

**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 No. UT-121994

**RESPONSE TESTIMONY**

**OF**

**AUGUST H. ANKUM, Ph.D.**

**On Behalf of**

**THE U.S. DEPARTMENT OF DEFENSE**

**and**

**ALL OTHER FEDERAL EXECUTIVE AGENCIES**

**PUBLIC VERSION**

**APRIL 25, 2013**

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**EXHIBITS**

- Exhibit\_\_AHA-2: Curriculum Vitae of August Ankum, Ph.D.
- Exhibit\_\_AHA-3: Table of Contents from Frontier’s Washington General and Local Exchange Tariff (WN U-17)
- Exhibit\_\_AHA-4: Settlement Agreement between DoD/FEA and CenturyLink QC from Arizona Docket No. T-01051B-11-0378
- Exhibit\_\_AHA-5: Company-specific market share data produced by CenturyLink QC in New Mexico Case No. 11-00340-UT

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

3 A. My name is August H. Ankum. I currently serve as Senior Vice President and Chief  
4 Economist of QSI Consulting, Inc. My business address is 429 North 13th Street, Apt.  
5 2D, Philadelphia, Pennsylvania 19123.

6 **Q. PLEASE DESCRIBE QSI CONSULTING, INC. AND ITS AREAS OF**  
7 **EXPERTISE.**

8 A. QSI Consulting, Inc. (“QSI”) is a consulting firm specializing in regulatory and litigation  
9 support in regulated network industries, with a special emphasis in the  
10 telecommunications sector. QSI’s primary areas of expertise include economic and  
11 financial analysis, cost of service modeling, regulatory compliance, and public policy  
12 development. Since its inception, QSI has assisted industry stakeholders on issues  
13 affecting local competitive entry, including: market dominance, service classification,  
14 customer migration, network interconnection, unbundled network element (“UNE”)  
15 access and pricing, contract negotiation and arbitration, intercarrier compensation,  
16 alternative forms of regulation, and service quality. QSI’s clients include  
17 telecommunications carriers providing services (*e.g.*, wireline local exchange carriers,  
18 cable companies and wireless carriers), customers who purchase those services and those  
19 who represent the public interest (*e.g.*, Department of Defense/Federal Executive  
20 Agencies, consumer counsels, attorneys general), and agencies that regulate carriers and  
21 services (*e.g.*, Colorado Public Utilities Commission, New Mexico Public Regulation

1 Commission, Oregon Public Utility Commission). QSI has a professional staff of nine  
2 consultants, including Ph.D. economists, a Certified Public Accountant, as well as cost  
3 and regulatory analysts. QSI has more than 175 years of combined experience in the  
4 telecommunications industry and QSI's consultants have testified as experts in hundreds  
5 of proceedings before almost all state regulatory commissions and the Federal  
6 Communications Commission ("FCC"). I co-founded QSI in 1999.

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**  
8 **EXPERIENCE.**

9 A. I have been employed as an expert consultant on telecommunications issues for the past  
10 17 years, and have a total of 26 years of experience in the telecommunications industry.  
11 Prior to practicing as a telecommunications consultant, I worked for MCI  
12 Telecommunications Corporation ("MCI") as a senior economist. At MCI, I provided  
13 expert witness testimony and conducted economic analyses for corporate decision  
14 making purposes. Before I joined MCI in early 1995, I worked for Teleport  
15 Communications Group, Inc. ("TCG"), as a Manager in the Regulatory and External  
16 Affairs Division. In this capacity, I testified on behalf of TCG in proceedings concerning  
17 local exchange competition issues. From 1987 until 1994, I was employed as an  
18 economist by the Public Utility Commission of Texas ("PUCT") where I worked on a  
19 variety of electric power and telecommunications issues and testified as an expert witness  
20 in litigated proceedings. During my last year at the PUCT, I held the position of Chief  
21 Economist. Prior to joining the PUCT, I taught undergraduate courses in economics as

1 an Assistant Instructor at the University of Texas from 1984 to 1986. I received a Ph.D.  
2 in Economics from the University of Texas at Austin in 1992, an M.A. in Economics  
3 from the University of Texas at Austin in 1987, and a B.A. in Economics from Quincy  
4 College, Illinois, in 1982.

5 **Q. HAVE YOU PREVIOUSLY TESTIFIED AS AN EXPERT BEFORE THE**  
6 **WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
7 **(“COMMISSION” OR “WUTC”)?**

8 A. Yes. I testified as an expert witness in WUTC Docket No. UT-100820  
9 (CenturyLink/Qwest merger proceeding) and WUTC Docket No. UT-090892 (Qwest  
10 complaint case).

11 **Q. DO YOU HAVE EXPERIENCE WITH THE ISSUES IN THIS PROCEEDING?**

12 A. Yes. I have been involved in telecommunications since 1988. Over the course of my  
13 career, I have testified as an expert on virtually all issues pertaining to the regulation of  
14 incumbent local exchange companies (“ILECs”), including the degree of competition in  
15 ILEC service territories, market dominance and the proper classification of services.  
16 Most recently, I testified in the ongoing proceeding in New Mexico (Case No. 11-00340-  
17 UT) addressing Qwest Corporation’s (d/b/a CenturyLink QC’s) request for a finding of  
18 “effective competition” for all of its regulated retail telecommunications in that state, as  
19 well as a similar request by CenturyLink QC in the state of Arizona (Docket No. T-  
20 01051B-11-0378). Much like the instant proceeding, the New Mexico and Arizona

1 proceedings involved a claim by an ILEC that there is effective, price-constraining  
2 competition for regulated retail telecommunications services.<sup>1</sup>

3 **Q. ON WHOSE BEHALF ARE YOU FILING THIS RESPONSE TESTIMONY?**

4 A. I am appearing on behalf of the consumer interests of the U.S. Department of Defense  
5 (“DoD”) and all other Federal Executive Agencies (“FEA”) in Washington.

6 **II. PURPOSE AND SUMMARY**

7 **Q. WHY HAS DoD/FEA INTERVENED IN THIS CASE?**

8 A. The interest of DoD/FEA in this proceeding is that of a customer – particularly a business  
9 customer – of Frontier Communications Northwest, Inc. (“Frontier” or “the Company”)  
10 in Washington. The Federal government maintains numerous offices, both military and  
11 civilian, in Frontier’s Washington service area. These offices and installations vary in  
12 size, and the business telecommunications purchased range from large complex systems  
13 to small office services. For example, the Federal government has customs and  
14 immigration offices along the Canadian border, and DoD has several military  
15 installations and facilities around the Puget Sound area which are located in Frontier  
16 exchanges. These installations and facilities include Naval Air Station Whidbey Island,  
17 an active military installation that includes: a hospital, active Navy electronic warfare and  
18 patrol squadrons, support facilities for various Navy activities, and a center for Navy and  
19 Marine Corp reserve training in the Pacific Northwest. Federal employment in

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<sup>1</sup> See Exhibit AHA-2 for a copy of my curriculum vitae listing other prior relevant experience.

1 Washington (civilian and active duty military) is approximately 100,000 persons.<sup>2</sup>  
2 Accordingly, it is important to DoD/FEA – and indeed important to national security,  
3 federal government operations, and military readiness – that Frontier’s business services  
4 are provided in an efficient manner, at reasonable cost, with the highest service quality  
5 and performance. It is also important for Frontier to be willing and able to offer the  
6 business telecommunications services of the nature that DoD/FEA operations require.  
7 DoD/FEA is concerned that a change in the regulatory framework in Washington could  
8 adversely impact its consumer interests. As a large and diverse user of  
9 telecommunications services as well as a current customer of Frontier, DoD/FEA is  
10 uniquely positioned to speak to the merit of Frontier’s Petition.

11 **Q. IS YOUR TESTIMONY LIMITED TO ADDRESSING BUSINESS SERVICES?**

12 A. Yes. My testimony is focused on local services for business customers. My testimony  
13 does not address services to residential customers or wholesale customers.

14 **Q. WHAT IS THE PURPOSE OF YOUR RESPONSE TESTIMONY?**

15 A. I will respond to Frontier’s Petition and the direct testimony of Mr. Jack Phillips and Mr.  
16 Billy Jack Gregg filed in support of Frontier’s Petition. In doing so, I will describe the  
17 circumstances surrounding DoD/FEA’s purchases of business services in Washington  
18 and discuss whether DoD/FEA’s first-hand experience as a business customer is  
19 consistent with Frontier’s claim about effective competition for its business services.

