In my opinion, allowing
15 deterioration of service below what is currently being
16 provided by Verizon to its customers in Washington is a
17 harm to Washington's customers.

18 Q. Ms. Alexander, would you please turn to
19 condition 19 on page 5 of the proposed settlement. Are
20 you there?

21 A. Yes.

22 Q. This condition states that Frontier Northwest
23 will adhere to Verizon's SPG program, Service
24 Performance Guaranty program, with some augmentations.
25 What is your assessment of this condition?

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1 A. I certainly appreciate the fact that this
2 provision will make sure that Frontier will comply with
3 a currently tariffed item in Verizon's tariffs approved
4 by this Commission. But frankly, I do not view that in
5 and of itself as any significant benefit, because as I
6 understood it Frontier had already indicated it would
7 comply with those tariffs. So the only advantages here
8 would fall to the notion of increasing the dollar
9 amounts for the types of customer specific failures that
10 are addressed by the tariff and offering a new dollar
11 amount credit for a new kind of failure that is not
12 otherwise required. So my comments would be directed to
13 those two things.

14 The dollar amounts involved here are very
15 small. While the exact dollar amounts are alleged to be
16 confidential so I will not reveal the exact dollar
17 amounts, they are reflected in the Staff's response to
18 the Public Counsel's Data Request 25, and it shows that
19 the dollar amounts that would have been in effect with
20 the higher dollars, the \$25 to \$35, if that had been in
21 effect more recently, the financial impact on the
22 company is minuscule in my opinion. The flat rate
23 dollar amount, \$5, if someone suffers an out of service
24 condition greater than 2 days is also quite small in
25 terms of the actual impact on the customer and the

0408

1 overall impact on the company. The Commission's
2 regulations already require customers to be -- already
3 requires that trouble reports be repaired within 48
4 hours. In many other states the dollar amount is keyed
5 to the length of the outage, and that is not handled
6 properly in this stipulation in my opinion since a
7 customer who's off for 4 days gets \$5 and a customer
8 who's off for 2 days and 20 minutes gets \$5.

9 But it's important to understand that I don't
10 object to the notion of customer credits for individual
11 customer failures. I think it's an appropriate adjunct
12 to a well-rounded service quality plan, but my point
13 here is that the dollar amounts in question are unlikely
14 to have any significant incentive on Frontier to prevent
15 any increase in the incidences that are covered by this
16 credit mechanism. In other words, the companies can pay
17 to have poor service quality under this approach in a
18 significantly increased level without suffering any
19 financial consequences.

20 Q. Thank you.

21 Turning now to the proposed condition number
22 20, which appears on page 6 of the proposed settlement,
23 are you there?

24 A. Yes.

25 Q. This condition creates six new service

0409

1 quality metrics in place for three years and with self
2 executing credits or penalties. What is your
3 recommendation regarding the first and second metrics?

4 A. Well, let me say first that this provision
5 overall is an attempt to try to establish a service
6 quality index of the kind that I recommended and that
7 the Staff recommended in our direct testimony, and I
8 appreciate the effort to do that. I think the idea of
9 doing that is in fact appropriate, but my concerns with
10 this overall approach are the standards that are being
11 established here and the dollar amounts that are
12 attached to the failure to meet the standards. So going
13 to the six standards, the first two I certainly endorse,
14 and I think it's important to have a standard similar to
15 the one that is being proposed here. I don't object to
16 those proposed performance standards.

17 Q. Ms. Alexander, what is your recommendation
18 regarding the remaining metrics in the proposed
19 condition 20?

20 A. The four standards remaining here are already
21 in place. They are the minimum performance standards
22 that are in effect in Washington. Obviously Frontier
23 must comply with those standards. But they are, as I
24 pointed out in my testimony, I believe they are
25 insufficient because in some of these areas Verizon

0410

1 provides a higher level of performance, a better level
2 of performance than the minimum standards. I believe
3 that more -- a higher level should be locked in to
4 prevent harm to customers as a result of the new owner
5 of this telephone system being approved. I would also
6 point out that the company promised in its application
7 that it would improve performance of service quality,
8 and I take that as an enforceable matter that the
9 Commission should also take into account when
10 establishing the proper performance standards. So this
11 I think is one of the two fatal defects in this
12 provision, that is it would allow deterioration in
13 actual performance. And I would point to the call
14 center performance in 2009 by Verizon and the trouble
15 report rate by Verizon, both of which are better than
16 the minimum standards today.

17 Q. Ms. Alexander, do you have any concerns about
18 how long these service quality provisions in condition
19 19 and 20 will remain in effect under the proposed
20 settlement?

21 A. Before I turn to that, and I apologize, I
22 actually didn't finish my prior discussion of the second
23 fatal defect in this provision. The first was the
24 standards themselves, but the second and perhaps more
25 importantly than even the first is the lack of adequate

0411

1 financial incentives attached to meeting these
2 standards. The total dollar amount involved here in the
3 first year even if all six metrics are not met is a
4 maximum of \$600,000, which is to be blunt a drop in the
5 bucket. If they miss all these standards for two out of
6 three years, the total is \$1.2 Million. If they miss
7 them all for three years, the total is \$1.8 Million.
8 These are minor amounts when considering Frontier's
9 acquisition of Verizon's revenues and services in
10 Washington. I had proposed in my direct testimony \$9.5
11 Million maximum penalty incentive in the form of credits
12 that would go to all customers for systemic service
13 quality performance degradation. The Staff had proposed
14 \$5 Million. So the gulf between what even the Staff
15 recommended and what is reflected in the stipulation is
16 in my opinion enormous and indefensible. I do not
17 believe these dollar amounts will have any significant
18 impact on the company or its shareholders in obtaining
19 -- in setting out the proper incentives to prevent
20 deterioration.

21 So next question had to do with the length of
22 time that these conditions are in effect; is that
23 correct?

24 Q. Yes, that's correct. I asked you if you had
25 any concerns about how long the provisions in 19 and 20

0412

1 will be in effect under the settlement?

2 A. Yes. For reasons that are not explained in
3 the settlement itself, condition 19 concerning the
4 customer credits, individual customer credits, Frontier
5 has the right to move to eliminate these, this feature
6 after 24 months. It is not clear to me and I would
7 object to the notion of giving Frontier the ability to
8 eliminate the additional dollars that it has agreed to
9 here after 2 years. There are no criteria in the
10 settlement that would govern that decision.

11 Second and just as important is that the
12 standards and the penalties in condition 20 are only in
13 effect for 3 years. There is no criteria -- there is no
14 basis for explaining why after 3 years we would not care
15 about this. And the reason why I think it's very
16 important to extend this provision is that we do not
17 know when Frontier will take these replicated systems
18 and move all of the data into its own legacy systems
19 that it uses in all the other states in which it
20 operates. They refused in this proceeding to tell us
21 when they might do that. It is that transfer which in
22 my opinion carries risks that need to be addressed in
23 the Commission's order.

24 Q. Thank you.

25 Would you now please turn to condition 28 on

0413

1 page 8 of the proposed settlement, which concerns
2 replication of Verizon's operations support systems.

3 A. Yes.

4 Q. Would you please describe any concerns you
5 may have with the retail service quality criteria set
6 forth in this condition?

7 A. Yes. I am very concerned with this
8 provision, although I agree with what I believe the
9 intent was, which is to try to create a mechanism to
10 ensure that at the point at which Frontier is going to
11 start using the replicated systems and the transaction
12 is "closed" that there is some basis for determining
13 whether in fact the use of the replicated systems is
14 delivering just as high of service quality and customer
15 service performance as they were the day before the
16 replicated systems were put into effect. So certainly I
17 understand the intent, and I certainly agree with trying
18 to create a mechanism to address that issue.

19 But the conflict is the lack of specificity
20 and the lack of detail about how this oversight will
21 work is of concern to me and I suggest should be to the
22 Commission. The notion that you will be given data
23 about 60 days worth of performance on 4 metrics only and
24 have a 5 day period within which to make a determination
25 that something called material degradation has or has

0414

1 not occurred is questionable to me. The 5 days is
2 probably too short. The amount of data you're getting
3 is too small a group.

4 The notion that material degradation can be
5 defined -- is not defined in this settlement is of
6 significant concern. I think there's the potential for
7 disputes, for lack of clear direction, and there is
8 nothing here that describes what the Staff would do in
9 this very short time period if it had concerns or
10 questions and how it would proceed and what rights they
11 would have to get things fixed or halt the transfer or
12 whatever. So all of those things are of concern and
13 legitimately call into question the value of what is
14 laid out here.

15 Finally, I think it's very important to note
16 the term billing error is not defined. In my 20 year
17 experience with service quality supervision of telephone
18 utilities, it has been extraordinarily difficult to get
19 any basis for capturing something called a billing error
20 out of the telephone utility database, and I will just
21 say that that term is going to be very difficult to nail
22 down. Was the bill produced on time, did the bill
23 contain all the services that the customer ordered, does
24 the bill contain the correct amount for the services
25 that the customer ordered, does the bill contain all the

0415

1 proper disclosures, and it's my experience that
2 customers may not recognize errors for more, you know,
3 it may take more than one billing cycle for those type
4 of errors to be obvious.

5 Q. Thank you, Ms. Alexander.

6 And just in conclusion could you please
7 describe what your overall assessment and recommendation
8 regarding the service quality conditions in the proposed
9 settlement is?

10 A. My overall assessment is that the settlement
11 does not properly respond to the very real needs to
12 identify the risks and create a self-enforcement
13 mechanism to address the risks of service quality
14 deterioration in a transaction of this type.

15 MS. SHIFLEY: Thank you, Ms. Alexander, I
16 have no further questions.

17 JUDGE CLARK: Thank you, Ms. Shifley.

18 We're going to turn now to cross-examination,
19 and is Verizon inquiring first or Frontier?

20 MR. SAVILLE: Your Honor, for Frontier we do
21 not have any cross-examination.

22 JUDGE CLARK: All right.

23 Verizon.

24 MR. ROMANO: Same for Verizon.

25 JUDGE CLARK: Is your microphone on,

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1 Mr. Romano?

2 MR. ROMANO: Verizon does not have any cross
3 either.

4 JUDGE CLARK: Mr. Thompson.

5 MR. THOMPSON: No cross for Staff.

6 JUDGE CLARK: All right.

7 Let's see if there is any Commissioner
8 inquiry for you, Ms. Alexander.

9 Commissioner Jones.

10

11 E X A M I N A T I O N

12 BY COMMISSIONER JONES:

13 Q. Just a clarifying question, Ms. Alexander, on
14 that last point on the definition of billing error in
15 merger commitment number 28, is that defined in the
16 ARMIS data that you used for the other indicia like out
17 of service repairs, and I think the ARMIS database is
18 43-08, correct?

19 A. The ARMIS database does not capture billing
20 errors as I understand it, sir.

21 Q. So how would the Commission Staff verify
22 billing errors, which data?

23 A. That is exactly my concern. I do not know
24 how they would require Frontier to report it, how to
25 track it, and what they would do with it, because there

0417

1 is no historical information against which you would
2 compare the 60 days of data on this that they're going
3 to get.

4 Q. I am looking through your testimony now,
5 BRA-1CT, and I'm trying to find any recommendation that
6 you have in writing on this particular point. Do you
7 have a recommendation for the --

8 JUDGE CLARK: If I may interrupt,
9 Commissioner Jones, this is just Ms. Alexander's oral
10 rebuttal on the settlement, and my understanding is that
11 Public Counsel will be calling her at a later date to
12 offer testimony regarding her prefiled.

13 COMMISSIONER JONES: I see, I'll withdraw
14 that question.

15 JUDGE CLARK: Sorry for the interruption.

16 COMMISSIONER JONES: I'm done.

17 JUDGE CLARK: Commissioner Oshie, do you have
18 any inquiry for Ms. Alexander regarding the settlement,
19 her position regarding the settlement?

20 COMMISSIONER OSHIE: Now I'm not sure if I
21 should ask her during when she -- because really she
22 made a statement in her response to Ms. Shifley, and it
23 was just a clarification, but it really does -- it's
24 germane to her testimony, so I can hold it, it's not
25 that big a deal.

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1 JUDGE CLARK: All right, thank you,
2 Commissioner Oshie, and I apologize for creating more
3 confusion rather than eliminating some.

4 Chairman Goltz.

5 CHAIRMAN GOLTZ: Yeah, I have one question
6 about the settlement, I believe it is anyway.

7

8 E X A M I N A T I O N

9 BY CHAIRMAN GOLTZ:

10 Q. And that's, Ms. Alexander, have you been
11 either involved or tracking the resolutions in other
12 states with regard to these issues between various
13 commissions and Frontier and Verizon?

14 A. I do not have an up-to-date database on that.
15 I have looked at a couple decisions that have been
16 reached that Public Counsel has passed along to me in
17 the context of this case, and I particularly took a look
18 at the Illinois situation. I know that it is not yet
19 approved by the commission, but I read Mr. McCarthy's
20 testimony and his agreements on service quality in
21 Illinois, and that one I guess I know more about than
22 the others.

23 Q. Well, let me ask you just with what you know,
24 are the, and maybe just the Illinois decision if that's
25 what we're talking about, is the -- are the -- have you

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1 had a chance to review the service quality provisions in
2 that decision?

3 A. I've looked at the service quality issues
4 that are pending there.

5 Q. Okay.

6 A. And I've looked at what Mr. McCarthy has
7 pledged to comply with in Illinois, yes.

8 Q. Okay. Then my question is in that provision,
9 if we were to look at that, would we find a list of
10 agreements on service quality that would be more
11 stringent than what are in the Paragraphs 19 and 20 of
12 this stipulation?

13 A. That would be -- in Illinois it is just
14 different, and there are some things about the Illinois
15 decision that are better, and I use that word
16 quote/unquote, than this stipulation. First of all, in
17 Illinois the staff and the company have agreed that the
18 company will comply with actual more recent performance
19 that is better than the existing minimum Illinois
20 service quality standards. As far as the dollar amounts
21 are concerned, the approach in Illinois is to prohibit
22 the company in Illinois from paying dividends to its
23 parent if there are service quality failures. I do not
24 know the value of that compared to the dollar amounts in
25 this provision, but my impression is that those dollars

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1 would be greater than the dollar amounts involved in
2 this stipulation.

3 CHAIRMAN GOLTZ: Thank you, that's all I
4 have.

5 JUDGE CLARK: Thank you, Ms. Alexander. Just
6 a moment, Ms. Shifley, do you have any redirect for this
7 witness?

8 MS. SHIFLEY: No, I do not, Your Honor.

9 JUDGE CLARK: Thank you for your testimony,
10 Ms. Alexander. This line is going to remain open, and
11 you're going to be the only caller on it, so you're
12 welcome to listen in to the remaining oral rebuttal and
13 surrebuttal. Again, don't place your phone on hold or
14 we will have music in the hearing room and I'll have to
15 disconnect this line as well.

16 THE WITNESS: I certainly understand that
17 problem.

18 Did you announce earlier any plans for the
19 next stage of this proceeding?

20 JUDGE CLARK: No, I did not. We are,
21 however, significantly behind schedule. I had
22 anticipated that we would be much further along than
23 oral rebuttal by this time if we are going to finish on
24 Thursday, which is highly unlikely at this juncture.

25 All right, Ms. Shifley, would you like to

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1 call your next witness in oral rebuttal.

2 MS. SHIFLEY: Yes, Your Honor, I would like
3 to now call Mr. Stephen Hill.

4 JUDGE CLARK: Thank you.

5 Raise your right hand, please.

6 (Witness STEPHEN G. HILL was sworn.)

7 JUDGE CLARK: Thank you, please be seated.

8 Ms. Shifley.

9 MS. SHIFLEY: Thank you, Your Honor.

10

11 Whereupon,

12 STEPHEN G. HILL,

13 having been first duly sworn, was called as a witness

14 herein and was examined and testified as follows:

15

16 D I R E C T E X A M I N A T I O N

17 BY MS. SHIFLEY:

18 Q. Good morning, Mr. Hill.

19 A. Good morning.

20 Q. Could you please state your name, title, and
21 business address for the record.

22 A. My name is Stephen G. Hill, I'm Principal of
23 Hill Associates, a consulting firm that addresses

24 financial issues in regulatory proceedings. My address

25 is P.O. Box 587, Hurricane, West Virginia, the

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1 telecommunications consulting capital of the Eastern
2 U.S.

3 Q. Mr. Hill, have you previously filed any
4 testimony or exhibits in this proceeding?

5 A. Yes, I filed direct testimony on November the
6 3rd I believe that addressed financial aspects of this
7 transaction, and I recommended that the Commission
8 reject this deal.

9 Q. On whose behalf are you testifying today?

10 A. Public Counsel.

11 Q. Could you please briefly summarize the
12 purpose of your testimony today?

13 A. Yes. My testimony today at this time is
14 going to address the financial conditions out of the
15 settlement conditions 1 through 12 as well as the
16 Staff's rationale for deciding to settle. I believe
17 that's important to discuss. My conclusion is that
18 those conditions 1 through 12 do not actually protect
19 the financial health of the company and that I continue
20 to recommend that the Commission reject both the
21 settlement and the transaction.

22 Q. Thank you.

23 Commission Staff states in its testimony
24 supporting the settlement that the Joint Applicants have
25 provided necessary assurance regarding the financial

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1 risks in this transaction in their rebuttal testimony.
2 Do you agree with Staff that Verizon and Frontier
3 respond effectively to all the financial concerns raised
4 previously in this proceeding?

5 A. No, I very, very strongly disagree with
6 Staff. I was quite surprised to see that that was
7 Mr. Weinman's testimony. There is significant factual
8 evidence drawn from both the company's publicly
9 available documents filed with the SEC as well as
10 documents that were highly confidential that were
11 presented to the board of directors which will
12 contradict Mr. Weinman's statement that the company's
13 rebuttal answered all his financial questions.

14 Frontier is not a financially strong company.
15 It's a financially weak company. Its earnings have
16 declined year by year from 80 cents per share in 2006 to
17 40 cents a share 2009 while they continue to pay \$1 in
18 dividends. That caused their equity ratio to drop from
19 24 to 8. There's no rebuttal on that issue. The
20 company's rate of access line loss has increased from 4%
21 in '04 to '06 to 5.1% in 07/09. The company has no
22 comment about that. This is a company that had income
23 from continuing operations decline 20% in 2 years. They
24 put their people on mandatory furlough last year. No
25 comment about that in rebuttal. All they say in

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1 rebuttal is we're a Fortune 1,000 company, and we hope
2 that we have a triple B bond rating one day. That's the
3 rebuttal. In my view that doesn't answer those
4 questions.

5 There were questions raised about Verizon's
6 carveout of SpinCo that are not answered. Verizon's
7 response was frankly to get upset that I would say that
8 Verizon was trying to maximize their sale price. Of
9 course, any company, anybody that's selling a house or a
10 car or anything is going to try to get the top dollar
11 for that sale. And if you can within reasonable bounds
12 affect the allocation process in your favor, you will do
13 so. And if you're a corporate president and you don't
14 do that to maximize your profits, then I think you ought
15 to be canned. So it's quite obvious to me that Verizon
16 has an incentive to maximize that sale price and have
17 done so, and the only response by Verizon is frankly to
18 say that I am impugning their integrity by saying that
19 they might allocate that SpinCo property some other way.
20 There's no effective rebuttal on that, and that's an
21 important issue. That allocation determines what the
22 earnings before interest, taxes, depreciation,
23 amortization, EBITDA, is going to be for 2010. That's a
24 launching pad for all the projections. It determines
25 what the debt is going to be in 2010. And that ratio

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1 debt to EBITDA is a big selling point. Well, the debt
2 is, if you examine the balance sheet, it's a negotiated
3 element, it's not allocated, and that description of the
4 debt comes from Mr. Whitehouse in one of his data
5 responses. So the company hasn't responded to that in
6 the rebuttal.

7 Similarly, they haven't responded to the fact
8 that their financial projections are overoptimistic.
9 There are very, very bold assumptions in their financial
10 projections. A 30% reduction in the rate of line loss
11 for SpinCo, a 50% increase in revenue per line for
12 SpinCo. Well, that seems like a very happy scenario.
13 And when questioned about this, questioned whether or
14 not those data had been tested to see if there was a
15 point at which they would become problematic, the
16 company consistently said no, we have done no stress
17 tests. And the only rebuttal that was offered by
18 Frontier was Mr. McCarthy's rebuttal that I made some
19 sort of miscalculation in this data. I made no
20 calculations in these data. These data were taken
21 directly from the board presentations on May the 12th,
22 the day before the transaction was approved. So, you
23 know, I don't know the rationale for Mr. McCarthy's
24 characterization of my testimony, but these are numbers
25 that were taken directly from the board presentations

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1 that I presented to you, which I believe are seriously
2 optimistic and that there could be financial problems if
3 those optimistic projections are not met. The problem
4 is there's no way to test that. The company hasn't done
5 it. In the financial model they provided, you're unable
6 to make those tests. So the Staff's decision to settle
7 because of the company's rebuttal testimony was ill
8 informed in my view.

9 Q. Staff also indicates in its testimony
10 supporting the settlement that its previous concerns
11 regarding the S-4 risk factors have been resolved.
12 Specifically Mr. Weinman states that the SEC requires
13 full disclosure of all risks attendant a merger
14 transaction, inferring that those risks need not be
15 seriously addressed. What is your response to this?

16 A. Well, both Mr. Weinman and I in our testimony
17 originally were concerned about the risk factors. The
18 rebuttal, company's rebuttal, said basically everybody
19 has to publish risk factors, and they're unlikely to
20 occur. There was no, as I saw it, any serious analysis
21 of any primary risk factor that was listed in Frontier's
22 S-4 as rebuttal. Basically the rebuttal was these are
23 not a problem, they're just something we're required to
24 say. And they used the example of AT&T's S-4, and they
25 I believe quoted some of AT&T's S-4. Certainly true the

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1 companies that are going to merge have to file S-4's,
2 and the SEC requires them to disclose to their investors
3 what some probable risks are. And for a financially
4 sound company like AT&T, those risks are probably small.
5 But for a company, a smaller company that's financially
6 weaker than the company it's acquiring which is three
7 times the size, those financial risks that are
8 enumerated can become realized. They are certainly
9 real. I mean one of the risks that Frontier talks about
10 is the risk, the construction risk they face. Verizon
11 is underinvested, and therefore there is serious
12 construction risk that they have to meet. I mean that's
13 certainly not untrue. They've confirmed that time and
14 time again here in testimony. So you can't say that
15 this is a -- risks are to be ignored. They certainly
16 aren't to be ignored. And some companies that report
17 risk don't realize them. Some companies that report
18 risk, for example FairPoint also had an S-4 with risks
19 listed, it ultimately realized those risks, and that can
20 be very bad for rate payers if those risks are
21 ultimately realized.

22 Q. Thank you.

23 There was some discussion of capital budget
24 for Washington, and part of that discussion did tie with
25 the commitment for expenditures tied to broadband that

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1 are in the settlement. Do you have any comments about
2 the discussion of the capital budget for Washington?

3 A. A couple of things in Mr. McCarthy's mention
4 today of money they might spend in Washington. It sort
5 of encapsulates the presentation that I see here is that
6 it's a lot of what we think we can do, what we might do,
7 here are some numbers about what we might do, but
8 they're not -- there's not really any definite plans
9 underneath those numbers. For example, he talked about
10 \$60 Million in the second year, some number like that,
11 and said, no, there's not a capital budget, there's not
12 an actual plan to spend any money here, that's just a
13 number 12% of what we think the revenues are going to
14 be. That's an assumption on an assumption.

15 And I would also note that in the May 1st
16 board of directors meeting, Frontier lowered its
17 estimate of capital spending from 12% on the dollar to
18 10%, so I frankly don't know why Mr. McCarthy was using
19 the 12% number.

