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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of)
FRONTIER COMMUNICATIONS NORTHWEST INC.,) Docket UT-121994
To be Regulated as a Competitive) Pages 1-18
Telecommunications Company Pursuant to)
RCW 80.36.320)

PREHEARING CONFERENCE, VOLUME I

Pages 1-18

ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

1:33 P.M.

February 13, 2013

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest
Olympia, Washington 98504-7250

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OLYMPIA, WASHINGTON, FEBRUARY 13, 2013

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1:33 P.M.

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P R O C E E D I N G S

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JUDGE KOPTA: Then let's be on the record in Docket
7 UT-121994 captioned: In the Matter of the Petition of Frontier
8 Communications Northwest Inc., To be Regulated as a Competitive
9 Telecommunications Company Pursuant to RCW 80.36.320.

10

11

I'm Gregory J. Kopta, the administrative law judge
who will be presiding over this proceeding, and we are here
12 today to conduct a prehearing conference.

13

14

And let's start by taking appearances beginning with
the Company.

15

16

MR. O'CONNELL: Timothy J. O'Connell, Stoel Rives law
firm, Seattle, Washington.

17

Do you need the full contact info?

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19

JUDGE KOPTA: As long as you have filed a notice of
appearance, then we don't need to go through that.

20

21

MR. O'CONNELL: Myself and Mr. Saville are
identified in Paragraph 1 of the petition on behalf of Frontier.

22

JUDGE KOPTA: That works for me.

23

Mr. Butler?

24

25

MR. BUTLER: Arthur A. Butler, from the law firm of
Ater Wynne, LLP, on behalf of Cbeyond.

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1 JUDGE KOPTA: Mr. Diamond?

2 MR. DIAMOND: Greg Diamond, regulatory counsel, for
3 Level 3 Communications.

4 JUDGE KOPTA: Mr. Denney?

5 MR. DENNEY: Doug Denney, here as a company
6 representative for Integra Telecom.

7 JUDGE KOPTA: Staff?

8 MS. CAMERON-RULKOWSKI: Jennifer Cameron-Rulkowski,
9 Assistant Attorney General, representing Staff.

10 JUDGE KOPTA: Mr. Trincherero?

11 MR. TRINCHERO: Mark P. Trincherero, Davis Wright
12 Tremaine, representing tw telecomm of washington, llc, and
13 Charter Fiberlink Washington-CCVII.

14 JUDGE KOPTA: Okay. And on the phone, Mr. ffitch?

15 MR. FFITCH: Simon ffitch, Senior Assistant Attorney
16 General, for the Office of Public Counsel.

17 JUDGE KOPTA: And, Mr. Smith?

18 MR. SMITH: Kyle Smith on behalf of the U.S.
19 Department of Defense and all other federal executive agencies,
20 as well as Stephen Melnikoff.

21 JUDGE KOPTA: All right. Thank you.

22 Is there anyone else who would like to make an
23 appearance?

24 Hearing none, we will assume that is the roster.

25 The next item of business is intervention. I have

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1 received -- or the Commission has received petitions to
2 intervene from Cbeyond, Integra, the Department of Defense and
3 other federal executive agencies, Level 3, tw telecom of
4 washington, and Charter Fiberlink.

5 Is anyone else petitioning to intervene?

6 Again, hearing nothing, we'll assume that is the
7 list.

8 Let me start by asking the Company whether there will
9 be any objections to intervention by any of these parties?

10 MR. SAVILLE: No, Your Honor.

11 JUDGE KOPTA: All right. Well, then, we can dispense
12 with any more. I have reviewed the petitions and find grounds
13 to grant all of them, so all of those parties that I have
14 mentioned are Intervenors in this case.

15 The next item on the agenda is discovery. Given the
16 nature and importance of this case, I will make the discovery
17 rules available without request. Those are listed in the
18 procedural rules in WAC 480-07-400 through 425.

19 Protective order. Would the Company like a
20 protective order?

21 MR. SAVILLE: Yes.

22 JUDGE KOPTA: Will you need just the regular
23 confidentiality, or do you anticipate that there will be highly
24 confidential information?

25 MR. SAVILLE: Your Honor, I would anticipate that

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1 there would be highly confidential as well.

