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 1 BEFORE THE WASHINGTON

 2 UTILITIES AND TRANSPORTATION COMMISSION

 3 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 4 In the Matter of the Joint )DOCKET UT-190574

 Application of )

 5 )

 NORTHWEST FIBER, LLC, FRONTIER)

 6 COMMUNICATIONS CORPORATION, )

 AND FRONTIER COMMUNICATIONS )

 7 ILEC HOLDINGS LLC, )

 )

 8 For an Order Declining to )

 Assert Jurisdiction Over, or, )

 9 in the Alternative Approving )

 the Transfer of Control of )

10 Frontier Communications )

 Northwest Inc. to Northwest )

11 Fiber, LLC )

12 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

13 SETTLEMENT HEARING, VOLUME III

14 Pages 42-78

15 CHAIRMAN DANNER, COMMISSIONER RENDAHL, COMMISSIONER

 BALASBAS AND JUDGE KOPTA

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17 January 27, 2020

18 10:30 a.m.

19 Washington Utilities and Transportation Commission

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0043

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 4 JAY BALASBAS, Commissioner

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11 STEVEN WEED, Northwest Fiber

 ANGUS ANKUM, DoD & FEA (via bridge)

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 1 EXHIBIT INDEX

 2 EXHIBITS FOR ADMISSION

 3 JP-1T Joint Testimony in Support of Settlement

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 4

 JP-2 Study Areas within the Four State Region

 5

 JP-3C Frontier Combined Financial Statements

 6 (Confidential)

 7 JP-4S Settlement Agreement between Joint

 Applicants, Staff, and Public Counsel

 8

 JP-5T Joint Testimony in Support of Settlement

 9 Agreement

10 JP-6S Settlement Agreement between Joint

 Applicants and Charter

11

 JP-7T Joint Testimony in Support of Settlement

12 Agreement

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 1 LACEY, WASHINGTON; JANUARY 27, 2020

 2 10:30 A.M.

 3 --o0o--

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

 5

 6 JUDGE KOPTA: Let's be on the record in

 7 Docket UT-190574, captioned In the Matter of the

 8 application of Northwest Fiber and Frontier and various

 9 Frontier entities.

10 We are here on -- for an evidentiary hearing

11 to consider three settlement agreements that have been

12 filed by the parties to resolve the issues in this

13 proceeding.

14 I earlier circulated an exhibit list to the

15 parties. All parties have agreed that it is accurate

16 and have agreed to stipulate to the admission of the

17 exhibits on that list. At this point, I will admit

18 Exhibits JP-1T through JP-8S, Exhibits SW-1TC through

19 SW-3, Exhibits AE-1T and AE-2C, and Exhibit BR-1C.

20 Now, let's begin by taking appearances of

21 the parties beginning with Northwest Fiber.

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

23 Trinchero on behalf of Northwest Fiber, the applicant.

24 MR. SPRINGER: I'm Byron Springer, general

25 counsel at Northwest Fiber.

0048

 1 JUDGE KOPTA: And Frontier?

 2 MR. O'CONNELL: Good morning, Your Honor.

 3 Tim O'Connell with the Stoel Rives firm on behalf of

 4 Frontier.

 5 MR. SAVILLE: Good morning. Kevin Saville

 6 on behalf of Frontier Communications.

 7 JUDGE KOPTA: Public Counsel?

 8 MS. SUETAKE: Nina Suetake for Public

 9 Counsel.

10 JUDGE KOPTA: Commission Staff?

11 MR. TEIMOURI: Good morning, Your Honor.

12 Dan Teimouri, Assistant Attorney General, on behalf of

13 Commission Staff.

14 MR. CALLAGHAN: Nash Callaghan, Assistant

15 Attorney General, for Commission Staff.

16 JUDGE KOPTA: Charter?

17 MR. SCANLON: Good morning, Your Honor.

18 Mike Scanlon for Charter Communications.

19 MS. RACKNER: Mr. Scanlon is our witness. I

20 am Lisa Rackner with the law firm McDowell Rackner

21 Gibson for Charter.

22 JUDGE KOPTA: And for the Department of

23 Defense and other Federal Executive Agencies?

24 MR. SMITH: Kyle Smith on the phone for the

25 United States Department of Defense and all other

0049

 1 Federal Executive Agencies.

 2 JUDGE KOPTA: All right. And we have a

 3 panel of witnesses who are supporting the three

 4 settlement agreements although separately. So if I

 5 could have all of those in the room identify yourselves

 6 to begin with, starting with Mr. Zawislak.