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<sup>2</sup> Sources:[http://eyeonwashington.com/few\\_map\\_2010/htm/Washington.html](http://eyeonwashington.com/few_map_2010/htm/Washington.html);  
<http://www.census.gov/compendia/statab/2012/tables/12s0509.pdf>

1 **Q. PLEASE SUMMARIZE YOUR FINDINGS AND CONCLUSIONS.**

2 A. Frontier’s Petition represents a dramatic change in regulation of telecommunications  
3 services in Washington. If approved, the Petition would effectively result in a “flash cut”  
4 transformation of Frontier *from* an ILEC that is currently regulated under a rate-of-return  
5 framework and controls the “last mile” facilities connecting customers *to* a competitive  
6 local exchange carrier (“CLEC”) with minimal regulatory oversight and no tariffs. In the  
7 process, *all* of Frontier’s regulated services *everywhere* in Washington would be  
8 reclassified as competitive. Therefore, for the sake of protecting consumers like  
9 DoD/FEA and the public interest, it is imperative that “effective competition” – as that  
10 term is defined in Revised Code of Washington (“RCW”) 80.36.320(1) – actually exist  
11 for Frontier’s business services, which is not the current circumstance as noted below,  
12 before its Petition is granted.

13 My overarching conclusion is that Frontier’s Petition and supporting testimony do not  
14 demonstrate the existence of effective competition for Frontier’s business services,  
15 particularly for the business services purchased by DoD/FEA. The analysis and  
16 information submitted by Frontier in relation to its Petition is devoid of the analytical  
17 rigor and economic underpinnings needed to make a finding of effective competition  
18 under RCW 80.36.320. For example, Frontier’s view of the “relevant market” is  
19 fundamentally flawed because it does not distinguish between different customer classes  
20 – residential, small/medium business and enterprise customers – a critical distinction that  
21 must be made for the results of an “effective competition” analysis to be meaningful.



1 Frontier assumes that competitive alternatives are uniformly and ubiquitously available  
2 across all of Washington and for all customers, which as explained below is a flawed  
3 assumption and particularly misguided with respect to DoD/FEA's services in  
4 Washington. By analogy, Frontier's assumption is like pointing to a river that is on  
5 average one foot deep and claiming that all passers-by can easily cross it at all points  
6 along the bank, all the while ignoring that there are parts of the river that are 20 feet deep  
7 with hazardous whitewater that can drown man and horse.

8 Frontier's failure to properly define the relevant market results in overstatements about  
9 the degree to which competitive alternatives curtail its market power. While it may be  
10 appealing on the surface to rely on the proliferation of newer technologies such as  
11 wireless devices and Voice over Internet Protocol ("VoIP") as indicia of a competitive  
12 telecommunications market, these trends must be analyzed in greater detail than what  
13 Frontier provides to determine whether and to what extent (*i.e.*, which geographic  
14 territories and/or customer classes) they are, in fact, providing market disciplining effects  
15 for Frontier's services.

16 I recommend that the Commission deny Frontier's Petition, at least as it applies to the  
17 business services purchased by DoD/FEA and other business entities, unless and until  
18 Frontier: (a) rectifies the methodological and analytical flaws in its analysis, and (b)  
19 meets its burden of proof that sufficient price-constraining, effective competition actually  
20 exists in Washington. In the alternative, if the Commission determines that the support  
21 Frontier provides for its Petition is sufficient (which I urge is not the case) and approves

1 the Petition, the Commission should at least order protections for DoD/FEA and similarly  
2 situated business customers such that there is a safety net in place in case competition  
3 does not provide the consumer protections needed once Frontier is classified as a  
4 competitive company.

5 **Q. HOW IS THE REMAINDER OF YOUR TESTIMONY ORGANIZED?**

6 A. The remainder of my testimony is organized as follows:

- 7
- 8 • Section III provides an overview of Frontier’s Petition, as well as the statutes and rules governing the Petition.
  - 9 • Section IV describes the types of business services DoD/FEA customers purchase in Washington, DoD/FEA’s continued heavy reliance on Frontier for local  
10 telecommunications services, and the negative impacts that could occur for DoD/FEA  
11 if Frontier’s Petition is approved.
  - 12 • Section V addresses the merits of Frontier’s Petition and supporting testimony from DoD/FEA’s perspective as a large business customer of Frontier in Washington. I  
13 describe in this section numerous flaws in Frontier’s analysis and explain that the  
14 alternative providers identified by Frontier do not offer reasonably available  
15 substitutes for the services purchased by DoD/FEA in Washington.
  - 16 • Section VI explains why the “effective competition” standard from RCW 80.36.320  
17 is not met for business services and that Frontier’s Petition should be rejected. I also  
18 describe a proposal to provide safeguards for DoD/FEA if Frontier’s Petition is  
19 approved despite the lack of competitive alternatives for DoD/FEA customers.  
20  
21

1 **III. OVERVIEW OF FRONTIER'S PETITION**

2 **Q. PLEASE BRIEFLY DESCRIBE FRONTIER'S PETITION?**

3 A. Frontier's Petition seeks reclassification of the Company, and all of Frontier's  
4 telecommunications services in Washington, as competitive under RCW 80.36.320 and  
5 Washington Administrative Code ("WAC") 480-121-061.<sup>3</sup>

6 **Q. FRONTIER'S PETITION WAS FILED UNDER RCW 80.36.320. WHAT DOES**  
7 **THIS STATUTE REQUIRE?**

8 A. RCW 80.36.320(1)<sup>4</sup> sets forth the test that is to be conducted in determining whether a  
9 company should be properly classified as a competitive telecommunications company:

10 (1) The commission shall classify a telecommunications company as a  
11 competitive telecommunications company if the services it offers are  
12 subject to effective competition. Effective competition means that the  
13 company's customers have reasonably available alternatives and that the  
14 company does not have a significant captive customer base. In  
15 determining whether a company is competitive, factors the commission  
16 shall consider include but are not limited to:

- 17 (a) The number and sizes of alternative providers of service;  
18 (b) The extent to which services are available from alternative  
19 providers in the relevant market;  
20 (c) The ability of alternative providers to make functionally equivalent  
21 or substitute services readily available at competitive rates, terms,  
22 and conditions; and  
23 (d) Other indicators of market power which may include market share,  
24 growth in market share, ease of entry, and the affiliation of  
25 providers of services.

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<sup>3</sup> Frontier Petition, p. 1, ¶ 2.

<sup>4</sup> RCW 80.36.320 also contains subsections 2 through 5. Subsection 2 discusses the minimal regulation that applies to competitive telecommunications companies; subsection 3 discusses the Commission's authority to revoke waivers and reclassify competitive companies; subsection 4 discusses waivers of RCW 80.36.170 and 80.36.180; and subsection 5 discusses the conditions under which the governor may waive or suspend operation of this statute or administrative rule.

1           The commission shall conduct the initial classification and any subsequent  
2           review of the classification in accordance with such procedures as the  
3           commission may establish by rule.

4           In simple terms, a company will be classified as a competitive telecommunications  
5           company if all of the services it provides are subject to “effective competition”. This  
6           “effective competition” determination is made by considering, at a minimum, the factors  
7           spelled out in subsections (a) through (d) above. This is the framework to be used in  
8           examining Frontier’s Petition.

9   **Q.   FRONTIER’S PETITION WAS ALSO FILED UNDER WAC 480-121-061. WHAT**  
10 **DOES THIS RULE SAY?**

11 A.   There are six subsections of WAC 480-121-061. Subsection 1 describes how a  
12 competitive classification case such as this one can be initiated (either by petition or on  
13 the Commission’s own motion). Subsection 2 permits petitions to intervene in such  
14 classification cases. Subsection 3 permits the Commission to require all regulated  
15 telecommunications companies potentially affected by a classification proceeding to  
16 appear as parties. Subsection 4 places the burden of proof in a classification proceeding  
17 on the telecommunications company – or, in this case, Frontier. Subsection 5 reiterates  
18 the definition of “effective competition” and competitive factors from RCW  
19 80.36.320(1). Finally, subsection 6 discusses the effective date of a proposed competitive  
20 classification (if not suspended by the Commission) and dictates a six-month timeframe  
21 for a Commission’s final order (if suspended by the Commission).

