Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
Utilities and Transportation Division
1400 S Evergreen Park Drive SW • PO Box 40128 • Olympia WA 98504-0128 • (360) 664-1183

April 8, 2013

Steven V. King, Acting Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RE: *In the Matter of the Petition of Frontier Communications Northwest, Inc., to be Regulated as a Competitive Telecommunications Co. Pursuant to RCW 80.36.320*
Docket UT-121994

Dear Mr. King:

Enclosed for filing in the above-referenced docket are the original and six copies of Commission Staff's Motion to Clarify Order 04, and Certificate of Service.

Sincerely,

JENNIFER CAMERON-RULKOWSKI
Assistant Attorney General

JCR/emd
Enclosures
cc: Parties w/enc.

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 MOTION TO CLARIFY ORDER 04

I. INTRODUCTION

1 Pursuant to WAC 480-07-835, Staff of the Washington Utilities and Transportation Commission (Commission) files this Motion to Clarify Order 04. Specifically, Commission Staff (Staff) seeks clarification on the standard to be applied under RCW 80.36.320 to services offered under Frontier's special access tariff.

II. DISCUSSION

2 The competitive classification statute at issue in this proceeding, RCW 80.36.320, requires a petitioner to show that "the services it offers are subject to effective competition" before the Commission can classify a carrier as competitive. In Order 04, the Commission indicates that wholesale services are not to be considered in the analysis under RCW 80.36.320, except to the extent that the incumbent could leverage its provision of those services to impede retail competition.[1] Staff seeks clarification of the services that the Commission considers to be wholesale services. In particular, Staff seeks clarity on whether Frontier must show that there is effective competition for the services offered in the special access section of its Tariff WN U-16, Facilities for Intrastate Access.[2]

[1] Order 04, ¶¶ 14-15.
[2] A copy of the tariff is available at http://carrier.frontiercorp.com/crtf/tariffs/u/253/WA/access/Access_16_Facilities_Intrastate.pdf.

3 Frontier includes the special access services offered in WN U-16 in its wholesale services discussion;[3] however, retail as well as wholesale customers can purchase services out of the tariff. The tariff addresses switched access as well as special access, but at issue in this motion are only the services offered in the special access section of the tariff, Section 5. In this section, Frontier offers services that other companies might offer in completely separate tariffs designed for retail customers and wholesale customers respectively. The services in Frontier's special access section of its tariff, in contrast, are available to any type of customer, whether it be a large business or another carrier. Customers do not need to enter into an interconnection agreement to order special access services from Tariff WN U-16.

4 In prior competitive classification proceedings under RCW 80.36.330 (competitive classification of a *service*) the Commission has considered whether to competitively classify services that Frontier offers as special access services in Tariff WN U-16. For example, in Docket UT-990022, the Commission examined whether US WEST's high capacity services, which can be purchased by retail or wholesale customers, were subject to effective competition.[4] At issue were US WEST's DS-1 and DS-3 circuits (as well as its "SONET" service), which were used to provide services to other carriers and large business customers (like ISPs) alike. In that proceeding, the Commission found it appropriate to consider both the retail and wholesale markets, noting that the circuit data available did not differentiate between wholesale and retail markets in all cases.[5] Additionally, in Docket UT-000883, the Commission considered whether to competitively classify Qwest services over DS-1 or larger capacity circuits in particular service areas.[6] Frontier offers the equivalent of these

[3] Direct Testimony of Billy Jack Gregg 2:12-13; 2:17-18; 8:1-11:8 (filed February 28, 2013).
[4] *In the Matter of the Petition of U S WEST Communications, Inc. for Competitive Classification of its High Capacity Circuits in Selected Geographical Locations*, Docket UT-990022, Eighth Supplemental Order Granting Amended Petition For Competitive Classification (Dec. 21, 1999).
[5] *Id.* at p. 15.
[6] *In the Matter of the Petition of Qwest Corporation for Competitive Classification of Business Services in*

services, DS-1 and larger capacity circuits, in its tariff WN U-16. Given that the services in the prior proceedings and in the instant proceeding are equivalent, if not identical, it would be consistent treatment to require a showing of effective competition by Frontier before the Commission permitted Frontier to detariff its special access services in WN U-16.

5 Even if the special access services Frontier offers in WN U-16 were not services equivalent to those subject to the effective competition analysis in prior proceedings, the dual nature of the services as retail as well as wholesale indicates that these services could be treated just as any other retail service. In other words, if end-use customers taking basic business service must be considered in the analysis under RCW 80.36.320, then so too should end-use customers who take service under WN U-16.

6 Frontier plans, if its petition is granted, to detariff special access services and move the services from WN U-16 into a service catalog.[7] From Frontier's direct testimony, it seems clear that the Company is seeking flexibility in pricing its retail special access services.[8] If Frontier is seeking pricing flexibility for special access services offered in WN U-16, then it logically follows that Frontier must show that these services are subject to effective competition. Order 04 implicates wholesale services but, because special access services are offered to both retail and wholesale customers in WN U-16, Staff seeks clarification as to Frontier's burden with respect to these services.

