

Docket No. UT-200898 - Vol. I

In the matter of the Petition of Asotin Telephone
Company, et al.

December 15, 2020



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<p style="text-align: right;">Page 1</p> <p>1 BEFORE THE WASHINGTON 2 UTILITIES AND TRANSPORTATION COMMISSION</p> <p>3 In the matter of the petition of) 4) ASOTIN TELEPHONE COMPANY, D/B/A) 5 TDS TELECOM; CONSOLIDATED) 6 COMMUNICATIONS OF WASHINGTON) DOCKET UT-200898 7 COMPANY, LLC; HAT ISLAND) 8 TELEPHONE COMPANY; HOOD CANAL) Virtual Prehearing 9 TELEPHONE CO., INC.; INLAND) Conference 10 TELEPHONE COMPANY; KALAMA) 11 TELEPHONE COMPANY; LEWIS RIVER) Pages 1 - 20 12 TELEPHONE COMPANY, D/B/A TDS) 13 TELECOM; MASHELL TELECOM, INC.) 14 D/B/A RAINIER CONNECT; MCDANIEL) 15 TELEPHONE COMPANY, D/B/A TDS) 16 TELECOM; PIONEER TELEPHONE) 17 COMPANY; PEND OREILLE TELEPHONE) 18 COMPANY, D/B/A RTI PEND OREILLE) 19 TELECOM; SKYLINE TELECOM, INC.) 20 ST. JOHN TELEPHONE, INC.; TENINO) 21 TELEPHONE COMPANY; THE TOLEDO) 22 TELEPHONE CO., INC.; WESTERN) 23 WAHIAKUM COUNTY TELEPHONE) 24 COMPANY; AND WHIDBEY TELEPHONE) 25 COMPANY, D/B/A WHIDBEY TELECOM,)) To Establish an Alternative Form)) of Regulation.)</p> <p>18 VOLUME I 19 VERBATIM REPORT OF PROCEEDINGS</p> <p>20 HELD BEFORE</p> <p>21 ADMINISTRATIVE LAW JUDGE GREGORY KOPTA</p> <p>22 December 15, 2020 23 (By Videoconference)</p> <p>24 Reported By: 25 Connie Church, CCR, RPR, CRR, CRC Certified Court Reporter, #2555</p>	<p style="text-align: right;">Page 3</p> <p>1 PROCEEDINGS</p> <p>2</p> <p>3 JUDGE KOPTA: All right. Let's be on the record 4 in Docket UT-200898, captioned In the Matter of the 5 Petition of Asotin Telephone Company, et al, to Establish 6 an Alternative Form of Regulation. 7 Today is Tuesday, December 15th, 2020. And we are 8 here this afternoon for a prehearing conference to 9 establish the procedural schedule and pick up any other 10 preliminary matters. 11 First of all, let's begin with appearances, starting 12 with the Petitioners. 13 MR. FINNIGAN: This is Rick Finnigan, appearing 14 on behalf of the Petitioners. 15 JUDGE KOPTA: And Commission staff? 16 MS. CAMERON-RULKOWSKI: Jennifer Cameron- 17 Rulkowski, Assistant Attorney General appearing on behalf 18 of Commission staff. 19 JUDGE KOPTA: And public counsel. 