1 **Q. THE TERM “EFFECTIVE COMPETITION” IS IMPORTANT TO THIS CASE.**  
2 **IS THE TERM DEFINED IN WASHINGTON STATUTES OR RULES?**

3 A. Yes. The term “effective competition” is defined in RCW 80.36.320(1) and WAC 480-  
4 121-061(5) as follows: “Effective competition means that the company's customers have  
5 reasonably available alternatives and that the company does not have a significant captive  
6 customer base.”

7 **Q. THE TERM “RELEVANT MARKET” APPEARS IN RCW 80.36.320(1)(b).**  
8 **WHAT IS THE “RELEVANT MARKET”?**

9 A. The “relevant market” is the range of services, within the relevant geographic scope, that  
10 may compete with the services in question. In other words, the “relevant market” is  
11 where the “geographic market” and “product market” intersect.

12 **Q. PLEASE ELABORATE.**

13 A. The economic underpinning of RCW 80.36.320 is to evaluate whether and to what extent  
14 the company seeking a competitive classification has market power. Indeed, the factors  
15 the Commission is required to consider under RCW 80.36.320(1)(a) through (d) are  
16 indicia of market power (see, *e.g.*, RCW 80.36.320(1)(d) “Other indicators of market  
17 power...”). When evaluating whether “effective competition” exists using a market power  
18 analysis as contemplated by RCW 80.36.320, a geographic market (or scope) is  
19 established and a product market (or range of functional equivalent or substitutable  
20 services) is established. Then, the consumers’ willingness and ability to switch to  
21 alternative products (in response to an increase in price or decrease in service quality) is

1 analyzed within the confines of the boundaries set by the geographic market and the  
2 functional equivalent/substitute services included in the product market. Market power  
3 as well as product and geographic markets are discussed in more detail below.

4 **Q. SHOULD THE COMMISSION EVALUATE FRONTIER'S PETITION IN**  
5 **ACCORDANCE WITH THE LEGISLATURE'S TELECOMMUNICATIONS**  
6 **POLICY GOALS?**

7 A. Yes. There are six telecommunications policy goals set by the Legislature under RCW  
8 80.36.300 as follows:

- 9 1. Preserve affordable universal telecommunications service;
- 10 2. Maintain and advance the efficiency and availability of telecommunications  
11 service;
- 12 3. Ensure that customers pay only reasonable charges for telecommunications  
13 service;
- 14 4. Ensure that rates for noncompetitive telecommunications services do not  
15 subsidize the competitive ventures of regulated telecommunications  
16 companies;
- 17 5. Promote diversity in the supply of telecommunications services and products  
18 in telecommunications markets throughout the state; and
- 19 6. Permit flexible regulation of competitive telecommunications companies and  
20 services.

21 **Q. WHAT IS FRONTIER'S RATIONALE FOR PETITIONING TO BECOME A**  
22 **COMPETITIVE TELECOMMUNICATIONS CARRIER?**

23 A. According to Frontier, it is facing intense competitive pressures in Washington to such an  
24 extent that: (a) it no longer retains market power, and hence, the traditional classification  
25 as an ILEC is no longer relevant, and (b) the current level of regulatory oversight applied

1 to Frontier is impeding Frontier's ability to compete and, therefore, regulatory parity with  
2 CLECs is needed.

3 **Q. WHO HAS THE BURDEN OF PROOF IN THIS PROCEEDING?**

4 A. Frontier has the burden of proof to demonstrate that the Company and all of its services  
5 are subject to effective competition in Washington.<sup>5</sup>

6 **IV. DoD/FEA RELIES ON FRONTIER FOR LOCAL EXCHANGE SERVICES;**  
7 **FRONTIER'S PETITION COULD NEGATIVELY AFFECT DoD/FEA**

8 **Q. DO DoD/FEA CUSTOMERS PURCHASE LOCAL TELECOMMUNICATIONS**  
9 **SERVICES FROM FRONTIER IN WASHINGTON?**

10 A. Yes. DoD/FEA customers purchase business local telecommunications services from  
11 Frontier in its Washington service territory. These customers include: (a) the U.S. Navy,  
12 (b) the U.S. Air Force, and (c) the U.S. General Services Administration ("GSA"), which  
13 purchases local telecommunications services on behalf federal civilian agencies,  
14 including the U.S. Customs and Border Protection ("CBP"), U.S. Immigration and  
15 Customs Enforcement ("ICE"), and U.S. Citizenship and Immigration Services ("CIS").  
16 With few exceptions, these customers look much like medium and large  
17 business/enterprise customers in terms of the local telecommunications services and  
18 products they purchase, but a primary difference between these DoD/FEA customers and  
19 a typical business customer is that DoD/FEA customers serve a critical role for national  
20 defense and security, military readiness and public safety.

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<sup>5</sup> WAC 480-121-061(4).

1 **Q. DESCRIBE IN MORE DETAIL THE LOCAL SERVICES DoD/FEA**  
2 **CUSTOMERS PURCHASE FROM FRONTIER IN WASHINGTON.**

3 A. The U.S. Navy and U.S. Air Force procure local telecommunications services from  
4 Frontier in Washington via contracts. Generally, these contracts are arrived at through an  
5 open and, to the largest extent possible, competitive bidding process. The Navy  
6 purchases a total of about 7,300 lines in six locations in Frontier's Washington service  
7 territory, which are served from two switch locations in Whidbey Island and Everett. The  
8 Navy purchases such services as local business lines, Integrated Services Digital  
9 Network-Primary Rate Interface ("ISDN-PRI"), Direct Inward Dials ("DIDs") and other  
10 local services. The U.S. Air Force purchases local services from Frontier in Washington  
11 at a Guard location at a Camp Murray field site in Everett and recruiter stations in  
12 Everett, Wenatchee, Kennewick, and Oak Harbor.

13 The GSA purchases about 53 analog and digital lines from Frontier in the Blaine,  
14 Washington area, which serve CBP, ICE and CIS. GSA does not purchase these services  
15 out of a contract, but instead purchases them out of Frontier's tariff on a month-to-month  
16 basis.

17 **Q. WOULD THE SERVICES PURCHASED FROM FRONTIER BY DoD/FEA**  
18 **CUSTOMERS IN WASHINGTON BE AFFECTED IF FRONTIER'S PETITION**  
19 **IS APPROVED?**

20 A. Yes. DoD/FEA customers purchase business lines, DIDs, and ISDN-PRI services, just to  
21 name a few, from Frontier in Washington. These services are all currently included in



1 Frontier's General and Local Exchange Tariff (WN U-17)<sup>6</sup> and would be detariffed if  
2 Frontier's Petition is approved.

3 **Q. IS IT SAFE TO ASSUME THAT REASONABLY AVAILABLE ALTERNATIVES**  
4 **EXIST FOR THE LOCAL BUSINESS SERVICES PURCHASED BY DoD?**

5 A. No, that is far from reality. Despite DoD's competitive bidding process and objectives,  
6 only one service provider has expressed interest in providing DoD local services in  
7 Washington – and that single provider is Frontier.<sup>7</sup> That is, the lack of competition DoD  
8 customers experience in the “competitive bidding process” shows that there is  
9 insufficient competition for the business local services DoD/FEA customers purchases  
10 from Frontier. It is primarily for this reason that DoD/FEA has concerns about Frontier's  
11 Petition.

12 **Q. PLEASE ELABORATE ON DoD/FEA's RELIANCE ON FRONTIER'S LOCAL**  
13 **SERVICES.**

14 A. Simply put, DoD/FEA relies very heavily on Frontier for local services in Washington:  
15 with one minor exception, no competitors are providing or showing any interest in  
16 providing local services to DoD/FEA in Washington and competitors are not bidding on  
17 DoD/FEA's local services contracts in competition to Frontier.

18 Only Frontier (or its predecessor, Verizon) has expressed interest in providing the U.S.  
19 Navy's local telecommunications requirements in Washington. I am not aware of any

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<sup>6</sup> I have attached the Table of Contents from Frontier's General and Local Exchange Tariff (WN U-17) as Exhibit AHA-3.

<sup>7</sup> In this context, Frontier refers to both Frontier as well as its predecessor Verizon.

1 competitors bidding on these contracts in the past. And if competitors do not bid on  
2 DoD/FEA's local services contracts, then competitors are not available to DoD/FEA.