 7 MR. ZAWISLAK: Hi, Timothy W. Zawislak,

 8 Commission Staff.

 9 MS. ELLIS: Allison M. Ellis, Senior Vice

10 President, Frontier Communications.

11 MS. LAYCOCK: Sarah Laycock with Public

12 Counsel.

13 MR. WEED: Steven Weed, Chairman of

14 Northwest Fiber.

15 JUDGE KOPTA: And on the phone I believe

16 Mr. Scanlon has already identified himself. Dr. Ankum?

17 MR. SCANLON: Yes, I'm here.

18 JUDGE KOPTA: All right. If you would all

19 stand and raise your right hand.

20 (Witness panel sworn.)

21 JUDGE KOPTA: You may be seated. All right.

22 So your testimony has been admitted into the record

23 along with the settlement agreements, and unless there

24 are any other matters that need to be addressed at this

25 point, we will now have questioning from the bench.

0050

 1 Who would like to begin?

 2 COMMISSIONER BALASBAS: Good morning. So

 3 this -- this question is to both Frontier and Northwest

 4 Fiber, and I'll start with Frontier.

 5 So we saw an article recently from

 6 Communications Daily. It was dated January 17th, 2020,

 7 that Frontier appeared to not meet its CAF-II broadband

 8 deployment milestones in Washington in calendar year

 9 2019. So my first question is, is that accurate?

10 MS. ELLIS: Yes, we made the required filing

11 at the FCC to notify them that we did not achieve the

12 full 80 percent benchmark required by the end of 2019.

13 We were within the 5 percent deviation that the FCC

14 required us to make that notification, but actually

15 doesn't assess any type of penalty associated with that.

16 We were very close to the 80 percent just,

17 you know, a handful of locations that we weren't able to

18 complete by year-end due to a variety of weather-related

19 and other delays. We actually are expecting to complete

20 the full 80 percent within the next week or so by the

21 end of the month, and we actually have until the

22 beginning of March to update the FCC's hub database,

23 which we intend to do and expect -- fully expect to be

24 able to record 80 percent completion.

25 COMMISSIONER BALASBAS: All right. Thank

0051

 1 you for that.

 2 And then a question to Northwest Fiber, does

 3 Northwest Fiber intend to seek any funding from the

 4 State Universal Service Fund?

 5 MR. WEED: Well, the next -- the next

 6 CAF-III funding, we intend to participate in that when

 7 it comes out. I think it's planned for later this year.

 8 But, you know, we will need to get -- close this

 9 acquisition and -- and learn more about how to do that,

10 but that's certainly our intent as well as completing

11 the CAF-II postclosing, we've committed to do that as

12 well.

13 COMMISSIONER BALASBAS: Okay. And you are

14 aware that we have a separate State Universal Service

15 Fund for both broadband deployment and -- and other --

16 and other purposes?

17 MR. WEED: Yeah, I'm aware of it. I don't

18 have any specific details around that, but maybe

19 somebody else at the table does.

20 COMMISSIONER BALASBAS: Okay. Then my final

21 question, then, this would be to Northwest Fiber. You

22 know, we just heard some public comments about a very --

23 very specific area down in the rural Cowlitz County

24 area. I'm just curious to hear your reaction to that.

25 We also know in the settlement stipulation there is a

0052

 1 provision that requires at least ten million of the 50

 2 million to be spent outside of the Seattle-Everett metro

 3 area, so I would like your comments on what you heard

 4 from the public comments as well as how that may or may

 5 not relate to the provision in the settlement regarding

 6 the 50 million in broadband.

 7 MR. WEED: Yeah, I'd say one, we're eager to

 8 get the acquisition closed so we can go to work at

 9 upgrading the network. I have spent the last 20 years

10 of my career figuring out ways to bring better broadband

11 to unserved markets. In fact, the company, Cascade Net,

12 that they're using today was owned by my prior company,

13 Wave Broadband. And so we've -- you know, we've been

14 creative in figuring how to get Internet to markets like

15 that.

16 And our goal with Frontier is to upgrade

17 that network to provide better Internet service across

18 all of Washington. The specifics of their address, I

19 just don't know the details of where our plant is

20 relative to where they're at, but -- but I do know that

21 we are -- you know, we're making plans today and are

22 eager to get to work at upgrading the network and

23 providing better phone and broadband service across the

24 Frontier footprint. Whether or not that means that

25 those addresses get upgraded or when they would get

0053

 1 upgraded, we just don't know that until we get our --

 2 until we own the asset and can get our design done.

 3 COMMISSIONER RENDAHL: So as a follow-up,

 4 and this is a question for Frontier, is this area within

 5 the CAF-II plans or is this -- or, you know, can you

 6 give us any specification about that or whether it would

 7 be in a CAF-III area? I guess this may be more for

 8 Mr. Weed.

 9 MS. ELLIS: Yeah, so I do believe that it's

10 in CAF-II. Whether or not it will be built out through

11 CAF-II funding, I -- I'm not sure of the plans at this

12 point. I -- I do believe that it also will be eligible

13 for RDOF funding so --

14 COMMISSIONER RENDAHL: And can you spell for

15 the record what that is, sorry.