20 But he wants to come before you at the 11th
21 hour and say, oh, yeah, we're going to spend money here.
22 They don't have plans, they don't have any plans in
23 place to spend money. They're going to spend money. I
24 mean they'll have to spend money to order to upgrade the
25 infrastructure that they're acquiring, but there's no

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1 definite plan. So for me his comment today about the
2 capital budget sort of encapsulates the problems I'm
3 having with this whole presentation. There's not a lot
4 of factual support. They seem like very nice people,
5 the story is compelling, we want to work here, Verizon
6 doesn't, that's all compelling, but I haven't seen
7 enough factual evidence to convince me that these
8 financial problems that I've raised have been answered.

9 Q. In your direct testimony you propose a number
10 of conditions you believe are necessary to protect
11 Washington customers, and your testimony speaks for
12 itself, but have circumstances changed or evidence been
13 presented in rebuttal or in the settlement to make those
14 conditions less necessary?

15 A. I don't believe so. The conditions that are
16 set out in the settlement agreement, the 12 conditions,
17 are I believe insufficient to protect rate payers from
18 financial consequences. And if you would like me to, I
19 can go through those 12 conditions.

20 Q. Certainly.

21 A. I'm turning now to the settlement agreement,
22 attachment 1, financial conditions, and I'll go through
23 them at a relatively high level. We've already talked
24 about some of them. For example, condition number 1, I
25 see this as a reporting function. The condition is to

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1 monitor the cash flows between Frontier Northwest and
2 Frontier. It's not a bad idea, I don't think it's a bad
3 idea, but I don't think it offers any protection,
4 financial protection, to the rate payers. I mean there
5 are no limits. What's a good ratio, should 90% go to
6 the parent and 10% to the local or 10 and 90 or, you
7 know, vice versa? There are no limits. There's no
8 trigger for action. If the amount going upstairs gets
9 to be X times their construction budget, is that a
10 problem? Where do we begin to be concerned about that?
11 And there -- and also there are no consequences, so we
12 just -- we're just watching the fish swim by and we're
13 not trying to catch anything.

14 The second one is a requirement to file an
15 AFOR. Well, this is not really an onerous condition for
16 a regulated utility. I mean it's in my view I've always
17 thought of AFOR as regulation light basically. I mean
18 and what utility wouldn't want to be less regulated? So
19 this is kind of like asking Brer Rabbit if he wants to
20 go to the briar patch, of course he does. So I don't
21 see that that has really much of anything to do with
22 protecting the company's finances. I would just note if
23 this becomes part of the deal I would hope that the
24 Commission would require a full bore rate case before
25 you get started on any kind of AFOR process down the

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1 road. I mean you got to have a decent starting point.
2 So if you do this, I think you should think about that.

3 Reporting synergy savings, also a good idea.
4 I don't know that it does anything to protect the
5 company financially or the rate payers from financial
6 harm. There's no sharing, there's no consequences
7 again, and there's no trigger for any kind of regulatory
8 action. Also I find the language to be vague. 3(a)
9 introspective activity, what is that? 3(c) impacts on
10 Washington operations, what are those, what are they
11 talking about, monetary? We just don't know, so I think
12 that's a little bit vague.

13 Number 4 seems to me to restate a company
14 commitment they made already, and I would think that
15 would be standard regulatory practice to not allow
16 transaction related costs to be filtered down to rate
17 payers, so I don't think that's much of a commitment.

18 Number 5, as we discussed with Mr. Weinman
19 yesterday, Frontier may not encumber the assets of
20 Frontier Northwest. Utilities don't, telephone
21 utilities don't issue mortgage debt. It's different
22 than an energy utility. The property doesn't last that
23 long, so it's not -- it's not really mortgageable, and
24 it's mostly debentures which are not tied to any assets.
25 So this is what's really being encumbered is the income

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1 stream that's generated by what rate payers pay to the
2 company. So number 5 I don't think makes an impact.

3 Moving on to number 6, which asks the company
4 to file what its actual debt to EBITDA ratio is after
5 the transaction, I think this simply underscores the
6 fact that we don't know what it is now. And, you know,
7 what if it's not 4, what if it's 8, what do we do? Is
8 there anything we can do? It's not listed in here.

9 Number 7 seems to be a reporting function. I
10 don't have any problem with reporting functions. I mean
11 this is affiliated interest, and the Commission already
12 has affiliated interest requirements, seems to fall
13 under that. Doesn't seem much of a give away once again
14 for Frontier, something they would have to comply with
15 anyway already.

16 Number 9, applicants inform the Commission of
17 any changes before the transaction actually occurs.
18 This is good common sense, there's nothing wrong with
19 it. What do you do? What if something, you know, oh,
20 oops, the interest rate's 12%, it's not the 8 1/2%, what
21 do you do? Do you say, okay, we decline, we change our
22 minds? I mean once again there's no response to this.
23 You're really looking at the numbers. They send you a
24 piece of paper and say something changed, our debt cost
25 us 12%, and then what do you do?

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1 Number 10, Frontier Northwest must maintain
2 books to ensure it will continue to report Washington
3 operations to the Commission, this is simply Frontier is
4 required to do what Verizon is now doing, nothing beyond
5 that. We found out yesterday from Mr. McCarthy and
6 McCallion that Verizon Northwest is a corporation. As
7 such, it should have, and does they said on the record,
8 has income statements, balance sheets, and cash flow
9 statements. Those should be part of this reporting.
10 They should report their financial statements. This is
11 not required in here, but if you're going to do this,
12 that's a minimum. It should be done.

13 And that reminds me of one thing I want to go
14 back to. Number 11 is a reporting requirement, the same
15 as number 4, I'm going to save discussion on number 12.

16 I want to go back to number 1. Forgot to say
17 that in the Commission's discussion with Mr. Weinman
18 yesterday about, well, how do you sequester these funds
19 in the state when you're talking about a national
20 company and all this other stuff, and Mr. Weinman's
21 direct testimony you recall said very clearly that you
22 can't ring fence this company, and I completely agree
23 with that, because it's a -- the Washington operations
24 are a division of Verizon/Frontier Northwest. They're
25 not a separate stand-alone company. Seems to me, and I

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1 just thought of this yesterday, it seems to me that as
2 part of this transaction if you want to approve it, you
3 could require them to incorporate in Washington. You
4 could go down to the Secretary of State's office and,
5 you know, a couple thousand bucks they got a company.
6 They would have to allocate capital and allocate, you
7 know, personnel and all this other stuff, but they could
8 incorporate. They could become Frontier Washington, and
9 then you can ring fence. Then with a actual legal
10 entity, then you have more control over the cash flows
11 in and out of the company. And I'm, you know, I'm sorry
12 to drop this on the company at the last minute, but
13 frankly it just occurred to me the other day, yesterday.
14 So that's something to consider.

15 I'm sorry to jump around, going back over to
16 number 12, this is -- I think this is a very good idea.
17 Basically you're tracking -- you want the company to
18 present what is effectively a capital budget for -- it
19 doesn't give a time period, but it says effective
20 remaining life of the host and remote central switches
21 and stuff like that. If you're looking for a
22 replacement plan, what you're looking for basically is
23 the capital budget. You want to know what they intend
24 to spend to get to where they say they're going to get
25 to. This is a good idea. And then they have to report

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1 how they're progressing, and you can combine that with
2 the knowledge of where the money's going to determine if
3 they're actually putting the rubber to the road, if
4 they're actually getting to where they say they want to
5 be at a certain time. So I think once again it's a
6 tracking reporting function that may help the Commission
7 in managing this whole thing. I don't think it really
8 offers any financial safety measures, but I don't think
9 it's a bad idea.

10 Q. Thank you, Mr. Hill.

11 And the conditions in the proposed
12 settlement, are any of those similar to what you
13 proposed?

14 A. Obliquely. We proposed that the company
15 limit its dividends to what its earnings are, and there
16 are some difficulties with that we discussed earlier.
17 But that is not a requirement here, although I think
18 there is an idea in these 12 factors with financial
19 conditions that wants to see that Frontier does what it
20 says it's going to do. I'm a little -- this requirement
21 that they limit their dividends is a little more heavy
22 handed, but basically it goes after the same thing,
23 trying to retain money in this local operation so we can
24 have some local input to the capital needs. That's the
25 idea, which is kind of the same as the 12 conditions,

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1 but it's a different way to get about it.

2 The other thing that's very different is I
3 recommend that Verizon be required to kick in \$70
4 Million into this deal, and in order to do that, that
5 \$70 Million payment would have to be declared to be not
6 a required payment amount, quote/unquote, which is
7 defined in the merger as a regulatory clawback that
8 Frontier ultimately would have to pay for. See, I don't
9 want Frontier to pay for that, I want Verizon to kick
10 that money in. And then I also would like, similar to
11 the condition number 12, like the Commission to monitor
12 the capital expenditures.

13 I'll say one more thing and then I'm done
14 with this, but there's a lot of monitoring going on
15 here, and I don't know if you have anybody on your Staff
16 who is underworked, I doubt it, but that seems to come
17 up in all of these merger cases. The Commission winds
18 up doing an immense amount of monitoring, and I would
19 guess that over the years as personnel changes, that
20 gets less and less acute. So maybe we could think about
21 having the companies fund someone to monitor their
22 actions rather than putting that burden on the
23 Commission.

24 Q. Mr. Hill, in sum, what is your recommendation
25 to this Commission as to the proposed settlement?

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1 A. I recommend the Commission reject the
2 settlement. I think there are too many unanswered
3 questions with regard to the financial issues in this
4 transaction for the Commission to accept a settlement.
5 I think these 12 conditions don't actually protect rate
6 payers from financial consequences, and the company
7 hasn't answered enough questions about its conditions
8 and its forecasts for me to have confidence that it's
9 not going to be a problem ultimately.

10 MS. SHIFLEY: Thank you, I have no further
11 questions at this time, Your Honor.

12 JUDGE CLARK: Thank you.

13 Who will be inquiring on behalf of Verizon?

14 MR. RUGGIERO: Good morning, Your Honor, this
15 is Joe Ruggiero.

16 JUDGE CLARK: We'll take a moment off record.

17 (Discussion off the record.)

18 JUDGE CLARK: All right, Mr. Ruggiero.

19

20 C R O S S - E X A M I N A T I O N

21 BY MR. RUGGIERO:

22 Q. Good morning.

23 A. Still morning.

24 Q. You testified a few moments ago that one
25 failing of the settlement agreement was that it did not

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1 adopt your requirement that Verizon be required to kick
2 in \$70 Million; do you recall that?

3 A. I don't believe I said that was a failing of
4 the settlement agreement. I think it was a difference
5 between what I recommended and the settlement agreement.

6 Q. All right. Could we take a look at your
7 direct testimony, it's Exhibit SGH-1HCT.

8 JUDGE CLARK: Mr. Ruggiero, I just want to
9 remind you that we are going to have the opportunity to
10 examine Mr. Hill later on that direct testimony and that
11 we really kind of focus on his opposition to the
12 settlement agreement at this time.

13 MR. RUGGIERO: Your Honor, I completely
14 understand.

15 JUDGE CLARK: All right.

16 MR. RUGGIERO: It's a difficult line for us
17 because he raised the notion of the settlement, the \$70
18 Million as part of the settlement agreement.

19 JUDGE CLARK: I understand, and so I'm going
20 to watch carefully how you phrase your inquiry.

21 MR. RUGGIERO: I think you are going to find
22 that I will be done in less than 5 minutes.

23 BY MR. RUGGIERO:

24 Q. Can you please turn to your direct testimony
25 at page 24, Mr. Hill. It's Exhibit SGH-1HCT.

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1 MS. SHIFLEY: Your Honor, could I just object
2 to this again. As you just stated, the
3 cross-examination here should focus on Mr. Hill's
4 analysis of the settlement agreement, and this question
5 seems to be going to his direct testimony.

6 JUDGE CLARK: Mr. Ruggiero.

7 MR. RUGGIERO: Your Honor, his oral rebuttal
8 testimony to the settlement was that he disagreed with
9 the settlement because it did not adopt his proposed
10 condition that Verizon, quote, be required to kick in
11 \$70 Million. Now I want to cross him on that comment,
12 but an important part of that cross is to look back at
13 his testimony where he first said it.

14 JUDGE CLARK: And I understand that, and I'm
15 trying very hard not to frustrate the purpose of your
16 cross-examination, but I really believe that this
17 inquiry would be better suited to contesting perhaps
18 Mr. Hill's position in direct when he testifies at a
19 later time.

20 MR. RUGGIERO: I think that will be fine,
21 Your Honor, I will take your recommendation on that.

22 JUDGE CLARK: Thank you.

23 MR. RUGGIERO: Verizon has no questions for
24 Mr. Hill at this time.

25 JUDGE CLARK: Thank you.

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1 Mr. Saville.

2 MR. SAVILLE: Your Honor, nothing from
3 Frontier.

4 JUDGE CLARK: Mr. Thompson.

5 MR. THOMPSON: No cross from Staff.

6 JUDGE CLARK: Is there any inquiry from
7 Commissioner Jones?

8 COMMISSIONER JONES: Just a couple points.

9

10 E X A M I N A T I O N

11 BY COMMISSIONER JONES:

12 Q. You talked about the overly optimistic
13 financial projections that the company presented to the
14 board. I'm a little confused about the financial
15 projections that you used in your analysis.

16 COMMISSIONER JONES: And maybe this is better
17 left for direct, Judge, okay.

18 JUDGE CLARK: I think so, and I think that
19 this is somewhat confusing, but at this juncture we're
20 just trying to make sure that Public Counsel's due
21 process rights to contest the terms and conditions of
22 the settlement are not infringed, and they will have the
23 opportunity to put on their direct case at a later time.

24 BY COMMISSIONER JONES:

25 Q. Just one clarifying question then. When you

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1 talk about the financial projections of the company, are
2 you also referring to the company's use of its financial
3 advisors, Citibank and Evercore, because they supposedly
4 developed or helped vet both evaluation recommendations?

5 A. They vetted them, but I don't think that they
6 developed the model. My understanding is that
7 Mr. McCarthy's group developed the model, and the
8 financial advisors took those projections and made a
9 determination that it was fair for the stockholders and
10 my -- okay, I'm not going to answer that first question
11 you asked.

12 Q. Please don't.

13 And did you hear my inquiry on merger
14 commitment number 1 yesterday of Mr. Weinman?

15 A. I did, yes, sir.

16 Q. Because that to me is the heart or one of the
17 key points of the settlement agreement, so I think to
18 rephrase to use your words, you think it's a good idea
19 but not sufficient?

20 A. Yes, that's my position.

21 COMMISSIONER JONES: Okay, thank you.

22 JUDGE CLARK: Commissioner Oshie has no
23 questions.

24 Chairman Goltz.

25 CHAIRMAN GOLTZ: I think it would be more

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1 efficient for me to wait until after I hear the
2 company's cross, because it all relates to the direct
3 testimony.

4 JUDGE CLARK: All right, thank you, Chairman.
5 Is there redirect?

6 MS. SHIFLEY: Not at this time, Your Honor.

7 JUDGE CLARK: Thank you for your testimony at
8 this time, Mr. Hill, and we do understand we'll see you
9 again.

10 THE WITNESS: I hope so.

11 JUDGE CLARK: We will.

12 Ms. Shifley, do you have additional witnesses
13 on oral rebuttal?

14 MS. SHIFLEY: Yes, Your Honor. At this time
15 I would like to call Dr. Trevor Roycroft.

16 JUDGE CLARK: Thank you.

17 (Witness TREVOR R. ROYCROFT was sworn.)

18 JUDGE CLARK: Thank you, please be seated.

19 Ms. Shifley.

20 MS. SHIFLEY: Thank you, Your Honor.

21

22 Whereupon,

23 TREVOR R. ROYCROFT,

24 having been first duly sworn, was called as a witness

25 herein and was examined and testified as follows:

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1 D I R E C T E X A M I N A T I O N

2 BY MS. SHIFLEY:

3 Q. Good morning, Mr. Roycroft.

4 A. Good morning.

5 Q. Could you please state your name and business
6 address for the record.

7 A. My name is Trevor R. Roycroft. My business
8 address is 51 Sea Meadow Lane, Brewster, Massachusetts
9 02631.

10 Q. Dr. Roycroft, what is your current position?

11 A. I operate Roycroft Consulting, which is a
12 firm that provides economic and policy analysis in the
13 public utility and telecommunications information
14 technology industries.

15 Q. And on whose behalf are you testifying today?

16 A. I'm testifying on behalf of the Public
17 Counsel Section of the Washington State Attorney
18 General.

19 Q. And have you previously filed any testimony
20 in this proceeding?

21 A. Yes, I filed direct testimony previously.

22 Q. Dr. Roycroft, do you believe that the
23 settlement agreement has reasonably addressed the harms
24 that were raised in the responsive cases?

25 A. No, I don't. Staff and Public Counsel

0444

1 identified numerous harms associated with the proposed
2 transaction, and we've already heard from Mr. Hill and
3 Ms. Alexander regarding the harms associated with the
4 financial risks and the risks associated with service
5 quality. I'll be addressing other harms including harms
6 associated with the failure of Verizon to perform
7 adequate due diligence, I'm sorry, Frontier to perform
8 adequate due diligence in Washington and across the
9 Verizon separate telephone operation service areas, and
10 I will be referring to those separate telephone
11 operations service areas as the VSTO service areas. In
12 addition, Staff and Public Counsel identified risks
13 associated with multiple cutovers associated with the
14 transaction as well as the transition to replicated
15 systems which could lead to operational problems. Risks
16 and harms are identified associated with increasing
17 rates that Frontier is likely to charge. Frontier's
18 focus on upselling customers is another risk, risks for
19 Verizon customers that are currently on term contracts
20 with Verizon that will be transitioned to Frontier as
21 well as separate risks associated with Frontier's use of
22 contracts with its customers. One of the main purported
23 benefits of the settlement agreement is associated with
24 DSL, and it's very important to understand the
25 settlement's addressing of DSL related issues in the

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1 broadband deployment. In direct case both Public
2 Counsel and Staff identified risks associated with
3 Frontier's focus on the deployment of first generation
4 DSL technology, higher prices that Frontier charges for
5 DSL services, and Frontier's limitations placed on DSL
6 usage. In its rebuttal case, Joint Applicants dismissed
7 these concerns and --

8 JUDGE CLARK: Dr. Roycroft, I really hate to
9 interrupt you, but at this time I really want you to not
10 focus on what was raised in the testimony that you
11 sponsored in response to the other case but rather to
12 the settlement agreements themselves and your position
13 regarding the conditions in the settlement agreement and
14 your overall recommendation to the Commission on that
15 issue.

16 THE WITNESS: Thank you.

17 A. In summary, the proposed settlement doesn't
18 address the harms that were identified by Staff and
19 Public Counsel, and I'm going to be focusing primarily
20 on the broadband pricing and marketing and operation
21 support system conditions.

22 BY MS. SHIFLEY:

23 Q. Thank you.

24 In looking at the structure of the settlement
25 proposal, do you believe that it is adequate in light of

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1 the previously identified concerns regarding the fact
2 that Verizon can walk away from this deal?

3 A. No. The settlement does not address any
4 potential Verizon contribution or warranty associated
5 with the properties that Frontier will be acquiring from
6 Verizon, and this does not remedy the risks associated
7 with that fact. If outside plant is in need of
8 remediation, those risks fall onto Frontier and
9 Frontier's rate payers. This fact of Verizon not being
10 involved with the process or providing any warranty does
11 not have -- can have an impact on Frontier's financial
12 viability, may negatively impact service quality, and
13 could hinder or make difficult to complete the broadband
14 commitments that are identified in the settlement. So
15 the risks that are shifted to Frontier are not remedied
16 by the settlement agreement.

17 Q. Dr. Roycroft, you previously mentioned the
18 broadband commitment in the settlement, do you believe
19 that the settlement agreement has adequately addressed
20 broadband deployment?

21 A. No, I don't, and I think this is a very
22 important component of the Commission's understanding of
23 the settlement agreement from the standpoint that the
24 major benefit area identified in the settlement
25 agreement is broadband deployment, and this is held up

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1 as an example of how any harms associated with the
2 transaction will be offset. The specifics within the
3 settlement agreement on broadband are important to
4 understand, but I think it's also important that the
5 Commission keep in mind the bigger picture with regard
6 to broadband. Issues of broadband that are going to be
7 of concern and affect Washington consumers include the
8 coverage of the broadband that ultimately results after
9 Frontier takes over Verizon's Washington operations, the
10 types of technologies that Frontier will deploy, the
11 quality of the broadband, the prices that the broadband
12 is sold at, and any limitations that Frontier places on
13 that broadband usage.

14 I think it's notable when evaluating this
15 transaction that Washington stands out among the VSTO
16 properties with regard to what Verizon has done.
17 Verizon has made substantial capital investments in
18 Washington to deploy fiber to the home, and that fiber
19 to the home investment has certainly provided benefits
20 to Washington consumers. Verizon has deployed more
21 fiber in Washington state than Frontier has across its
22 entire legacy operating territory, and that has resulted
23 in benefits, and I think what the Commission should
24 recognize is that that vision of a business model that
25 Verizon has brought is going to go away if Frontier

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1 takes over Verizon's operations in this state, and those
2 potential consumer benefits of expanded fiber are at
3 risk.

4 Frontier's business model with regard to
5 broadband is focused on first generation DSL technology,
6 and DSL technology can be enhanced to what is often
7 referred to as a second generation where you put fiber
8 out farther into the neighborhood, shorten the copper
9 loop lengths, and provide higher speeds. That's what
10 AT&T is doing, and that's what Qwest is doing with
11 regard to its broadband. Frontier is not pursuing that
12 model. It's pursuing an old fashioned DSL deployment
13 using existing plant corrected for the deficiencies that
14 the provision of waste service injected with regard to
15 inhibiting potential broadband deployments. In addition
16 to focusing on this first generation DSL, Frontier's
17 business model sells DSL at higher prices than Verizon
18 does, and in addition Frontier sells DSL with usage
19 restrictions that Verizon does not impose. So this
20 shift in vision with regard to broadband is one that I
21 think it's important for the Commission to understand
22 and to consider when they evaluate the alleged benefits
23 that the broadband commitment contained within the
24 settlement agreement brings.

25 Q. Thank you.

0449

1 Dr. Roycroft, do you believe that the
2 structure of the settlement agreement with regard to the
3 \$40 Million escrow account is reasonable?

4 A. No. There are several problems with the \$40
5 Million escrow account. The first problem was that this
6 \$40 Million escrow account was determined or arrived at
7 within the context of the settlement agreement without
8 the benefit of understanding the overall capital
9 spending plan here in Washington. And we've heard a
10 little bit about some insight that Frontier is now
11 willing to share regarding that capital spending this
12 morning, but when the settlement was negotiated, that
13 information, even that information, that very limited
14 information, was not available.

15 The problem with regard to DSL deployment
16 within the context of this \$40 Million escrow account
17 and the recovery of funds by Frontier from that escrow
18 account relates -- is going to arise due to the shared
19 nature of DSL deployment. When DSL is deployed, it's
20 using facilities that are shared with voice services.
21 The settlement agreement does not determine or define
22 how it is that remediation for example that may be
23 necessary to bring broadband to a certain area, which
24 also favorably impacts voice services, whether that is
25 something that is permissible or will there be some need

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1 to divide out the appropriate dedicated moneys for
2 broadband.

3 To give you an idea of how difficult it is to
4 think about the \$40 Million in the context of what it
5 actually means, it's useful to consider what Frontier
6 has told the West Virginia Public Service Commission
7 which adds to more information and helps to give that
8 commission some understanding of what their commitment
9 means in that state. In West Virginia, which has a
10 slightly larger number of access lines than Washington,
11 about 50,000 more access lines than Washington, Frontier
12 has stated that it will expend over a 3 year period \$48
13 Million on broadband. However, they also told the
14 commission specific numbers with regard to capital
15 expenditures that they plan during that same 3 year
16 period. They told the Commission that they plan on
17 investing over that 3 year period \$201 Million in their
18 network at the same time that they're investing the \$48
19 Million in broadband.