20 MS. PAISNER: Good afternoon. My name is 21 Ann Paisner, and I'm an Assistant Attorney General with 22 the Public Council Unit of the Washington State Office of 23 the Attorney General. 24 JUDGE KOPTA: All right. And I believe we have 25 one other attorney who wants to make a Notice of</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES</p> <p>2 FOR THE PETITIONERS: MR. RICHARD A. FINNIGAN 3 ATTORNEY AT LAW 4 2112 Black Lake Blvd. SW 5 Olympia, WA 98502 6 (360) 956-7001 7 rickfinn@localaccess.com</p> <p>8 FOR THE COMMISSION: MS. JENNIFER CAMERON-RULKOWSKI 9 ASSISTANT ATTORNEY GENERAL 10 Office of the Attorney General 11 UTC Division 12 P.O. Box 40128 13 Olympia, WA 98504-0128 14 (360) 664-1186 15 jennifer.cameron-rulkowski@utc.wa.gov</p> <p>16 PUBLIC COUNSEL: MS. ANN N.H. PAISNER 17 ASSISTANT ATTORNEY GENERAL 18 Office of the Attorney General 19 Public Counsel Unit 20 800 Fifth Avenue, Suite 2000 21 Seattle, WA 98104-3188 22 (206) 464-6595 23 ann.paisner@atg.wa.gov</p> <p>24 FOR THE WASHINGTON STATE MILITARY DEPARTMENT, 911 COORDINATOR'S OFFICE: MS. DAWN CORTEZ 25 ASSISTANT ATTORNEY GENERAL Office of the Attorney General P.O. Box 40113 Olympia, WA 98504-0113 (360) 586-2436 dawnc@atg.wa.gov</p>	<p style="text-align: right;">Page 4</p> <p>1 Appearance. 2 MS. CORTEZ: Yes. I'm Dawn Cortez with the 3 State Attorney General's Office, representing the 4 Washington State Military Department, State 911 5 Coordinator's Office. 6 JUDGE KOPTA: All right. Thank you. Anyone 7 else wishing to make an appearance? 8 Hearing none, we will go on to the next item of 9 business, which is petitions to intervene. The 10 Commission has received only one petition to intervene, 11 and that's from the military department. First of all, 12 let me ask: Is there are any objections to that 13 petition? 14 MR. FINNIGAN: No objection from the 15 Petitioners. 16 JUDGE KOPTA: All right. Hearing no objection, 17 then we will grant that petition and allow the Military 18 Department to participate in this proceeding as an 19 intervenor. 20 The next matter is discovery. Do the parties wish 21 to have the Commission's discovery rules available for 22 this proceeding? 23 MS. CAMERON-RULKOWSKI: Yes, Your Honor. From 24 Commission staff perspective, yes. 25 JUDGE KOPTA: All right. Then we will make</p>