16 MS. ELLIS: Rural Digital Opportunity Fund.

17 That's the successor program to CAF-II. That is a $20

18 billion fund that will be auctioned to provide broadband

19 service to areas that are currently unserved with 25/3.

20 It -- the -- the large auction of that is scheduled to

21 happen later this year, the first $16 billion, and the

22 FCC just approved its final order in RDOF. And so there

23 is still some work to be done to determine exactly which

24 locations are going to be included in that auction, but

25 it is intended to address areas exactly like the Kalama

0054

 1 exchange area.

 2 COMMISSIONER RENDAHL: Okay. And actually,

 3 I'd like to issue a bench request to Frontier to find

 4 out if, in fact, this area is within the CAF-II plans

 5 that the Company has committed to with the FCC just so

 6 we can have that information. Thank you.

 7 JUDGE KOPTA: That will be Bench Request 2.

 8 Counsel, do you understand what the request

 9 is?

10 MR. O'CONNELL: We do, Your Honor. Thank

11 you.

12 CHAIRMAN DANNER: All right. Good morning.

13 I guess I want to ask some questions about service

14 quality, and there are some conditions in the settlement

15 that deal with this that -- as I understand it that the

16 Frontier will provide service quality report before the

17 transaction would go forward, although we've already

18 received confidentially a copy of their confidential

19 exhibit, and then we would receive another going

20 forward.

21 Normally, when we have a company that is

22 classified as a competitive, in theory, you would look

23 to the markets to deal with this kind of consumer

24 quality issue. You would say, well, if they don't like

25 the quality of the service, they can -- they can go

0055

 1 elsewhere, but in this case, you have elected to put

 2 this in as the settlement. Is this something that in

 3 your opinion is needed at this time as we make this

 4 transition or is this something where we should let the

 5 market forces deal with this? And I'll just throw that

 6 out to any of the witnesses.

 7 MS. ELLIS: Maybe I'll start and just say

 8 that this is part of the settlement that we negotiated

 9 with Staff and the Public Counsel as -- in order to give

10 additional comfort that there would be a seamless

11 transition of services to Northwest Fiber. We certainly

12 don't have any difficulty in complying with the

13 provisions of the settlement agreement and providing

14 that, those service quality metrics.

15 Generally, we do track these kind of metrics

16 internally anyways to internally monitor our own

17 performance and ensure that we're providing a level of

18 service that we're intending to. So from Frontier's

19 perspective, at least of what we have to provide up to

20 and -- and immediately postclose, we're very comfortable

21 with that.

22 MS. LAYCOCK: Oh, yeah, I will just also add

23 I feel what she said and also, you know, it is a no-harm

24 standard, and so I think this is also a way to ensure

25 that the Company is -- the service quality is not

0056

 1 degrading and that that no-harm standard is met and that

 2 the proper assessments are being made. So I do think

 3 it's -- it's necessary to have right now.

 4 CHAIRMAN DANNER: All right. Thank you.

 5 Anyone else? Mr. Zawislak?

 6 MR. ZAWISLAK: Staff appreciates the

 7 condition that the Company's agreed to, the parties

 8 agreed to, and I think it's important that it's

 9 recognized that the -- some of the reports are on a wire

10 center basis. And so that would give us more insight

11 into the various geographies out in the state.

12 CHAIRMAN DANNER: All right. Thank you.

13 So, Mr. Weed, just -- just want to make

14 sure, I mean, what experience does Northwest Fiber have

15 as an ILEC and how can we be comfortable that you're

16 going to comply with the -- the customer service and

17 regulatory obligations of -- of an ILEC?

18 MR. WEED: My prior company was a CLEC, but

19 not an ILEC, so we have extensive experience in -- in

20 broadband Internet and fiber. And phone service. We --

21 we offered switch [inaudible] in California as well as

22 IP phone up here in Washington State. In addition to

23 that, I'm on the board of a hundred-year-old ILEC and an

24 investor, Hargray Communications based on Hilton Head

25 Island and have been involved with that company for

0057

 1 several years.

 2 And also, Northwest Fiber, the management

 3 team of Northwest Fiber is a -- largely the former

 4 management of Wave Broadband, but also who has now

 5 joined our team is the -- who was the president of

 6 CenturyLink for the Northwest, Brian Stading. He's

 7 joined us as chief operating officer and is now part of

 8 our team. So you have a great broad skill of management

 9 as well as -- as me as chairman and our other board

10 members have experience there.