20 MR. SAVILLE: Your Honor, I would object that
21 this is beyond the scope of the settlement that is
22 before the Commission at this point in time.

23 JUDGE CLARK: Response, Ms. Shifley.

24 MS. SHIFLEY: Your Honor, I believe that what
25 Dr. Roycroft is trying to do is to point out what his

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1 assessment is regarding the deficiency of the \$40
2 Million escrow, and so it does directly relate to this
3 part of the proposed settlement.

4 JUDGE CLARK: Dr. Roycroft, is your testimony
5 in this regard a comparison of condition 13 in
6 Washington with other conditions or testimony presented
7 on this case in West Virginia?

8 THE WITNESS: I'm sorry, testimony on this
9 case presented in West Virginia?

10 JUDGE CLARK: Yes.

11 THE WITNESS: No, it's a comparison with what
12 is being described in this settlement agreement and
13 helping the Commission understand why the \$40 Million is
14 a number that is essentially suspended without context
15 and very difficult to interpret.

16 JUDGE CLARK: So I think the answer to my
17 question is just yes, that you are comparing condition
18 13 in the Washington settlement with what has happened
19 in another jurisdiction regarding this particular issue?

20 THE WITNESS: Yes.

21 JUDGE CLARK: Thank you.

22 I'm going to overrule the objection and allow
23 it.

24 Do you remember where you were?

25 THE WITNESS: Yes, I do.

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1 A. As I was indicating, as I was stating,
2 Frontier has told the West Virginia commission that it
3 will expend during that same 3 year period \$201 Million,
4 and even more specifically Frontier in West Virginia in
5 the first year of that 3 year period contained within
6 that \$201 Million has committed to expend \$12 Million to
7 remediate service quality problems and improve outside
8 plant. So this sort of information then allows the West
9 Virginia commission to gain a better understanding of
10 what that \$48 Million might actually mean. The
11 settlement agreement as it's written lacks that context.
12 It also lacks clear definitions as to what is a
13 qualified broadband expense, and the shared nature of
14 broadband and voice services opens up the possibility
15 that these broadband dollars, these alleged broadband
16 dollars may go to fund other types of investments that
17 are shared with voice or just necessary to remediate
18 problems with outside plant.

19 A second problem with the \$40 Million and the
20 settlement itself is that the broadband commitment does
21 not address Federal broadband stimulus funding. There
22 is an opportunity for Frontier to apply for broadband
23 stimulus funds that could be used in Washington, and I
24 certainly hope that Frontier does pursue that
25 opportunity. However, within the context of the

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1 settlement agreement, it's not -- it appears that
2 Frontier could gain broadband stimulus funds, pay for
3 the project with those funds, and then recoup moneys
4 from this \$40 Million fund. There's nothing to prevent
5 within the four corners of the settlement agreement the
6 \$40 Million necessarily having to come from Frontier.
7 So as a result by not focusing, not even mentioning the
8 Federal broadband stimulus program, the settlement
9 agreement misses an opportunity to push broadband to a
10 higher level within the state.

11 A third problem with the \$40 Million stimulus
12 fund, the \$40 Million broadband fund as it's written
13 within the settlement agreement, is that it specifically
14 rules out any dollars going to expand fiber deployments.
15 And I understand that there's a need to segregate moneys
16 to complete the FiOS buildout, and the settlement
17 agreement appropriately eliminates those dollars from
18 the \$40 Million fund, but the opportunity for Frontier
19 to leverage its broadband fiber platform in Washington
20 to satisfy the terms of the settlement agreement is
21 excluded. The settlement specifically says that we --
22 that the moneys can not be used to deploy fiber to the
23 home, and that seems to be an unreasonable limitation
24 with regard to the level of technology that this \$40
25 Million can support.

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1 Finally on this issue, \$40 Million, the
2 settlement agreement talks about quantifying synergies,
3 and the only place that I see any potential to even link
4 the settlement agreement with synergy sharing in any
5 sort of immediate sense is with this \$40 Million
6 broadband commitment. And it is notable that this \$40
7 Million commitment over a 5 year period, the broadband
8 obligation is not to be completed until the end of 2014,
9 which is just about 5 years down the road, is not very
10 much synergy sharing. We've heard from the company's
11 witnesses today that they're expecting 500 in run rate
12 synergies. Run rate synergies meaning that once these
13 synergies are arrived at, they will occur year after
14 year. They ramp up over a period of a 3 year term.
15 It's reasonable I believe based on my analysis to
16 associate \$41 Million per year of synergies with
17 Washington state. In analysis that I conducted, it
18 seems ramping up those synergies over a 3 year period
19 would indicate that there should be reasonably \$89
20 Million of synergies available in Washington state, and
21 if we add in the fourth year to 2014 that value would go
22 up to \$130 Million. Sharing those synergies through
23 broadband deployment is a win-win in this situation.
24 Frontier gets the opportunity to have broadband more
25 widely deployed, Washington consumers get the economic

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1 development benefits of broadband. Allowing 30% of the
2 reasonably associated synergies to stay in Washington
3 and the rest to go elsewhere, either to Frontier's
4 shareholders or to other jurisdictions, is not a
5 reasonable outcome, and the settlement agreement does
6 not provide for a reasonable sharing mechanism.

7 In summary on this point, the settlement's
8 broadband provisions with regard to this \$40 Million
9 commitment are not a reasonable approach to the
10 broadband issue.

11 BY MS. SHIFLEY:

12 Q. Thank you.

13 And you were just talking about the -- you
14 were just discussing the subset of the broadband issue
15 dealing with the escrow account. Could you discuss the
16 deficiencies of the broadband deployment conditions in a
17 little bit more detail if you have any points on other
18 deficiencies?

19 A. Yes. With regard to the specific broadband
20 commitments, how much broadband will be deployed in this
21 -- as a result of the terms of the settlement, there are
22 several problems. The first is that there's an
23 unacceptably long timeline. We're looking at a horizon
24 of December 31st, 2014, for which Frontier may use to
25 satisfy these commitments. That's 5 years from now.

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1 It's also important to note that during that 5 year
2 period it will be a relatively small movement in the
3 amount of broadband that will be deployed in the state
4 of Washington.

5 Q. Dr. Roycroft, just one thing, just a reminder
6 that there is some confidential information in the
7 settlement agreement, so if your testimony just doesn't
8 mention any of the specific confidential information in
9 the settlement, thank you.

10 A. I think we'll be okay.

11 As I was saying, Washington state already has
12 among the VSTO service areas the highest level of
13 broadband deployment among the 14 states, and the
14 movement that we're going to see over this extended
15 period of time is relatively small. To put it into
16 context, what we're getting a commitment for, 89%
17 average of households in Frontier's Washington service
18 area, is something that's already been achieved by
19 Century Tel and very close to what Qwest has achieved.
20 We don't even get the 92% that Frontier has presented to
21 this Commission on numerous occasions as being the
22 broadband vision of Frontier with regard to getting
23 coverage out to a large number of customers.
24 Furthermore, by the end of 2014, the settlement leaves 5
25 wire centers potentially unserved, and I see absolutely

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1 no reason why at the end of 2014 within Frontier's
2 service area, given the amount of synergies that they're
3 expecting, that there should be unserved wire centers in
4 Washington state in their service area.

5 Second, the third issue that I wanted to
6 mention with regard to the structure of the broadband
7 commitment was that the DSL technology that is described
8 in the settlement agreement sets an extremely low hurdle
9 for Frontier. The technology is essentially already
10 outdated, and by the time that we hit the benchmark year
11 of 2014, this technology deployment is going to be
12 antiquated. The settlement specifies that 75% of
13 households should have 1.5 megabit downstream, 381
14 kilobits upstream by the end of 2011 and then by the end
15 of 2014 that 80% of households should have 3 megabits
16 per second downstream. No mention of upstream speeds,
17 and that too is a weakness from the standpoint that
18 upstream speeds are increasingly important from the
19 standpoint of consumers' abilities to upload information
20 or work at home.

21 For example, in California 2 years ago the
22 commission there approved a advanced services subsidy
23 fund, and to gain subsidy dollars from that fund, the
24 applications had to have 3 megabits per second
25 downstream, 1 megabits per second upstream, with the

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1 rationale of the commission being that that was the
2 minimum that they saw of being effective for working
3 from home. So we don't even get that level of
4 commitment with regard to Frontier's obligation in the
5 settlement agreement.

6 And furthermore, the target that is
7 identified here doesn't even bother to leverage the fact
8 that Frontier is capable of deploying higher speeds and
9 already is. We set a very low hurdle here, 3 megabits
10 per second by the end of 2014, when we're told by
11 Mr. Gregg that 3 megabits per second is their standard
12 deployment today and that they are deploying higher
13 speeds in some areas. In fact, just last week before
14 the FCC Frontier filed an ex parte communication that
15 specifies that 5 megabits per second can be achieved by
16 Frontier 41% of current Frontier locations. So rather
17 than building in a higher hurdle for Frontier, the
18 settlement agreement essentially provides a very weak
19 set of broadband standards with regard to the types of
20 technologies associated with the deployment.

21 Q. Thank you, Dr. Roycroft.

22 Moving now a little bit beyond what we were
23 just discussing, Staff witness Mr. Weinman stated that
24 in the CenturyTel/Embarq merger, the FCC required a 100%
25 broadband deployment. Does this fact offset the

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1 deficiencies in the settlement agreement's broadband
2 provisions?

3 A. No, I don't believe that it does. At this
4 time what the FCC may do is uncertain, and it certainly
5 isn't reasonable for this Commission to be presented
6 with the hope that the FCC will do something better as a
7 remedy to the very weak broadband provisions of the
8 settlement agreement.

9 Q. Do you have anything further on that point?

10 A. No.

11 Q. Does the settlement agreement address
12 Frontier's DSL pricing strategies?

13 A. I don't believe that it goes far enough on
14 DSL pricing. The settlement identifies a specific cap
15 with regard to stand-alone DSL for 12 months. It also
16 identifies apparently some pricing restrictions for 12
17 months associated with DSL that may be in a bundle.
18 Both my analysis and Staff analysis indicate that
19 Frontier's DSL rates are substantially higher than
20 Verizon's, and it's likely that those DSL rates will be
21 introduced in Washington after those caps expire. The
22 settlement fails to adequately address DSL pricing.

23 Q. In your direct testimony, you identify
24 Frontier practices with regard to broadband service that
25 identify an upper limit on the amount of data that may

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1 be transmitted over a Frontier broadband connection.

2 Does the settlement agreement address this issue?

3 A. No, it does not, and I think this is once
4 again an important aspect of understanding the change in
5 vision between Verizon and Frontier with regard to how
6 they operate their business. Frontier has an acceptable
7 use policy for broadband which states that Frontier may
8 suspend, terminate, or apply additional charges to the
9 service if usage exceeds a reasonable amount of usage
10 and then goes on to define a reasonable amount of usage
11 as defined as 5 gigabytes combined upload and download
12 consumption during the course of a 30 day billing
13 period. So what this means is that if comparing it to
14 Verizon, Verizon essentially says our service is all you
15 can eat. You pay us our \$19.99 a month for the specific
16 speed of service, and you can download as much as you
17 want.

18 JUDGE CLARK: Dr. Roycroft, I really hate to
19 interrupt you again, but I really think it's important
20 at this juncture, as difficult as it is, to try to stay
21 kind of focused only on the parameters of the settlement
22 agreement, and recognize that you will be coming back to
23 testify regarding some of these other distinctions.

24 THE WITNESS: I'm not sure if I can proceed.

25 JUDGE CLARK: Ms. Shifley, maybe you can

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1 help.

2 MS. SHIFLEY: Yes.

3 BY MS. SHIFLEY:

4 Q. Dr. Roycroft, just to clarify your last,
5 would you like to just answer very briefly whether or
6 not the settlement agreement addresses the issue of
7 limitations on data that can be transmitted?

8 A. No, it does not.

9 Q. I would like to now move to some questions
10 about non-broadband services. Again previously
11 potential harms to Washington rate payers were
12 identified regarding Frontier's pricing strategies for
13 retail telephone services. Do the retail service rates
14 provisions in the settlement agreement, which are
15 conditions 23 through 26, adequately address these
16 potential harms?

17 A. No, I don't believe that they do. The
18 settlement agreement's provisions with regard to retail
19 pricing with regard to the residential basic service cap
20 seems to be a reasonable provision. Other services, and
21 other services are consumed by large numbers of Verizon
22 Washington consumers, do not have similar protection.
23 The settlement agreement fails to offer adequate
24 protection, and this represents another shortfall of the
25 settlement agreement.

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1 Q. Thank you.

2 In your direct testimony, again you discuss
3 the need for a fresh look policy for Verizon's customers
4 who are locked into a term contract at the time of the
5 merger's closing. Does the settlement agreement address
6 this issue?

7 A. It only addresses that issue in part. It
8 appropriately identifies the pick change provision which
9 allows consumers to reevaluate their choice of long
10 distance providers without penalty. However, the
11 settlement agreement does not address the fact that some
12 Verizon customers are currently locked into term
13 contracts for non-long distance services, and these
14 customers, some of them, may have a choice of service
15 provider. The settlement agreement essentially does not
16 allow those consumers to make that choice without
17 penalty and rather forces them into a relationship with
18 a carrier that they did not choose.

19 Q. Dr. Roycroft, I would like to turn now to the
20 issues relating to the proposed replication and
21 integration of Verizon's operating systems. In your
22 direct testimony you discuss risks associated with
23 Frontier's use of replicated Verizon systems. Staff's
24 direct testimony expressed similar concerns. Does the
25 settlement agreement reasonably address the risks

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1 associated with the system cutover?

2 A. No, I don't believe that it does. Focusing
3 on the provisions contained in Paragraph 27 of the
4 attachment to the settlement agreement, this provision
5 of the settlement agreement focuses on what will happen
6 with regard to the preproduction testing, and I think
7 it's important to evaluate how close a look or how
8 detailed a look at the preproduction environment this
9 provision of the settlement results in. The
10 preproduction period is one that will lead to the -- it
11 precedes the 60 day period when there will be production
12 mode of operation of the replicated systems. The
13 preproduction testing limits the evaluation, appears to
14 limit the evaluation of the third party reviewer to
15 whether there are any severity level 1 failures, which
16 are defined as full service denials. So Subparagraph A
17 of Paragraph 27 seems to define a very limited role for
18 this third party reviewer. It doesn't allow the third
19 party reviewer or doesn't specify that the third party
20 reviewer will provide a full evaluation of the
21 preproduction operations, but rather whether there have
22 been any severity level 1 failures and whether those
23 have been resolved. For example, there are also
24 severity level 2 failures which are associated with a
25 software problem for which a work around has been

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1 developed. That sort of information could lend some
2 insight into how robust the replicated systems are and
3 what sort of level of work arounds are existing within
4 those systems. So the look or the level of detail
5 associated with the preproduction mode as reviewed by
6 the third party reviewer seems to be overly narrow and
7 perhaps not allowing for a full evaluation of the
8 preproduction environment.

9 Very briefly, Ms. Alexander discussed the
10 Paragraph 28, I just wanted to add to her discussion
11 that the benchmarking process with regard to these 4
12 service quality metrics appears to be somewhat biased in
13 my opinion from the standpoint that it specifies that
14 the comparison is in the previous 12 months of data with
15 previous 12 months of operating data, and Staff witness
16 Russell indicates that in 2 of these metrics that
17 Verizon's performance has been declining over time. So
18 by focusing on the last 12 months, it seems to be
19 lowering the bar with regard to the performance.

20 Finally, I would note and just reiterate that
21 the settlement, these provisions of the settlement
22 agreement don't appear to give the Staff sufficient
23 authority to delay the closing or otherwise order
24 remediation to problems that may result from these
25 reports.

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1 Q. Thank you, Dr. Roycroft.

2 I just have three more questions and I
3 believe that we should be able to get through these
4 pretty quickly here since we're coming up on the lunch
5 hour.

6 In your direct testimony you also discussed
7 risks associated with future cutovers of Frontier's
8 customers from the replicated systems to Frontier's
9 legacy system. Does the settlement agreement adequately
10 address this concern?

11 A. No, I don't believe that it does. These
12 cutovers, we don't know when these cutovers are going to
13 occur, and the provision within the settlement in
14 Paragraph 29 sunsets after three years. Frontier has
15 told the Commission that it's in no rush to cut over
16 these systems, and as a result it would appear that this
17 three year sunset could leave important information out
18 of the Commission's hands when these cutovers eventually
19 do occur.

20 Q. One last point, Dr. Roycroft, the settlement
21 agreement requires Frontier to petition for an AFOR, an
22 alternative form of regulation, within 5 years. Do you
23 believe that this is a benefit for customers?

24 A. No, I don't, and I'll just add to Mr. Hill's
25 discussion of the AFOR provision that there's no reason

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1 for an AFOR to be attached to this settlement agreement.
2 AFORs can be risky propositions for customers, and
3 whether or not there would be any benefit for consumers
4 from an AFOR it's difficult to say, but certainly I've
5 seen AFORs that have resulted in harms to consumers.
6 Furthermore, given the timing of the AFOR, I'm not quite
7 sure how the synergies would be appropriately accounted
8 for within the window of opportunity. Assuming that
9 they stayed out for three years associated with the
10 residential rate freeze and then had to come in before
11 the five year deadline, whether or not those synergies
12 will be properly reflected in operations in developing a
13 test year analysis is difficult to say.

14 Q. I know that we've covered a lot this morning,
15 and thank you, Dr. Roycroft, but could you just state in
16 conclusion your recommendation with regard to the
17 proposed settlement agreement between the Joint
18 Applicants and Staff?

19 A. I don't believe that the settlement agreement
20 offers an adequate solution to the problem presented by
21 Frontier's application. It certainly doesn't overcome
22 the deficiencies of the transaction. There are still
23 harms that will arise, and the benefits identified in
24 the settlement agreement do not rise to a level to
25 offset or overcome those harms. I believe that the

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1 Commission should reject the settlement agreement, and I
2 also still believe that the Commission should reject the
3 transaction. Thank you.

4 MS. SHIFLEY: No further questions at this
5 time, Your Honor.

6 JUDGE CLARK: Thank you.

7 The Commissioners have decided, there's a lot
8 of carryover in Dr. Roycroft's testimony between the
9 settlement agreement and his prefiled testimony, so the
10 Commissioners are going to reserve their examination of
11 Dr. Roycroft until he presents his testimony later in
12 this hearing.

13 Hint, hint, do you have any inquiry,
14 Mr. Ruggiero?

15 MR. RUGGIERO: I think Verizon will do the
16 same.

17 JUDGE CLARK: Mr. Saville.

18 MR. SAVILLE: Not at this time, Your Honor.

19 JUDGE CLARK: Mr. Thompson.

20 MR. THOMPSON: No cross.

21 JUDGE CLARK: All right, I'm assuming there's
22 no redirect then since there's no cross.

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

24 JUDGE CLARK: All right, thank you,
25 Dr. Roycroft, and I do apologize, I'm not trying to cut

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1 you off, I'm just trying to make sure that we have
2 clarity in our record.

3 THE WITNESS: Thank you.

4 JUDGE CLARK: All right, we are going to be
5 at lunch recess until approximately 1:15. Ms. Shifley,
6 I understand that that concludes the presentation of
7 oral rebuttal.

8 MS. SHIFLEY: Yes, it does, Your Honor.

9 JUDGE CLARK: And so I want counsel to think
10 seriously about the need for oral surrebuttal over the
11 lunch hour, and I'll see you at 1:15, 1:30, I'm sorry, I
12 apologize, 1:30.

13 Was there some procedural matter you needed
14 me to address before then, Mr. Romano?

15 MR. ROMANO: Yes, Your Honor, just to
16 clarify, in terms of us determining what we would offer
17 up in surrebuttal, we would need some extended time to
18 figure that out given that we just heard the oral
19 rebuttal for the first time, so can we have an extended
20 break to prepare that?

21 JUDGE CLARK: Longer than an hour and a half?

22 MR. ROMANO: Two hours approximately.

23 JUDGE CLARK: That's fine as long as you
24 really need the two hours to make that kind of
25 determination based on what we've heard this morning.

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1 MR. ROMANO: Yes, Your Honor, we need to
2 prepare the surrebuttal given that we've just heard
3 this.

4 JUDGE CLARK: All right, then we're going to
5 be at a lunch recess until 2:00 p.m.

6 (Luncheon recess taken at 12:05 p.m.)

7

8 A F T E R N O O N S E S S I O N

9 (2:00 p.m.)

10 JUDGE CLARK: When we recessed for lunch, we
11 were ready to commence with oral surrebuttal, turning to
12 you first, Mr. Romano.

13 MR. ROMANO: Thank you, Your Honor, Verizon
14 would like to call to the stand Steve Smith and Tim
15 McCallion.

16 JUDGE CLARK: All right, thank you.

17 Mr. McCallion, I will just remind you that
18 you remain under oath.

19 And, Mr. Smith, if you would please rise.

20 (Witness STEPHEN EDWARD SMITH was sworn.)

21 JUDGE CLARK: Thank you, please be seated.

22 Mr. Romano.

23 MR. ROMANO: Thank you, Your Honor.

24

25

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1 Whereupon,

2 STEPHEN EDWARD SMITH and TIMOTHY J. MCCALLION,
3 having been first duly sworn, were called as witnesses
4 herein and were examined and testified as follows:

5

6 D I R E C T E X A M I N A T I O N

7 BY MR. ROMANO:

8 Q. Mr. McCallion, were you in the room during
9 the previous oral rebuttal testimony session?

10 A. (McCallion) Yes, I was.

11 Q. So did you hear Mr. Hill argue that the
12 settlement agreement with the Staff was insufficient
13 because it did not address what he claimed to be
14 Verizon's underinvestment in the state?

15 A. (McCallion) Yes.

16 Q. How do you respond to that?

17 A. (McCallion) Well, Mr. Hill was simply
18 incorrect when he states that Verizon's underinvested in
19 its plant. As I testified to earlier and as the Staff
20 witness testified to, our network trouble reports per
21 hundred lines have been low, and that's certainly a good
22 indicator of good service quality in your plant. In
23 addition to that, Dr. Roycroft testified about Verizon's
24 investment in fiber to the premise, which has been a
25 very significant investment, so there's just no basis

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1 for Mr. Hill's assertions.

2 Q. Thank you, Mr. McCallion.

3 MR. ROMANO: I would like to pass out what
4 will be a first surrebuttal exhibit.

5 MR. RUGGIERO: Your Honor, may I approach?

6 MR. ROMANO: And just to add, this is a
7 highly confidential document, so to the extent we can in
8 our conversation, let's just avoid discussing specific
9 numbers.

10 I will wait until everyone has a chance to
11 look at the document.

12 BY MR. ROMANO:

13 Q. Do you have that in front of you?

14 JUDGE CLARK: Just one minute, please, I need
15 to make sure that we're getting the right number for
16 marking this for identification purposes, and I believe
17 the next number would be TM-24HC.

18 And you can go ahead now, Mr. Romano, I'm
19 sorry.

20 MR. ROMANO: Thank you.

21 BY MR. ROMANO:

22 Q. Mr. McCallion, do you have in front of you
23 what's been marked as TM-24HC?

24 A. (McCallion) Yes, I do.

25 Q. And what does this document show?

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1 A. (McCallion) Well, what this document shows
2 is that Verizon's capital expenditures per access line
3 did not decline in the recent period from 2006 to 2009.
4 In fact, when you include the FiOS investment, a very
5 important investment that we made, it shows an upward
6 trend in investment per access line. And if you exclude
7 the FiOS investment, it basically shows a flat level of
8 investment per access line, not a declining level of
9 investment per access line. So Verizon has continued to
10 invest in its network here in Washington.