7 Staff's request for clarification stems from the question of whether the Commission considers the special access services in WN U-16 to be wholesale services or retail services for the purposes of Order 04. Under the analysis of Order 04, does Frontier need to show that special access services are subject to effective competition? Order 04 indicates that, if this is so, only special access services taken by end-use customers, that is, retail customers,

---

Specified Wire Centers, Docket UT-000883, Eighth Supp. Order Granting Reconsideration, Modifying and Clarifying Order (Feb. 16, 2001).

[7] Direct Testimony of Billy Jack Gregg at 10:15-19.

[8] *Id.* at 11:7-18.

would be relevant to this analysis (except to the extent that Frontier potentially could exert market power over wholesale customers; for example, by offering the same service to wholesale and retail customers at such disparate prices that it squeezes competitors out of the market[9]). In the alternative, does Order 04 mean that if the analysis of other services leads to the conclusion that the petition should be granted, special access automatically would be deemed a competitive service without requiring Frontier to demonstrate it is subject to effective competition? If Order 04 indicates that special access is a wholesale service for which Frontier does not need to demonstrate effective competition, does granting the petition mean that Frontier would be authorized to detariff all of the services in WN U-16, or does the order mean that some or all of the services would remain tariffed?

IV. CONCLUSION

8 In summary, in light of Order 04, Staff seeks clarification of the burden that Frontier must meet with respect to the special access services offered in its tariff WN U-16 to support its petition for competitive classification under RCW 80.36.320.

DATED this 8th day of April, 2013.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

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

[9] Note the Direct Testimony of Billy Jack Gregg at 8:11-19, indicating that Frontier would like to "enhance competitive pressures" by reducing its prices to respond to competitors selling the same service below Frontier's tariff rate.

Docket UT-121994
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached Motion to Clarify Order 04 upon the persons and entities listed on the Service List below by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED at Olympia, Washington this 8th day of April, 2013.

ELIZABETH M. DeMARCO

For Frontier Communications NW, Inc.:
Timothy J. O'Connell
Stoel Rives, LLP
One Union Square
600 University St., 36th Fl.
Seattle, WA 98101
Phone: 206-386-7562
E-mail: tjoconnell@stoel.com
Kevin.saville@ftr.com
jack.phillips@ftr.com
carl.gipson@ftr.com
dldern@stoel.com
jweidson@stoel.com

For Level 3 Communications LLC:
Gregory T. Diamond
Regulatory Counsel
1505 5th Avenue, Suite 501
Seattle, WA 98101
Phone: 206-652-5608
E-mail: Greg.diamond@level3.com

For Integra Telecom of WA, Inc.:
Douglas Denney
Vice President, Costs & Policy
1201 NE Lloyd Blvd., Suite 500
Portland, OR 97232
Phone: 503-453-8285
E-mail: dkdenney@integratelecom.com
kdisaacs@integratelecom.com
kim.wagner@integratelecom.com

For Cbeyond Communications, LLC:
Arthur A. Butler
Ater Wynne LLP
601 Union Street, Suite 1501
Seattle, WA 98101-3981
Phone: 206-623-4711
E-mail: aab@aterwynne.com
Gene.watkins@cbeyond.net
sjk@aterwynne.com

For U.S. Dep't of Defense:
Kyle J. Smith, Esq.
General Attorney
Regulatory Law Office (JALS-RL)
U.S. Army Legal Services Agency
9275 Gunston Rd., Suite 1300
Fort Belvoir, VA 22060
Phone: 703-693-1274
E-mail: Kyle.j.smith124.civ@mail.mil
Stephen.s.melnikoff.civ@mail.mil
gankum@qsiconsulting.com
pphipps@qsiconsulting.com

For tw telecom of Washington, llc:
Lyndall Nipps
Vice President Regulatory
9665 Granite Ridge Drive, Suite 500
San Diego, CA 92123
Phone: 858-805-6050
E-mail: Lyndall.nipps@twtelecom.com

Mark Trinchero
Davis Wright Tremaine LLP
1300 SW Fifth Avenue, Suite 2400
Portland, OR 97201-5630
Phone: 503-241-2300
E-mail: marktrinchero@dwt.com
alangalloway@dwt.com
debbiereed@dwt.com

For Charter Fiberlink:
Michael R. Moore
12405 Powerscourt Dr.
St. Louis, MO 63131
Phone: 314-965-0555
E-mail: Michael.moore@chartercom.com

K.C. Halm
Davis Wright Tremaine LLP
1919 Pennsylvania Ave., NW, Ste. 800
Washington, DC 20006-3401
Phone: 202-973-4200
E-mail: kchalm@dwt.com
marktrinchero@dwt.com
alangalloway@dwt.com
debbiereed@dwt.com

For Public Counsel:
Simon J. ffitch
Lisa W. Gafken
Public Counsel Section
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
Phone: 206-389-2055
E-mail: simonf@atg.wa.gov
Lisaw4@atg.wa.gov
stefaniej@atg.wa.gov
carolw@atg.wa.gov