2 JUDGE KOPTA: In these types of cases, that's
3 generally the case. So I will issue the standard protective
4 order with highly confidential provisions in it.

5 And then what brings us to probably the most
6 difficult issue, which is the schedule. I think that probably
7 unless you all have an agreement that you're ready to present,
8 we may want to go off the record and have some discussion in
9 that.

10 So let's be off the record.

11 (Discussion off the record from
12 1:37 p.m. to 2:45 p.m.)

13 JUDGE KOPTA: Let's be back on the record.

14 During our break, the parties have been discussing
15 scheduling, other than the hearing dates that we've already
16 established, and they have come up with at least a partial
17 agreed schedule. I will let Ms. Cameron-Rulkowski tell us --
18 tell me what the status is.

19 MS. CAMERON-RULKOWSKI: Thank you, Your Honor. We
20 have actually a fully agreed procedural schedule, so here's what
21 we've got. And I can hand up to you a copy that's -- well, you
22 tell me what you would like me to do. I have a copy that's
23 scribbled on. If that's helpful, you're welcome to have it.
24 Otherwise, I'll just go ahead and read it on the record.

25 JUDGE KOPTA: Well, somebody's going to have to read

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1 it on the record, whether it's you or whether it's me. And
2 since it's your scribbles, it might be better if you do it.

3 MS. CAMERON-RULKOWSKI: So here we go: The date for
4 Company direct testimony and exhibits, Thursday, February 28th;
5 motions to dismiss, March 7th; responses to motions to dismiss,
6 March 14th; replies to those responses, March 21st; settlement
7 conference, March 18th; public comment hearing, probably to be
8 held in Everett, Washington, date to be determined; Staff,
9 Public Counsel, and Intervenor responsive testimony and
10 exhibits, Thursday April 11th; Company rebuttal, Staff, Public
11 Counsel, and Intervenor cross-answering testimony and exhibits,
12 Tuesday, April 30th; distribution of cross-examination exhibits,
13 Monday, May 20th. And our intent there is to provide
14 cross-examination exhibits to the parties and to the Judge, but
15 not to actually file them with the Commission until after we
16 know which ones have been admitted, and only those would be
17 filed.

18 MR. FFITCH: Can I interject there, Jennifer?

19 MR. CAMERON-RULKOWSKI: Yeah. Did I get that wrong?

20 MR. FFITCH: No. Your Honor, just an additional
21 point there that the electronic copies of the cross exhibits
22 would be filed one week after the hearing. That is in
23 accordance with the more recent practice. So hard copies on the
24 20th of May, but then the final -- the electronic copy of the
25 final, the parties' final cross exhibits, would be filed on June

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1 5th. That was all I had.

2 JUDGE KOPTA: Okay. And do you anticipate any need
3 for a prehearing conference in advance of the first day of
4 hearings?

5 MS. CAMERON-RULKOWSKI: So we hadn't talked about
6 this so much, but I think what we would anticipate is that we
7 would all work together with the Judge to get together an
8 exhibit list.

9 JUDGE KOPTA: Okay.

10 MS. CAMERON-RULKOWSKI: Is that acceptable to the
11 other parties?

12 MR. O'CONNELL: It's a good goal.

13 JUDGE KOPTA: Well, yes. I will need an exhibit
14 list, and I will be preparing one. And we'll expect the parties
15 to provide me, at the same time that they're providing
16 cross-examination exhibits, a list of all of their other
17 exhibits so that I can compile that list.

18 We have a form that we use, and I'm happy to
19 circulate it to folks so that you can put it in and all I have
20 to do is cut and paste.

21 I will note that as Mr. ffitch mentioned, we have
22 begun to change our practices so that cross-examination
23 exhibits, we'll go ahead and file them, the hard copies on the
24 day rather than just distribute them and file them later. It
25 became more of a burden on the Records Center to do it the other

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1 way around. But I have no objection to making the electronic
2 copies filed with the Commission one week later, and that should
3 not impose any undue burden on the Commission, which is my
4 concern.