11 CHAIRMAN DANNER: All right. Thank you very

12 much.

13 MS. ELLIS: I would also just maybe add as

14 part of the transaction, there are roughly a thousand

15 employees who are transferring, 600 of which are here in

16 Washington. And these are personnel who have today

17 operated our network and deliver service to customers.

18 They are the subject matter experts. And so Northwest

19 Fiber will continue to have the benefit of those

20 employees moving forward.

21 MR. WEED: Yeah, thanks for adding that.

22 We are taking on the entire local staff.

23 What I was describing was the headquarters, which is

24 actually moving from Norwalk, Connecticut, to Washington

25 State, Kirkland.

0058

 1 CHAIRMAN DANNER: All right. Thank you.

 2 JUDGE KOPTA: I believe Exhibit SW-3 also

 3 has the list of employee classifications that are being

 4 retained; is that what you're referring to?

 5 MR. WEED: Yes, that was a list of the

 6 classifications and an estimated number of employees in

 7 total. The -- about 600 of those or a little over 600

 8 are in Washington State. The rest are in Oregon and

 9 Idaho.

10 JUDGE KOPTA: So while that is not part of

11 the settlement agreement, that is something that you're

12 representing to the Commission that you were actually

13 going to do?

14 MR. WEED: Correct. Yes.

15 JUDGE KOPTA: Thank you.

16 COMMISSIONER RENDAHL: Good morning. So,

17 Mr. Zawislak, is Staff satisfied that Northwest Fiber

18 has the financial, technical, and managerial ability to

19 operate the ILEC?

20 MR. ZAWISLAK: Yes.

21 COMMISSIONER RENDAHL: Okay. And I guess I

22 would ask that to Public Counsel as well.

23 MS. LAYCOCK: Yes, I believe they do. I

24 think financially, it appears that they are better off

25 than Frontier, and so they do have the ability to

0059

 1 provide those upgrades and investments that are needed

 2 to improve the -- the service quality. So yeah, I would

 3 say yes.

 4 COMMISSIONER RENDAHL: Okay. And can both

 5 you and Mr. Zawislak elaborate on why the requirement

 6 for filing financial statements and then why that's

 7 limited to three years?

 8 MR. ZAWISLAK: Sure. So I believe you're

 9 referring to Condition No. 1 under financial reporting,

10 and I think --

11 COMMISSIONER RENDAHL: And if you could

12 speak closer to the mic, that would be helpful.

13 MR. ZAWISLAK: Sorry. Yeah, the intent is

14 to recognize that Northwest Fiber is not a publicly

15 traded company, and so they don't file the reports at

16 the FCC that Frontier has in the past. And so Staff has

17 been able to use the FCC EDGAR database to review

18 quarterly and annual filings that Frontier made as a

19 publicly traded company.

20 So this is a condition I think that Staff

21 felt was important to -- at least for the first three

22 years to have that -- that tool to be able to see how

23 the Company's doing. We do have annual reports that are

24 filed on a state basis, Washington State only basis.

25 But the -- that is -- that is part of a larger regional

0060

 1 company, and so this kind of gives us the bigger picture

 2 as well as the State requirements that are already --

 3 already in place. And I believe the Company will comply

 4 just like all other companies comply in Washington.

 5 COMMISSIONER RENDAHL: Okay. So the

 6 combination of the three years of the national

 7 information plus the annual reporting that will

 8 continue, you're confident that this will give you the

 9 information you need?

10 MR. ZAWISLAK: Yes.

11 COMMISSIONER RENDAHL: And any other witness

12 commenting on that?

13 MS. LAYCOCK: I -- I would echo what he

14 said. I'm confident as well. I think the three years

15 is sufficient.

16 COMMISSIONER RENDAHL: Okay. And this

17 transitions to the discussion about the commitment for

18 the $50 million investment. Will these reports

19 separately identify whether and how this investment

20 commitment is going to be met or is that a separate

21 issue?

22 MR. ZAWISLAK: Thank you, Commissioner

23 Rendahl. To clarify your question, are you asking --

24 COMMISSIONER RENDAHL: I'm asking whether

25 the financial commitments will identify where the 50

0061

 1 million investment commitment is being made or is that a

 2 separate commitment?

 3 MR. ZAWISLAK: Okay. Exhibit 1 to the

 4 settlement conditions is a template for the reporting on

 5 the financial conditions, and it doesn't break it down,

 6 I guess, geographically between the Seattle areas and

 7 the Everett areas versus the rest of the state. But the

 8 commitment to spend at least ten million in those

 9 non-metropolitan areas would probably foll- -- require a

10 little bit of follow-up, but will also have the location

11 they report as well. So we can -- we can dig in deeper

12 and maybe ask some follow-up questions during the

13 compliance reporting process.