3 The story is similar for the U.S. Air Force in Washington. For example, in the 2007-2008  
4 timeframe, the Air Force sought competitive bids for local services at the Camp Murray  
5 site and at recruiter stations in Everett, Wenatchee, Kennewick, and Oak Harbor. Only  
6 Frontier (f/k/a Verizon) submitted an offer to provide those local services.

7 As mentioned above, GSA purchases local services from Frontier's tariffs on a month-to-  
8 month basis because no alternative providers have expressed interest in providing those  
9 services.

10 **Q. DID DoD/FEA ASK COMPETITORS OF FRONTIER ABOUT THE EXTENT TO**  
11 **WHICH THEY ARE PROVIDING LOCAL SERVICES OR HAVE SOUGHT TO**  
12 **PROVIDE LOCAL SERVICES TO DoD/FEA IN WASHINGTON?**

13 A. Yes. DoD/FEA issued discovery to all of the CLEC interveners in this proceeding  
14 consisting of a single two-part question: (1) Has your Company bid on any DoD/FEA  
15 local telecommunications services contracts in Washington in the past 10 years?<sup>8</sup> and (2)  
16 Does your company currently provide any local exchange services to DoD/FEA in  
17 Frontier's Washington territory? The following five CLECs responded: Cbeyond  
18 Communications, Charter Fiberlink, Integra Telecom, Level 3 Communications and tw  
19 telecom.

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<sup>8</sup> DoD/FEA subsequently clarified for the CLECs that its discovery questions were specific to Frontier's service territory in Washington.

1           Cbeyond Communications responded as follows:

2                   No, Cbeyond has not bid on any DoD/FEA local telecommunications  
3                   services contracts in Washington in the past 10 years

4                   No, Cbeyond does not currently provide any local exchange services to  
5                   DoD/FEA in Frontier's service territory in Washington.

6           Charter Fiberlink (in addition to objecting) responded as follows:

7                   Subject to the general and specific objections stated herein, Charter  
8                   Fiberlink WA-CCVII, LLC (“Charter”) has not bid on any local  
9                   telecommunications services contracts within the scope of this request.

10                  Subject to the general and specific objections stated herein, Charter does  
11                  not currently provide any local exchange services to DoD/FEA in the state  
12                  of Washington.

13          Level 3 Communications responded as follows:

14                  Level 3 has not bid on DOD/FEA local telecommunications services  
15                  contracts in the state of Washington since 2004. Level 3 has no business  
16                  records or documents in its custody, control or possession that would  
17                  enable it to determine whether it bid on such contracts prior to 2004 and  
18                  otherwise lacks sufficient knowledge or information within its custody,  
19                  control or possession that would enable it to make such a determination.

20          Level 3 also answered “No” to the question about whether it currently provides local  
21          exchange services to DOD/FEA in the state of Washington.

22          tw telecom responded as follows:

23                  tw has made no bids on any such [local telecommunications] services in  
24                  Frontier’s Washington territory.

25                  tw provides no such [local exchange] services in Frontier’s Washington  
26                  territory.

27          Integra Telecom (in addition to objecting to the questions) responded that it **\*\*\*BEGIN**

28          **HIGHLY CONFIDENTIAL** [REDACTED]

29          [REDACTED] **END**

1       **HIGHLY CONFIDENTIAL\*\*\*** Integra Telecom also stated that **\*\*\*BEGIN**

2       **CONFIDENTIAL** [REDACTED]

3       [REDACTED] **END CONFIDENTIAL\*\*\*** I will discuss Integra  
4       Telecom's response in more detail below in Section V(C). These responses are  
5       consistent with my statement that there is not "effective competition" for the local  
6       business services purchased by DoD/FEA in Frontier's Washington territory.

7       **Q. HOW DOES DoD/FEA's RELIANCE ON FRONTIER IN WASHINGTON**  
8       **COMPARE TO DoD/FEA'S RELIANCE ON INCUMBENT LOCAL EXCHANGE**  
9       **CARRIERS IN OTHER AREAS?**

10      A. The heavy reliance on the ILEC and lack of competitive bids for DoD/FEA's local  
11      services is not uncommon in the states I have analyzed recently (which include Arizona,  
12      California, New Mexico and Washington). For example, in the recent New Mexico case  
13      examining "effective competition" for CenturyLink QC's retail local services (New  
14      Mexico Case No. 11-00340-UT), I testified that DoD/FEA typically received a single bid  
15      from the ILEC – CenturyLink QC – for its local services contracts in New Mexico. I also  
16      explained in my recent testimony in the recent Arizona "effective competition" case  
17      (Arizona Case No. T-01051B-11-0378) that DoD/FEA continues to rely heavily on  
18      CenturyLink QC for business services and CenturyLink was oftentimes the sole bidder on  
19      DoD/FEA's local services contracts in that state. So, DoD/FEA's reliance on Frontier in  
20      Washington is not an outlier.

1           However, unlike Frontier’s Washington service territory, there are certain DoD/FEA  
2           customers in other states who receive multiple bids for their local services contracts. For  
3           example, the U.S. Air Force received bids for local services from four  
4           telecommunications carriers at March Air Reserve Base in California, three bids for local  
5           services at Los Angeles Air Force Base in California, and two bids for local services at  
6           Davis-Monthan Air Force Base in Arizona. Hence, there is less competition for  
7           DoD/FEA customer local services contracts in Frontier’s Washington territory than in  
8           certain other areas. In addition, the multiple competitive bids for local services contracts  
9           in other states shows that the terms of DoD/FEA customer local services contracts are not  
10          so stringent as to discourage or prevent competitors from bidding on them.

11   **Q.   YOU MENTION ABOVE RECENT “EFFECTIVE COMPETITION” CASES IN**  
12   **NEW MEXICO AND ARIZONA IN WHICH YOU SUBMITTED TESTIMONY**  
13   **ABOUT THE LEVEL OF COMPETITION FOR DoD/FEA’S LOCAL BUSINESS**  
14   **SERVICES. WHAT WAS THE OUTCOME OF THOSE CASES FOR DoD/FEA?**

15   A.   After my testimony was filed on behalf of DoD/FEA in the Arizona proceeding,  
16   CenturyLink QC and DoD/FEA reached a settlement agreement that contained a number  
17   of protections for DoD/FEA, including:

18           (1) “Rate Protection Commitment”: for a period of five years, CenturyLink QC  
19           commits to bid on DoD/FEA contracts that are solicited for  
20           telecommunications services in CenturyLink QC’s Arizona ILEC service  
21           territories, and to offer rates, terms and conditions no higher or less  
22           advantageous than currently provided;

23           (2) “Tariff Availability Commitment”: in the case of detariffing, CenturyLink QC  
24           commits to retain a copy of the tariff that was in effect immediately preceding  
25           detariffing or deregulation and provide to DoD/FEA for review upon request,

1 as well as for a five year period commits to offer DoD/FEA rates, terms and  
2 conditions no higher or less advantageous than those under the tariffs before  
3 detariffing or detariffing; and

4 (3) “Service Quality Commitment”: CenturyLink QC commits that all service  
5 quality requirements that are part of a DoD/FEA contract, commission order,  
6 etc. will continue to be applicable to the service provided by DoD/FEA.

7 As a result of this settlement agreement and the protections for DoD/FEA contained  
8 therein, DoD/FEA agreed to withdraw its opposition to CenturyLink QC’s “effective  
9 competition” Petition in Arizona. I have attached the DoD/FEA-CenturyLink QC  
10 settlement Agreement from Arizona Docket No. T-01051B-11-0378 as Exhibit AHA-4.

11 The New Mexico case is still ongoing. Currently, the Recommended Decision has been  
12 issued and Exceptions to the Recommended Decision are due to be filed on the same day  
13 as this testimony. If the Recommended Decision is approved by the New Mexico  
14 Commission as currently written, then CenturyLink QC’s request for a finding of  
15 “effective competition” would be denied for all business services in New Mexico.<sup>9</sup> A  
16 driving force behind this conclusion was the evidence produced by DoD/FEA showing a  
17 lack of competitive alternatives for the business services it purchases. The  
18 Recommended Decision states:

19 The lack of market share data for the enterprise market that is at least  
20 specific to CenturyLink QC’s New Mexico service territory is a deficiency  
21 in CenturyLink’s case for effective competition in the enterprise market.  
22 That, coupled with evidence of DoD/FEA’s actual experience as a  
23 CenturyLink QC enterprise customer, precludes a finding of effective

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<sup>9</sup> Recommended Decision in New Mexico Case No. 11-00340-UT, February 25, 2013 (“New Mexico Recommended Decision”), Findings of Fact and Conclusions of Law, ¶¶ 6, 7 (“CenturyLink QC has failed to show the existence of effective competition for business services that it offers under its New Mexico Exchange and Network Services Tariff”...CenturyLink QC’ Petition should be denied with respect to nonpackaged residential services and all business services that it offers under its New Mexico Exchange and Network Services Tariff”).