11 MR. ROMANO: Your Honor, next I would like to
12 have marked another surrebuttal exhibit which will be
13 marked as TM-25HC, which is also highly confidential, so
14 to the extent, Mr. McCallion, you can avoid referring to
15 figures, that would be appreciated.

16 BY MR. ROMANO:

17 Q. Mr. McCallion, can you please explain what
18 this document that's now marked as Exhibit TM-25HC
19 shows?

20 A. (McCallion) Yes, this exhibit has two charts
21 on it. The chart on the left shows the CapX plus the
22 maintenance expense per access line. The chart on the
23 right also shows the CapX plus maintenance expense per
24 access lines. On the left side we actually break down
25 the capital expenditures and the plants separately, and

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1 in the chart on the right we've added them together.

2 Q. Thank you.

3 Mr. Smith, were you here this morning when
4 Mr. Hill explained at length why he believed that the
5 settlement agreement was insufficient because it did
6 nothing to address what he perceived to be as an
7 incorrect transaction value?

8 A. (Smith) Yes.

9 Q. And what is your --

10 MS. SHIFLEY: Your Honor, could I object, I'm
11 sorry, I believe that Mr. Romano has mischaracterized
12 Mr. Hill's testimony. I don't believe that Mr. Hill
13 used the term that Mr. Romano just stated.

14 JUDGE CLARK: Mr. Romano, response?

15 MR. ROMANO: I can rephrase, Your Honor.

16 JUDGE CLARK: Thank you.

17 BY MR. ROMANO:

18 Q. Mr. Smith, do you recall Mr. Hill explaining
19 at length Verizon's reaction to his testimony with
20 regard to the way the transaction was valued?

21 A. (Smith) Yes.

22 Q. And what is your reaction to that testimony?

23 A. (Smith) I believe he based his argument on
24 his assertion that the way in which the financials were
25 prepared by Verizon were not correct or misused

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1 allocations or as he said managers would go to the edge
2 to create a set of numbers that made the property look
3 better.

4 MS. SHIFLEY: Your Honor, again I would just
5 object to the witness's response. I don't believe that
6 Mr. Hill ever used -- ever stated what he is now
7 claiming Mr. Hill stated.

8 JUDGE CLARK: Ms. Shifley, I'm going to
9 overrule the objection, and I think that these
10 particular topics rather than being objections to
11 Mr. Smith's testimony or Mr. McCallion's might better be
12 questions you pose in cross-examination of these
13 witnesses.

14 MS. SHIFLEY: Thank you, Your Honor.

15 BY MR. ROMANO:

16 Q. Please go ahead, Mr. Smith.

17 A. (Smith) And for the record, Verizon would
18 like to strongly disagree. In fact, in his testimony
19 this morning Mr. Hill used the phrase very, very
20 strongly on another point. I think you can add three or
21 four more verys in front of how I feel about what he
22 stated here. I think that captures I think our
23 position. His statement is inflammatory, and worse yet
24 it's made without a single shred of evidence either
25 presented today or previously.

0475

1 Mr. Hill understands that Verizon's a
2 publicly traded company and that as such that imposes on
3 it a set of external controls as to how it runs its
4 operations including how it keeps its books. Verizon is
5 also a heavily regulated business. These regulators
6 also impose the same controls, and those controls make
7 it necessary for us to keep a strong set of internal
8 controls. Verizon's executive management team makes
9 quarterly and annual assertions as to the accuracy of
10 its controls in accordance with Sarbanes-Oxley, and
11 those controls extend to the preparation of Verizon's
12 financial statements. Verizon's financial statements
13 are prepared in accordance with GAAP and benchmarked
14 against the best practices in the industry.

15 His concern appears to arise around
16 allocations, and just to level set on allocations, the
17 revenues of the business are not allocated. 60% of the
18 costs of the business directly arise in the operations
19 that are being conveyed. It is true that 40% of the
20 costs are allocated, but the allocation rules that we
21 follow were established by the FCC and by the states
22 where we do business, and we implement those rules based
23 on time studies and other procedures that are prescribed
24 by those agencies.

25 Further, the practices that we follow are

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1 reviewed annually by our auditors. Verizon prepared the
2 VSTO financials using the very same accounting policies
3 and practices that it employs in the preparation of
4 Verizon's consolidated statements as well as separate
5 operating telephone company statements such as Verizon
6 Northwest, Verizon North, Verizon California, Verizon
7 West Virginia. The VSTO financials were audited by E&Y,
8 and those audited financials contain a full set of
9 footnotes that explain how the financials were prepared.
10 Those audited results were further reviewed by the
11 national office of E&Y because the audited financials
12 were included in Frontier's S-4 filing.

13 If all of this were not enough, Verizon made
14 -- is contractually bound to provide Frontier with
15 financial statements that are consistent with the way in
16 which we keep our books. We made representations and
17 warranties to Frontier that we would do so. In the
18 event that we don't, they have the right not to close
19 the transaction.

20 At the end of his statement he said, you
21 know, the Verizon manager ought to be canned if he
22 doesn't -- if he didn't do -- stretch the edge or
23 whatever you would like me to clarify later. You know,
24 Verizon's an ethical company. A Verizon manager would
25 be canned if he did the very thing that Mr. Hill

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1 described.

2 Q. Okay, turning to another subject, Mr. Hill
3 also criticized the Staff settlement agreement as not
4 requiring Verizon to have some sort of continuing
5 interest post close. How do you respond to that
6 criticism?

7 A. (Smith) I think that that is unwarranted.
8 As the record and witnesses have attested to, Staff and
9 others, Verizon has been a good service provider, it has
10 invested in the state, and it has found in Frontier an
11 excellent provider for service going forward. In fact,
12 given the strategic direction that Verizon intends to
13 go, it will be a much better provider for the state of
14 Washington and its rate payers. Further, from a
15 business matter, it makes no sense for Verizon to have a
16 continuing interest in a business that it no longer
17 operates.

18 MR. ROMERO: Thank you.

19 That's it for the surrebuttal panel for
20 Verizon, Your Honor.

21 JUDGE CLARK: All right, thank you.

22 And I'm not going to allow any friendly cross
23 so I'm not even calling on Frontier or Staff.

24 Ms. Shifley.

25 MS. SHIFLEY: Your Honor, may I just have one

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1 minute, please?

2 JUDGE CLARK: Yes.

3 MS. SHIFLEY: We have no cross-examination at
4 this time.

5 JUDGE CLARK: All right.

6 Do any commissioners have inquiry of this
7 surrebuttal panel?

8 Commissioner Jones is shaking his head no.

9 Commissioner Oshie.

10 COMMISSIONER OSHIE: No.

11 JUDGE CLARK: Chairman Goltz.

12

13 E X A M I N A T I O N

14 BY CHAIRMAN GOLTZ:

15 Q. Just so I understand on the Exhibits 24 and
16 25, TM-24 and 25HC, on 24HC on the, let's see, there's
17 -- on the left-hand column there's three categories, I'm
18 talking about the first one, and I'm sure this isn't
19 confidential, I'm sorry, I'm talking about the second
20 one, which is capital. That's not -- the headings
21 aren't confidential, are they?

22 A. (McCallion) No, they aren't.

23 Q. Okay. So the capital in thousands, and then
24 there's a non-FiOS amount, does that have a
25 corresponding line on TM-25HC?

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1 A. (McCallion) I'm sorry, could you repeat the
2 question.

3 Q. 24HC on the category called capital, there's
4 a number 2, and there's a total FiOS and a non-FiOS, and
5 I want to know if there's a corresponding non-FiOS
6 capital amount on TM-25HC or a corresponding -- I'm
7 sorry, I'm very confused, let me start over.

8 On 24HC the total under capital and has
9 yearly amounts, is there -- why is that different or is
10 it the same as the second line on 25HC?

11 MR. ROMANO: Mr. Chairman, I could try to
12 help.

13 CHAIRMAN GOLTZ: That would be fine.

14 MR. ROMANO: I won't reveal any numbers, but
15 just if you look at --

16 CHAIRMAN GOLTZ: Oh, I see, okay.

17 MR. ROMANO: If you look at the -- if you
18 line up the correct year --

19 CHAIRMAN GOLTZ: I see it, okay. I thought I
20 found inconsistency but I didn't, never mind. I'm done.

21 JUDGE CLARK: All right, is there redirect?

22 MR. ROMANO: No, Your Honor.

23 JUDGE CLARK: Would you like to move the
24 admission of TM-24HC and TM-25HC?

25 MR. ROMANO: Yes, Your Honor.

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1 JUDGE CLARK: Is there any objection to their
2 receipt?

3 MS. SHIFLEY: No, Your Honor.

4 JUDGE CLARK: All right, hearing none,
5 TM-24HC and TM-25HC are received.

6 Thank you for your testimony, Mr. Smith,
7 Mr. McCallion.

8 And does that conclude the presentation of
9 Verizon's oral surrebuttal?

10 MR. ROMANO: Yes, Your Honor.

11 JUDGE CLARK: All right, and I'm going to
12 turn next to Frontier.

13 MR. BEST: Your Honor, Chuck Best again for
14 Frontier, we would call Daniel McCarthy, David
15 Whitehouse, and Billy Jack Gregg, and we'll do them as a
16 panel if that's okay with Your Honors.

17 JUDGE CLARK: I think it would be most
18 expeditious to do it that way.

19 MR. BEST: And I will be handling Mr. Gregg,
20 and Mr. Saville will be handling the other two
21 witnesses.

22 JUDGE CLARK: Mr. McCarthy, I'm just going to
23 remind you that you remain under oath.

24 And the other two witnesses, if you would
25 rise, please, and raise your right hand.

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1 (Witnesses DAVID R. WHITEHOUSE and BILLY JACK
2 GREGG were sworn.)

3 JUDGE CLARK: Thank you, please be seated.
4 Mr. Best.

5 MR. BEST: Thank you, Your Honor. Would you
6 like me to have the witnesses introduce themselves now
7 or do it as they testify?

8 JUDGE CLARK: It would be nice to have the
9 panel introduced now, thank you.

10

11 Whereupon,

12 DANIEL MCCARTHY, DAVID R. WHITEHOUSE and

13 BILLY JACK GREGG,

14 having been first duly sworn, were called as witnesses
15 herein and were examined and testified as follows:

16

17 D I R E C T E X A M I N A T I O N

18 BY MR. BEST:

19 Q. Mr. Gregg, could you state your full name and
20 spell your last.

21 A. (Gregg) Billy Jack Gregg, G-R-E-G-G.

22 Q. And, Mr. Gregg, what do you do for a living?

23 A. (Gregg) I'm a utility consultant.

24 Q. Okay. Are you representing Frontier in this
25 matter?

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1 A. (Gregg) Yes.

2 Q. And, Mr. Whitehouse, could you state your
3 full name and spell your last.

4 A. (Whitehouse) David Whitehouse, last name
5 spelled W-H-I-T-E-H-O-U-S-E.

6 Q. Mr. Whitehouse, what do you do for a living?

7 A. (Whitehouse) I'm the Senior Vice President
8 and Treasurer of Frontier Communications.

9 Q. And, Mr. McCarthy finally, he has been
10 introduced before, but --

11 JUDGE CLARK: We're okay with Mr. McCarthy.

12 MR. BEST: Thank you.

13 JUDGE CLARK: We're well acquainted, thank
14 you.

15 BY MR. BEST:

16 Q. Beginning with Mr. Gregg, Mr. Gregg, you're a
17 consultant for Frontier in this case; is that right?

18 A. (Gregg) That's correct.

19 Q. And in fact you helped Frontier with service
20 quality issues as part of this transaction across the
21 states it was doing them in?

22 A. (Gregg) Yes, in multiple states.

23 Q. And are you familiar with what's gone on in
24 those other states with respect to service quality and
25 conditions and things like that?

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1 A. (Gregg) Yes, and also the agreements that
2 have been reached in many other states.

3 Q. Could you -- a question came up I know
4 earlier I think from Chairman Goltz about the conditions
5 in other states that was asked really of Ms. Alexander,
6 can you give some perspective about what's gone on in
7 the various states and how the Washington settlement
8 with Staff in particular and also to some degree with
9 the DOD relate to the other settlements in the other
10 states?

11 A. (Gregg) Yeah. Although I recognize that
12 each state has a different system and a different
13 context for service quality enforcement, the agreement
14 reached in Washington is more comprehensive than the
15 agreements reached in other states in many ways.
16 Ms. Alexander mentioned the agreement in Illinois as an
17 example of what she considered to be a better agreement.
18 In Illinois the agreement reached by Frontier specified
19 seven separate metrics, and there was a potential
20 sanction of a restriction on dividends if those service
21 quality metrics were not met. However, that sanction
22 only applied if a majority of those seven metrics, four
23 out of seven, were not met in any annual period. In
24 comparison, in Washington there are six separate service
25 quality metrics, each of which has potential customer

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1 credits of \$100,000 associated with them. In addition,
2 five of those six metrics have the credits calculated
3 monthly, not on an annual basis. On top of that, there
4 is a 40% increase in the existing service performance
5 guaranty plan that exists for Verizon that has been
6 agreed to by Frontier.

7 And finally, there is a new credit that has
8 been agreed to by Frontier for out of service conditions
9 greater than two days. Ms. Alexander characterized the
10 \$5 credit associated with those outages as
11 insubstantial. I disagree. \$5 amounts to approximately
12 30% of the basic monthly charge for premium service in
13 Washington. Thus I believe that the service quality
14 agreement and metrics contained in the settlement in
15 Washington are entirely appropriate, and especially so
16 because we are dealing not with a remedial plan, as you
17 heard Mr. Weinman state, but with a prophylactic plan.

18 This plan is meant to prevent a deterioration
19 from the current high level of service quality in
20 Washington. As a result, it is entirely appropriate to
21 have a series of escalating customer credits based on
22 Frontier's demonstrated performance. However, I fully
23 believe that those escalations will not occur, because
24 based on Frontier's actual track record in the states
25 where it now operates, we have every indication that

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1 these credits will not be necessary.

2 As you heard Mr. Weinman also state, state
3 commissions in other states where Frontier currently
4 operates have a good opinion of Frontier. My experience
5 has been the same. Frontier is not currently under any
6 current service quality investigations in any state, and
7 it does not currently pay penalties for service quality
8 violations in any state. In summary, I believe that the
9 settlement on service quality issues contained in the
10 Washington settlement is entirely reasonable and
11 appropriate for the state of Washington.

12 Q. Thank you.

13 And one last question, Mr. Gregg, when
14 looking at a settlement, do you think it's fair to
15 single out specific pieces of a settlement and say,
16 gosh, that's not good enough, or do you think you need
17 to look at the settlement in total?

18 MS. SHIFLEY: Your Honor, could I just object
19 to this question, I believe that it does go beyond the
20 scope of what Ms. Alexander testified to.

21 JUDGE CLARK: Do you want to respond,
22 Mr. Best?

23 MR. BEST: I believe that Public Counsel
24 spent a fair amount of time going through each
25 measurement and saying this isn't good enough, this

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1 isn't good enough, and I guess the only point I'm trying
2 to get the witness to comment on is whether that's
3 really fair. Because if you do that throughout the
4 entire settlement, then it builds on itself, and you end
5 up with something completely different. I guess that's
6 the point we're trying to make.

7 JUDGE CLARK: The objection is overruled.

8 A. (Gregg) My experience has been that most
9 settlements are a series of give and take procedures by
10 both sides. No side gets everything that it wants.
11 Settlements by their very nature are compromises.

12 MR. BEST: Thank you, that's all I have.

13 JUDGE CLARK: All right.

14 Mr. Saville.

15 MR. SAVILLE: Thank you, Your Honor,
16 Commissioners.

17

18 D I R E C T E X A M I N A T I O N

19 BY MR. SAVILLE:

20 Q. Mr. Whitehouse, just a couple of questions
21 for you. You were here this morning when Mr. Hill
22 testified?

23 A. (Whitehouse) Yes, I was.

24 Q. And do you recall his statement when he
25 described Frontier as it exists today as not a

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1 financially strong company?

2 A. (Whitehouse) Yes, I believe he referred to
3 it as a weak company, to which I would highly disagree.
4 You know, when I think about the merits of a strong or a
5 weak company, I would pick three key things I would
6 focus on in this discussion at the moment. One is the
7 free cash flow generating capabilities of the entity,
8 the rating of the entity, and their access to capital,
9 and I'll touch on each of those briefly.

10 Frontier's a company that generates
11 approximately \$500 Million a year of free cash flow.
12 And by free cash flow we're talking about the cash flow
13 that is left over after the company has paid all its
14 bills, paid its CapX, paid its interest expense, paid
15 its taxes, and in fact it is what is left over. And
16 indeed we do present to our board of directors a very,
17 in my opinion, high class problem where at the end of
18 the year we say, we have this extra cash flow, how would
19 you like us to allocate it. It is their decision. And
20 I believe the witness earlier today implied that paying
21 dividends was at odds with, you know, capital
22 expenditures, and that in fact is not how the board
23 thinks about it. They're not at odds with each other.
24 They fully understand that you need to invest in the
25 company to continue generating the cash to pay the

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1 dividends. And it is that process by which they declare
2 the dividend. It's only after they're comfortable that
3 the company has the appropriate level of investment and
4 that the capital structure and our credit metrics are
5 where we would like them to be before we consider
6 dividends or share repurchases or other forms of
7 investment.

8 I think the next topic is rating. I think
9 Mr. Hill implied because we were a double B rated
10 company that that was a weak rating, and I think I
11 should clarify that point as well. You know, credit
12 ratings are -- run a full spectrum from triple A being
13 the strongest to I believe D being the weakest, a
14 company that is in default. Somewhere along the way
15 there was a line drawn, and everything above triple B or
16 higher was rated investment grade, and everything below
17 triple B was not investment grade. We happen to be a
18 double B rated company. And just as a triple B company
19 is not the same as a triple A, a double B rated company
20 is not the same as a B+ rated company. You can't
21 generalize that all non-investment grade companies are,
22 you know, junk credits. In fact, Moody's would tell you
23 that 73% of the companies they rate are non-investment
24 grade, so that if you use that standard that you have to
25 be investment grade to be a strong company, that would

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1 imply 73% of the companies operating that are rated are
2 weak, and I don't think that's reasonable or fair.

3 And finally, a company's strength is
4 certainly tied to access to capital, because certainly
5 the market speaks in that regard. If you're able to
6 access capital and raise capital from a third party,
7 that's a very good proxy for your financial strength.
8 And I will simply point out that in this year alone
9 Frontier has entered the market twice raising over \$1.2
10 Billion worth of capital. Our last transaction we only
11 sought to raise \$400 Million and ended up with \$1.7
12 Billion worth of demand. And I will point out that the
13 rate on that debt of 8.375% was 200 basis points cheaper
14 than the offering we did before we announced this
15 transaction, so I would argue that the market clearly
16 sees the benefits of the deleveraging of this
17 transaction and accordingly has afforded a -- accepted a
18 lower rate on our capital.

19 Q. Mr. Whitehouse, Mr. Hill also testified, made
20 some statements that Frontier in putting together
21 projections on the post transaction company was overly
22 optimistic in terms of its projections. Can you comment
23 on that?

24 A. (Whitehouse) Yeah, I believe his -- I
25 believe his word was bold, and I would again strongly

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1 disagree to that. I think the model that was created
2 and was shared with Public Counsel encompasses over 100
3 years worth of collective experience of folks that are
4 operating managers and experienced acquirers with
5 assumptions that in my view were conservative. In fact,
6 the company adjusted its long range view in light of the
7 challenging economic surroundings that we saw in the
8 early part of this year to establish a lower jumping off
9 point for the basis by which we projected forward. We
10 didn't simply bootstrap some numbers on some old
11 projections that were stale. This was real live data
12 that was used to formulate the model. You know, all of
13 these assumptions were presented in the board of
14 directors materials that have been furnished to all the
15 parties involved here. And, in fact, you know, the
16 access line losses that we've seen in 2009, which was
17 also referenced this morning, have been improving versus
18 2008. So even though we did, you know, take a
19 conservative view, I think those assumptions are proving
20 to be valid and appropriate in light of the way the
21 performance of the company has ultimately played out.

22 Q. Condition Number 5 in the settlement
23 agreement indicates that Frontier Northwest will not
24 encumber the assets, and there was testimony by Mr. Hill
25 this morning indicating that that was not really a

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1 meaningful condition as a part of this settlement
2 agreement. Can you address Mr. Hill's comment?

3 A. (Whitehouse) Yes. I'm not sure where he was
4 coming from on that other than to say that I know that
5 creditors would love to have a direct mortgage or pledge
6 of the assets of the ILEC. It was the primary form of
7 security, and it could easily be used to secure a lower
8 rate for this financing, and we have chosen to not offer
9 that up and to instead issue unsecured debt as it
10 relates to this transaction, which is a clear benefit to
11 the state by not having any potential encumbrances on
12 those assets. And in doing so, you could certainly
13 offer up a security like that and lower the rate, but
14 we've chosen not to encumber ourselves and take away any
15 financial flexibility just in return for a cheaper rate.

16 Q. Thank you.

17 Mr. Hill also commented on the risk factors
18 that Frontier has incorporated into its S-4 filing and
19 suggested that Frontier hasn't adequately considered or
20 addressed those risk factors as part of this
21 transaction. Can you respond to his comment?

22 A. (Whitehouse) Yes, I would like to respond to
23 that. I think it was covered by some other witnesses,
24 but as many have said in their written testimony, the
25 SEC requires a full disclosure of all potential risks

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1 and does not allow issuers to detail any potential
2 mitigants to those. It's meant to protect issuers from
3 potential litigation in the event an investor claims
4 that they weren't provided with all the potential risks.
5 And you certainly have to weight them and look at the
6 probability of them occurring. And I would argue that
7 in the preparation of the model, again drawing upon the
8 decades and decades of collective experience of all the
9 parties involved, that to the extent risk was believed
10 to have some quantifiable risk, it would have been
11 factored into that model when taken as a whole. But it
12 is virtually impossible to assess risk by risk by risk
13 what the impact of those are and then aggregate those
14 into a meaningful number. My argument is that to the
15 extent that a risk is appropriate to incorporate into
16 the model, it is indeed there.

17 Q. Thank you.

18 Just a couple more quick questions.

19 Mr. Whitehouse, Mr. Hill commented this morning that
20 Frontier management has stated that we hope to be
21 investment grade after this transaction and somehow
22 characterized that as it was just wishful thinking on
23 the part of Frontier management. Can you respond to
24 that?

25 A. (Whitehouse) Yeah, it is anything but that.

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1 In fact, the management of Frontier has stated publicly
2 their commitment to delever this entity, and that is not
3 a commitment that we make lightly. When you make such
4 commitments to the market, trust me, they write them
5 down, and they hold you to those. And we have committed
6 to a leveraged target of less than 2 1/2 times net debt
7 to earnings before taxes and depreciation and
8 amortization. That is a very common benchmark metric to
9 utilize to give some indication of where you would need
10 to be to petition for an investment grade rating.

11 And I think it's also worth noting how the
12 process of getting an upgrade works in today's
13 environment. As many in the room may know, the rating
14 agencies took some lumps over the last couple years for
15 perhaps, you know, not being conservative enough in how
16 they rated companies, and as a result the agencies are
17 very much in a -- of the view now that, you know, you
18 got to prove it to me first. So to expect an agency to
19 provide an upgrade to a triple B rating before the
20 transaction is even closed is not realistic, nor would
21 we have ever asked them to do so. In fact, what we
22 would expect to happen is the transaction will close, we
23 will show in the course of several quarters of showing
24 the entity is operating in a reasonably smooth fashion
25 and the synergies that we've offered up are being

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1 realized and the metrics are where they need to be, we
2 would make a case for an upgrade. But we understand
3 that does take some time and we need to prove that to
4 them.