14 COMMISSIONER RENDAHL: So I guess this is a

15 question for Mr. Weed. So how -- what sort of

16 information are you willing to share with the Commission

17 as you make this investment, particularly for the ten

18 million investment outside of the -- the -- the

19 Seattle-Everett metropolitan area of where these --

20 where this investment is going to be made?

21 MR. WEED: Yeah, we've agreed to the -- the

22 template listed below, which breaks out the total

23 capital investment by major category. And I guess as

24 was pointed out, it doesn't -- it doesn't give a

25 location, but we could -- we can make sure when we file

0062

 1 the report that we're showing what -- that we've met our

 2 $10 million commitment for the outside of the metro

 3 area.

 4 COMMISSIONER RENDAHL: But would you

 5 identify where those investments were made outside of

 6 the metropolitan area?

 7 MR. WEED: Yeah, my hesitation is just how

 8 we're going to track it and I'm -- I'm -- I

 9 definitely -- this -- this report was vetted by our

10 financial people as a -- as a way in which we're going

11 to track it. We definitely can work with -- with your

12 Staff to ensure that we provide the information

13 necessary to ensure we're making that investment outside

14 the metro area. I just couldn't comment exactly on how

15 we're going to track that, whether we know the exact

16 addresses or we just have categories of a metro versus

17 non-metro.

18 CHAIRMAN DANNER: Okay. I just want to make

19 sure that the information provided allow us to verify

20 that that condition is met so that, you know, we have to

21 have some confidence that it's being spent where you

22 said it was going to be spent.

23 MR. WEED: Yeah, I'm -- I'm confident that

24 we can provide metro and non-metro capex, I just -- I

25 just didn't want to get into the detail of how we're

0063

 1 breaking it out here without having our financial people

 2 review it.

 3 CHAIRMAN DANNER: Okay. Yeah, again, I

 4 mean, whether, you know, if -- if -- if the filing

 5 itself didn't make it clear, I mean, whether we would

 6 have to follow up with a request for information or

 7 audit or anything like that, then just want to -- just

 8 want to make sure that we can verify whatever

 9 information so if it's given to us at too high a level,

10 that that may not be sufficient. So but I think we will

11 cross that bridge when we come to it.

12 MR. WEED: Yeah, like I said, I'm confident

13 we can provide the information of capital investment on

14 this form by metro and non-metro area.

15 COMMISSIONER RENDAHL: So I guess, has

16 Northwest Fiber contemplated the criteria for investing

17 outside of the -- the metropolitan area?

18 MR. WEED: We have definitely done our

19 analysis on where we plan to invest and upgrade the

20 network. We don't have -- since we don't own the

21 company yet, we don't have the exact designs done, but

22 there are many markets outside of the metro area that

23 fit our design criteria to -- to -- to do fiber to the

24 home, which is primarily where we're going to be

25 investing the capital. So there's many towns on --

0064

 1 Eastern Washington are ones that I have personally

 2 looked at with the data that we had that we're excited

 3 to go to work on and get -- get upgraded.

 4 CHAIRMAN DANNER: And so with the money that

 5 you have earmarked as this $50 million, of which at

 6 least ten is outside of the metro area, now are you

 7 looking -- you're still looking for places where -- I

 8 mean, there are several underserved areas where there's

 9 simply low probability of getting return on your

10 investment. Are you looking at those areas or are you

11 merely looking at areas where the investment is going to

12 pay off?

13 MR. WEED: We're looking at the entire

14 network. We're acquiring in total about 1.6 million

15 locations served by Frontier, and our goal is to improve

16 service to all 1.6 million locations. How -- how -- how

17 deep the fiber gets to each location is -- is something

18 we'll work out as we finalize the design. But -- but

19 the goal is to bring better service to all locations,

20 and the vast majority will have, you know, fiber to the

21 home if not very near the home.

22 CHAIRMAN DANNER: Okay.

23 COMMISSIONER RENDAHL: So this -- this

24 relates to -- we just received a comment from the

25 Northwest Telecommunications Association, was filed on

0065

 1 the 17th, actually filed on the 21st, in which they

 2 asked that the Commission require that Northwest Fiber

 3 not seek forbearance for all of the interconnection

 4 agreements that -- from the FCC, and the Charter

 5 settlement is just specific to Charter. Is -- is

 6 that -- I mean, would it make sense to go to the FCC and

 7 just seek for -- you know, if you're -- if you're not

 8 seeking forbearance from one, how does that apply to the

 9 others?

10 MR. WEED: Yeah, I think we are committing

11 to assume all of the interconnection agreements. The

12 difference with Charter was an -- an extension.