<p style="text-align: right;">Page 5</p> <p>1 those available to the parties.</p> <p>2 What about a protective order? Is that going to be</p> <p>3 necessary in this case?</p> <p>4 MR. FINNIGAN: Depends on what's requested in</p> <p>5 the discovery. Probably yes.</p> <p>6 JUDGE KOPTA: All right. Well, since we are on</p> <p>7 a statutory clock, we might want to as well go ahead and</p> <p>8 enter a protective order just to make sure so that we</p> <p>9 don't have to deal with that issue later.</p> <p>10 The other sort of administrative issue is a service</p> <p>11 list. There's a master service list already that's in</p> <p>12 the docket, which is comprised of folks that have already</p> <p>13 identified themselves as being participants or</p> <p>14 representatives of participants in this proceeding. If</p> <p>15 any of you want additional persons who are not on that</p> <p>16 list to be on the electronic service list, please let me</p> <p>17 know, preferably by the end of the day today, so that we</p> <p>18 can make sure that they are included. Since we are</p> <p>19 serving electronically, it's fairly easy to add another</p> <p>20 e-mail address. And I want to make sure that, to the</p> <p>21 extent possible, we have everybody listed that we want to</p> <p>22 have on the service list and right at the beginning of</p> <p>23 the proceeding.</p> <p>24 And that leads us to a discussion about the</p> <p>25 procedural schedule. I received an e-mail earlier today</p>	<p style="text-align: right;">Page 7</p> <p>1 that we believe need to be addressed at a minimum in the</p> <p>2 testimony of the petitioners.</p> <p>3 The other thing that we were looking at was there</p> <p>4 are a number of petitioners, and so we were also trying</p> <p>5 to think about where we would need individual testimony</p> <p>6 from a company and where that wasn't so important. And</p> <p>7 so we've also -- so we've also designated that or</p> <p>8 indicated that on the testimony content document that I</p> <p>9 shared with you, Your Honor. And that document has been</p> <p>10 shared with all of the parties and both Public Counsel</p> <p>11 and SECO do support that list as a minimum list of items</p> <p>12 that would need to be in the testimony.</p> <p>13 And most of those items come directly from the terms</p> <p>14 of the statute itself. Some of them then are indirect</p> <p>15 items, meaning that staff would need to know these things</p> <p>16 in order to make an evaluation of the statutory item.</p> <p>17 And then there are also some places where we just knew</p> <p>18 right away that there were questions where the petition</p> <p>19 had not elaborated. For example, there is no explanation</p> <p>20 of why the individual waivers that are requested are</p> <p>21 requested. So that was -- that was one item that we'd</p> <p>22 need to know right up front, what the purpose was of each</p> <p>23 of those waivers.</p> <p>24 And that's the -- and so what we hoped was that this</p> <p>25 list of items would create the record that staff and the</p>
<p style="text-align: right;">Page 6</p> <p>1 from Ms. Cameron-Rulkowski with a list of items that</p> <p>2 Staff and Public Counsel I believe, as well as the</p> <p>3 Military Department, are recommending that the</p> <p>4 Petitioners address in their direct testimony.</p> <p>5 And I also understand from Mr. Finnigan via the</p> <p>6 e-mail exchange that we had that that may impact the</p> <p>7 schedule that we adopt in this proceeding.</p> <p>8 So first of all, Ms. Cameron-Rulkowski, let me let</p> <p>9 you sort of explain what it is that you have provided to</p> <p>10 me and why that is something that you want to have</p> <p>11 addressed at this juncture.</p> <p>12 MS. CAMERON-RULKOWSKI: Thank you, Your Honor.</p> <p>13 When staff took a look at the petition, it's -- we found</p> <p>14 that it was pretty spare and that there were items that</p> <p>15 are in the AFOR statute that were not addressed in the</p> <p>16 petition or were really only cursorily addressed. And we</p> <p>17 would expect that all of the items in the AFOR statute</p> <p>18 would be addressed in testimony. But we're already a</p> <p>19 little bit short on time at this point.</p> <p>20 And we're also concerned about shifting the burden</p> <p>21 onto staff and other parties to elicit the information</p> <p>22 that we need in the record for evaluation under the</p> <p>23 statute through discovery. That is very time-consuming</p> <p>24 and takes a lot of effort. And so staff put quite a lot</p> <p>25 of thought and work into developing a list of those items</p>	<p style="text-align: right;">Page 8</p> <p>1 other parties needed to evaluate the AFOR petition and</p> <p>2 also would have the benefit of resulting in an adequate</p> <p>3 record for the Commission to be able to make a decision</p> <p>4 on the petition. And so we really viewed it as hopefully</p> <p>5 something that could make the process a little more</p> <p>6 efficient and also would make -- would let the</p> <p>7 petitioners know what it was that we needed.</p> <p>8 There are other items, too, that staff feels that we</p> <p>9 needed that we would then conduct discovery on. But</p> <p>10 these items in the list represent things that come</p> <p>11 directly from the statute.</p> <p>12 JUDGE KOPTA: All right. Ms. --</p> <p>13 MS. CAMERON-RULKOWSKI: Oh, I'm sorry. I needed</p> <p>14 to add that the intent of this list was to have it</p> <p>15 appended to the Prehearing Conference Order and be made a</p> <p>16 part of the Prehearing Conference Order so that everyone</p> <p>17 knows what the expectations are for testimony, that at</p> <p>18 least these items to be addressed.</p> <p>19 JUDGE KOPTA: All right. Anything in addition</p> <p>20 from Public Counsel or the Military Department?</p> <p>21 MS. PAISNER: This is Ann for Public Counsel. I</p> <p>22 just want to say that we do support the schedule in the</p> <p>23 testimony document proposed by Ms. Cameron-Rulkowski.</p> <p>24 That testimony document, we view it as asking for the</p> <p>25 minimum required under the statute. So it would be</p>

