

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of

NORTHWEST FIBER, LLC,
FRONTIER COMMUNICATIONS
CORPORATION, AND FRONTIER
COMMUNICATIONS ILEC
HOLDINGS LLC,

For an Order Declining to Assert
Jurisdiction Over, or, in the Alternative,
Approving the Transfer of Control of
Frontier Communications Northwest
Inc. to Northwest Fiber, LLC

DOCKET UT-190574

ORDER 01

PREHEARING CONFERENCE
ORDER; NOTICE OF HEARING
(Set for January 29, 2020,
at 9:30 a.m.)

- 1 **NATURE OF PROCEEDING.** On June 28, 2019, Northwest Fiber, LLC (Northwest Fiber), Frontier Communications Corporation (Frontier Parent) and Frontier Communications ILEC Holdings LLC (Frontier ILEC Holdings) (collectively, the Joint Applicants) filed with the Washington Utilities and Transportation Commission (Commission) a Joint Application requesting that the Commission decline to assert jurisdiction over a transaction involving the transfer of control of Frontier Communications Northwest, Inc. (Frontier NW) from Frontier ILEC Holdings to Northwest Fiber, or, in the alternative, to approve the application for transfer.
- 2 **CONFERENCE.** The Commission convened a prehearing conference at Lacey, Washington on July 23, 2019, before Administrative Law Judge Gregory J. Kopta.
- 3 **APPEARANCES.** Mark Trincherro, Alan Galloway, Heather Moelter, Portland, OR; and K.C. Halm, Washington, D.C., represent Northwest Fiber. George Thomson, Jr., Everett, Washington, and Timothy O'Connell and Anne Dorshimer, Seattle Washington, represent Frontier Parent. Nash Callaghan and Daniel Teimouri, Assistant Attorneys General, Olympia, Washington, represent Commission staff (Staff).¹ Nina Suetake,

¹ In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the

Assistant Attorney General, Seattle, Washington, represents the Public Counsel Unit of the Attorney General's Office (Public Counsel). Kyle Smith, Assistant United States Attorney, Washington, D.C., represents the United States Department of Defense and all other federal executive agencies (DOD/FEA). Lisa Rackner, Portland, Oregon, represents Charter Communications, Inc. (Charter). Contact information for the representatives of those granted party status is attached as Appendix A to this Order.

- 4 **PETITIONS FOR INTERVENTION.** Charter timely filed a petition to intervene, and DOD/FEA sought intervention at the prehearing conference. No party objected to either request. The Commission finds that Charter, as a competitor of Frontier, and DOD/FEA as one of the company's largest customers, have a substantial interest in this proceeding, and their participation is in the public interest. Accordingly, the Commission grants intervention to both of them.
- 5 **PROTECTIVE ORDER.** The parties ask that the Commission enter a protective order in this docket under RCW 34.05.446, RCW 80.04.095, and WAC 480-07-420 to protect the confidentiality of proprietary information. The Joint Applicants further request that the Commission provide protection for highly confidential information, which they identify as competitively sensitive information pertaining to the financing of the proposed transaction and technical, financial, and strategic information concerning plans and strategies for investing, upgrading, and operating the company's network and operations following the close of the transaction. No party objected to this request. The Commission agrees that the information the Joint Applicants have specified is entitled to greater protection and will enter a protective order in this docket that includes provisions governing highly confidential information. We caution the parties to designate as highly confidential only the information that falls within these parameters.
- 6 **DISCOVERY.** The parties may conduct discovery pursuant to the Commission's discovery rules, WAC 480-07-400 – 425. The Commission urges the parties to work cooperatively together to avoid having to bring discovery matters forward for formal resolution.
- 7 **PROCEDURAL SCHEDULE.** The parties have not agreed on a preliminary procedural schedule. The Joint Applicants propose a schedule that would enable the Commission to enter a final order by the end of this year. They contend this schedule is comparable to the procedural schedules the Commission has established in other merger or company

presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

acquisition dockets and would promote the public interest by more promptly enabling consumers to realize the benefits of the proposed transaction.

8 Staff proposes a somewhat longer schedule that would conclude evidentiary hearings and post-hearing briefing by the end of February 2020. Staff states that such a schedule is the best it can do in light of limited resources and other Commission proceedings in which telecommunications Staff is actively involved, Staff also notes that the applicable statute does not require a Commission decision in this docket until the end of May 2020 and thus Staff's proposal is a reasonable compromise between the Joint Applicant's proposal and a schedule designed to comply with the statute. Public Counsel supports Staff's proposal, citing its own resource constraints.

9 We adopt Staff's proposed procedural schedule. We appreciate the Joint Applicants' desire for an expeditious resolution of this proceeding, but we find that providing all parties with sufficient time to prepare and present their positions will best enable the Commission to make an informed decision. The Commission, however, will endeavor to establish an earlier hearing date if the parties are able to reach a settlement of all disputed issues significantly before the evidentiary hearing is currently scheduled. The procedural schedule for this proceeding is attached to this Order as Appendix B.²

10 **DOCUMENT FILING AND SERVICE REQUIREMENTS.** Parties must file and serve all pleadings, motions, and other pre-filed materials in compliance with all of the following requirements:

(a) Parties must submit electronic copies of all documents by 5 p.m. on the filing deadline established in the procedural schedule (or other deadline as applicable) unless the Commission orders otherwise. Parties must comply with WAC 480-07-140(6) in formatting, organizing, and identifying electronic files. In addition, the parties must file **five** hard copies of all documents by 5 p.m. on the next business day after the filing deadline.