1 competition in the enterprise market...DoD/FEA presented substantial,  
2 credible evidence with which CenturyLink QC did not identify any  
3 inaccuracies.<sup>10</sup>

4 \*\*\*

5 CenturyLink QC has failed to show the existence of effective competition for  
6 business services that it offers under its New Mexico Exchange and Network  
7 Services Tariff...CenturyLink QC's Petition should be denied with respect to...  
8 all business services that it offers under its New Mexico Exchange and Network  
9 Services Tariff.<sup>11</sup>

10 Frontier has produced no market share data specific to Frontier's Washington service area  
11 (for the enterprise market or otherwise), and DoD/FEA is providing evidence of its actual  
12 experiences that, similar to its evidence in New Mexico, indicates a lack of competitive  
13 alternatives for the business services it purchases.

14 **Q. PLEASE EXPLAIN HOW DoD/FEA COULD BE ADVERSELY AFFECTED IF**  
15 **FRONTIER'S PETITION IS APPROVED.**

16 A. Frontier has indicated that it will seek regulatory parity with CLECs if its Petition is  
17 approved. This would involve, among other things, detariffing; eliminating service  
18 quality standards; and reducing or eliminating oversight over local service rates, terms  
19 and conditions. This could adversely impact DoD/FEA in a number of ways.

20 First, there are no assurances that Frontier will even continue to provide local services to  
21 DoD/FEA in the future. With a tariff in place, Frontier has an obligation to serve all  
22 comers who seek service under the tariffs at the tariffed rates, terms and conditions.  
23 However, if those services are detariffed, Frontier's continued obligation in this regard is

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<sup>10</sup> New Mexico Recommended Decision, p. 130.

<sup>11</sup> New Mexico Recommended Decision, Findings of Fact and Conclusions of Law, ¶¶ 6, 7.

1 in question – notwithstanding the existence of service catalogs which could be changed  
2 by Frontier.<sup>12</sup> If, for whatever reason, Frontier decides that it no longer wants to bid on  
3 DoD/FEA’s local services contracts and Frontier’s tariffs are not there as a backstop  
4 because of detariffing, DoD/FEA customers could be in a position in which no service  
5 providers are offering them local services.

6 Second, even if Frontier continues to provide local services in the future to DoD/FEA  
7 customers, Frontier’s detariffing plans raises questions about the rates, terms and  
8 conditions under which those services will be provided in the future. Although Frontier  
9 states that it will maintain service catalogs on its website, it will have significantly more  
10 control over the rates, terms and conditions for its services once they are moved from a  
11 tariff to a service catalog. In the absence of intense competition, the “hard cap” of  
12 Frontier’s tariff offerings serves as a safety net – an ultimate protection against lack of  
13 competitors, lack of competitive bids and price increases. Without tariffs, there would be  
14 no (or a significantly less effective) safety net for DoD/FEA if Frontier decides to  
15 increase bid prices or chooses not to submit a bid at all.

16 Third, detariffing concerns DoD/FEA because, as explained above, GSA purchases local  
17 services from Frontier out of its tariff on a month-to-month basis. Moving those services  
18 into product catalogs, as proposed by Frontier, is not a suitable alternative in this instance  
19 because it provides no certainty to GSA about the rates, terms and conditions under  
20 which Frontier will make those services available.

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<sup>12</sup> Frontier seeks to detariff and move services to service catalogs that Frontier will make available on its website. See, Phillips Direct, p. 15, lines 2-5.



1 Without the availability of price-constraining competitive alternatives, a premature  
2 finding of effective competition in this proceeding could result in DoD/FEA facing  
3 higher prices, a lower level of service quality, the elimination of generally-available  
4 tariffs, and worse yet, the potential to be without a provider of local telecommunications  
5 services.

6 **Q. GIVEN THAT DoD/FEA CUSTOMERS PURCHASE LOCAL**  
7 **TELECOMMUNICATIONS SERVICES FROM CONTRACTS, AREN'T THEY**  
8 **INSULATED FROM RISKS ASSOCIATED WITH APPROVING FRONTIER'S**  
9 **PETITION?**

10 A. No. DoD/FEA will be protected only in a truly competitive market, but  
11 telecommunications markets in Washington are not ubiquitously competitive. As  
12 discussed, only Frontier has expressed any interest in serving DoD/FEA customers local  
13 services in Frontier's Washington territory, leaving them without the protection of  
14 competitive markets and dependent on Frontier. Therefore, if Frontier's Petition is  
15 approved and it is granted the deregulatory relief it seeks, it would have the ability to  
16 raise prices and lower service quality for the services DoD/FEA purchases in Washington  
17 – even if those changes are delayed until the next time DoD/FEA contracts come up for  
18 bid. This would be detrimental to federal government budgets which are already  
19 stretched to the maximum and being reduced.

20 **Q. AS A LARGE BUSINESS CUSTOMER, DOES DoD/FEA HAVE THE**  
21 **PURCHASING POWER OR LEVERAGE TO EXTRACT THE TYPE OF**

1           **PROTECTIONS THAT REGULATION CURRENTLY PROVIDES IF**  
2           **FRONTIER'S PETITION IS APPROVED?**

3    A.    No. For instance, despite DoD/FEA seeking competitive bids for local services from a  
4           variety of sources in Frontier's Washington service area, Frontier is in the vast majority  
5           of circumstances the only service provider that expresses interest. And despite attempts  
6           by GSA to get a contract with Frontier for local services, it has been unsuccessful to date  
7           and continues to purchase local services from Frontier's tariff. These facts are not  
8           indicative of a customer with purchasing power able to dictate terms to service providers.  
9           Despite DoD/FEA's incentives to get the best deal possible for local services, this can  
10          only work if there is effective competition for Frontier's services; absent such  
11          competition, quality service at reasonable rates requires continued regulatory protection.

12   **Q.    CAN THE LACK OF COMPETITIVE BIDS FOR DoD'S LOCAL SERVICES**  
13          **CONTRACTS BE ATTRIBUTED TO STRINGENT CONTRACT**  
14          **REQUIREMENTS THAT ONLY FRONTIER CAN SATISFY?**

15    A.    No. I am aware of no burdensome requirements or bureaucratic procedures in DoD  
16          contracts that would limit the number of qualified vendors. Indeed, the local services that  
17          DoD purchases in Washington are typical voice type services that are not unusual or  
18          unique to DoD. This includes business network access lines, ISDN-PRIs, DIDs, etc.  
19          These types of services should not be problematic for another carrier to provide if, in fact,  
20          Frontier faces effective competition for these local business services.

1 **V. THE INFORMATION AND ANALYSIS PROVIDED BY FRONTIER DOES NOT**  
2 **SUBSTANTIATE A FINDING OF “EFFECTIVE COMPETITION” UNDER RCW**  
3 **80.36.320**

4 **Q. HAVE YOU REVIEWED FRONTIER’S PETITION AND SUPPORTING**  
5 **TESTIMONY AND EXHIBITS?**

6 A. Yes.

7 **Q. DO YOU HAVE CONCERNS ABOUT THE MERITS OF FRONTIER’S**  
8 **PETITION?**

9 A. Yes. Frontier has not provided information sufficient for the Commission to render a  
10 finding of “effective competition”, as defined in RCW 80.36.320 and WAC 480-121-061,  
11 for business services.

12 **Q. PLEASE ELABORATE.**

13 A. In the remainder of my testimony, I will discuss three primary flaws in Frontier’s case:

- 14 1. Frontier has not demonstrated that its market power is constrained by  
15 competition;
- 16 2. Frontier fails to properly define the “relevant market” which results in  
17 exaggerated claims about the degree of competition in Washington; and
- 18 3. The alternative providers identified by Frontier do not provide reasonably  
19 available substitute services at competitive rates, terms and conditions for the  
20 business local services DoD/FEA customers purchase from Frontier.