13 COMMISSIONER RENDAHL: So the commitment to

14 honor all the interconnection agreements, at least for a

15 period of three years, extends to the not seeking

16 forbearance?

17 MR. WEED: The commitment to assume all the

18 existing interconnection agreements. They -- they have

19 their own terms and their own -- their own terms and

20 conditions. So whatever their existing terms and

21 conditions are, we've agreed to assume those.

22 COMMISSIONER BALASBAS: Maybe a slightly

23 broader follow-up to that. You know, given that we have

24 three separate settlement agreements in front of us, I

25 would like to hear both Staff and Public Counsel's

0066

 1 reactions to the Charter and DoD settlements and whether

 2 you believe we have enforcement over those and how would

 3 we do that.

 4 MR. ZAWISLAK: Thank you, Commissioner

 5 Balasbas. This is Tim Zawislak. Yeah, in preparation

 6 for the hearing this morning, I really focussed on the

 7 Staff, Public Counsel settlement agreement and the

 8 conditions therein. I'm aware of the DoD and the

 9 Charter settlement agreements, but I think any specific

10 questions regarding those I would defer to the witnesses

11 for those parties.

12 MS. LAYCOCK: Yeah, Public Counsel does not

13 have an issue with the settlements made by the other

14 parties, but I would also defer the questions to those

15 witnesses.

16 COMMISSIONER BALASBAS: So I guess I would

17 pose the question to both the DoD and the Charter

18 witnesses about the settlement agreements that you have

19 reached with Northwest Fiber here in this case. What

20 would be -- if you found that those settlement

21 agreements were not being honored, I would assume you

22 would then come to the Commission?

23 MR. SCANLON: This is Mike Scanlon speaking,

24 yes.

25 DR. ANKUM: Would this question also be for

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 1 the Department of Defense?

 2 COMMISSIONER BALASBAS: Yes, for Department

 3 of Defense.

 4 DR. ANKUM: I -- I think that question in a

 5 way is better directed at counsel. There's a legal

 6 component to that. And I have not had conversations

 7 with my client about that possibility, so I really don't

 8 have an informed opinion there.

 9 MR. SMITH: And this is Kyle Smith, counsel

10 for DoD, FEA. I -- I think that under some

11 circumstances, there could be an attempt to enforce

12 portions of a settlement agreement to the Commission,

13 but for the most part, the federal government does not

14 assert claims through settlement agreements or contracts

15 in all likelihood. These things are run by contracting

16 officers in terms of services purchased from a company

17 and where the federal government sees that they have

18 contractual or statutory rights to do something, they

19 would withhold payment related to those things and then

20 cause the company to bring claim against them in

21 a -- before the appropriate board or the Court of

22 Federal Claims.

23 CHAIRMAN DANNER: And, Your Honor, as long

24 as we're asking questions of counsel, I was wondering,

25 perhaps Mr. Trinchero or his client could tell me, if

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 1 they have looked at the Oregon order, which just came

 2 out today, and whether there will be anything there that

 3 in your mind triggers the most favored nations

 4 provision?

 5 MR. TRINCHERO: Thank you, Chair Danner. I

 6 have given it the most cursory of glances as it came

 7 out --

 8 CHAIRMAN DANNER: That's why I was hoping

 9 you had done a -- done a deeper dive.

10 MR. TRINCHERO: Yes, I gave it enough of a

11 review to know that the Oregon Commission adopted the

12 stipulation that was presented to them in toto with no

13 changes. That same stipulation was provided to Staff

14 and Public Counsel after it was executed and filed with

15 the Oregon Commission. So they've already reviewed the

16 settlement conditions in the Oregon agreement and -- and

17 did get back to us with their input and feedback.

18 At this -- this juncture, we do not

19 anticipate that it would trigger the MFN just because

20 Staff and Public Counsel already looked at those terms

21 and conditions, but I guess I would leave that to Staff

22 and Public Counsel to opine on whether they believe they

23 might still ask for something. But we had already had

24 them look at the agreement.

25 CHAIRMAN DANNER: All right. Thank you.

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 1 JUDGE KOPTA: Following up on that actually,

 2 and this may be more appropriate for the witnesses, I

 3 notice that in the Oregon stipulation, that the Oregon

 4 Commission approved it's a similar $50 million

 5 investment, but also there's a subsequent requirement

 6 that Northwest will spend 20 million of the total amount

 7 within the first three years. There's no comparable

 8 provision like that in Washington. Does Staff or Public

 9 Counsel believe that that is through the MFN provision

10 something that should be incorporated into Washington?

11 MR. ZAWISLAK: Speaking for Staff, I don't

12 believe so. We discussed this with the Company during

13 the preparation of the joint testimony, and -- I'm not

14 sure which page it is right now, but it -- the Company

15 had committed that it -- any acceleration in Oregon

16 wouldn't affect the timing in Washington. And so

17 Washington would still get the effect of the full 50

18 million over the five-year period.