(b) Parties must submit documents electronically through the Commission's web portal (www.utc.wa.gov/e-filing). If a party is unable to use the web portal to submit documents for filing, the Commission will accept a submission via email to records@utc.wa.gov, provided that the email: (1) explains the reason

² Staff's proposed schedule included only rough time frames for many of the filing deadlines and the evidentiary hearing. The Commission, therefore, has adopted its own specific dates for these events. The settlement conferences are scheduled only for specific weeks. The parties must decide which day to meet during that week.

the documents are not being submitted via the web portal, and (2) complies with the requirements in WAC 480-07-140(5)(b).

- (c) Documents filed with the Commission must conform to the formatting and other requirements in WAC 480-07-395, and must comply with the requirements in WAC 480-07-160 and the Protective Order in this docket for documents that include information designated as confidential or highly confidential.
- (d) Parties must electronically serve the other parties and provide courtesy electronic copies of filings to the presiding administrative law judge (gregory.kopta@utc.wa.gov) by 5 p.m. on the filing deadline unless the Commission orders otherwise. If parties are unable to email copies, they may furnish electronic copies by delivering them on a flash drive only.

11 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission has limited ability to provide dispute resolution services. If you wish to explore those services, please contact Rayne Pearson, Director, Administrative Law Division (360-664-1136).

12 **NOTICE TO PARTIES: A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of this Order, in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this docket, subject to Commission review.**

Dated at Olympia, Washington, and effective July 30, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA
Administrative Law Judge

**APPENDIX A
PARTIES' REPRESENTATIVES
DOCKET UT-190574**

PARTY	REPRESENTATIVE	PHONE	E-MAIL
Northwest Fiber, LLC	Northwest Fiber, LLC Mark P. Trincherro Davis Wright Tremaine LLP 2400 SW Fifth Ave. Portland, OR 97201	(503) 241-2300	marktrincherro@dwt.com
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	Heather Moelter Attorney		heathermoelter@dwt.com
	K.C. Halm		kchalm@dwt.com
	Blake Robinson		blakerobinson@dwt.com
Frontier Communications Corporation	George B. Thomson, Jr. Associate General Counsel 1800 41 st Street Everett, WA 98201	(206) 624-0900	George.thomson@ftr.com
	Timothy J. O'Connell Stoel Rives LLP 600 University St., Suite 3600 Seattle, WA 98101		tim.oconnell@stoel.com
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	Debbie Dern		dldem@stoel.com
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Commission Staff	Nash Callaghan Assistant Attorney General Office of the Attorney General Utilities and Transportation Division 1400 S. Evergreen Park Drive S.W. P.O. Box 40128 Olympia, WA 98504	(360) 664-1194	nash.callaghan@utc.wa.gov
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PARTY	REPRESENTATIVE	PHONE	E-MAIL
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Public Counsel	Nina Suetake Assistant Attorney General Washington Attorney General's Office Public Counsel Unit 800 Fifth Avenue, Suite 2000 Seattle, WA 98104-3188	(206) 389-2055	NinaS@atg.wa.gov
	Sarah Laycock Regulatory Analyst		Sarah.Laycock@atg.wa.gov
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	Chanda Mak Legal Assistant		chanda.mak@atg.wa.gov
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United States Department of Defense and all other federal executive agencies	Kyle Smith General Attorney U. S. Army Legal Services Agency Regulatory Law and Intellectual Property Division 9275 Gunston Road, Suite 1300 Fort Belvoir, VA 22060-5546	(703) 693-1274	kyle.j.smith124.civ@mail.mil
	Patrick Phipps QSI Consulting, Inc.	(217) 726-7334	pphipps@qsiconsulting.com
Charter Communications, Inc.	Lisa Rackner McDowell Rackner Gibson PC 419 SW 11 th Ave, Suite 400 Portland, OR 97205	(503) 595-3925	lisa@mrg-law.com
	Shoshana Baird Attorney	(503) 290-3625	shoshana@mrg-law.com
	Alisha Till Paralegal	(503) 290-3628	alisha@mrg-law.com

**APPENDIX B
PROCEDURAL SCHEDULE
DOCKET UT-190574**

EVENT	DATE
Prehearing Conference	July 23, 2019
Prehearing Conference Order³	July 30, 2019
Joint Applicants File Direct Testimony	July 31, 2019
Initial Settlement Conference	Week of August 26, 2019
Public Comment Hearing (if necessary)	TBD
Second Settlement Conference	Week of October 21, 2019
Staff, Public Counsel, and Intervenor Response Testimony and Exhibits⁴	November 14, 2019
Joint Applicants Rebuttal Testimony and Exhibits; Staff, Public Counsel, and Intervenor Cross-Answering Testimony and Exhibits⁵	December 19, 2019
Discovery Deadline	January 17, 2020
Cross-Examination Exhibits, Witness Lists, and Time Estimates⁶	January 23, 2020
Evidentiary Hearing	January 29, 2020 (and January 30, 2020, if needed)
Simultaneous Post-Hearing Briefs	February 28, 2020

³ Response time to data requests will be seven business days.

⁴ Response time to data requests will be five business days.

⁵ Response time to data requests will be three business days.

⁶ Witness lists and time estimates are not filed but must be provided only to the Administrative Law Judge and the parties.