5 So with that amendment to what you said,
6 Ms. Cameron-Rulkowski, I don't see any problem with this
7 schedule.

8 I'll have to check with --

9 MS. CAMERON-RULKOWSKI: Shall I continue?

10 JUDGE KOPTA: Yeah, in just a moment. I'll have to
11 check with the Commissioners on the need for public comment
12 hearing. I understand that's probably something that Public
13 Counsel is going to push hard for, but I will need to confirm
14 that that's something that the Commissioners want to do.

15 But is there more that you had a briefing schedule,
16 or did you want to wait until after the hearings to decide that?

17 MS. CAMERON-RULKOWSKI: Yes, Your Honor. We do have
18 dates. So we have the evidentiary hearing, then, May 23rd,
19 starting May 23rd, and then continuing May 28th through 29th.

20 And then simultaneous initial posthearing briefs,
21 Thursday, June 20th; and simultaneous reply briefs one week
22 later, Thursday, June 27th, and they would have a page limit of
23 20 pages.

24 And then we have some agreement about discovery
25 response times. Data request responses would be due within

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1 seven business days from the date of the Company's direct
2 testimony filing, which is February 28th, through the date for
3 response testimony filing, which is Thursday, April 11th.

4 And then between the due date for response testimony
5 filing and the hearing, data request responses would be due
6 within three business days.

7 MR. O'CONNELL: As to all parties?

8 MS. CAMERON-RULKOWSKI: That's correct.

9 MR. BUTLER: Just one clarification. Up until the
10 filing of the Company's direct testimony, the normal ten-day
11 rule would apply to discovery responses?

12 JUDGE KOPTA: That's how I read what the proposal is.

13 MR. O'CONNELL: And that was our understanding as
14 well.

15 MS. CAMERON-RULKOWSKI: Ours as well.

16 JUDGE KOPTA: Okay. Again, that's fine as long as
17 everyone agrees. I'm perfectly happy to adopt those
18 modifications to the default.

19 MS. CAMERON-RULKOWSKI: And I would only remark that
20 the parties would be hopeful for a swift decision on any motions
21 to dismiss that are filed, and that's all that I have.

22 JUDGE KOPTA: Okay.

23 MR. SMITH: And also --

24 JUDGE KOPTA: Excuse me?

25 MR. SMITH: And also with respect to discovery

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1 requests and responses, I think we also agreed that in addition
2 to all the parties being served with requests, it would also be
3 served with responses, at least electronically.

4 JUDGE KOPTA: Well, that's the custom, and I believe
5 that's Mr. Smith talking.

6 MR. SMITH: Yes.

7 JUDGE KOPTA: The custom is to send out data requests
8 by electronic means, as well as paper, and I assume that that's
9 what everyone will be doing as a matter of standard practice.

10 MR. SMITH: Right. But it's my understanding with
11 respect to the responses, those only go to the -- or those only
12 go to the requesting party unless another party requests a copy,
13 and I believe we have agreed that those responses will be served
14 on all parties regardless of whether or not they requested a
15 copy.

16 JUDGE KOPTA: If that's the agreement among the
17 parties, then, again, I have no issue with that.

18 MS. CAMERON-RULKOWSKI: That's essentially
19 stipulating upfront to the "me too" responses.

20 JUDGE KOPTA: Correct. And as I say, if that's the
21 agreement, then that's fine.

22 MR. O'CONNELL: We're okay with that.

23 JUDGE KOPTA: Okay. And that goes for all data
24 requests? Is that...

25 MR. O'CONNELL: Presumptively, yes.

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1 JUDGE KOPTA: Okay.

2 MR. O'CONNELL: I guess if there are particular
3 issues, we would reserve the right to address them on a
4 particular basis. But, certainly, as a general rule, yes.

5 JUDGE KOPTA: Okay.

6 MS. MELNIKOFF: Your Honor, this is Steve Melnikoff.
7 Lest there be any confusion, when Jennifer said the
8 limitation of 20 pages, she meant only to the reply briefs.

9 JUDGE KOPTA: That's how I noted it in what I was
10 writing down, so I appreciate the clarification.

11 I also note that generally, there isn't an automatic
12 right to reply to motions. If you want to include that in the
13 schedule, again, I don't have an issue with that, but it really
14 depends on the nature of the motions to dismiss as to how
15 beneficial replies are going to be. I'll just give you that.