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1 impossible to analyze this request without more
 2 information. And it does appear only to be asking for
 3 what is required under RCW 80.36.135.
 4 MS. CORTEZ: And the state 911 office agrees.
 5 It did not have any information about how these things
 6 would impact the 911 answering points. The state
 7 Military Department has the obligation to administer the
 8 911 excise tax account, which they do on behalf of the
 9 counties. They also pay the telephone bills for the
 10 county 911 offices. And so it has a vested interest in
 11 finding out how those fees by the telephone companies are
 12 charged and any increase, why there would be any increase
 13 to the charges. So we also support the staff's request.
 14 Thanks.
 15 JUDGE KOPTA: All right. Mr. Finnigan, your
 16 response?
 17 MR. FINNIGAN: Well, I disagree with the
 18 statement that that list -- that three-page list is
 19 simply repeating what the statute requires. I disagree
 20 entirely. It goes well beyond what the statute requires.
 21 And I think it's up to us, if we want to move forward, to
 22 craft our own case. I don't think it's up to the staff
 23 and the intervenors to tell us how to prepare our case
 24 and what they want to see.
 25 The statute is pretty clear. And quite frankly --

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1 quite frankly, that list and the things that are on it
 2 pretty well demonstrate why regulatory relief is needed.
 3 I mean it's simply overkill. And so I got that this
 4 morning and I sent it out to my member companies and
 5 their reaction, quite frankly, was if this is really what
 6 people want, then we're going to withdraw and we'll go
 7 find another way to get relief. But what's being done
 8 there is very expensive, very time-consuming, and goes
 9 well beyond the statute.
 10 JUDGE KOPTA: Anything further,
 11 Ms. Cameron-Rulkowski?
 12 MS. CAMERON-RULKOWSKI: So I think the reaction
 13 of Mr. Finnigan is partly why we put the list together.
 14 The statute does have a number of elements to be
 15 addressed. And in order to have a record that we can
 16 adequately evaluate, we need a lot more information than
 17 was in the petition. And if the Petitioners are not
 18 willing to provide that information, then -- then going
 19 forward with the AFOR probably doesn't make sense. It
 20 would certainly be a lot of -- a lot of time and effort
 21 and resources spent in ways that no one really wants to
 22 spend them.
 23 And when I say that, I mean it sounds like the WITA
 24 companies are not interested in providing this
 25 information. Staff is not interested in trying to

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1 extract it through discovery and multiple rounds of
 2 discovery and follow-up discovery.
 3 So you know, if we know from the outset that the
 4 companies are not -- the Petitioners are not going to be
 5 providing this information and don't even think it's
 6 necessary, even though it's stated right there in the
 7 statute, then I think -- I would certainly not object to
 8 a withdrawal of the petition.
 9 JUDGE KOPTA: Well, this is a bit unusual. I
 10 have not seen a proposal like this at this stage of any
 11 proceeding to sort of delineate what one party is
 12 proposing that a petitioner include in its direct
 13 testimony. I realize that in some cases, we have rules
 14 that require certain things to be included, for example
 15 in re cases. We do not have a similar type of rule for
 16 this type of petition. I hesitate to be as prescriptive
 17 as Staff and Public Counsel and the Military Department
 18 want to be.
 19 I will state the obvious, which is that the
 20 Petitioners have the burden of proof. They have the
 21 obligation to demonstrate what is required under the
 22 statute. And if they fail to do so, then they will not
 23 carry their burden of proof and will not be able to
 24 obtain the relief that they have requested. I am not
 25 sure at this stage that it's necessary to delineate every

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1 area in which they need to provide information.
 2 This is an unusual proceeding. I mean we've done
 3 AFORs before for the large telecommunications companies
 4 but not for the smaller ones, and certainly not in a
 5 group, as we have here.
 6 So I am at this point not inclined to include that
 7 list as part of the Prehearing Conference Order.
 8 Instead, I will leave it up to the Petitioners to decide
 9 what information they want to include to support their
 10 petition as part of their direct case.
 11 I caution that I don't want to be in a position
 12 where there is a light direct case and a heavy reply
 13 case. I think if nothing else, this list demonstrates
 14 the areas where the other parties believe that the
 15 Petitioners need to provide information. If they do not
 16 provide it as part of their direct testimony and instead
 17 wait to provide it as part of their reply testimony, I
 18 will look on that with a great deal of skepticism shall
 19 we say.
 20 And I'm not suggesting, Mr. Finnigan, that you would
 21 engage in that kind of gamesmanship. I'm just saying
 22 that this is kind of a note to the -- to the other
 23 parties in the docket that this is the type of
 24 information that the others are looking for and if you,
 25 for whatever reason, decide not to include that with your

