

Docket No. UT-190574 - Vol. III

In the Matter of Northwest Fiber, LLC, et al.

January 27, 2020



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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)
 6 NORTHWEST FIBER, LLC, FRONTIER)
 COMMUNICATIONS CORPORATION,)
 7 AND FRONTIER COMMUNICATIONS)
 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
 16 _____
 17 January 27, 2020
 18 10:30 a.m.
 19 Washington Utilities and Transportation Commission
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LACEY, WASHINGTON; JANUARY 27, 2020
 10:30 A.M.
 --oOo--
 PROCEEDINGS

JUDGE KOPTA: Let's be on the record in Docket UT-190574, captioned In the Matter of the application of Northwest Fiber and Frontier and various Frontier entities.

We are here on -- for an evidentiary hearing to consider three settlement agreements that have been filed by the parties to resolve the issues in this proceeding.

I earlier circulated an exhibit list to the parties. All parties have agreed that it is accurate and have agreed to stipulate to the admission of the exhibits on that list. At this point, I will admit Exhibits JP-1T through JP-8S, Exhibits SW-1TC through SW-3, Exhibits AE-1T and AE-2C, and Exhibit BR-1C.

Now, let's begin by taking appearances of the parties beginning with Northwest Fiber.

MR. TRINCHERO: Thank you, Your Honor. Mark Trinchero on behalf of Northwest Fiber, the applicant.

MR. SPRINGER: I'm Byron Springer, general counsel at Northwest Fiber.

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JUDGE KOPTA: And Frontier?

MR. O'CONNELL: Good morning, Your Honor. Tim O'Connell with the Stoel Rives firm on behalf of Frontier.

MR. SAVILLE: Good morning. Kevin Saville on behalf of Frontier Communications.

JUDGE KOPTA: Public Counsel?

MS. SUETAKE: Nina Suetake for Public Counsel.

JUDGE KOPTA: Commission Staff?

MR. TEIMOURI: Good morning, Your Honor. Dan Teimouri, Assistant Attorney General, on behalf of Commission Staff.

MR. CALLAGHAN: Nash Callaghan, Assistant Attorney General, for Commission Staff.

JUDGE KOPTA: Charter?

MR. SCANLON: Good morning, Your Honor. Mike Scanlon for Charter Communications.

MS. RACKNER: Mr. Scanlon is our witness. I am Lisa Rackner with the law firm McDowell Rackner Gibson for Charter.

JUDGE KOPTA: And for the Department of Defense and other Federal Executive Agencies?

MR. SMITH: Kyle Smith on the phone for the United States Department of Defense and all other

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Federal Executive Agencies.

JUDGE KOPTA: All right. And we have a panel of witnesses who are supporting the three settlement agreements although separately. So if I could have all of those in the room identify yourselves to begin with, starting with Mr. Zawislak.

MR. ZAWISLAK: Hi, Timothy W. Zawislak, Commission Staff.

MS. ELLIS: Allison M. Ellis, Senior Vice President, Frontier Communications.

MS. LAYCOCK: Sarah Laycock with Public Counsel.

MR. WEED: Steven Weed, Chairman of Northwest Fiber.

JUDGE KOPTA: And on the phone I believe Mr. Scanlon has already identified himself. Dr. Ankum?

MR. SCANLON: Yes, I'm here.

JUDGE KOPTA: All right. If you would all stand and raise your right hand.
 (Witness panel sworn.)

JUDGE KOPTA: You may be seated. All right. So your testimony has been admitted into the record along with the settlement agreements, and unless there are any other matters that need to be addressed at this point, we will now have questioning from the bench.

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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

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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

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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

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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

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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

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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

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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

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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.

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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

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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

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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

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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 fol- -- 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

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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

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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 --

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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

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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

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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

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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. Trincherero, 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. Trincherero. 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 CERTIFICATE

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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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Tayler Garlinghouse, CCR 3358

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