21 **A. Frontier Fails to Demonstrate That Its Market Power Is Constrained By**  
22 **Competition**

23 **Q. WHAT IS MARKET POWER?**

1 A. For the purposes of my testimony, I will refer to market power as the ability of a firm to  
2 raise prices, reduce output, diminish innovation, or otherwise harm consumers as a result  
3 of the lack of competitive constraints or incentives. A firm possessing market power can  
4 unilaterally raise and sustain prices profitably above a competitive level.<sup>13</sup>

5 Market power is a key component of determining whether “effective competition” exists.  
6 That is, the presence of market power directly affects: (1) the extent to which services are  
7 reasonably available from alternate providers, (2) the ability of alternate providers to  
8 make functionally equivalent or substitute services readily available at competitive rates,  
9 terms and conditions, and (3) economic barriers. The greater the market power, the less  
10 likely effective competition exists – and vice versa.

11 **Q. HOW HAS MARKET POWER IN TELECOMMUNICATIONS MARKETS BEEN**  
12 **ANALYZED IN THE PAST?**

13 A. Market power has been analyzed by the Federal Trade Commission (“FTC”), the  
14 Department of Justice (“DoJ”) and the FCC in the past by using a market power analysis.  
15 A traditional market power analysis is conducted by first establishing product and  
16 geographic markets, and then evaluating the competitive alternatives available in those  
17 markets to which consumers would be willing and able to switch in response to a price  
18 increase. This is the analytical framework that the FTC/DoJ has used consistently for  
19 evaluating impacts on market power stemming from mergers and acquisitions involving

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<sup>13</sup> See, e.g., United States Department of Justice, *Horizontal Merger Guidelines* (“HMG”) (2010), p. 2.

1 actual or potential competitors under the federal antitrust laws.<sup>14</sup> The FCC has also used  
2 this framework for various purposes, including applications to transfer control of licenses  
3 and for petitions for forbearance from dominant carrier regulations.<sup>15</sup> The FCC explained  
4 the purpose of the market power analysis as follows: "...the Commission's market power  
5 analysis was designed to identify when competition is sufficient to constrain carriers from  
6 imposing unjust, unreasonable, or unjustly or unreasonably discriminatory rates, terms,  
7 and conditions, or from acting in an anticompetitive manner."<sup>16</sup>

8 **Q. IS THERE A WAY TO MEASURE CONSUMERS' ABILITY AND**  
9 **WILLINGNESS TO SUBSTITUTE AWAY FROM ONE PRODUCT TO**  
10 **ANOTHER IN RESPONSE TO A PRICE INCREASE?**

11 A. Yes. This behavior is measured by the elasticity of demand.

12 **Q. DOES FRONTIER RELY ON ANY DEMAND ELASTICITY STUDIES TO**  
13 **EVALUATE THE EXTENT TO WHICH FRONTIER'S MARKET POWER IS**  
14 **CONSTRAINED FOR BUSINESS SERVICES IN WASHINGTON?**

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<sup>14</sup> HMG, §1.

<sup>15</sup> *In the Matter of Application of EchoStar Communications Corporation, (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporation); (Transferors) and EchoStar Communications Corporation (a Delaware Corporation); (Transferee)*; CS Docket No. 01-38, 17 FCC Rcd 20559; FCC 02-284, October 18, 2002 ("EchoStar Order"). See also, *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, FCC 10-113, June 22, 2010 ("FCC Phoenix Forbearance Order"), ¶ 34, affirmed by the United States Court of Appeals for the Tenth Circuit in *Qwest Corp. v. FCC*, No. 10-9543, August 6, 2012.

<sup>16</sup> *FCC Phoenix Forbearance Order*, ¶ 37.

1 A. No.<sup>17</sup>

2 **Q. ARE THERE OTHER INDICATORS OF THE EXTENT TO WHICH**  
3 **FRONTIER'S MARKET POWER IS CONSTRAINED BY COMPETITION?**

4 A. Yes. Competition tends to drive prices toward cost. Therefore, the margin between  
5 Frontier's retail prices and the underlying costs of those services can provide insight into  
6 the level of competitive pressure Frontier faces for those services. The greater the  
7 competitive pressures, the smaller the margin between price and cost will be – and vice  
8 versa.

9 **Q. DOES FRONTIER RELY ON ANY COST ANALYSES TO EVALUATE THE**  
10 **EXTENT TO WHICH FRONTIER'S MARKET POWER IS CONSTRAINED IN**  
11 **WASHINGTON?**

12 A. No. Frontier produced no such cost analyses in its direct case. However, DoD/FEA  
13 asked Frontier in discovery to provide all cost studies related to business services in the  
14 past five years in order to analyze this issue. Frontier provided in response to DoD/FEA  
15 data request DoD/FEA-FTR I.13 a highly confidential attachment which **\*\*\*BEGIN**  
16 **HIGHLY CONFIDENTIAL** [REDACTED]

17 [REDACTED]

18 [REDACTED]

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<sup>17</sup> In response to DoD/FEA data request DoD/FEA-FTR I.20, Frontier states: "Frontier has not identified price elasticity studies performed or commissioned by Verizon relative to end user business services in Washington prior to Frontier's acquisition of the Verizon Northwest operations in July 2010. Frontier has not completed price elasticity studies for end user business services in Washington subsequent to Frontier's acquisition of the Verizon Northwest operations in July 2010."

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED] **END**

4 **HIGHLY CONFIDENTIAL\*\*\*** Furthermore, according to the FCC, properly-  
5 calculated Long Run Incremental Costs (or “LRICs”) already provide for a “reasonable  
6 profit”.<sup>18</sup> Therefore, gross margins based on LRICs reflect “supranormal profits”  
7 because “normal” profit is already built into the LRICs.<sup>19</sup>

8 **Q. ARE THERE ANY OTHER INDICATORS OF THE EXTENT TO WHICH**  
9 **FRONTIER’S MARKET POWER IS CONSTRAINED BY COMPETITION?**

10 A. Yes. Since competition tends to drive prices toward cost, the expected response of a  
11 company operating in this type of competitive environment is to lower prices to respond  
12 to the alternative products of competitors.

13 **Q. DID FRONTIER PROVIDE ANY INFORMATION IN ITS DIRECT CASE**  
14 **INDICATING THAT IT HAS RESPONDED TO COMPETITION BY**  
15 **LOWERING PRICES?**

16 A. No. However, DoD/FEA asked in discovery for a list of all services for which Frontier  
17 had changed prices in the past 5 years. Frontier responded that it had not changed any

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<sup>18</sup> See, e.g., *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*; First Report and Order, CC Docket No. 96-98, FCC 96-325, released August 8, 1996 (“*FCC Local Competition Order*”), ¶ 700, explaining that the forward-looking cost of capital is equal to normal profit.

<sup>19</sup> *Id.*, ¶¶ 699-700, discussing “normal” versus “economic” (or supranormal) profits.

1 business tariff rates since the acquisition in 2010 and was not aware of any business tariff  
2 rate changes made by Verizon in the two years prior to the acquisition.<sup>20</sup>

3 **Q. FRONTIER PROVIDES MARKET SHARE DATA THAT IT CLAIMS**  
4 **DEMONSTRATES THE EXISTENCE OF EFFECTIVE COMPETITION IN**  
5 **WASHINGTON. SHOULD THE COMMISSION RELY ON THIS DATA AS A**  
6 **BASIS FOR A FINDING THAT FRONTIER’S MARKET POWER IS**  
7 **CONSTRAINED AND EFFECTIVE COMPETITION EXISTS FOR FRONTIER’S**  
8 **BUSINESS SERVICES?**

9 A. No. There are two primary problems with the market share data produced by Frontier.  
10 First, none of the market share data is specific to Frontier.<sup>21</sup> Instead, Frontier relies on  
11 market share data that applies to the entire state of Washington, which includes service  
12 territories of not only Frontier but also CenturyLink QC and other rural ILECs in the  
13 state. There is no indication that statewide market share data bears any relationship to or  
14 provides a reasonable proxy for the actual market share Frontier possesses in its  
15 Washington service territories. This harkens back to the analogy I provided in Section II  
16 about the river that averages one foot deep.