<p>1 direct case, then I will look long and hard at any 2 attempts to do so at a later date. 3 MR. FINNIGAN: Your Honor, you don't need to 4 worry about that. If we don't produce it, I'm not going 5 to come in at the last minute. 6 JUDGE KOPTA: All right. Like I say, I'm not 7 suggesting in any way, shape or form that you would do 8 that, Mr. Finnigan. I'm just, you know, laying cards on 9 the table so that everyone knows where we're coming from. 10 MR. FINNIGAN: All right. And just in that 11 light, the reaction from the members this morning to that 12 list and the tone that it sets is -- it's something they 13 want to think about. And so it may be something 14 where . . . Well, what it looks like to us -- and it may 15 not be the case -- is that staff is really telling us 16 that they don't want us to go forward on this petition. 17 So that's something that we're thinking about, and we'll 18 have a response very soon. 19 JUDGE KOPTA: All right. Just a moment, 20 Ms. Cameron-Rulkowski. 21 I understand the reluctance. And though I was 22 interested that these companies decided to file a 23 petition, I have been involved in almost all, if not all, 24 of the AFOR proceedings involving the other companies, 25 and they do tend to be long and complex and require quite</p>	<p>Page 13</p> <p>1 the fact that the ability to change rates would be made 2 on a much shorter timeframe, which is troubling right 3 now, given the economic situation that everyone is in. 4 So to Public Counsel, it's very troubling the dearth of 5 facts in the petition as it is right now. 6 The second thing I wanted to bring up is given that 7 there are 17 companies, we don't know anything about how 8 many customers each of these companies has. But given 9 the high number of companies in this petition, we would 10 want a minimum of two public comment hearings. And three 11 would be better. So I did want to make that clear in the 12 record today. So thank you. 13 JUDGE KOPTA: All right. Thank you, 14 Ms. Paisner. 15 Anything further from you, Ms. Cameron-Rulkowski? 16 MS. CAMERON-RULKOWSKI: Yes, Your Honor. I 17 believe that you did characterize Staff's motivations 18 accurately. This is -- the list of testimony contents is 19 not an attempt to shut out the Petitioners. It is an 20 effort to make sure that there's an appropriate record 21 for a decision. 22 The things that I'm very concerned right now is -- 23 that I'm concerned about right now is I hope that 24 Mr. Finnigan understands that everything in the list that 25 we provided is something that if it's not addressed in</p> <p>Page 15</p>
<p>1 a bit of resources to adjudicate. And so I can 2 understand that that might be more than what some of your 3 members want to undertake at this point. 4 I don't want to -- I will not characterize staff's 5 effort as any type of attempt not to have parties 6 proceed. I construe it as an attempt by staff to 7 delineate the sort of information that they believe is 8 necessary in any type of AFOR proceeding, regardless of 9 who the company is. So I'm not going to cast aspersions 10 on anyone's motivations in this proceeding but instead 11 will just reflect that we are in slightly unusual 12 circumstances and they are challenging. 13 MS. PAISNER: Judge Kopta, if I may, I would 14 like to address a couple of issues that weren't 15 addressed. At this point, there are 17 companies in this 16 petition requesting to be part of a plan where there's, 17 you know, very little, if any, factual -- or facts 18 underlying the request in order for anyone else to 19 analyze whether it's in the public interest. So that is 20 our motivation behind supporting the requests in that 21 document provided by Ms. Cameron-Rulkowski. 22 And as you said, the Petitioner does have the burden 23 to provide that information. And I don't see how we 24 could do an analysis without it. It talks about duration 25 of a plan. Very little facts about this plan except for</p> <p>Page 14</p>	<p>1 the testimony, staff will need to seek through discovery. 2 And so if -- if that is not something that the companies 3 can comply with, then it would be certainly easier to 4 have that decision made up front. And I do -- I do not 5 say that because I'm trying to make this go away; 6 certainly not. I'm simply trying to explain the 7 pragmatic difficulties of evaluating a case without a 8 sufficient record. 9 JUDGE KOPTA: Well, and I believe Mr. Finnigan 10 understands that that list also represents information 11 that staff and the other parties believe that they need 12 and will ask for if it's not provided up front, which, as 13 I understand it, is part of a calculus that his clients 14 will be considering in terms of whether they wish to 15 proceed. 16 Is that fair, Mr. Finnigan? 17 MR. FINNIGAN: Yes, that is fair. That's a fair 18 characterization. One of the difficulties is we just got 19 the list this morning, and so I haven't heard back from 20 most of the companies actually. I have heard back from 21 some of them. I won't characterize their responses at 22 this point, but -- 23 JUDGE KOPTA: We have a -- 24 MR. FINNIGAN: Yeah. I'm still in the process 25 of getting input from the members. But I'm not planning</p> <p>Page 16</p>

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1 on taking very long to finish that process.

