

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Frontier	)	DOCKET UT-121994
Communications Northwest Inc.’s	)	
Petition to Be Regulated as a	)	ORDER 05
Competitive Telecommunications	)	
Company Pursuant to RCW 80.36.320	)	ORDER DENYING STAFF
	)	MOTION TO CLARIFY ORDER 04
	)	
.....)	)	

**BACKGROUND**

- 1 On January 24, 2013, Frontier Communications Northwest Inc. (Frontier or Company) filed with the Washington Utilities and Transportation Commission (Commission) a Replacement Amended Petition for Approval of Minimal Regulation in Accordance with RCW 80.36.320 (Petition), seeking classification as a competitive telecommunications company throughout its current service territory. The Commission suspended the filing and set the matter for hearing.
- 2 On March 7, 2013, the competitive local exchange carrier (CLEC) Intervenors filed a joint motion to dismiss the Petition.<sup>1</sup> These parties contended that Frontier has failed to assert any facts to prove that the wholesale services the Company provides are subject to effective competition. Because those services are not competitive, the CLEC Intervenors argue, Frontier cannot be classified as a competitive telecommunications company under RCW 80.36.320.
- 3 On March 29, 2013, the Commission entered Order 04 denying the CLEC Intervenors’ motion.
- 4 On April 8, 2013, Commission Staff (Staff) filed a Motion to Clarify Order 04 (Motion). Staff contends, “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. Staff seeks clarification of the services that the Commission considers to be wholesale services.”<sup>2</sup> More specifically, “Staff seeks clarification on the standard to

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<sup>1</sup> The CLEC Intervenors include Cbeyond Communications, LLC, Charter Fiberlink WA-CCVII, LLC, Integra Telecom of Washington, Inc., Level 3 Communications, LLC, and twtelecom of washington, llc.

<sup>2</sup> Motion ¶ 2 (footnote omitted).

be applied under RCW 80.36.320 to services offered under Frontier’s special access tariff.”<sup>3</sup>

### DISCUSSION

- 5 Staff’s requested clarification of Order 04 is unnecessary. While Staff construes paragraphs 14 and 15 in that order to be directed to undefined “wholesale” services, in fact those paragraphs and the entirety of the Commission’s determinations in the order actually distinguish between services provided to end users and services provided to other carriers. Thus the order states that under RCW 80.36.320, the Commission “must determine whether a company’s *end user customers* have reasonably available alternatives to the company’s services, regardless of the extent to which the company also provides services to other carriers.”<sup>4</sup> The Commission need not clarify the meaning of “wholesale” services because Order 04 does not use that term in the context of discussing the appropriate statutory inquiry, which focuses on the alternatives available to end user customers.
- 6 Nor would it be appropriate at this point in the proceedings for the Commission to single out special access or any other particular service for special consideration. Order 04 does not discuss which services Frontier provides to end users and thus Staff’s motion goes beyond the scope of Order 04. The extent to which end user customers use special access services, moreover, is an issue of fact to be determined at the evidentiary hearings, not in response to a motion for clarification.

### ORDER

THE COMMISSION ORDERS that Commission Staff’s Motion to Clarify Order 04 is DENIED.

DATED at Olympia, Washington, and effective April 22, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA  
Administrative Law Judge

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<sup>3</sup> *Id.* ¶ 1.

<sup>4</sup> Order 04 ¶ 14 (emphasis added).