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<sup>20</sup> Frontier response to DoD/FEA data request DoD/FEA-FTR I.2 (“Frontier has made only administrative changes to its retail tariff since acquisition of the former Verizon Northwest operations in July 2010. Frontier has not changed its business end user tariffed rates since Frontier acquired the property on July 1, 2010 and is not aware of any business end user tariff changes made by Verizon in the two years prior to the transaction.”)

<sup>21</sup> See, e.g., Frontier response to Staff Data Request 135 (“The FCC data referenced in Chart 1 is statewide data and not specific to Frontier’s Washington exchange markets.”) See also, Frontier response to Staff Data Request 136 (“The FCC data in Chart 2 is statewide data and not specific to Frontier’s Washington exchange markets.”)



1 **Q. FRONTIER CLAIMS THAT IT HAS NO MEANS OF CALCULATING MARKET**  
2 **SHARE OF INDIVIDUAL COMPETITORS IN ITS SERVICE TERRITORY.<sup>22</sup> IS**  
3 **THIS TRUE?**

4 A. No. In the recent Arizona and New Mexico “effective competition” cases I participated  
5 in related to CenturyLink QC’s local services, CenturyLink QC produced market share  
6 estimates for individual competitors that were specific to CenturyLink QC’s service  
7 territories in those states. These market share data were developed by a company called  
8 Centris, a consulting firm retained by CenturyLink QC to provide market share and other  
9 market data.<sup>23</sup> This market share data was provided on the public record in the New  
10 Mexico proceeding, which I have attached as Exhibit AHA- 5 to my testimony. In  
11 addition, CenturyLink QC recently submitted, on a confidential basis, similar Centris  
12 market share estimates for CenturyLink QC and its competitors specific to CenturyLink  
13 QC’s Washington service territory in Docket UT-130477.<sup>24</sup>

14 **Q. WHAT IS THE SECOND PROBLEM WITH FRONTIER’S MARKET SHARE**  
15 **DATA?**

16 A. The market share data produced by Frontier suffers from a flawed definition of the  
17 “relevant market”. For instance, Frontier sums its line counts with the line counts of its  
18 wireline competitors as well as wireless connections, and then claims that Frontier serves

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<sup>22</sup> Frontier response to Staff Data Request 15.

<sup>23</sup> Centris’ website is available at: <http://www.centris.com/home.html>

<sup>24</sup> Direct Testimony of John M. Felz, Washington Docket UT-130477, Exhibit JMF-1TC (4/1/13), pp. 8-12 and Exhibit JMF-4C (redacted).

1 about one-third of that market.<sup>25</sup> However, Frontier does not explain what “market” is  
2 represented by this statistic. Business customers like DoD/FEA typically need wireline  
3 service and cannot “cut the cord”, and as such, this “one-third” statistic (which assumes  
4 wireless is a substitute for Frontier’s local services) is not relevant to the business market  
5 in which Frontier operates. The problems with Frontier’s proposed “relevant market”,  
6 including its failure to distinguish between business and residential markets, are  
7 discussed in more detail below.

8 **Q. ARE THERE OTHER STATISTICS BESIDES MARKET SHARE THAT**  
9 **MEASURE MARKET CONCENTRATION?**

10 A. Yes. The Herfindahl-Hirschman Index (“HHI”)<sup>26</sup> measures market concentration and,  
11 like market share, provides insight into the degree of market power a firm can exert in the  
12 market. However, Frontier did not provide any HHI data in support of its direct case, and  
13 indicates in response to DoD/FEA data request I.7: “Frontier has not initiated a formal  
14 HHI or other market share study” within the past 5 years.<sup>27</sup>

15 **Q. HAS FRONTIER PROVIDED INFORMATION TO SHOW THAT ITS MARKET**  
16 **POWER IS CONSTRAINED FOR LOCAL BUSINESS SERVICES?**

17 A. No. Frontier does not address the issue of consumers’ ability and willingness to switch to  
18 competitive alternatives in response to a price increase, which is a critical component of a

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<sup>25</sup> Frontier response to Staff Data Request 15.

<sup>26</sup> The HHI is calculated as the sum of the squares of the market shares of the firms competing in a market.

<sup>27</sup> Frontier response to data request DoD/FEA-FTR I.7.

1 market power analysis missing in Frontier’s testimony. Without this component, it is  
2 impossible to verify Frontier’s assertion that its market power is constrained.

3 **B. Frontier Fails to Properly Define the Relevant Market And, In Turn,**  
4 **Exaggerates The Level of Competition in Washington**

5 **Q. HOW SHOULD THE “RELEVANT MARKET” BE DEFINED IN THIS**  
6 **PROCEEDING?**

7 A. The relevant market should be defined in this proceeding as it has been defined in  
8 traditional market power analyses – in terms of both product market and geographic  
9 dimensions.<sup>28</sup> The Commission should use the traditional market power analysis  
10 framework reflected in the Horizontal Merger Guidelines (“HMG”) as guidance for  
11 defining the “relevant market”.<sup>29</sup> This is the best way to evaluate whether and to what  
12 extent alternative providers and products are reasonably available to consumers.

13 **Q. WHAT IS A “PRODUCT MARKET”, AS THAT TERM IS USED IN A MARKET**  
14 **POWER ANALYSIS?**

15 A. The “product market” has been defined as a group of competing products for which a  
16 hypothetical monopoly provider of the products would profitably impose at least a small  
17 but significant and nontransitory increase in price.<sup>30</sup> When defining the product market,

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<sup>28</sup> HMG, § 4 (“Although discussed separately for simplicity of exposition, the principles described in Sections 4.1 and 4.2 are combined to define a relevant market, which has both a product and a geographic dimension.”) See also, *FCC Phoenix Forbearance Order*, ¶ 42 (“our market power analysis begins by defining the relevant product and geographic markets and by identifying the market participants.”)

<sup>29</sup> The FCC’s Phoenix Forbearance Order used a market power analysis to evaluate Qwest’s request for forbearance of dominant carrier regulations. Frontier’s Petition is similar in that it seeks elimination of dominant carrier regulation on the state level.

<sup>30</sup> *FCC Phoenix Forbearance Order*, footnote 141, citing HMG, §§ 1.11 and 1.12.

1 the focus is on a consumer's ability and willingness to substitute away from one product  
2 to another in response to a price increase.<sup>31</sup> As such, the product markets defined in the  
3 telecommunications industry typically recognize distinctions between various customer  
4 categories – *e.g.*, mass market, small/medium business and large business/enterprise –  
5 because those customers purchase different types of telecommunications services. In  
6 simple terms, if a consumer is able and willing to substitute away from product X to  
7 product Y in response to a price increase for product X, then products X and Y should  
8 likely be included in the same product market. And if a consumer is not able and willing  
9 to substitute away from product X to product Y in response to a price increase for product  
10 X, then products X and Y should *not* be included in the same product market.

11 **Q. WHAT IS A “GEOGRAPHIC MARKET”, AS THAT TERM IS USED IN A**  
12 **MARKET POWER ANALYSIS?**

13 A. The geographic market has been defined in market power analyses “as the region where a  
14 hypothetical monopolist that is the only producer of the relevant product in the region  
15 would profitably impose at least a ‘small but significant and nontransitory’ increase in the  
16 price of the relevant product, assuming that the prices of all products provided elsewhere  
17 do not change.”<sup>32</sup> In simple terms, the geographic market should be defined as the region  
18 where alternative providers and products are available to which consumers can migrate in  
19 response to a price increase. For example, if there are ample competitive providers and  
20 products in Exchange A but not Exchange B, Exchanges A and B should not be included

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<sup>31</sup> HMG, §4.

<sup>32</sup> *FCC Phoenix Forbearance Order*, footnote 142, citing HMG, § 1.21.

1 in the same geographic market because the competitive alternatives are different between  
2 the two locations. The same rationale applies to other geographic boundaries, such as  
3 Metropolitan Statistical Areas (“MSAs”), zip codes, LATA or the state as a whole.

4 **Q. WHAT ARE THE CONSEQUENCES OF DEFINING A “RELEVANT MARKET”**  
5 **INCORRECTLY?**

6 A. There are two errors that can occur when defining the relevant market: (1) defining a  
7 market too narrowly and (2) defining a market too broadly – each of which can lead to  
8 erroneous results. If a market is defined too narrowly, it will exclude alternative  
9 providers and products that should actually be counted and to which customers could  
10 choose as a substitute in response to a price increase. A market defined too narrowly  
11 would also result in artificially high market shares because it excludes other firms over  
12 which the total market share should be distributed. This would result in an erroneous  
13 finding that market power exists, when it actually does not.