5 But I think it should be certainly noted that
6 our rating has a positive outlook from two of the three
7 agencies, which what that means is the agency is viewing
8 the likely trend of the rating and when looking at this
9 transaction clearly designated that the metrics indicate
10 an upgrade is certainly more warranted than any other
11 action as it relates to the credit. The one entity that
12 did not, Standard & Poor's, my understanding in speaking
13 to them is simply a different protocol that they
14 undertake when they assign outlooks. They, as I
15 mentioned earlier, would wait until the transaction
16 closed before they came out with any refresh on the
17 outlook of the stock, of the credit, excuse me.

18 Q. Last question, Mr. Whitehouse, Mr. Hill
19 indicated that with a settlement agreement there were
20 still significant risks as far as Frontier's financial
21 health if this transaction is approved. Do you agree
22 that this settlement with the conditions that are
23 included in the settlement provides further assurance,
24 adequate assurance to the Commission of the ongoing
25 financial wellbeing of Frontier?

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1 A. (Whitehouse) Yes, I do.

2 Q. Thank you.

3 Mr. McCarthy, a couple of questions for you.

4 You were here this morning when Mr. Hill testified?

5 A. (McCarthy) I was.

6 Q. As well as Ms. Alexander?

7 A. (McCarthy) I was.

8 Q. And Mr. Roycroft?

9 A. (McCarthy) I was.

10 Q. Mr. Hill indicated that as part of the
11 projections that Frontier has included in its analysis,
12 financial analysis, it hasn't sufficiently factored in
13 access line losses that either Verizon or Frontier are
14 experiencing. Can you address that?

15 A. (McCarthy) Certainly. I would -- what I
16 would say to that is first of all the access line rates
17 that Mr. Hill had talked about from Frontier escalating
18 still would put us at that rate at some of the best line
19 losses in the industry. Our assumptions in the model
20 that were used really had essentially status quo losses
21 in the early years of ownership and then declining to I
22 believe 7.9% loss, which is still higher than where we
23 are today. And really from our perspective, the key to
24 stemming line losses is, one, investing in broadband,
25 two, having our local engagement philosophy rolled out

1 throughout the service territories, and really, three,
2 focusing the entire organization on that customer
3 centric approach towards going to market. And when you
4 look at those three combined, we've had a recipe for
5 success that has yielded line losses despite having
6 competitive overlap of over 73% in our area of line
7 losses down in the 6% range in the most recently
8 challenging economic environment. So I really don't
9 think that our assumptions were overly aggressive in
10 that regard.

11 Q. Mr. McCarthy, Ms. Alexander in commenting on
12 the service quality aspects of the settlement agreement
13 and specifically the credits that would be paid if
14 Frontier failed to meet the various service quality
15 metrics, she described the \$600,000 of credits that
16 Frontier would be subject to during the first year as a
17 drop in the bucket, and can you respond to that?

18 A. (McCarthy) Yes. I would say from Frontier's
19 perspective as the Chief Operating Officer, any kind of
20 service penalty is too much. Certainly \$600,000 would
21 absolutely not only get my attention, but it would get
22 our CEO's attention, and more than likely I would be
23 explaining to the board of directors why I was paying a
24 \$600,000 penalty in Washington. So the concept that
25 that would not get our attention is just not true.

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1 And then I would just say that aside from the
2 agreements that we've put forward, the way that we
3 compete in the market is really to compete effectively
4 on customer service. And not maintaining a quality
5 customer service and a quality product doesn't help us
6 to compete, so we have certainly the incentive to
7 maintain high quality service above and beyond the
8 settlement that's on the table.

9 Q. Thank you.

10 Mr. Roycroft testified that with Verizon
11 transferring service territory in Washington to
12 Frontier, Verizon's FiOS vision is going away in
13 Washington. Do you agree with that?

14 A. (McCarthy) No, I don't. As part of the
15 transaction, we are acquiring all the assets associated
16 with FiOS. We've made commitments in fact, as you might
17 have seen in some of the press, we've actually -- we've
18 gotten approval from all 41 of the local franchising
19 authorities that were necessary to transfer the assets,
20 and we fully plan on meeting all the commitments around
21 that. So Mr. Roycroft's quote of the vision of FiOS
22 disappearing is just not true. It will be here, it will
23 be a benefit in Washington post close, and we plan on
24 operating the system just as Verizon does today.

25 Q. Mr. Roycroft also commented on Frontier's DSL

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1 service and described DSL generally as an inadequate
2 technology. Do you agree with that?

3 A. (McCarthy) I don't. From our perspective
4 and I think most of the telephone companies in America,
5 DSL technology still remains the workhorse of how
6 broadband is delivered to households over copper lines.
7 In fact, we work very closely with all the equipment
8 manufacturers to make sure that their upgrade pads on
9 equipment are aligned with what our needs are. We are
10 constantly upgrading transport technology as well as the
11 electronics to get the most that we can in
12 deliverability throughout the footprint. In fact, we
13 spend time all the time on that. The implication or the
14 opinion put forth that this is first generation
15 technology is just not true. There are new developments
16 that happen all the time including bonding, different
17 methods of delivering transport to the different DSLAM's
18 that really offer the opportunity to continue to upgrade
19 the ability to deliver high quality service throughout
20 the footprint. And we use different types of techniques
21 depending upon the densities and different tactics to go
22 after home penetrations with as little as 20 to 50 homes
23 in the area. And that's just something that I think in
24 the Verizon model they have not really focused on, and
25 it's one of the benefits that we bring to this

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1 transaction.

2 Q. Mr. Roycroft was also critical of the part of
3 the settlement agreement in terms of Frontier's
4 commitment on broadband speeds that would be made
5 available in the state of Washington. Can you address
6 that concern raised by Mr. Roycroft?

7 A. (McCarthy) Well, first off I would say that
8 I spend quite a bit of time every year throughout the
9 year looking at how to stay competitive in markets
10 across the country from a speed perspective, so we now
11 that we've gotten to 92% of the markets, the households
12 in our markets, we're constantly looking at ways to
13 increase speed, increase throughput, in all of those
14 markets. The commitment in Washington really follows
15 the same kind of evolution that we've used in our legacy
16 markets, and that is we want to get to the most reach
17 that we can as quickly as possible. Obviously if we can
18 do that and generate higher speeds for customers, we
19 would do that. However, these were minimum commitments
20 that we think that we can attain during that time frame.
21 Along the way there will be customers that get higher
22 speeds, it's just the way the technology actually works,
23 so it's really driven by loop length in many cases. But
24 I think that the commitments that we've made here in
25 Washington are actually as large or larger than any

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1 other state that we've done any kind of settlement with
2 as part of this transaction.

3 Q. Mr. Roycroft also was critical of Frontier
4 imposing some type of usage limitation on customers of
5 broadband services. Could you respond to his criticism?

6 A. (McCarthy) Yes. I understand Mr. Roycroft's
7 point that 5 gigabit is in our acceptable use policy
8 today. It was put in place several years ago as we
9 responded to some abusive behavior in our network. I
10 have not, since I've been on the road for the last
11 probably four months, I have not been intimately
12 involved in revising the acceptable use policy, but my
13 understanding is that a new acceptable use policy will
14 be promulgated prior to the close of this transaction
15 that would actually have the 5 gigabit cap removed.

16 Q. Mr. Roycroft also highlighted the \$40 Million
17 broadband commitment that's included in the settlement
18 agreement and somehow suggested that that \$40 Million
19 was not sufficient or Frontier had not really conducted
20 the appropriate analysis to determine that \$40 Million
21 was the appropriate number to achieve what's identified
22 in the settlement. Can you respond to that?

23 A. (McCarthy) Certainly. The \$40 Million
24 figure was derived from using a broadband model that
25 took into account the starting point as being the

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1 latitude and longitude of every network element that
2 exists in Washington, for that matter across the
3 country. We then looked at the wire centers, we looked
4 at the equipment that was there, we looked at the
5 transport to and from that network element, we looked at
6 the densities around it from a customer perspective, and
7 we developed a model that was based in our own
8 experience in serving similar density customers around
9 the country, and that is really the basis for the \$40
10 Million. We've actually subsequent to signing the deal,
11 we've verified it again, had independent work done to
12 verify our model, and we're very comfortable that the
13 \$40 Million is appropriate for the commitments we're
14 making.

15 Q. Mr. Roycroft also suggested that the
16 settlement agreement was inadequate because it didn't
17 specifically require Frontier to apply for Federal
18 stimulus funding and that there was the potential that
19 if the company did apply for Federal stimulus funding,
20 we would use that funding to offset the \$40 Million
21 commitment that is included in the settlement. Can you
22 respond to that?

23 A. (McCarthy) Certainly. I would say two
24 points. First, we did apply for some stimulus funding
25 in the first round. We applied for approximately a \$70

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1 Million draw in West Virginia. We did it very
2 specifically because we were the second largest
3 incumbent in West Virginia, and we were also certified
4 as a CLEC there, so we were able to move forward with
5 that application. Unfortunately we were not successful
6 with the application. We just were notified about that.
7 We did not apply in other areas, especially in areas
8 that we would be acquiring in this transaction, because
9 we did not have a certificate, and we were not the
10 incumbent in those areas, especially when you were
11 looking at the final 5% to 7% as being the candidate
12 target segment for potential stimulus funding. Having
13 said that, the rules that were promulgated, as I
14 understand it, changes to them two to three weeks ago,
15 and the application deadline it's my understanding is
16 3/15, so I don't think that we'll make the next
17 application deadline for the stimulus. But if we did
18 for some reason and we were successful, I would assure
19 the Commission that the stimulus funds would be used for
20 that final 5% to 7% that are not economic. It would not
21 displace the \$40 Million that we've committed to to get
22 to the 89%.

23 Q. Mr. McCarthy, last question, you heard the
24 testimony of Mr. Hill, Ms. Alexander, and Mr. Roycroft,
25 all critical of various aspects or components of the

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1 settlement agreement that Frontier has entered into with
2 the Commission Staff. Do you feel that their criticisms
3 are appropriate, and can you comment on the overall
4 settlement document that we've entered into with the
5 Staff?

6 A. (McCarthy) I would just echo I think
7 Mr. Gregg's comments on that in that I've been involved
8 certainly with our team and the Verizon team in
9 negotiating settlements in many of the states, and it is
10 a give and take, and the settlement should be taken in
11 the total context of the 35 plus conditions that are
12 incorporated here. And I think that taking each one and
13 trying to bootstrap up even higher doesn't take into
14 account the entire bargain that was put together with
15 Staff.

16 MR. SAVILLE: Thank you.

17 JUDGE CLARK: Thank you.

18 Again, no friendly cross, so Ms. Shifley.

19 MS. SHIFLEY: Yes, Your Honor, I just have a
20 few questions.

21

22 C R O S S - E X A M I N A T I O N

23 BY MS. SHIFLEY:

24 Q. I would like to start with a couple questions
25 for Mr. Whitehouse. Mr. Whitehouse, is it true that

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1 Verizon currently has a higher rating than Frontier
2 does, bond rating?

3 A. (Whitehouse) Yes, it does.

4 Q. Okay. And you mentioned that a lot of
5 companies that Moody's rates are below investment grade;
6 is that correct?

7 A. (Whitehouse) That is correct.

8 Q. How many utilities are non-investment grade?

9 A. (Whitehouse) I don't have that data.

10 Q. And I just want to ask you a couple
11 questions, you stated that you made the or the financial
12 model was made available to Public Counsel?

13 A. (Whitehouse) Yes, it was.

14 Q. So I just wanted to ask you a couple
15 questions about that financial model that you had
16 provided to us. I believe that some of the specific
17 figures in the model are highly confidential, so I won't
18 address those in particular, I just will ask some
19 questions about some of the various parameters of the
20 model, but please caution me if I'm approaching
21 something that might be highly confidential. You and
22 your management team at Frontier created this model and
23 provided it to the advisors; is that correct?

24 A. (Whitehouse) I think it's better described
25 that our advisors were involved in this process from day

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1 one and played an integral role in the development of
2 that model.

3 Q. But it was created by Frontier; is that
4 correct?

5 A. (Whitehouse) The key assumptions were
6 created by Frontier; that is correct.

7 Q. And in the financial model that you provided
8 to Public Counsel, there were only five parameters that
9 could be changed; is that correct?

10 MR. SAVILLE: Your Honor, I'm going to
11 object, I think this goes beyond the scope of what was
12 testified to in the live rebuttal. I think these
13 questions could appropriately be addressed to
14 Mr. Whitehouse when he's available for cross-examination
15 as part of the underlying case.

16 JUDGE CLARK: Ms. Shifley, response.

17 MS. SHIFLEY: I'm only addressing these right
18 now because Mr. Whitehouse made some statements about
19 the model as a support for why the model provided Public
20 Counsel with adequate information, and this just goes to
21 the quality of the model and the completeness and
22 utility of it.

23 JUDGE CLARK: The objection is overruled.

24 A. (Whitehouse) The model was furnished as well
25 as all the assumptions that went into that model as

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1 well. I think it's fair to say that it's an extremely
2 complex model with thousands of cells. It's virtually
3 impossible to design a model that is so user friendly
4 that any third party stepping into the transaction
5 without the full benefit of the development of all its
6 assumptions can simply type in a number and have it flow
7 perfectly through the model. It was never developed for
8 the intention of third party consultants or witnesses to
9 use. It was developed for management and the
10 appropriate team involved in that transaction to utilize
11 as a tool in evaluating the transaction, and thus it is
12 the -- that is why the model is constructed the way that
13 it is.

14 BY MS. SHIFLEY:

15 Q. So you just said that there were thousands of
16 cells, and of those, five of the parameters could
17 actually be changed; is that correct?

18 A. (Whitehouse) I believe in the version you
19 have that at some point the model is locked down and
20 there's no need to add additional functionality for
21 running iterations.

22 Q. So there's a version that is actually more
23 functioning or more highly sophisticated than the one
24 that you provided to Public Counsel; is that correct?

25 A. (Whitehouse) No, I'm not saying that. I'm

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1 saying that the model is what it is. That is the model
2 that we provided to every state and to everyone who's
3 requested it. But there is no model that would allow
4 you that ability to run iterations. Certainly
5 management with its detailed knowledge of the model
6 could provide such sensitivities, but it would not be --
7 it would not be -- the model would not be designed such
8 that any third party could just come in and do that. It
9 would require some retooling of that model to do so.

10 Q. And that higher functionality would be
11 something that Frontier management could do?

12 A. (Whitehouse) They certainly have the
13 capability, yes. Same way they have the capability to
14 build the model. If we had to rebuild it, it could be
15 done, but that is the only model that is available at
16 this time.

17 Q. And available to all parties including
18 Frontier management?

19 A. (Whitehouse) Yes.

20 Q. And the model does not allow revenues for the
21 VSTO SpinCo areas or for legacy Frontier operations to
22 be changed; is that correct?

23 A. (Whitehouse) That's correct.

24 Q. So that means that no party could actually
25 run the model with different assumptions for projected

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1 revenues?

2 A. (Whitehouse) Yeah, I believe that's fair.

3 But again, as I stated, the model was not designed -- it
4 was designed to be a tool for management, not a tool for
5 other third parties not directly involved in the
6 transaction. And we certainly can provide, as we have,
7 you know, hundreds of data requests to provide
8 additional information to give parties better insight as
9 to the assumptions that were included in that model.

10 Q. So management didn't run a financial model
11 that used any other revenue projections than the single
12 assumption that it made?

13 A. (Whitehouse) I believe there have been some
14 subsequent requests from other states to do such
15 analysis, and but the model that is -- was provided was
16 the model that management decided upon to be the base
17 case, the expected outcome of the transaction, and thus
18 it is the official version.

19 Q. So Frontier's management didn't run any
20 financial model with different revenue projections?

21 MR. SAVILLE: Objection, it was asked and
22 answered.

23 JUDGE CLARK: Response, Ms. Shifley.

24 MS. SHIFLEY: I believe what I'm looking for
25 is a yes or no answer from the witness, and I just

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1 haven't got that, so I wanted to make sure the record
2 was clear.

3 A. (Whitehouse) I don't believe it's a yes or
4 no. I'm not sure I would be able to answer that yes or
5 no. I think what --

6 JUDGE CLARK: Mr. Whitehouse, you need to not
7 do anything until I rule, okay.

8 THE WITNESS: Sorry.

9 JUDGE CLARK: I think the question has
10 actually been asked and answered. I think this is now
11 the third time.

12 MS. SHIFLEY: Thank you, Your Honor.

13 BY MS. SHIFLEY:

14 Q. And it also was not possible in the model
15 that you provided or that Frontier management used to
16 change the rate of line loss for the VSTO SpinCo or
17 legacy Frontier territories; is that correct?

18 A. (Whitehouse) That is correct.

19 Q. So for example if the model that you provided
20 to Public Counsel, if Public Counsel or the Commission
21 wanted to make some different assumptions about the rate
22 of line loss for VSTO SpinCo than Frontier made, we or
23 the Commission would not be able to do so with the
24 financial model that you provided; is that correct?

25 MR. SAVILLE: I'm going to object, that

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1 misstates his prior testimony. I think he's indicated
2 that the model assumptions are able to be varied upon a
3 request by a party.

4 JUDGE CLARK: Response, Ms. Shifley.

5 MS. SHIFLEY: I'm asking -- I would just like
6 to understand how the model itself functions that we
7 were provided and allowed to do analysis on, and I'm
8 just trying to clarify that we were unable to actually
9 test the model with different assumptions.

10 JUDGE CLARK: All right, then you need to
11 rephrase the question, and the objection is overruled
12 with the restatement.

13 BY MS. SHIFLEY:

14 Q. The model that you provided to Public
15 Counsel, did it allow Public Counsel to enter different
16 rates of line loss for either VSTO or for the legacy
17 Frontier territories?

18 A. (Whitehouse) No, it did not.

19 Q. Could the parameters for SpinCo, VSTO, or
20 legacy Frontier be changed for operating expenses?

21 A. (Whitehouse) No, I believe -- no, they could
22 not.

23 Q. What about capital expenditures?

24 A. (Whitehouse) Again I believe my answer is
25 going to be back to where I started was that the model

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1 took into account the input from all management involved
2 in the development of the model. For quality control
3 purposes, it's not prudent to have a model that is just
4 floating around with everyone putting different
5 assumptions and inputs into it. It controls -- it is a
6 better control to have a model that at some point you
7 set a base line, and that becomes the expected outcome
8 that management uses as one of the many tools including
9 all the various qualitative assessments that are going
10 to be taken into account by management and the board as
11 to whether to move forward with that transaction or not.
12 Sorry, but we did not have it as a goal at the time to
13 have a user friendly model that anyone could just step
14 into and make changes at will. It's a far too complex
15 transaction to create a model that has that type of
16 functionality.

17 Q. So the model that Frontier management used is
18 different than the model that you provided to parties
19 and regulators?

20 MR. SAVILLE: Objection, asked and answered.

21 JUDGE CLARK: I'm going to sustain the
22 objection even without hearing.

23 MS. SHIFLEY: Just a moment.

24 BY MS. SHIFLEY:

25 Q. Mr. Whitehouse, I think I just have a couple

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1 more questions. You made some comments regarding a
2 showing of access line losses in 2009. Can you provide
3 any support for the data?

4 A. (Whitehouse) I certainly can. We've
5 reported them every quarter for both Frontier and for
6 the VSTO operations as to what the line losses have been
7 on an annual basis.

8 Q. Are they in your quarterly reports,
9 Mr. Whitehouse?

10 A. (Whitehouse) They absolutely are.

11 Q. And one more question. Standard & Poor's
12 reported that after the merger was announced they might
13 upgrade or downgrade Frontier based on how the
14 transaction proceeds; is that correct?

15 A. (Whitehouse) As I explained, the direct
16 conversations that I had with Standard & Poor's implied
17 to me that they indeed would like to see more
18 information about the transaction, because it is their
19 protocol to wait until the transaction closes and they
20 have all the facts before they make an official view on
21 the outlook or the ultimate rating of the company. That
22 wasn't anything that's specific to Frontier, I was told
23 that is the way they view all outlooks. It has to be
24 something that is pending inside of a 12 month period.
25 Since this transaction was not slated to close inside of

0513

1 12 months, it chose not to address the outlook.

2 Q. So is that yes or no to my previous question?

3 Could you just clarify whether or not I was correct?

4 A. (Whitehouse) I do not have their write-up in
5 front of me, so I would not -- I do not recall the exact
6 verbiage they used in their publication.

7 MS. SHIFLEY: Thank you.

8 One moment, Your Honor.

9 No further questions at this time, Your
10 Honor.

11 JUDGE CLARK: Great, thank you, Ms. Shifley.

12 Is there any Commissioner inquiry?

13 Commissioner Jones.

14

15 E X A M I N A T I O N

16 BY COMMISSIONER JONES:

17 Q. This is a question for Billy Jack Gregg.

18 Would you just state on the record who the leading
19 telecommunication analyst is in West Virginia? This is
20 really important to me.

21 A. (Gregg) I would say he's located somewhere
22 in greater Putnam County, but exactly where would be
23 hard to tell.

24 COMMISSIONER JONES: No further questions.

25 JUDGE CLARK: Commissioner Oshie, do you have

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1 any inquiry?

2 COMMISSIONER OSHIE: No.

3 JUDGE CLARK: All right.

4 Chairman Goltz.

5

6 E X A M I N A T I O N

7 BY CHAIRMAN GOLTZ:

8 Q. Mr. McCarthy, did you respond to the sort of
9 11th hour suggestion of Mr. Hill that there be a
10 separate corporate entity created for Frontier
11 Northwest?

12 A. (McCarthy) I did not. When I heard him say
13 that, that was the first time anyone has ever raised
14 that to me, so I just don't have any basis to --

15 Q. But the current plan would be that there
16 would not be a separate corporate entity for -- in
17 effect it would just be an operating unit of the main
18 corporation?

19 A. (McCarthy) That's correct.

20 Q. And did the -- was there any consideration to
21 having separate corporate entities?

22 A. (McCarthy) No, there wasn't.

23 Q. And do you, off the top of your head, do you
24 see a problem with that?

25 Mr. Whitehouse, that's fine.

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1 A. (Whitehouse) I would be glad to respond. I
2 think the issue that I would raise with that is the
3 whole -- the efficiencies that you gain in running a
4 telco on a national basis is that you are able to
5 generate scale, economies of scale by having common
6 support functions like an executive team, corporate
7 accounting, human resources, et cetera. To completely
8 ring fence an entity and confine it to a single state
9 would mean you would have to have a state CEO and a
10 state CFO and a state treasurer and a state chief
11 counsel and a state HR department, so it certainly is
12 not a cost efficient way to establish a corporate
13 entity.

14 Q. But you still have central functions being
15 performed at the parent level though, correct?

16 A. (Whitehouse) That was not the way I
17 understood what was being called for. In order to have
18 a true ring fence, you would have to have a completely
19 stand-alone self-functioning entity. I may have
20 misunderstood what was being proposed.

21 MR. SAVILLE: Your Honor, can I just clarify
22 something. I'm not sure that the witnesses have
23 accurately characterized the structure of the
24 transaction. I think this calls for legal counsel to
25 explain. The transaction as it's structured, Verizon

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1 Northwest Inc. is the operating entity that operates
2 here in the state of Washington, also the state of
3 Oregon and the state of Idaho. Under the proposed
4 transaction, that operating legal entity Verizon
5 Northwest Inc. will come over in totality as a separate
6 corporation that will be under the Frontier
7 Communications Corporation umbrella. The only change
8 that will transpire with respect to that legal entity
9 that again operates in Washington, Oregon, and Idaho
10 will be a name change. It will be renamed from Verizon
11 Northwest Inc. to Frontier Northwest Inc., so that will
12 still be a separate legal entity that is the ILEC
13 providing service in the state of Washington.