19 JUDGE KOPTA: Well, my question is a little

20 bit different, which is, should there also be a

21 requirement in Washington that at least $20 million be

22 spent within the first three years?

23 MR. ZAWISLAK: Staff, we didn't anticipate

24 that, and I think we're fairly comfortable with the --

25 the market in Washington. That company would probably

0070

 1 want to, you know, make the investment, but I can defer

 2 to Mr. Weed on that.

 3 MR. WEED: Yeah, I'll go out on a limb and

 4 say that's not going to be a problem, and I think that's

 5 why it wasn't put in there. We intend -- like we're

 6 designing as much as we can, we're working on getting

 7 started now. So as soon as we get our last government

 8 approval today, we'll -- you know, we're going to close

 9 the asset and -- and go to work. We've got construction

10 teams we're hiring and we're eager to -- to invest in

11 the network to provide better service to the customers

12 and improve the -- the performance of the business that

13 we're acquiring. So it's not going to be an issue.

14 We're -- and I think that's why it wasn't in the

15 provision.

16 CHAIRMAN DANNER: Okay. I -- actually, the

17 question was -- is a good one, is whether that

18 provision, because it's in the Oregon agreement, becomes

19 a legal requirement here under the most favored nation

20 provision. And so, I mean, your answer is -- I'm not

21 sure if I take it as aspirational or -- a commitment

22 by --

23 MR. WEED: I will give you the commitment on

24 record if you want it right now to move things along.

25 CHAIRMAN DANNER: All right. It's not

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 1 whether I want it or not --

 2 MR. WEED: I mean, if Staff decides they

 3 would like it, it's not a problem for Northwest Fiber to

 4 provide it.

 5 CHAIRMAN DANNER: All right. Thank you.

 6 COMMISSIONER RENDAHL: Mr. Callaghan, did

 7 you want to opine?

 8 MR. CALLAGHAN: Not at this time, Your

 9 Honor. Thank you.

10 JUDGE KOPTA: Ms. Suetake?

11 MS. SUETAKE: Yes, thank you. With respect

12 to the Oregon settlement, we did see those stipulations

13 before our settlement was completely finalized, but I

14 wouldn't go so far as to say that because no party

15 raised it then, it was precluded from now that we have

16 the Oregon order in place from raising it now. Just not

17 to completely contradict Mr. Trinchero, but there was a

18 timing issue to when we received even their finalized

19 stipulation that was filed in terms of Public Counsel's

20 ability to get authorization to settle here.

21 So I would not take it to say that we would

22 never raise it now after if we get this authorized using

23 the most favored nation clause. I'm not saying I'm

24 intending to disturb it, I just don't want it to be

25 construed as we're a hundred percent not looking at that

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 1 now. There is a timing issue with everything involved

 2 in our settlement. So I would take Mr. Weed at his word

 3 saying that they plan on spending the money within that

 4 time frame, though, so I appreciate that being on the

 5 record about that.

 6 MR. TRINCHERO: And -- and just to clarify,

 7 that is not inconsistent with my understanding of what I

 8 said earlier, is that at the time, neither Staff nor

 9 Public Counsel raised any issues, but that does not

10 preclude them from doing so now under the settlement

11 agreement.

12 CHAIRMAN DANNER: Thank you.

13 MR. TEIMOURI: That is Staff's understanding

14 as well. We agree with Ms. Suetake's statement. Thank

15 you.

16 COMMISSIONER RENDAHL: Just one more

17 follow-up mainly to Mr. Weed's comment, so this goes to

18 Mr. Trinchero. So has Idaho finalized this as well?

19 I'm not sure if this would be the last or if Idaho is --

20 has finalized yet.

21 MR. TRINCHERO: So under Idaho law, we were

22 not required to seek an approval other than to get our

23 intrastate long distance certification, which the

24 Company has done. So this would be the last one. All

25 of the federal approvals came in in the December time

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 1 frame. The Montana order came out earlier this month.

 2 By operation of Montana law, I believe it goes into

 3 effect today. And of course we got the Oregon decision

 4 now. So the only regulatory approval that we are

 5 awaiting is the Washington Commission.

 6 COMMISSIONER RENDAHL: Thank you.

 7 JUDGE KOPTA: I would ask one more follow-up

 8 in terms of the $50 million investment. It's spread out

 9 over five years, is it your anticipation that it will

10 take five years to invest that amount of money in

11 Washington or do you have some other plan for how that

12 money is going to get invested?

13 MR. WEED: Yeah, and this is the commitment

14 we agreed to, but it's -- it's likely that we will

15 invest significantly more than that and -- and hopefully

16 in a much shorter time frame.

