

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Frontier Communications  
Northwest, Inc.'s Petition to be Regulated as  
a Competitive Telecommunications  
Company Pursuant to RCW 80.26.320

DOCKET UT-121994

COMMISSION STAFF'S REPLY  
TO FRONTIER'S RESPONSE TO  
CLEC INTERVENORS' JOINT  
MOTION TO DISMISS

**I. INTRODUCTION**

1 Staff of the Washington Utilities and Transportation Commission (Commission) submits this Reply to Frontier's Response to CLEC Intervenors' Joint Motion to Dismiss Frontier's Petition to be Regulated as a Competitive Telecommunications Company Pursuant to RCW 80.36.320, or, in the Alternative, to Treat Petition as a Request Under RCW 80.36.330 filed March 7, 2013 (Response).

**II. ARGUMENT**

2 On March 14, 2013, Frontier filed its Response, disputing the CLECs' contention that the petition at issue was insufficient and opposing its dismissal. Frontier argued alternatively, however, that if the Commission were to find the petition to be insufficient, Frontier should be allowed to correct or amend the petition in accordance with WAC 480-7-395(5).<sup>1</sup> The amendment, as proposed, would consist of adding some portion of Frontier's testimony or the materials attached to the Response to the petition. While Staff agrees that the petition need not be dismissed, Frontier's proposal for alternative relief would be unfairly prejudicial.

---

<sup>1</sup> Response, ¶ 28, at p. 13.

3

Frontier's failure to mention in its petition that it was seeking pricing flexibility for services offered in compliance with 47 U.S.C. 251 (Section 251) as well as other wholesale services created uncertainty at the outset concerning the scope of the filing. The competitive classification statutes, RCW 80.36.320 and RCW 80.36.330, were enacted in 1985, a decade before Section 251 was enacted as part of the Telecommunications Act of 1996. For Staff, it is an ongoing inquiry as to Frontier's intent concerning services it provides to other carriers. Allowing Frontier to add to its petition and testimony piecemeal without providing other parties with added time to orient their analysis would be inequitable. Accordingly, if the Commission decides to allow Frontier to constructively or actually amend its petition, the amendment should not relate back to the filing date. Rather, the date of such amendment should become the new filing date, restarting the six-month clock in this proceeding.

4

Frontier raised another issue in its Response that has the potential to strain the procedural schedule in this proceeding. In its Response, Frontier indicates that it anticipates supplementing its testimony with discovery from "various third parties not currently involved in this docket as to their provision of wholesale telecommunications throughout Washington."<sup>2</sup> While Staff has no objection to receiving and analyzing additional relevant information and recognizes that Frontier requires certain data to meet its burden of proof, Staff and other parties must have an opportunity to review and respond to any supplementation of Frontier's testimony.<sup>3</sup> Realistically, if Frontier desires to supplement its testimony, the procedural schedule will require extension.

---

<sup>2</sup> Response, ¶ 5, at p. 4.

<sup>3</sup> Staff notes that data gathered on wholesale competition may be relevant to retail competition as well; and so supplementation in one area could necessitate additional analysis and response in other areas.

#### IV. CONCLUSION

5 Given the incomplete petition in this matter, it is in the public interest to convert this proceeding to a more tailored filing under RCW 80.36.330 or RCW 80.36.135. To allow Frontier sufficient time to supplement and clarify the record and for other parties to have sufficient time to analyze the additional or revised information, fairness requires that an amendment to the petition result in a new filing date.

DATED this 21st day of March, 2013.

Respectfully submitted,

ROBERT W. FERGUSON  
Attorney General



JENNIFER CAMERON-RULKOWSKI  
Assistant Attorney General  
Counsel for Washington Utilities and  
Transportation Commission Staff