14 MR. ROMERO: And just to add to that just to
15 help here, Verizon Northwest Inc. is incorporated in the
16 state of Washington, and so I didn't quite understand
17 the suggestion this morning either, but I think that
18 would help with the discussion.

19 BY CHAIRMAN GOLTZ:

20 Q. So basically you will have a separate legal
21 entity then. You stand corrected.

22 A. (Whitehouse) Maybe I -- I was viewing it
23 less so from a legal concept but more practically as the
24 Treasurer of the company, which I also meant to address
25 is if you have a ring fence around an entity, then it

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1 also has to be self financed just because to the extent
2 you block the ability for the cash flow to move outside
3 of that entity. I would not be able to borrow on a
4 senior unsecured basis at the parent level. Those
5 creditors would demand the ability to have cash, so it
6 would require a separate capital structure for that
7 entity as well as a separate credit rating. It simply
8 wouldn't be as efficient as a capital structure. It
9 would be more expensive for the company.

10 CHAIRMAN GOLTZ: I have no further questions.

11

12 E X A M I N A T I O N

13 BY JUDGE CLARK:

14 Q. I have just one point of clarification for
15 you, Mr. Whitehouse, and that is can you let me know
16 when the much argued about model was provided?

17 A. (Whitehouse) It was provided on September
18 16th.

19 Q. To Public Counsel?

20 A. (Whitehouse) That is correct.

21 Q. And all other parties?

22 A. (Whitehouse) That is my understanding.

23 JUDGE CLARK: All right, thank you.

24 Redirect.

25 MR. SAVILLE: Your Honor, just to clarify

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1 Mr. Whitehouse's last statement.

2 JUDGE CLARK: Okay, I don't really want to
3 get into the habit of having counsel paraphrase the
4 testimony of a witness, all right. I think that
5 Mr. Whitehouse has adequately answered the inquiry and
6 under oath.

7 MR. SAVILLE: I understand, Your Honor.
8 There's no further redirect.

9 JUDGE CLARK: All right, thank you.

10 Thank you for your testimony, Mr. McCarthy,
11 Mr. Whitehouse, Mr. Gregg.

12 It's my understanding that the next phase of
13 this hearing will be the cross-examination of the Joint
14 Applicants on broader issues.

15 Yes, Mr. Thompson. Oh, I'm sorry, I ignored
16 Staff oral surrebuttal.

17 MR. THOMPSON: Correct.

18 JUDGE CLARK: And you would like to call a
19 witness in oral surrebuttal?

20 MR. THOMPSON: I would.

21 JUDGE CLARK: Please.

22 MR. THOMPSON: Two in fact.

23 JUDGE CLARK: Please call your witnesses, Mr.
24 Thompson.

25 MR. THOMPSON: Thank you.

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1 JUDGE CLARK: You were so quiet for a while
2 there, I forgot you were in the room.

3 MR. THOMPSON: Staff would call back to the
4 stand William Weinman and Robert Williamson.

5 JUDGE CLARK: Thank you.

6 (Discussion off the record.)

7 JUDGE CLARK: I will just remind Mr. Weinman
8 and Mr. Williamson that you remain under oath.

9 Mr. Thompson.

10 MR. THOMPSON: Thank you.

11

12 Whereupon,

13 WILLIAM H. WEINMAN AND ROBERT T. WILLIAMSON,
14 having been previously duly sworn, were called as
15 witnesses herein and were examined and testified as
16 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. Let's see, I think the first question is for
21 Mr. Weinman, and this pertains to some testimony from
22 Ms. Alexander about the condition 19 of the settlement
23 agreement of the SPG or service performance guaranty
24 program, and I think she criticized that as essentially
25 being not enough and having a minuscule impact when

0520

1 applied to Verizon historical data. What's your
2 response to that?

3 A. (Weinman) Well, first of all I would like to
4 start off with just a brief explanation on quality rules
5 within the Washington Administrative Code. We have
6 approximately eight items that are in the service
7 quality standard, missed appointments, installation,
8 major outages, trouble reports per hundred by central
9 office, switching, trunk blockage, repair times, and
10 business office average speed of answer. So those are
11 the service quality standards that Frontier can expect
12 to enjoy when and if they become a company in the state.

13 With regard to item number 19 though,
14 Ms. Alexander did make a comment that there wasn't
15 enough. One thing I would point out is the \$35 missed
16 commitment credit to a customer is higher than any other
17 ILEC that is subject to missed commitments. The
18 company's also required to provide alternative service
19 if they can't get the repairs done timely. And the \$5
20 credit for out of service was criticized as being
21 inadequate. If we look at what would happen if Frontier
22 did not become an entity in this state, we would drop
23 back to Verizon's pro rate, which to give you an example
24 if the customer is out of service for two days, the
25 amount of the credit that would be given to them is

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1 \$1.12. So while \$5 in and of itself may not be huge, it
2 really is quite a bit more in terms of money. And these
3 provisions are really not intended to be punitive, but
4 really to let the customer recognize that we do perceive
5 some value if they're -- if the company doesn't meet
6 their commitments.

7 I also look at item 20 with the credits for
8 missed service over the three year period. The credits
9 go to the customers. Total value of that is about \$3.6
10 Million, which has been mentioned previously. Staff's
11 proposal is that this really is a temporary transition
12 piece during the cutover times to integration and to
13 give the customer more value from any services that may
14 have been missed in those particular metrics. I would
15 just like to point out that when we looked at the
16 CenturyTel/Embarq merger, none of these items in terms
17 of the credits and the cumulative three year provisions
18 for the \$3.6 Million was required of those companies.
19 So it is a much greater standard that we're holding
20 Frontier to with these items even though Public Counsel
21 seems to think they're not very adequate, or at least
22 that's my impression of the testimony they gave today.

23 Q. Thanks, Mr. Weinman.

24 My next question is actually for
25 Mr. Williamson.

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1 Ms. Alexander also made some comments with
2 regard to the measures chosen under condition number 28
3 pertaining to the operation of the replicated systems
4 prior to the close of the transaction. Could you just
5 comment on why those particular measures were chosen?

6 A. (Williamson) The items in 28, installation
7 commitment, network trouble per 100 access lines,
8 repair, percent out of service trouble cleared in 48
9 hours, and billing error commitments, were chosen after
10 studying the failure in New England and the indicators
11 that were seen early that a major problem had arisen.
12 We discussed these with Oregon, Oregon staff. Oregon
13 staff had actually traveled to the New England states
14 and talked to staff in those states, and they agreed
15 that these indicators were the canary in the mine for a
16 massive failure. Again, that's what we're trying to
17 look for here.

18 This in no way takes place of the regular
19 quality of service reports. They will continue for
20 Verizon as they do today. In 60 days we'll have only
21 one full 30 day report, but along with these indicators
22 should show us if there's a massive failure. It's my
23 belief if there's a system failure similar to what
24 happened in New England, it will happen right away.
25 These indicators came up immediately when they cut over

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1 the systems. And if that's the kind of failure -- and
2 that's the kind of failure we're looking for to make
3 sure our friends in Verizon don't get to walk away if
4 there's system problems. It's also our belief that our
5 friends at Verizon wouldn't do that, but Frontier would
6 hold them at the door if they tried. It's very
7 important to Frontier to make sure that these systems
8 are working correctly because they will live with them
9 after the 60 days.

10 Q. What about the complaint about, well, I
11 shouldn't use the word complaint, what about the
12 criticism of the use of the term billing error as a
13 measure?

14 A. (Williamson) Well, it is true that a billing
15 error is not one of our normal quality of service
16 reporting metrics, but it was a strong indicator in the
17 New England states as well as Hawaii for system failure.
18 It is not just a billing error, it's a billing error
19 complaint. So it's our understanding that the company
20 would tell us how many complaints they've had. Probably
21 will take a few days after the first bill goes out for a
22 customer, well, maybe, depending what the error is, to
23 complain. We also have a stand-alone, a very important
24 piece that also showed up in New England with commission
25 complaints. If we see the kind of problem they had in

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1 New England, we will get Commission complaints as well
2 as billing complaint reports from the company. That's
3 why we chose those particular items.

4 Q. What about the criticism that Staff will only
5 have -- Staff and the Commission will only have five
6 days to review the final report prior to closing?

7 A. (Williamson) Well, it would sound like Staff
8 would be asleep at their desk for 55 days waiting for
9 the report, which obviously would not be true. We've
10 been working closely with the company and will be with a
11 third party provider. They've agreed to provide us with
12 information along the way on a regular basis along with
13 Oregon and Ohio staff and any other staff that we can
14 pull in with us. We're discussing who might be the
15 point of contact for that. It could be some staff here
16 in Washington state or another, but we're looking for
17 one point of contact so that they can give us the
18 information. We do not expect to get to the 55th day
19 and be shocked at what the report says. We believe we
20 will know what it's going to say before then, and the 5
21 days will give us time to analyze it in more detail.

22 Q. Thank you.

23 Back to Mr. Weinman, one of the points that
24 Dr. Roycroft brought up was I guess a question about the
25 efficacy of the \$40 Million escrow account as a means of

0525

1 assuring broadband buildout. Could you respond to that,
2 please?

3 A. (Weinman) Certainly. From my point of view,
4 the \$40 Million is a downpayment in that it's based on
5 an estimate, and we take the estimate at the face value
6 of the company. But when we look at what the company
7 actually has to do, if we look at page 4 of settlement,
8 we have three groups of customers, unserved,
9 underserved, and all other wire centers, and they have
10 to make certain percentage commitments by the end of
11 2011, 2013, and 2014. The percentage of availability
12 dictates the final amount of money needed to be expended
13 by the company to meet this settlement. So \$40 Million,
14 like I said, I believe is a downpayment. It's a showing
15 of good faith that the company has the ability to escrow
16 this kind of money and then go forward and build the
17 plant.

18 The other things that I think I heard
19 criticism was is that Frontier could have at least gone
20 to 92% like they did in their other areas. For Staff,
21 our primary concern was to get service to underserved
22 and unserved areas and have a deployment over a much
23 broader base. I mean 92% would be fairly easy to
24 achieve if all you have to do is worry about it in the
25 higher population centers and not worry about the areas

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1 that are underserved or unserved. So we have a
2 different priority set for achieving a certain amount of
3 DSL penetration.

4 The DSL pricing has pricing bundles, I
5 believe there's five of them that are bundled in which
6 Frontier is committed to continue to offer DSL
7 customers. And as far as criticism of DSL speeds and
8 speed limitations or choking of the data, we're talking
9 about a product that as far as I'm concerned has certain
10 market pressures for both price, speed, and limitations.
11 Otherwise Frontier is not going to be able to achieve
12 the penetration of high speed Internet services that are
13 available to those customers. They'll take somebody
14 else unless Frontier happens to be the only choice, and
15 then they'll probably be glad to get whatever speed
16 they're deploying at that point in time anyway. Because
17 we hear complaints from customers that I can't get DSL,
18 so I believe that minimum speed set up to get the
19 service out to the customers, and after that the market
20 will really dictate what kind of speeds need to be
21 produced for them to be competitive in the future.

22 Q. Mr. Weinman, just one last question, in
23 response to just the various criticisms from the Public
24 Counsel witnesses about the quality of the settlement,
25 do you have any general thoughts about the quality of

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1 the settlement?

2 A. (Weinman) I do have some general thoughts
3 about the quality of the settlement. I went back and
4 looked at the CenturyTel/Embarq merger, we had 12
5 conditions in the settlement. That was an all party
6 settlement so that everybody that was participating in
7 that agreed to that. We have 35 conditions in this, and
8 the quality of the conditions in this settlement are
9 much more stringent than they were in the CenturyTel
10 settlement. Things like credit refund provisions, item
11 20, that puts about \$3.6 Million in jeopardy for
12 Frontier, are not in CenturyTel/Embarq merger. And so
13 Staff believes that there may be items in the settlement
14 that we can take shots at, but on the whole this is a
15 very good settlement, and it resolves many of the risk
16 issues that we were concerned about when we started this
17 process.

18 MR. THOMPSON: Thank you, that's all I have
19 on the surrebuttal.

20 JUDGE CLARK: All right.

21 Ms. Shifley.

22 MS. SHIFLEY: Thank you, Your Honor, I just
23 have a couple brief questions.

24

25

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1 C R O S S - E X A M I N A T I O N

2 BY MS. SHIFLEY:

3 Q. Mr. Williamson, you testified to the fact
4 that Staff will be working with other parties and the
5 third party evaluator and will be getting information
6 before the 60 day period. Is any of that laid out in
7 the settlement agreement?

8 A. (Williamson) No, it is not.

9 Q. Okay.

10 And now I just have a couple questions for
11 Mr. Weinman. Mr. Weinman, you testified about the
12 service quality conditions that are included in the
13 settlement. Would it in your understanding be possible
14 for the level of service quality from Verizon's historic
15 and current performance to deteriorate under the
16 settlement agreement without any penalties or bill
17 credits occurring?

18 A. (Weinman) I know of no reason for that. I
19 suppose somebody could make it hypothetical to get me
20 there, but my response generally is no from a practical
21 standpoint.

22 Q. So the service that is now being delivered by
23 Verizon, could that -- if that goes down at all from
24 what's occurring currently -- is the settlement
25 agreement based on Verizon's current performance, or is

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1 it based on the Commission minimum standards?

2 A. (Weinman) It's based on the Commission
3 standards.

4 Q. Thank you. And one more question for you,
5 Mr. Weinman, you testified concerning the
6 CenturyTel/Embarq settlement?

7 A. (Weinman) Correct.

8 Q. Is it your understanding that the Commission
9 actually imposed additional terms on that settlement
10 above and beyond what all parties had agreed to in the
11 proposed settlement?

12 A. (Weinman) They did and I wouldn't be
13 surprised if they imposed additional conditions on this
14 one also.

15 MS. SHIFLEY: That's all, Your Honor, thank
16 you.

17 JUDGE CLARK: Let's see if there's any
18 Commissioner inquiry.

19 Commissioner Jones?

20 COMMISSIONER JONES: No.

21 JUDGE CLARK: Commissioner Oshie?

22 Chairman Goltz?

23

24

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1 E X A M I N A T I O N

2 BY JUDGE CLARK:

3 Q. I have just one clarifying question for you,
4 Mr. Williamson, that is when you say you conferred with
5 Oregon and Ohio staff, you're referring to the
6 regulatory commissions in those states?

7 (Williamson) I apologize, yes, Your Honor.

8 JUDGE CLARK: Thank you.

9 Oh, redirect.

10 MR. THOMPSON: No redirect.

11 JUDGE CLARK: All right, thank you, Mr.

12 Williamson, thank you, Mr. Weinman.

13 And unless I'm misstepping again, maybe we're
14 now ready to have examination on broader issues. Okay,
15 then we're going to take our afternoon break, which is
16 approximately 15 minutes, and then during that recess we
17 can talk about the order of the witnesses. I think we
18 have it, but I just want to confirm that. We're at
19 recess for 15 minutes.

20 (Recess taken.)

21 JUDGE CLARK: Good afternoon, we're back on
22 the record. Mr. Romano, would Verizon call their first
23 witness, please.

24 MR. ROMANO: Yes, thank you, Your Honor,
25 Verizon calls Timothy McCallion.

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1 JUDGE CLARK: Thank you.

2 Mr. McCallion, I will just remind you you
3 remain under oath.

4 MS. SHIFLEY: Your Honor, I'm sorry to
5 interrupt here, I just thought that now might be a good
6 time to notify the parties and the Bench that Public
7 Counsel is going to waive its cross-examination of the
8 joint applicant witnesses.

9 JUDGE CLARK: All of them?

10 MS. SHIFLEY: Yes, Your Honor.

11 JUDGE CLARK: Just confirmation for the
12 record, you will have no cross-examination of
13 Mr. McCallion, Mr. Smith, Mr. McCarthy, Mr. Gregg, or
14 Mr. Whitehouse?

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

16 JUDGE CLARK: All right, thank you.

17 CHAIRMAN GOLTZ: I guess I'll make my dental
18 appointment on Friday after all, darn.

19 JUDGE CLARK: All right, I'm certainly not
20 going to allow any friendly cross-examination from the
21 party I like to ignore, I mean Mr. Thompson.

22 MR. THOMPSON: Thank you.

23 JUDGE CLARK: So what we are going to turn to
24 then is any Commissioner inquiry that there might be for
25 any of these witnesses, and I'm going to turn to you

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1 first, Commissioner Jones.

2

3 Whereupon,

4 TIMOTHY J. MCCALLION,

5 having been previously duly sworn, was called as a

6 witness herein and was examined and testified as

7 follows:

8

9 EXAMINATION

10 BY COMMISSIONER JONES:

11 Q. Good afternoon, Mr. McCallion.

12 A. Good afternoon, Commissioner.

13 Q. I just have a few clarifying questions on I
14 think it's in your direct testimony, and it's in the
15 first TM-1T, and I'm just trying to get clear in my own
16 mind what assets are being transferred and what assets
17 are remaining in the state of Washington. So maybe you
18 could just generally go through that again in terms of
19 long distance assets, global IP assets, FiOS assets,
20 what is being transferred and what is not? Maybe the
21 best way to answer the question is what assets will
22 Verizon continue to own other than wireless in the state
23 of Washington?

24 A. Okay. Commissioner, the assets that we will
25 transfer will be the assets of our ILEC, Verizon

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1 Northwest Incorporated, so that will be the local
2 telephone business. In addition to that, we will be
3 transferring the Verizon Long Distance customers who are
4 associated with the customers of the land line business.
5 So for example if we have customers for Verizon Long
6 Distance and they are in Qwest area or CenturyTel/Embarq
7 area, those will not be transferred. Verizon Long
8 Distance will stay in the state and continue to compete.
9 And then you asked in addition Verizon Wireless, yes,
10 Verizon Wireless will continue to maintain a strong
11 presence in the state of Washington, as will Verizon
12 Business. And Verizon Business is our Enterprise
13 Business that's largely focused on large private
14 companies and also government entities, and it primarily
15 consists of the assets that we acquired several years
16 ago when we acquired the assets of the former MCI. We
17 added to that the larger business accounts that Verizon
18 already had.

19 Q. So to clarify, you will, on the long distance
20 side you will continue to operate what you call VLD,
21 Verizon Long Distance, and VES, Verizon Enterprise
22 Solutions, in the state of Washington?

23 A. Yes, we will.

24 Q. Okay. Turn to page 5 of your testimony, line
25 18, if you would. Tell me when you're -- do you have it

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1 in front of you?

2 A. Yes, I do, Commissioner.

3 Q. On line 18 it says:

4 The proposed transaction with Frontier
5 will allow Verizon to focus on its ILEC
6 local IP and wireless operations.

7 So what do you mean by, given your previous
8 answer, I -- my understanding -- it's just confusing to
9 me. This transaction is you're divesting of all ILEC
10 operations in our state, are you not?

11 A. Well, Commissioner, you bring up a good
12 point. I think I probably could have structured that
13 sentence a little bit clearer. We're keeping our ILEC
14 operations in our high density states, so I use the word
15 high density later in the sentence, and that's referring
16 to the ILEC business because we're staying in the
17 wireless business in all states for example.

18 Q. So are you staying in the ILEC business in
19 California?

20 A. Yes, we are, and we serve high density areas
21 primarily surrounding Los Angeles.

22 Q. FiOS?

23 A. We have significant FiOS in California.

24 Q. Okay, I think -- oh, just one more question.
25 Are you responsible for Hawaii in the West Region?

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1 A. Yes.

2 Q. Did you have any personal involvement in the
3 negotiations to sell the assets of or divest the assets
4 of Hawaii Telecom to The Carlyle Group?

5 A. I wasn't involved in the negotiations of the
6 transaction with The Carlyle Group. I did get involved
7 in some of the regulatory discussions before that
8 transaction was consummated, but I wasn't involved in
9 the negotiation of the transaction itself.

10 COMMISSIONER JONES: I have some questions on
11 the Fort Wayne data center and something I think that
12 was in Mr. Roycroft's testimony on some depositions you
13 made in the state of Ohio, but I will wait on that. I
14 assume that Public Counsel Mr. Roycroft will address
15 that, thank you.

16 JUDGE CLARK: Commissioner Oshie?

17 COMMISSIONER OSHIE: No questions.

18 JUDGE CLARK: Chairman Goltz?

19 CHAIRMAN GOLTZ: No questions.

20 JUDGE CLARK: All right, I'm assuming -- yes,
21 go ahead, Mr. Romano.

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

23

24

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1 D I R E C T E X A M I N A T I O N

2 BY MR. ROMANO:

3 Q. One thing we neglected to do is I wanted to
4 ask you about your rebuttal testimony which is marked as
5 Exhibit TM-2HCT, did you have any corrections to that
6 testimony?

7 A. Yes, I had one correction on page 34, line 9.

8 Q. And the correction involves a highly
9 confidential number, so, Mr. McCallion, please when you
10 explain the correction try to avoid referring to the
11 number.

12 JUDGE CLARK: All right, and we just were
13 handed an errata that perhaps addresses this issue?

14 MR. ROMANO: Yes, Your Honor.

15 JUDGE CLARK: Then you don't need to go into
16 any great details other than to ask him if the errata
17 makes the correction he wants to make.

18 BY MR. ROMANO:

19 Q. Does the errata before you make the proper
20 correction?

21 A. I need to see the errata, please.

22 Q. (Complies.)

23 A. Yes, the errata makes the proper correction.

24 MR. ROMANO: Thank you.

25 JUDGE CLARK: All right, then the record

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1 should reflect that page 34 of Exhibit TM-2T is
2 replaced.

3 MR. ROMANO: Thank you, Your Honor.

4 JUDGE CLARK: Is that it?

5 MR. ROMANO: That's it.

6 JUDGE CLARK: All right, thank you for your
7 testimony, Mr. McCallion.

8 THE WITNESS: Thank you.

9 MR. ROMANO: Would it be appropriate to now
10 move the testimony in?

11 JUDGE CLARK: Actually all of the, and we'll
12 address this just a little bit later, but just to say
13 very, very briefly all of the testimony of all witnesses
14 has already been received in evidence, was received in
15 evidence on Tuesday morning. There are a few exceptions
16 which we will address at the end of the day, some
17 exhibits that were moved from one witness to another and
18 some that I affectionately refer to as dangling
19 exhibits, and we'll address all that. But the remainder
20 of the exhibits for which there were no objections have
21 already been received.

22 MR. ROMANO: Thank you, Your Honor.

23 JUDGE CLARK: I think it might facilitate the
24 remainder of the hearing day if we took a few moments
25 off record, because as you know I'm not going to allow

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1 any friendly cross and Ms. Shifley has already indicated
2 she does not have any examination, so I would like the
3 opportunity to confer with Commissioners regarding
4 examination they might have for any of the joint
5 applicant witnesses, so we're at recess until further
6 call.

7 (Recess taken.)

8 JUDGE CLARK: During the recess the
9 Commissioners confirmed that there is no inquiry for any
10 of the joint applicant witnesses other than Mr. McCarthy
11 and Mr. Whitehouse, so Mr. Saville.

12 MR. SAVILLE: Thank you, Your Honor.

13

14 Whereupon,

15 DANIEL MCCARTHY AND DAVID R. WHITEHOUSE,

16 having been previously duly sworn, were called as

17 witnesses herein and were examined and testified as

18 follows:

19

20 D I R E C T E X A M I N A T I O N

21 BY MR. SAVILLE:

22 Q. Just briefly, Mr. McCarthy, can you just

23 identify yourself for the Commissioners.

24 A. (McCarthy) My name is Daniel McCarthy, I'm

25 the Executive Vice President and Chief Operating Officer

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1 of Frontier Communications.