17 JUDGE KOPTA: All right. That concludes the

18 questioning from the bench. We do have a bench request.

19 Can you let me know, is a week enough time to be able to

20 provide a response to that bench request?

21 MR. O'CONNELL: Yes, I believe it would be,

22 Your Honor.

23 JUDGE KOPTA: All right. In addition,

24 Ms. Suetake, has Public Counsel received any comments

25 from the public on this transaction?

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 1 MS. SUETAKE: Yes, we have and we are

 2 working with Mr. Cupp about getting all of the public

 3 comments in. When would you like that and what would

 4 you like this numbered as?

 5 JUDGE KOPTA: Well, let's call it PC-1, and

 6 I think we would like to have the public comment period

 7 remain open for a week after this hearing just in case

 8 some people may want to provide some additional

 9 comments. And so if you could provide us with that

10 exhibit say by the end of next week?

11 CHAIRMAN DANNER: I -- I would be satisfied

12 by the end of this week. That would be...

13 JUDGE KOPTA: Well, receiving the public

14 comments by the end of this week, but then compiling the

15 exhibit by the end of next week is what I'm talking

16 about. Is that...

17 CHAIRMAN DANNER: How much time do you think

18 it would take to compile the public comments?

19 MS. SUETAKE: We would be fine with the end

20 of this week, but if you want to keep the comment period

21 open, it's fine.

22 CHAIRMAN DANNER: So I think given the level

23 of public comments so far, I actually think we could

24 probably close the public comment period on Thursday and

25 have the exhibit on Friday.

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 1 MS. SUETAKE: Oh, that might be a bit too

 2 short. Yeah, I see what you're saying. We can do it --

 3 if you wanted to keep the comment period until Thursday,

 4 probably next Monday would be fine. That gives us a day

 5 to put it together in a filing format.

 6 CHAIRMAN DANNER: Is that all right with my

 7 colleagues?

 8 MS. SUETAKE: Okay. And then question about

 9 the comment that you received the hard copy today, would

10 you like that also included in the file?

11 CHAIRMAN DANNER: Are you talking about

12 Mr. Slack's testimony?

13 MS. SUETAKE: Yes.

14 CHAIRMAN DANNER: Yes.

15 MS. SUETAKE: Would you like that filed as

16 well?

17 CHAIRMAN DANNER: Sure.

18 MS. SUETAKE: Okay. Thank you.

19 JUDGE KOPTA: All right. So we will receive

20 both BC-1 and BR-2 on -- a week from today?

21 MS. SUETAKE: Yes.

22 JUDGE KOPTA: All right. Just want to make

23 sure we're all on the same page.

24 CHAIRMAN DANNER: And then, Judge, I don't

25 know if -- do we usually give an opportunity for

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 1 redirect after bench questions or -- it doesn't seem we

 2 had anything so contentious that we need to correct the

 3 record, but I just wondered if that's what we normally

 4 do.

 5 JUDGE KOPTA: I didn't see any counsel

 6 moving in their chairs, but I will ask rather than rely

 7 on body language. Is there any redirect of the

 8 witnesses?

 9 MR. TRINCHERO: No redirect on behalf of

10 Northwest Fiber. Thank you.

11 MR. O'CONNELL: No questions on behalf

12 Frontier.

13 MS. SUETAKE: Nothing for Public Counsel.

14 MR. CALLAGHAN: Nothing for Commission

15 Staff. Thank you.

16 JUDGE KOPTA: All right. Thank you,

17 Mr. Chair, for -- oh.

18 MS. RACKNER: Nothing from Charter.

19 JUDGE KOPTA: All right.

20 MR. SMITH: And this is Kyle Smith for DoD

21 and FEA, I would just add one clarifying point to the

22 comment I had made previously, that the federal

23 acquisition regulations should be referred to for any

24 questions on how the government deals with contracts and

25 also the Defense Federal Acquisition Regulation, which

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 1 are statutes that are publicly published.

 2 JUDGE KOPTA: All right. Thank you,

 3 Mr. Smith.

 4 I believe that concludes our proceeding for

 5 the day. The Commission will take this matter under

 6 advisement and enter an order in due course. Thank you

 7 very much. And we are adjourned.

 8 (Adjourned at 11:11 a.m.)

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 1 C E R T I F I C A T E

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 3 STATE OF WASHINGTON

 4 COUNTY OF THURSTON

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 6 I, Tayler Garlinghouse, a Certified Shorthand

 7 Reporter in and for the State of Washington, do hereby

 8 certify that the foregoing transcript is true and

 9 accurate to the best of my knowledge, skill and ability.

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13 Tayler Garlinghouse, CCR 3358

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