16 MR. O'CONNELL: Your Honor, we plugged that into the
17 schedule, because there is some suggestion that there are other
18 parties who might file on a response date but actually being in
19 support of the motion to dismiss.

20 JUDGE KOPTA: Okay. Well, then, we'll see what we
21 get, and, obviously, we'll do our best to rule on any such
22 motions expeditiously.

23 So with those addendum -- addenda, I have no issue
24 with the schedule, and so I believe we can adopt that.

25 Ordinarily, I think the end of briefing, you know, in

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1 less than a month before we have to issue an order would be
2 pretty tight. But since I'm not going to be here, I'm not as
3 concerned, since I'm going to be the one that's going to be the
4 major part of the drafting. And at least we'll have the initial
5 briefs before then, so we'll be able to at least start anybody
6 that's around.

7 All right. And since you've already read that, I
8 will simply say that we will adopt that as the schedule for this
9 proceeding. I will be issuing a prehearing conference order in
10 the next day or two that reflects all of these.

11 I will tell you, you will need to file original and
12 nine copies when you are making filings. That will be included
13 in the order, but I just thought I'd let you know today for
14 whatever it's worth.

15 And is there anything else that needs to come before
16 the Commission while we're here today?

17 MR. FFITCH: Your Honor, Simon ffitch. One other
18 housekeeping matter.

19 JUDGE KOPTA: Yes, Mr. ffitch.

20 MR. FFITCH: Could we submit, with your permission, a
21 couple of additional names for the electronic service list that
22 the Commission prepares from our staff? And I could e-mail
23 those to the Bench and copy other parties. But I'm referring to
24 the electronic courtesy service list that the Commission
25 ordinarily issues with the prehearing conference order, and that

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1 would get our legal assistant and other litigation team on the
2 e-mail list.

3 JUDGE KOPTA: That would be fine, and that is our
4 custom. If anyone wants to add additional persons to the
5 electronic service list, then you can let us know, preferably
6 this afternoon, because I intend to issue this order fairly
7 quickly --

8 MR. FFITCH: Thank you, Your Honor.

9 JUDGE KOPTA: -- before the end of this week.

10 MR. SMITH: Department of Defense would be doing the
11 same.

12 JUDGE KOPTA: Then if you would, please, provide me
13 with that so that we can include it in the order. We can always
14 add it later, but it's our practice that the service list that
15 we append to the prehearing conference order is the service list
16 for this docket. And that's for us, as well as for the parties,
17 and so we would like to have it as complete as possible when
18 that order issues.

19 So if we need to wait a day to make sure that the
20 people provide us with any additional names and e-mail addresses
21 for the courtesy electronic service list, then we can do that.

22 MR. O'CONNELL: Could we just wait until -- it's
23 already three o'clock. Some of us might not be getting back to
24 the office before the close of the business day.

25 JUDGE KOPTA: Right. If we can have that before the

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1 end of the day tomorrow, then that way we can issue the
2 prehearing conference order on Friday.

3 MR. O'CONNELL: Thank you.

4 MR. TRINCHERO: And, Your Honor, the list of those
5 names, would you like those e-mailed to you or filed with the
6 Commission?

7 JUDGE KOPTA: Just e-mail them to me would be fine,
8 because we will include them in the appendix that we include
9 with the prehearing conference order so that everyone will have
10 them and, hopefully, everyone will have the same electronic
11 service list that is reflected in that exhibit.

12 MR. TRINCHERO: Thank you, Your Honor.

13 JUDGE KOPTA: All right. Unless there's anything
14 further, we are adjourned.

15 Thank you.

16 (Proceeding concluded at 2:59 p.m.)

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3 STATE OF WASHINGTON)

) ss

4 COUNTY OF KING)

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6 I, SHELBY KAY K. FUKUSHIMA, a Certified Shorthand Reporter
7 and Notary Public in and for the State of Washington, do hereby
8 certify that the foregoing transcript is true and accurate to
9 the best of my knowledge, skill and ability.

10 IN WITNESS WHEREOF, I have hereunto set my hand and seal
11 this 22nd day of February, 2013.

12

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SHELBY KAY K. FUKUSHIMA, CCR

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18 My commission expires:

June 29, 2013

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