2 Q. And you caused to be filed in this docket
3 direct testimony, supplemental testimony, and rebuttal
4 testimony?

5 A. (McCarthy) I did.

6 Q. And, Mr. Whitehouse, your name and title?

7 A. (Whitehouse) David Whitehouse, Senior Vice
8 President and Treasurer of Frontier Communications.

9 Q. You caused to be filed in this proceeding
10 rebuttal testimony?

11 A. (Whitehouse) Yes, I did.

12 MR. SAVILLE: Your Honor, Commissioners,
13 they're both available for questions.

14 JUDGE CLARK: And do you have any additions,
15 corrections, or deletions to any of that testimony?

16 MR. MCCARTHY: I do not.

17 MR. WHITEHOUSE: I do not either.

18 JUDGE CLARK: All right, I remind you both
19 that you remain under oath, you've already been sworn
20 in.

21 Commissioner Jones.

22

23 E X A M I N A T I O N

24 BY COMMISSIONER JONES:

25 Q. Good afternoon.

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1 A. (McCarthy) Good afternoon.

2 A. (Whitehouse) Good afternoon.

3 Q. My first series of questions will revolve
4 around the ratings agency issues, and I think,
5 Mr. Whitehouse, you may want to address those, but,
6 Mr. McCarthy, could you turn to page what I have marked
7 in my testimony as page 65 of your rebuttal testimony,
8 DM-8HCT.

9 A. (McCarthy) Yes, sir.

10 Q. And actually it's both pages, in pages 64 and
11 65 you are quoting a Morgan Stanley report, a Raymond
12 James report, and then you get into a discussion of
13 Moody's and Fitch, do you not?

14 A. (McCarthy) Yes, I do.

15 Q. How many analysts follow your company?

16 A. (Whitehouse) at the moment I actually have a
17 count. There are 14 that currently have ratings on us,
18 15 if you include the analyst at J.P. Morgan who is
19 currently reserving rating at the moment until the
20 transaction closes given J.P. Morgan's role as an
21 advisor to Verizon. And that is to be clear equity
22 analysts.

23 Q. So of the equity analysts, I'm going to get
24 to one analyst in a minute, but what would you say is
25 the majority opinion on both the credit metrics and the

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1 financial strength of the company post transaction of
2 those 14 analysts?

3 A. (Whitehouse) I think, well, we can start
4 with what their actual recommendation is at the moment,
5 and they're at 3 buys on the stock, there are 8 holds
6 and they view it to be a market perform, and 3
7 underperforms, which I would say that the median is
8 clearly that the company's expected to have market level
9 performance taking into account this transaction since
10 everyone is clearly aware of it and factoring that into
11 their analysis of the stock.

12 Q. So probably, there's more for you,
13 Mr. Whitehouse, so please continue, I have -- are you
14 familiar with the D.A. Davidson analyst rating, I think
15 it's in Mr. Hill's Exhibit SGH-29?

16 A. (Whitehouse) I am familiar with that, yes.

17 Q. Okay. And he, well, that analyst downgraded
18 you from neutral to underperform?

19 A. (Whitehouse) That's correct.

20 Q. So just let -- what were the primary reasons
21 in your view that he downgraded your stock?

22 A. (Whitehouse) I believe the primary reason
23 was driven by what I view to be a technical overhang on
24 the stock given the fact that there is going to be a
25 large distribution of Frontier shares to Verizon

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1 holders, many of which may be precluded from holding
2 them based on the charter of their investment mandate,
3 especially as it relates to institutional investors.
4 And I believe this analyst was merely saying that on a
5 short-term basis there would be an opportunity to buy
6 the stock at a lower level. I don't believe they were
7 casting any long-term views on the viability of the
8 company as a whole. I think if you look at the target
9 stock price, it is still I believe \$6.75, which clearly
10 indicates that they view it as a viable company going
11 forward and certainly make no indications that it's
12 going to be in any level of financial distress, so. And
13 I think that's fair to say of many analysts is that
14 remember they are picking stocks from the perspective of
15 an equity holder, not from a creditor or someone like a
16 commission such as yours that might be more focused at
17 the overarching long-term viability of the credit
18 metrics of the company.

19 Q. I think, just for the record, I think I'm
20 reading from the, you may want to get it in front of
21 you, but the target price he quoted was \$6.25 per share.

22 A. (Whitehouse) I stand corrected.

23 Q. Just let me go through a few of his points.
24 I think he points out some good points about the merger
25 or some positives as well as some potential negatives.

0543

1 One of the issues, and maybe you can tell me if other
2 analysts are bringing this up too, it regards the
3 synergy issues, and I think Commissioner Oshie and
4 Chairman Goltz and I have asked some questions on that,
5 but to read from one part of that opinion, it says:

6 Frontier has not given shareholders a
7 detailed breakdown for the savings but
8 expects to gain efficiencies in the
9 accounting and regulatory systems that
10 it will acquire.

11 And he's basically questioning the \$500
12 Million of synergy savings. So what's your response to
13 that?

14 A. (Whitehouse) Well, I don't mean to cast
15 aspersions on this particular analyst, but I don't see a
16 lot of backup behind this. You know, this analyst in my
17 view is not a highly rated analyst. There's no model
18 attached here to indicate that there's any level of
19 significant analysis that was done on the company. And
20 I don't think they fully grasp the concept that we've
21 discussed and Mr. McCarthy has discussed at length that
22 indeed many of these synergies are very realizable right
23 out of the gate because a large portion of them do come
24 out of the, you know, the lower corporate allocations
25 that would come with a more leanly operated Frontier

0544

1 organization versus Verizon. And I think -- by the way
2 it is a she is the analyst, she makes reference to
3 synergies associated with billing conversions when in
4 fact the company has a very strong track record of
5 making such conversions just as we did in the
6 Commonwealth of Pennsylvania acquisition, and we have --
7 and we've been very forthright in acknowledging that
8 that would take some time to occur, so that is -- she's
9 not stating anything that we would necessarily disagree
10 with, but we just -- we still view the fact that it
11 takes two or three years to still be a very significant
12 and valuable source of synergies.

13 Q. Maybe there's more for Mr. McCarthy, but she
14 also points out that you won't be able to achieve your
15 synergy savings because 74% of the acquired work force
16 will be unionized. Now is that roughly an accurate
17 statement?

18 A. (McCarthy) That's probably accurate from the
19 percentage of the work force, but I don't think she was
20 taking into account the wage and non-wage savings that
21 we were anticipating. Again, I did not speak to that
22 analyst, maybe Mr. Whitehouse did, but I don't think she
23 appreciates the fact that there will be those level
24 synergies immediately. There will be network synergies,
25 not necessarily in Washington but in states like West

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1 Virginia where we operate together where we actually
2 purchase a lot of transport services and we'll be
3 integrating those networks. So there is undoubtedly a
4 fair amount of synergies. Some of them are very state
5 specific where we operate today. Others are more around
6 the corporate types of overhead that we talked about
7 this morning and yesterday.

8 Q. But is it true that the unionized or the
9 wages and benefits associated with the unionized work
10 force are not part of your synergy savings estimates,
11 correct?

12 A. (McCarthy) They're certainly -- we had made
13 a commitment as part of the transaction that for 18
14 months we were not going to affect any of the field
15 forces.

16 Q. Okay.

17 A. (McCarthy) So we had not planned on that as
18 part of the synergies.

19 Q. So what percent of your work force is
20 unionized and what is non-unionized?

21 A. (McCarthy) Today on the legacy Frontier
22 side?

23 Q. Yeah.

24 A. (McCarthy) Today the percentages would be
25 approximately 65% to 70% is unionized today.

0546

1 Q. So if there are any wage and benefit synergy
2 reductions to be achieved in the first 18 months, they
3 will be taken from the non-unionized employees, correct?

4 A. (McCarthy) To the extent that there is
5 redundant functions that would be coming over, yes.

6 Q. Okay. The last point I want to raise in this
7 analyst's opinion, this is for you, Mr. Whitehouse, I
8 think, is there's a concern about the dilution of stock
9 or the, no, not dilution, I withdraw that, the sale of
10 stock once it's close of transaction. The Verizon
11 shareholders especially after they saw what happened to
12 the IDEOC and FairPoint Communications stock that they
13 may, to put it crudely, dump the stock or sell it
14 quickly, so what is your response to that?

15 A. (Whitehouse) I think the company has done an
16 excellent job over the last -- over the period from when
17 we've announced this transaction very clearly addressing
18 what we view to be the critical differences between this
19 transaction and those prior Verizon line divestitures.
20 And, you know, the institutional investors I believe get
21 that. I know as I am responsible for investor relations
22 so I do have direct contact with our largest
23 shareholders and have not received any significant push
24 back or concerns once we walked them through the
25 significant differences between these two transactions.

0547

1 I believe, you know, and institutional investors
2 represent, you know, approximately 50% of the holdings
3 out there. I think there certainly could be an element
4 of retail investors that perhaps feel that they did not
5 do well holding FairPoint stock and they do sell.
6 There's nothing we can do about that, and nor are we
7 trying to. I mean we are managing the business for the
8 long term.

9 As I mentioned earlier, we fully expect that
10 there will be some reshuffling of shares, which is
11 typical of any spinoff transaction. It will take, you
12 know, maybe 60 to 90 days for all those shares to find
13 their home. But if you look at, you know, the share
14 performance post announcement, it has been pretty solid.
15 We are trading I believe today in the 7.70 ish range,
16 which is more or less where the trade went out. So I
17 believe if there was any resounding problem with the
18 shares, you know, it would have already been reflected
19 in that share price. In fact, the stock traded up over
20 \$8.50 at one point in the not too distant past. So I
21 simply think that there is going to be some shaking out
22 to occur.

23 Some of that is not an indication of an
24 investor's view of management or the prospects of the
25 company either. For example, a very, very large mutual

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1 fund that might have a specific mandate to invest in a
2 wireless company clearly would, you know, would not want
3 to hold Frontier, not because they don't think it's a
4 well managed company that will have strong financials
5 going forward, it just doesn't fit their mandate, and
6 they would sell. But to counter that as part of our
7 role in the investor relations arena, you know, we do
8 speak with these holders, and we make sure that to the
9 extent there is another fund within the complex, you
10 know, a fidelity certainly would have a large megacap
11 fund that it might have a dividend driven growth or
12 income related fund, and we try to make sure that all
13 the other potential holders that will now find the stock
14 even more attractive that we're getting their attention
15 as well. And so, you know, we've followed the
16 announcement of this transaction, hired a director of
17 investor relations who spends all day basically making
18 sure that our investors are well informed and potential
19 investors are well informed about the transaction.

20 Q. What percentage, this is the final question
21 on this point, what percentage of your stock is owned by
22 large institutions such as mutual funds and how much by
23 retail investors?

24 A. (Whitehouse) I believe it's, I should -- I
25 can confirm it, but it is in the ball park of 50/50. It

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1 might be a little more heavily weighted. It's roughly
2 -- it's fairly comparable to Verizon's current
3 ownership.

4 Q. Next series of questions is on the ratings
5 agencies. You discuss how the ratings agencies such as
6 S&P and Fitch and Moody's will view the transaction
7 after it closes and suggest that achieving an investment
8 grade rating is possible or likely. I think we have had
9 an exchange of views on this. What's the basis for that
10 statement? Maybe, Mr. McCarthy, you can start because
11 that was in your testimony.

12 A. (McCarthy) Certainly.

13 Q. You said it's likely.

14 A. (McCarthy) When we went forward and moved
15 forward with consummating the transaction,
16 Mr. Whitehouse, our Chief Financial Officer, met with
17 each one of the rating agencies and gave them an
18 overview of what the transaction entailed as well as a
19 pro forma look at what the credit metrics would look
20 like in the revised company post close. Based on that,
21 two of the rating agencies actually came out with that
22 positive outlook change. And as Mr. Whitehouse
23 described, Standard & Poor's, as I understand it, they
24 are waiting for consummation of the transaction. So I
25 think that was the basis for the change that the two

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1 rating agencies have.

2 A. (Whitehouse) And I can address that in
3 greater granularity if you would like.

4 Q. Sure.

5 A. (Whitehouse) Obviously we keep an ongoing
6 dialogue with the rating agencies. We speak with them
7 several times a year giving them, you know, business as
8 usual updates, and certainly in advance of a transaction
9 like this we bring them completely into the loop on
10 that. But as part of the regular updates we get from
11 them, it's not a one-way conversation. We get back from
12 them dialogue on how do they rate companies, what are
13 the qualitative and criteria that they use to rate a
14 company. And using that information, which is pretty,
15 you know, explicit, and looking at comparable companies
16 out there like a CenturyLink, we have a very good
17 benchmarking out there to know what sort of credit
18 metrics would need to be realized by the pro forma
19 company to with a straight face petition the agencies
20 for an upgrade in investment grade.

21 And our commitment to delever, you know,
22 right out of the gate a full turn, which I can't
23 emphasize how meaningful that is. I mean typically
24 companies delever one tip at a time, you know, 1/10 of a
25 turn. This is a full turn plus of leverage right out of

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1 the gate that we're going to realize. That's why the
2 outlook was immediately refreshed by two of the three
3 agencies.

4 And I think when you get to, if you just want
5 to pick one key metric being the debt to EBITDA earnings
6 before interest, taxes, depreciation, and amortization,
7 when you get inside 2 1/2 times and you are squarely --
8 and you are in the range of the metrics that are
9 appropriate for a triple B rated company.

10 Furthermore, over 25% according to Moody's of
11 a rating is simply driven by scale. So simply being a
12 larger company carries a lot of weight with the
13 agencies, and so that in and of itself, being a larger
14 company, adding more states, presumably more
15 diversification to the portfolio, is a very positive
16 thing. And access to capital is very much driven by
17 size. You know, investors like very large liquid
18 issuers because they like to -- it just allows them to
19 come in and out of the bonds if they were to wish to do
20 so.

21 Not to say that we weren't a very liquid
22 issuer to begin with. As I alluded to in my earlier
23 testimony, we have been a frequent issuer in the market.
24 Our credit is very well known. We have a full range of
25 maturities that trade every day and are very liquid, so

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1 we have a very good idea of how the market views the
2 credit.

3 And finally, just we do get input from our
4 investment bankers. Investment bankers have in-house
5 ratings advisory teams that are able to provide input on
6 what they would view to be the necessary metrics
7 necessary to achieve investment grade. And that was,
8 you know, again I said it before earlier, but when a
9 management team makes a public statement that they are
10 going for investment grade rating, meaning it is their
11 target, it means something, and you don't do it lightly.
12 So that was a very calculated decision by the management
13 of Frontier and the board of directors.

14 Q. Who are your investment advisors?

15 A. (Whitehouse) On this particular transaction
16 it was Citibank and Evercore advisors, but on the
17 routine capital markets and funding there are a few
18 other banks I deal with including J.P. Morgan, Credit
19 Suisse, First Boston, Citibank, a whole host of them.

20 Q. This Commission and this Commissioner is
21 quite familiar with mergers and with debt equity ratios
22 and ratings agency issues. Are you familiar with the
23 merger that came to this Commission last year, electric?

24 A. (Whitehouse) Are you referring to
25 CenturyTel?

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1 Q. No.

2 A. (Whitehouse) Then I don't believe I am.

3 Q. Okay. Well, it was a large merger in the
4 electric and gas area. Did you consider basically your
5 attitude or your, excuse me, your testimony from both of
6 you is I regard as kind of trust us, here's the
7 evidence, here's some preliminary indications of what
8 may happen, but it's kind of trust us, we are a
9 financially viable company and we will be more viable
10 based on what you said on the delevering even though you
11 are taking on a substantial amount of debt, correct, at
12 least --

13 A. (Whitehouse) On an absolute basis, yes.

14 Q. So did you consider obtaining some sort of a
15 letter from S&P or other ratings agencies during the
16 pendency of this transaction so that they could review
17 the financial model you developed, opine on the credit
18 metrics, and maybe submit it to the Commission even if
19 it were informal so the Commissioners could have some
20 assurance, greater assurance on this issue?

21 A. (Whitehouse) We did not do that in advance.
22 I am aware that such services are available from the
23 agencies where you can submit certain scenarios that
24 they will rate. I believe our concern with this was
25 given, you know, there were so many -- there would be

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1 potential moving variables that they would not
2 necessarily get comfortable with so far out in advance
3 of the actual closing. So we did not pursue that but
4 instead relied upon advice from in-house agency experts
5 including many of them that were previously employed by
6 the agencies to provide us with that input.

7 But I would say that it's a little more than
8 just trust us, because clearly we have taken steps in
9 terms of cutting our dividend. I mean essentially we've
10 recapitalized this company to the net harm, harm is not
11 the right word, but our shareholders are going to bear
12 the brunt of that in terms of lower potential free cash
13 flow they would realize by having a lower amount of
14 debt. So we felt strongly that having a more
15 conservative and prudent capital structure given what we
16 all saw passing through 2008 and early 2009 that that
17 was prudent. I myself was previously the treasurer of
18 an investment grade company that was very large,
19 International Paper, and personally believe that the
20 larger you get, the more value there is to being
21 investment grade issuer, and thus why we set that target
22 and made that commitment to work towards that. But
23 recognizing that the agencies, as I alluded to earlier,
24 are much more reluctant to really stick their necks out.
25 They basically say, well, come back to us when you're

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1 ready, and then we'll give you a rating.

2 Q. I understand. And it also costs money to get
3 an opinion like that, doesn't it?

4 A. (Whitehouse) It does, yes.

5 Q. Could you turn to page 25 of your testimony,
6 please.

7 A. (Whitehouse) I'm there.

8 Q. And the question posed is, should the
9 Commission assume that an investment grade rating is
10 necessary for carriers serving Washington, and your
11 answer is no. And I would like to go through this
12 reasoning again.

13 A. (Whitehouse) Okay.

14 Q. The first question is, are you familiar with
15 the precedents that this Commission has in addressing
16 the investment grade status issue for all regulated
17 utilities, electric, gas?

18 A. (Whitehouse) I would not say that I am an
19 expert on that in any capacity.

20 Q. You're not?

21 A. (Whitehouse) No.

22 Q. Okay. Do you mean to imply that the
23 Commission in one of its orders or in a rule or whatever
24 would conclude that an investment grade rating is not
25 necessary for any regulated utility?

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1 A. (Whitehouse) I think I can really only speak
2 to the telecommunications side in simply looking at the
3 universe of ILEC's out there and recognizing that
4 there's really only two large RBOC's, being AT&T and
5 Verizon, and then CenturyTel, and that the majority of
6 ILEC's are not investment grade that it certainly didn't
7 seem, all of which are operating in good standing within
8 their states for all intents and purposes, it didn't
9 appear to be a critical gating item for a LEC to be a
10 strong provider in a particular state.

11 Q. So you're not saying that this Commission in
12 a previous case with Qwest for example or CenturyTel or
13 even CenturyLink during the merger proceeding opined on
14 this issue and said something to the effect that below
15 investment grade rating is okay?

16 A. (Whitehouse) I'm not sure I'm following your
17 question exactly. I want to make sure I'm answering it.

18 Q. Are you referring to any specific Commission
19 order or any policy that we have when you state that an
20 investment grade rating is not --

21 A. (Whitehouse) No, no, I'm sorry if it was
22 construed that way. I think it was simply rebuttal to
23 one of the other witnesses involved for other parties.
24 It was nothing directed at the Commission itself.

25 Q. So as I understand your reasoning, it is that

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1 Qwest is junk status or below investment grade, you are
2 below investment grade, CenturyLink is not but it's
3 based on maybe 2/3 or 3/4 of the telecom carriers in the
4 country are below investment grade and therefore that's
5 good enough?

6 A. (Whitehouse) No, I wouldn't be that -- I
7 wouldn't -- I would be a little more -- I think the
8 company's saying a little more than that. I mean the
9 fact that we are in fact acknowledging the value of an
10 investment grade rating by making the commitment to
11 delever to target levels that we think will help us to
12 get there. We certainly could have set a capital
13 structure that had leverage a half a turn higher, which
14 would likely have been potentially to the benefit of
15 higher free cash flow accretion to our shareholders.
16 But as I said, we do recognize the value of investment
17 grade. I would like to be an investment grade issuer.
18 I think it will give me better access to the capital
19 markets. I believe I have them now, but I would like to
20 have even better access as always. So I think we're
21 saying that we would like to put ourselves in that
22 higher echelon of issuers that are high grade, and thus
23 we do agree that there is value to it.

24 Q. And, Mr. Whitehouse, I know you had
25 experience, you state in the record that you were

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1 treasurer for International Paper?

2 A. (Whitehouse) That is correct.

3 Q. And that's an investment grade carrier?

4 A. (Whitehouse) It is.

5 Q. But what was the experience for Frontier
6 during the financial implosion I guess you would say
7 that started in September of 2008? You cite it your
8 testimony the debt issuance of \$600 Million in October
9 of 2009, correct?

10 A. (Whitehouse) Correct.

11 Q. But during this period of 18 months,
12 especially after September 2008, didn't high yield debt
13 have a tough time getting financed in the market?

14 A. (Whitehouse) I believe that's -- that is a
15 fair statement, but I would also elaborate to say that
16 Frontier has a very conservative approach to
17 refinancing. In fact, the company did at one point have
18 a large 2009 maturity tower which was refinanced I
19 believe it was just before I arrived at the company, a
20 good, you know, year plus, maybe even 18 months in
21 advance of it being coming due, so we've always -- we've
22 never waited until the last minute to deal with near
23 term maturities. So as we looked at that challenging
24 market of the fourth quarter of last year and the first
25 quarter this year, as Treasurer I really did not lose

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1 that much sleep, because I had no pending maturities.
2 The nearest maturity at that time was not until May of
3 2011. We had a fully available revolving credit
4 facility, \$250 Million that we have never drawn in its
5 existence. And the company has a policy of keeping
6 greater than \$100 Million of cash on hand. So we're
7 very focused on not finding ourselves caught short. I
8 mean that really is -- if there's one way to lose your
9 job as the Treasurer, it's to not be able to make
10 payroll. I learned that long ago in my career.

11 And I think that carries through into 2009
12 where even though we actually had in addition to the
13 September issuance, we went into the market in early
14 April. We were one of the earlier companies to in
15 effect help reopen the high yield market, which I think
16 speaks to us as being somewhat of a bellwether issuer in
17 the high yield market. We were receiving a lot of
18 reverse inquiry, meaning accounts, investors were coming
19 to our bankers and saying, hey, you know, here's a list
20 of companies, if you brought a deal to the market, we
21 would buy, and we were often on those types of lists due
22 to the predictability of our cash flow.

23 And with that in mind, even though April, and
24 you're talking about two years in advance of the actual
25 maturity, we thought it prudent, and at that point this

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1 deal wasn't something we were even contemplating, it
2 wasn't done in any sort of anticipation of this, we
3 simply felt that it was prudent to take some of that
4 risk off the table even though that did incur us paying
5 a premium to buy some of that debt back and some
6 negative carry, we just thought it was the right thing
7 to do. That is my personal view and that is my boss,
8 the Chief Financial Officer, as well as our CEO and
9 board felt the same way. So we really were fine through
10 that entire process.

11 And I think it's fair to say too that I
12 think, you know, the markets were very choppy, but I
13 think a lot of companies do approach it the way we do.
14 I mean conservative companies, the goal is to borrow
15 money when you can, not when you need to, and if you
16 found yourselves in a position in fourth quarter of last
17 year or first quarter, you could have borrowed money.
18 You wouldn't have liked the price, but there's always
19 money at a certain price.

20 Q. Right. Mr. Whitehouse, what were the spreads
21 on high yield, the spread compared to either corporate
22 double or single A rated corporate bonds with treasuries
23 at the peak?

24 A. (Whitehouse) I don't have that handy. I
25 could produce that if you would like to see that. I can

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1 say generally, I've been looking more recently, I track
2 more, you know, how would we price relative to say a
3 triple B issuer like CenturyTel, and I would say on
4 average there's probably a 1, maybe a 1 1/2%, maybe --
5 it varies depending on the maturity, but there certainly
6 is a meaningful benefit to being an investment grade
7 issuer.