2 JUDGE KOPTA: Is that something that we need to

3 take into account in any procedural schedule that we

4 adopt today? Is this a serious issue, from your

5 perspective, Mr. Finnigan?

6 MR. FINNIGAN: Yes, it is. I mean if we are

7 going to provide the information that staff and the

8 others have requested, you know, the January 25th date is

9 problematical. But what I would suggest in order to move

10 this forward is we go ahead and adopt staff's proposed

11 schedule, with the understanding that I may need to come

12 in and make a motion to modify it at some point in time.

13 But at this -- at this point, we need something and so --

14 and to get us started, I'm fine with what staff is

15 proposing.

16 JUDGE KOPTA: Well, I reviewed it and I agree.

17 Given that we do have a statutory deadline to have a

18 decision from the Commission, that schedule will get us

19 there. And there's not much room to extend it without an

20 agreement by the Petitioners to waive that statutory

21 deadline for a period of time.

22 MR. FINNIGAN: I understand that.

23 JUDGE KOPTA: Okay. Then that would be my

24 inclination would be to go ahead and to adopt the

25 schedule that staff has proposed, understanding, of

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1 course, that there may be circumstances in which we need

2 to make adjustments. And I think -- I believe that

3 schedule has two public -- no, it doesn't -- just has one

4 public comment hearing. But that's again something that

5 can be addressed later on in the process. We need to

6 just have at least one in the schedule, as well as a

7 settlement conference. And that's included in the

8 schedule as proposed right now.

9 And to the extent that we need additional public

10 comment hearings and need to find a location, et cetera,

11 we can do that at a later date.

12 I believe Ms. Cameron-Rulkowski, you represented

13 that the other parties were okay with your proposed

14 schedule. Is that correct?

15 MS. CAMERON-RULKOWSKI: I have since received

16 confirmation. But I'm happy to have them speak for

17 themselves.

18 JUDGE KOPTA: All right. Ms. Paisner, is that

19 schedule acceptable to you?

20 MS. PAISNER: Yes. And we will further discuss

21 with the parties additional dates for public comment

22 hearing.

23 JUDGE KOPTA: All right. And Ms. Cortez?

24 MS. CORTEZ: Yes. The Military Department

25 agrees.

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1 JUDGE KOPTA: All right. Then we will

2 officially adopt that schedule. I will enter a

3 Prehearing Conference Order within the next couple of

4 days that includes all of the decisions that I have made

5 here today, and we will proceed along those lines.

6 Is there anything else that we need to take up

7 today?

8 MS. CAMERON-RULKOWSKI: Nothing further from

9 staff.

10 MR. FINNIGAN: Nothing from the Petitioners.

11 JUDGE KOPTA: All right. Then that concludes

12 this prehearing conference and we are adjourned. Thank

13 you all very much.

14 (Concluded at 2:00 p.m.)

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Page 20

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

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3 I, CONNIE CHURCH, a Certified Court Reporter in and for

4 the State of Washington, residing at Montesano, do hereby

5 certify:

6 That the foregoing proceedings were reported by me and

7 thereafter reduced to a typed format under my direction; that the

8 transcript, consisting of pages 1 - 20, is a full, true and

9 complete transcript of said proceedings;

10 That as a CCR in this state, I am bound by the Rules of

11 Conduct as Codified in WAC 308-14-130; that court reporting

12 arrangements and fees in this case are offered to all parties on

13 equal terms;

14 That I am not a relative, employee, attorney or

15 counsel of any party to this action, or relative or employee of

16 any such attorney or counsel, and I am not financially

17 interested in the said action or the outcome thereof;

18 That upon completion, the original transcript will be

19 securely sealed and served upon the appropriate party.

20 IN WITNESS WHEREOF, I have hereunto set my hand this

21 17th day of December, 2020.

22

23 _____

24 CONNIE CHURCH

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