8 Q. So just wrapping up on this question, what is
9 the, in your view based on what you just said and based
10 on the fact that if this transaction is approved by this
11 Commission you would continue to be a regulated utility
12 in this state.

13 A. (Whitehouse) Correct.

14 Q. What is the risk in your view to rate payers
15 of continuing to rely on below investment grade debt and
16 be a BB, be a double B rated company?

17 A. (Whitehouse) I'm not an expert on how that
18 all plays into the regulatory rate making process.
19 Maybe Mr. McCarthy is.

20 Q. Mr. McCarthy.

21 A. (McCarthy) I would think, Commissioner, that
22 that was one of the key parts of the settlement that as
23 we went forward into the AFOR or if it was the
24 Commission decides that an AFOR isn't appropriate and
25 should be a traditional rate making proceeding, that we

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1 would impute a capital structure that's similar to what
2 Verizon has today in investment grade, so in that case I
3 don't think that there would be a harm to customers from
4 purely a rate making perspective. And I think as
5 Mr. Whitehouse said, we don't feel that we're inhibited
6 from going into the market. In fact, we're planning on
7 entering the market as I said hopefully at the end of
8 the first quarter to finance this transaction, so we
9 don't think there will be any harm from that.

10 Q. So you think that provision in the settlement
11 agreement will protect rate payers even though the
12 company, let's say spreads widen, the company could be
13 issuing debt at 400 basis points over investment grade
14 so that increased interest cost would in essence be
15 borne by your shareholders, not by the rate payers?

16 A. (McCarthy) That is our intention with the
17 settlement condition.

18 Q. Mr. Whitehouse, could you turn to page 39 of
19 your testimony, table 4.

20 A. (Whitehouse) Yes, I'm there.

21 Q. I think this is a very important summary of
22 your testimony, is it not?

23 A. (Whitehouse) I certainly agree that it is
24 important.

25 Q. Isn't free cash flow the basis of the

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1 valuation of the company?

2 A. (Whitehouse) I believe the company's --

3 Q. Excuse me, aren't investors primarily looking
4 at your dividend and dividend yield when they purchase
5 your stock?

6 A. (Whitehouse) Yes, it is a very important
7 element of the purchase decision given the yield driven
8 nature of our typical investor.

9 Q. And then what supports the dividend, isn't
10 free cash flow, FCF, the basis of almost everything
11 including the dividend?

12 A. (Whitehouse) It absolutely is.

13 Q. Okay. So this chart if I understand it
14 correctly the way -- and I don't want to get into the
15 weeds of the financial model that we were discussing
16 previously. I know it's important, but I'm going to try
17 to keep it at a summary level here. But the -- just so
18 I understand the financial model that you're using, it
19 calls for an increase in free cash flow in 2008 before
20 the transaction to \$1.423 Billion after the transaction
21 presynergy.

22 A. (Whitehouse) I believe what that column is
23 meant to be is really more illustrative in that we
24 wanted to give investors some sense for what the pro
25 forma entity would look like. We're not able to share

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1 the proprietary out year projections. What we were able
2 to give them as a reference point is the audited 2008
3 number.

4 Q. Okay.

5 A. (Whitehouse) So that was meant to be just
6 really illustrative, but also making it very clear that
7 some of the key assumptions that would go into the out
8 years, in particular our need to enhance our capital
9 expenditures.

10 Q. Sure. But isn't one of your -- one of the
11 key points in your testimony as I understand it is debt
12 is going up in the absolute sense, and you have to issue
13 roughly \$3 Billion more in debt, but free cash flow is
14 increasing at a more rapid pace than that increase in
15 debt to finance the transaction.

16 A. (Whitehouse) That is correct.

17 Q. Okay.

18 A. (Whitehouse) That there is on a relative
19 basis it is actually less leverage, correct.

20 Q. So I wanted to understand, and if you can
21 answer this based on what was the exchange with Public
22 Counsel before if you can answer, but I think it's
23 important to understand the assumptions of several
24 things behind this free cash flow estimate that is in
25 your testimony. What is the specific access line loss?

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1 I think, Mr. McCarthy, you said that you had stanchd
2 the loss in other territories from 11% to maybe 6%, is
3 it roughly 6%, 7%?

4 A. (McCarthy) I believe the model,
5 Commissioner, had the assumptions declining from current
6 run rates down to at the end of the period 7.9%.

7 Q. Okay. What are the assumptions that you're
8 using on broadband connection hands?

9 A. (Whitehouse) I don't believe we've furnished
10 that in open forum if I'm not mistaken.

11 Q. That's confidential?

12 A. (Whitehouse) I think it is presented in the
13 board of directors materials.

14 Q. And the revenue per subscriber, that's
15 confidential as well?

16 A. (Whitehouse) Yes, anything 2009 onward would
17 be.

18 Q. Okay, I struck out there. Let's go to what
19 are your estimates and what sources do you go to for cut
20 the cord subscribers? Mr. McCarthy, you know this,
21 you've been around the industry a long time, there are a
22 lot of people who are, quote, cutting the cord and just
23 going to a wireless only subscriber, so what estimates
24 did you use for cut the cord in the VSTO states?

25 A. (McCarthy) Well, we consider that part of

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1 the access line losses today are in that category.

2 Q. Okay.

3 A. (McCarthy) I mean we certainly see that.

4 Probably the bigger cut the cord in our personal
5 experience are people that move into a home and have a
6 cell phone and decide not to activate a phone, so we see
7 more of that kind of activity. So as we looked at the
8 access line losses, we tried to factor in and temper our
9 ability to reduce it to our current run rate levels
10 which are down in more like the 6% level on a legacy
11 basis, and we kept the line losses up there to reflect
12 those kind of losses.

13 Q. Okay. I think the Pew Center, the most
14 recent estimate I have seen, this is not in the record,
15 but the Pew Center is a reputable organization that
16 follows these trends, is it not?

17 A. (McCarthy) Yes.

18 Q. And the latest number I saw was 18%
19 nationally, something like that.

20 Last question on the free cash flow,
21 Mr. Whitehouse, is I think in your testimony in several
22 areas you say that even without the synergy savings, you
23 had built a, quote, cushion, financial cushion into
24 these estimates, so just to summarize where is the
25 cushion?

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1 A. (Whitehouse) I think the way I think about
2 it, and maybe we could even use this illustrative
3 example on page 40, is that -- actually no, I would take
4 you to page -- there's another table that shows the
5 actual leverage before and after if you give me a second
6 to find it. It's on if you turn to page 20 of my
7 rebuttal testimony, if you -- and again this is looking
8 at the leverage ratios calculated using the pro forma
9 actual numbers June 30, 2009, that even without
10 synergies, the actual delevering that takes place goes
11 from 3.9 to 2.6, which is certainly a meaningful
12 reduction, and it's knocking on the door of our target
13 level of 2 1/2. And I recognize this is illustrative
14 and using, you know, numbers looking backwards, you
15 can't apply synergies to something you don't own yet.
16 But I do think it is illustrative to say that by virtue
17 of the recapitalization going on here, the tremendous
18 amount of Frontier shares being used to pay for this
19 asset, that we are almost instantly even without the
20 effect of synergies showing very strongly improved
21 credit metrics, and certainly adding the synergies would
22 be, you know, icing on the cake and further allows us to
23 get to that rating even quicker.

24 Q. And again the basis for this information is
25 you cite here is the SEC filings of the 10-Q's?

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1 A. (Whitehouse) That's correct.

2 Q. Okay.

3 A. (Whitehouse) We have been, in addition to
4 our quarterly reports, the VSTO properties have been
5 reporting on a quarterly basis, Verizon has been showing
6 those to the SEC.

7 Q. Okay. My last series of questions revolves
8 around the credit, the proposed credit facility to
9 finance this transaction.

10 A. (Whitehouse) Okay.

11 Q. There are two numbers that I have been --
12 I've been rereading both of your testimonies,
13 Mr. McCarthy and Mr. Whitehouse, and there's a range
14 from 2.9 Billion to 3.3 Billion. Which is the correct
15 number of the aggregate amount of credit facility that
16 you will have to come up with at close?

17 A. (Whitehouse) I can take that one. The way
18 to think about the transaction is there is indeed a \$3.3
19 Billion cash payment required to Verizon. Of course to
20 the extent that we assume any of their existing debt,
21 that would be netted off of that. So if you take 3.3
22 less what will likely be \$250 Million, that is the
23 actual amount of cash. And then if you add some of the
24 expenses, you know, the underwriting discount associated
25 with raising the capital, it is indeed closer to a 3.1,

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1 3.2 type of number that I would anticipate raising in
2 advance of the closing of this transaction.

3 Q. There is very little evidence in the record
4 even in confidential documents on the syndication of the
5 facility, who is the lead syndicator, the joint book
6 runner, you know, the usual stuff that you deal with.
7 Why is that, and why isn't there more in the record on
8 this?

9 A. (Whitehouse) Well, I would be happy to give
10 a little more color on that, and I would probably roll
11 all the way back to our thinking around this transaction
12 and what were the risks that we were looking to mitigate
13 here. And certainly there have been examples of
14 companies that in advance of a transaction will go out
15 and get a bridge loan of some sort. A bridge loan
16 really only provides you certainty that a bank will show
17 up and lend you the money. It doesn't really guaranty
18 at what price that money will come or what covenants it
19 will come. And we've certainly seen precedence of
20 companies who, you know, agreed to close a transaction,
21 did not have an appropriate financing out, they went and
22 got a bridge loan from a bank, and certainly as the
23 markets deteriorated they found themselves actually
24 having to use the bridge loan. I mean that's your worst
25 case scenario, because typically a company doesn't ever

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1 really intend to use the bridge loan. You hope to put
2 the permanent financing, the long-term financing, in
3 place in advance of the closing.

4 Banks used to love to write bridge loans,
5 because they got paid very big fees, you know, sometimes
6 2%, 3% of the amount borrowed or advanced, and yet they
7 never really had to deliver on them. Well, as the
8 markets softened in 2007 and 8, a lot of banks were
9 stuck, you know, having companies draw on those bridge
10 loans. But they also found themselves because the loans
11 did not -- that they basically had variable rates and
12 market flex as it's called meaning the banks can
13 basically dictate the terms to you at that time.

14 And, you know, both Frontier and Verizon,
15 given Verizon's shareholders are going to continue to
16 own roughly 70% of this company, did not want to find
17 themselves in a position where all of their conditions
18 had been met to close and we had to rely upon a bridge
19 loan that could cost us, you know, 15%, 14%, and I think
20 that was indeed some of what we saw in New England with
21 the FairPoint transaction, they had a very onerous
22 capital structure thrust upon them.

23 So what Frontier sought to do to care for
24 that was to in fact give ourselves a financing out that
25 said, look, we need a capital structure that makes sense

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1 for this company on a long-term basis, and if we find
2 ourselves -- and of course we, it was our -- my expert
3 opinion and the expert opinion of the Verizon treasury
4 team, that we would be able to source this capital at
5 less than 9 1/2%, but, you know, God forbid we couldn't,
6 we all can walk away. We wouldn't be happy about it,
7 because we would have gone through all of this exercise
8 and expense for not, but we weren't going to saddle the
9 company with a capital structure that didn't make sense.
10 And we didn't quite frankly want to shell out, you know,
11 60, \$75 Million for that piece of paper from the bank
12 that was really nothing more than a pig in a poke.

13 So what we instead agreed to do was to
14 basically prefund the transaction in one or several
15 stages where we would go into the high yield bond
16 market, we would borrow that money, and that is what I
17 am doing as we speak, and the Verizon team and my team
18 are gearing up preparing documentation to be ready to go
19 into the bond market this quarter and set a very large
20 amount of the capital aside in an escrow account so
21 these banks -- you will -- we will know at that point
22 the exact coupon, the exact terms and conditions, and
23 the escrow would be released upon the closing of the
24 transaction. And that is what we're gearing up, we
25 think that provides the ultimate certainty.

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1 We've had the very high class problem, or not
2 problem, we've had the really -- have been very grateful
3 about the performance of the high yield markets, they
4 have been extremely constructive as we've moved through
5 2009. Our rates just continue to get lower and lower,
6 and at this point I'm very comfortable that we're going
7 to be able to place this debt probably around the same
8 rate that we did back in September or potentially even
9 better for some of the shorter. So it isn't a
10 traditional credit facility to a limited number of
11 banks.

12 Q. Now this is new information to me, I was
13 going to ask you what sort of progress you've made since
14 your filing of rebuttal testimony. So just so I
15 understand this, you were in the market or have been in
16 the market for the past couple of months raising money?

17 A. (Whitehouse) I wouldn't say we've been in
18 the market. We have been preparing to go to market.

19 Q. Preparing to go to market.

20 A. (Whitehouse) Of course the FCC will require
21 certain blackout windows to be cleared.

22 Q. Sure.

23 A. (Whitehouse) We believe that there will be a
24 window that opens later in the first quarter when both
25 Frontier's year end results are out, Verizon year end

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1 results which are already out but the VSTO results are
2 not out yet, when that is all out it provides the
3 ultimate, the preferred platform to go to investors and
4 say, look, here's a whole year of audited results for
5 you to make your decision. And to be honest, these
6 proceedings play into that as well. The further along
7 we are with the regulatory process, the more comfort we
8 can provide to everyone on our ability to get approval
9 for the deal. It just provides impetus for a better
10 execution of the transaction, because investors just
11 want to know that these boxes have been checked as it
12 relates to the risks associated with the financing.

13 Q. So as I understand this, you -- this isn't
14 going to be a traditional credit facility with a lead
15 bank and a lead syndicator, it sounds like something a
16 little more diverse?

17 A. (Whitehouse) The complete financing package,
18 the permanent drawn financing will be a bond offering.
19 There will be lead book runners named and a syndicate of
20 book runners that will place that.

21 Q. Have you chosen those yet?

22 A. (Whitehouse) We have not named them as of
23 yet.

24 Q. Okay.

25 A. (Whitehouse) It's not that I don't know who

0574

1 they will be, I believe, you know, at the appropriate
2 time we will name them.

3 Q. Sure, I understand.

4 A. (Whitehouse) But I would like to add
5 alongside of that facility we will be putting in place a
6 larger backstop revolving credit facility, which is just
7 part of our core liquidity. The current \$250 Million
8 facility will -- I would like to increase that to \$750
9 Million. And I will use the underwriting of the bonds
10 as the stick to, you know, provide incentive to those
11 banks to provide commitments to that new facility. And
12 so that is all, you know, work in progress as we sit
13 today.

14 Q. Well, I don't want to inquire if -- given the
15 delicacy of the situation and the competitive reasons
16 for your response.

17 Just a final question, isn't there a
18 substantial difference, Mr. Whitehouse, between a \$600
19 Million facility versus a \$3 Billion facility?

20 A. (Whitehouse) I certainly would agree, but
21 the point I was trying to make is the, you know, that
22 facility was essentially issued off of our current
23 leverage because there is no certainty that this deal
24 closes. And yet there was extremely strong demand for
25 that, you know, almost, you know, more than 3 times

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1 oversubscribed, almost 4 times. So I was simply trying
2 to show that there's tremendous demand for the credit,
3 and I can say that, you know, based on again in my role
4 as Treasurer and investor relations, I spend a lot of
5 time speaking to our fixed income investors as well, and
6 I've noticed a spike in the inquiry from investment
7 grade investors that now have a piqued interest in this
8 credit, because clearly they're looking at this as a
9 potential attractive investment where you buy in and
10 you're going to get initially a high yield coupon, and
11 if the company, when the company achieves its investment
12 grade rating, that piece of paper will appreciate
13 significantly.

14 Q. Sure.

15 A. (Whitehouse) So we're getting a lot of as
16 they say crossover investors showing appetite for this
17 deal.

18 Q. Those are called crossovers?

19 A. (Whitehouse) Yes.

20 Q. People who buy high yield debt with the
21 anticipation that it will cross the barrier into
22 investment grade?

23 A. (Whitehouse) They will dip into high
24 non-investment grade but usually with the anticipation
25 that it will migrate upward.

0576

1 Q. But are you shopping this facility around as
2 a junk, excuse me, as a below investment grade issue or
3 as an investment grade issue?

4 A. (Whitehouse) The reality is that as a -- as
5 I spoke to earlier, the reality is that the rating
6 agencies at upon issuance this will still be likely a
7 double B rated company.

8 Q. Okay.

9 A. (Whitehouse) There's always the potential it
10 could maybe get a one notch up to double B plus, but I
11 do not have any anticipation it will be investment grade
12 out of the gate.

13 COMMISSIONER JONES: Thank you, Judge, that's
14 the end of my questioning.

15 JUDGE CLARK: Is there any other inquiry for
16 either Mr. Whitehouse or Mr. McCarthy?

17

18 E X A M I N A T I O N

19 BY JUDGE CLARK:

20 Q. I just have one clarifying question for you,
21 Mr. Whitehouse, and in your discussion with Commissioner
22 Jones regarding deleveraging you used a term I think it
23 was a full turn or a half turn, just for the clarity of
24 the record can you explain more fully what you mean by
25 those terms.

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1 A. (Whitehouse) Yes. A turn would be if a
2 company went from say our current leverage of 3.8 times
3 net debt to EBITDA just for sake of illustration if you
4 went to 2.8 times, it would -- that would be 1 full turn
5 of leverage. And that is a significant movement when
6 generally deleveraging tends to occur in tenths of turns
7 so, 3/8, 3/6, 3/4, so this is somewhat of a quantum
8 shift in our capital structure.

9 JUDGE CLARK: Thank you, I appreciate that.
10 Is there any redirect?

11 MR. SAVILLE: No, Your Honor.

12 JUDGE CLARK: All right, thank you,
13 Mr. Whitehouse, thank you, Mr. McCarthy.

14 I think rather than starting with -- and that
15 concludes the presentation of the joint applicants'
16 cases, right?

17 MR. SAVILLE: That's correct.

18 JUDGE CLARK: All right.

19 MR. ROMANO: Yes, Your Honor.

20 JUDGE CLARK: After my earlier misspeaking,
21 I'm a little nervous here. So we have nothing left
22 except for the presentation of Public Counsel's case; is
23 that correct?

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

25 JUDGE CLARK: I'm reticent to start that at

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1 4:45, especially knowing that we have a number of
2 evidentiary and procedural matters to address this
3 afternoon, so I suggest that we take a brief recess and
4 allow the Commissioners to vacate the hearing room while
5 we discuss exhibits, unless there are some other matters
6 you would like to bring to the Commissioners' attention.
7 All right, then we are at recess for about 5 minutes.

8 (Recess taken.)

9 JUDGE CLARK: The record should reflect that
10 the Commissioners are not present for this portion of
11 the hearing regarding procedural matters. And as we
12 discussed very briefly on the record with the
13 Commissioners present, the majority of the exhibits that
14 were offered in this proceeding have already been
15 admitted, so maybe we'll start with the exceptions to
16 that. And if you'll bear with me, I know you're going
17 through a less recent version of what I'm looking at
18 because I've been updating it as we've been going
19 through the hearing, but starting on page 1, Exhibit
20 Number 3 has not yet been admitted because that is --
21 we're just reserving that number for Public Counsel so
22 that at the conclusion of the hearing any public
23 comments that are received in this docket will be filed
24 as an exhibit.

25 Exhibits, and I'm on, let's see, where am I,

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1 I believe approximately page 5 under Mr. McCallion, I
2 have 4 exhibits that were previously designated for
3 Timothy McCallion TM-20HC through TM-23HC that were
4 moved to SES-24 through SES-27. SES-5 was withdrawn by
5 Public Counsel. SES-11, 12, and 13 were withdrawn by
6 Public Counsel. SES-18 was withdrawn by Public Counsel.
7 SES-22 was moved to DM-88. And then of course we are in
8 Mr. Smith's testimony now, so we have the new Exhibits
9 24HC, 25HC, 26HC, and 27HC that I mentioned earlier
10 being moved from Mr. McCallion. And we have the new
11 Exhibit DM-88 which was moved from Mr. Smith's SES-22.

12 MR. ROMANO: Your Honor.

13 JUDGE CLARK: That's on about page 12.

14 Yes.

15 MR. ROMANO: Sorry to jump backwards, but
16 just to clarify on the TM-24HC and 25HC, those were the
17 new exhibits we had.

18 JUDGE CLARK: Those are already admitted. I
19 already checked on that, had you move their admission,
20 and those were admitted.

21 MR. ROMANO: Okay, thank you, Your Honor.

22 JUDGE CLARK: Sure.

23 And if anybody else has questions as we're
24 going through this, jump in. It's easier to do when
25 we're there than to go back and try to find where we're

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1 supposed to be.

2 I think that's it, but I just want to skim
3 through the remainder of the exhibit list and make sure
4 there's not something else that I've forgotten.

5 SGH-30 was withdrawn by Public Counsel in
6 advance of hearing.

7 TRR-28 and 29 I don't have as yet. That's
8 one of my -- those are two of my dangling exhibits,
9 Joint Applicants response to Public Counsel Data Request
10 Numbers 538 and 539, and those were handed out at the
11 onset of our hearing, no, those were distributed over
12 the weekend I believe electronically to everyone. Why
13 don't we deal with those now. Ms. Shifley do you want
14 to move the receipt of TRR-28 and 29?

15 MS. SHIFLEY: Your Honor, I believe I just
16 want to confirm that those two documents are already in
17 the record as WHW-36.

18 JUDGE CLARK: I believe TRR-29 is, but I'm
19 not sure about TRR-28.

20 MS. SHIFLEY: And I believe that, yes, and
21 TRR-28 is in the record as DW -- sorry, Your Honor.

22 JUDGE CLARK: That's all right, take your
23 time.

24 MS. SHIFLEY: Yes, I will go ahead and move
25 for the admission of those two exhibits at this time.

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1 JUDGE CLARK: Is there any objection to the
2 receipt of TRR-28 or 29?

3 MR. BEST: Your Honor, not unless we've
4 already objected to them, and I've lost track of whether
5 we did or not.

6 JUDGE CLARK: And I'll tell you what,
7 Mr. Best, you're keeping track of your own objections,
8 not me.

9 All right, so no one else is indicating
10 objection, so TRR-28 and TRR-29 are admitted.

11 Oh, I remember now, there's one more chunk of
12 dangling exhibits I believe. Yes, on approximately page
13 16 in conjunction with Mr. Lafferty, Public Counsel had
14 initially indicated cross-examination exhibits for
15 Mr. Lafferty. However, when we got to the point of
16 actually estimating time, Public Counsel indicated that
17 they did not intend to cross-examine, so I asked if they
18 wanted to withdraw those cross-examination exhibits.

19 Ms. Shifley kind of reserved what Public Counsel would
20 like to do on that particular issue to see if they
21 wanted to use those in conjunction with some other
22 witness. And given the fact that there has been no
23 examination on Joint Applicant witnesses this afternoon,
24 I'm assuming that you want to withdraw these.

25 MS. SHIFLEY: I'm just confirming that now.

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1 JUDGE CLARK: That's what I suspected.

2 MS. SHIFLEY: We can withdraw those exhibits,
3 Your Honor.

4 JUDGE CLARK: All right, so FWL-3 through 5
5 will be withdrawn by Public Counsel.

6 And I believe that takes care of all of the
7 issues regarding exhibits that I had, and I understand
8 there may also be one the parties wanted to raise.

9 MR. ROMANO: Your Honor, I will withdraw that
10 issue, just let it lie.

11 JUDGE CLARK: All right, are there any other
12 procedural or evidentiary matters that would aid up the
13 expeditious and efficient conclusion of this case?

14 MS. SHIFLEY: Not at this time, Your Honor.

15 JUDGE CLARK: All right.

16 MR. SAVILLE: No, Your Honor.

17 JUDGE CLARK: All right, if there's nothing
18 further to be heard, we are at recess until 9:30 a.m.
19 tomorrow morning.

20 (Hearing adjourned at 5:05 p.m.)

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