14 A market defined too broadly has the exact opposite impacts. It will include alternative  
15 providers and products that should not actually be counted and to which customers could  
16 not choose as a substitute in response to a price increase. A market defined too broadly  
17 would also result in artificially low market shares because total market share would be  
18 distributed over firms that should not be included. This would result in an erroneous  
19 finding that market power does not exist, when it actually does.

20 **Q. HOW HAS FRONTIER PROPOSED TO DEFINE THE RELEVANT MARKET?**

1 A. Frontier has in effect proposed to define the relevant market as one single geographic  
2 market (Frontier's service territory in Washington) and one single product market (all of  
3 Frontier's regulated retail and wholesale services in the state).<sup>33</sup>

4 **Q. DO YOU AGREE WITH FRONTIER'S PROPOSED DEFINITION OF THE**  
5 **RELEVANT MARKET?**

6 A. No. Frontier defines both the product and geographic market dimensions too broadly.  
7 As a result, Frontier overestimates the level of competition for its services in Washington.

8 **Q. WHAT IS THE MAJOR FLAW WITH FRONTIER'S PRODUCT MARKET**  
9 **DEFINITION?**

10 A. The product market definition proposed by Frontier is too broad and needs to be  
11 narrowed in order for reasonably available substitute services to be identified. Frontier  
12 lumps all of its services together into the same product market, which assumes that all  
13 services are substitutes for one another, when in fact, they are not.

14 **Q. PLEASE ELABORATE.**

15 A. Recall that for services to properly be in the same product market, consumers must be  
16 willing and able to substitute to Product Y in response to a price increase for Product X.  
17 Frontier's Petition would result in the reclassification as competitive (and detariffing) of

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<sup>33</sup> See, Frontier Petition, p. 1, ¶ 2 ("The geographic area for which Frontier requests competitive classification includes all of its serving areas (102 wire centers) in the state of Washington.") Frontier does not distinguish between the separate business and residential customer classes/product markets when discussing the alternative providers present in Washington (*e.g.*, cable telephony, wireless, CLECs and over-the-top VoIP). The practical effect of this is that Frontier proposes to establish a "relevant market" consisting of a single statewide "voice services" market. This approach is not in accordance with Washington statutes or rules, and runs counter to established economic principles.

1 all services currently in its General and Local Exchange Tariff (WN U-17). By way of  
2 example, this tariff contains “Basic” Network Access Service and “Premium” Network  
3 Access Service for both business and residential customers. Basic service provides  
4 “basic access to the network coupled with measured usage rates for outgoing local  
5 calls...” for a monthly rate of \$21.60 for business customers and \$11.15 for residential  
6 customers.<sup>34</sup> Premium service provides “basic access to the network coupled with  
7 unlimited usage of outgoing local calls...” for monthly rate of \$33.60 for business  
8 customers (month-to-month) and \$16.90 for residential customers.<sup>35</sup> These services  
9 essentially provide customers with a network access line to connect with the public  
10 switched telephone network plus access to local calling (the difference is whether local  
11 calling is measured (Basis) or unlimited (Premium)). The problem with Frontier’s  
12 proposed single product market is evident within this simple example: customers could  
13 not migrate to the residential Network Access Service in response to a price increase for  
14 business Network Access Service because business customers are not permitted to  
15 purchase residential services. Hence, one of the problems with Frontier’s proposed single  
16 product market is that it does not analyze competition for business and residential  
17 separately, which is a critical component of defining an appropriate “relevant market”.

18 Likewise, business customers would not be able to migrate to many other services  
19 included in Frontier’s General and Local Exchange Tariff in response to a price increase  
20 for business Network Access Service. For instance, Frontier’s General and Local

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<sup>34</sup> Frontier Tariff WN U-17, Section 4, Original Sheets 36 and 37.

<sup>35</sup> Frontier Tariff WN U-17, Section 4, Original Sheets 38 and 40.

1 Exchange Tariff also includes operator and directory services (WN U-17 Section 10),  
2 E911 Emergency Telephone Service (WN U-17 Section 12), 811 Dialing Service (WN  
3 U-17 Section 15), and Versaline Centrex Service (WN U-17 Section 18) – and none of  
4 these services are substitutes or functional equivalents for Frontier’s Network Access  
5 Service or for one another. As such, contrary to Frontier’s proposed single product  
6 market, these products do not belong in the same product market.

7 **Q. IF SEPARATE PRODUCT MARKETS ARE ESTABLISHED FOR BUSINESS**  
8 **AND RESIDENTIAL CUSTOMERS, IS IT SAFE TO ASSUME THAT ALL**  
9 **BUSINESS SERVICES ARE SUBSTITUTES/FUNCTIONAL EQUIVALENTS**  
10 **FOR ONE ANOTHER?**

11 A. No. Larger business customers typically purchase more complex services than small  
12 business customers. For example, DoD/FEA purchases ISDN-PRI from Frontier in  
13 Washington. ISDN-PRI is described in Frontier’s General and Local Exchange Tariff as:

14 a central office based service arrangement that utilizes ISDN architecture  
15 to provide network offerings. ISDN-PRI Service supports the  
16 simultaneous transmission of circuit switched voice and data and packet  
17 switched data transmission over a four-wire facility at a standard interface.  
18 ISDN-PRI Service provides digital end-to-end access capable of  
19 supporting a combination of public and private network access services  
20 via a 1.544 Mbps (Megabits per second) digital facility between the  
21 customer’s premises and the Company’s serving central office. The 1.544  
22 Mbps transmission speed is typically divided into twenty-three 64 Kbps  
23 (Kilobits per second) channels (known as B-Channels) and one 64 Kbps  
24 channel (known as a D-Channel). The channels are communications paths  
25 over which telecommunications services flow (e.g., data, image, video,  
26 and voice)...<sup>36</sup>

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<sup>36</sup> Frontier Tariff WN U-17, Section 7, Original Sheet 43.



1 Obviously, ISDN-PRI service is not functionally equivalent to or a substitute for business  
2 Network Access Service (which provides a single POTS line with access to local calling).  
3 Therefore, a business customer could not substitute between these services if Frontier  
4 raised the price for one of them (*i.e.*, they should not be in the same “relevant market”).  
5 Despite Frontier’s claims about wireless substitution, offering DoD/FEA a wireless  
6 handset when it requires ISDN-PRI lines (to hook its switching facilities to the PSTN and  
7 provide for many simultaneous calls and data transmission) does DoD/FEA no good. It  
8 is like offering a carpenter a piece of chewing gum when she needs a screwdriver. These  
9 differences in service characteristics support analyzing “effective competition” on a  
10 granular level, including analyzing not only business and residential services separately  
11 but also individual services within the business customer segment.

12 The cornerstone of market power analysis, as well as RCW 80.36.320, is to properly  
13 define the “relevant market”. This involves including only services within a product  
14 market that are substitutes/functional equivalents for one another. Frontier’s analysis  
15 fails to do so.

16 **Q. HOW COULD THE PROBLEMS WITH FRONTIER’S OVERLY BROAD**  
17 **PRODUCT MARKET BE RECTIFIED?**

18 A. Each service that would be reclassified as competitive if Frontier’s petition is approved  
19 should be analyzed individually, and only those products that are reasonable substitutes  
20 should be included in the same product market. This approach accounts for differences  
21 between different customer classes (*e.g.*, business customers and residential customers)

1 as well as differences between non-substitutable services within the same customer  
2 segment (e.g., business basic service and ISDN-PRI). This approach is critical for  
3 determining whether alternatives are reasonably available from alternative providers at  
4 competitive rates, terms and conditions to Washington consumers.

5 **Q. PLEASE DESCRIBE THE FLAWS IN FRONTIER'S PROPOSED**  
6 **GEOGRAPHIC MARKET.**

7 A. Frontier's proposed geographic market (which is the entire Frontier Washington serving  
8 area) glosses over important variations in competitive characteristics between geographic  
9 regions within that larger territory. For example, Frontier provided in response to  
10 discovery information showing the presence of cable telephony providers, wireless  
11 providers, and CLECs by Frontier exchange. This data shows that: \*\*\*BEGIN

12 **CONFIDENTIAL** [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16 [REDACTED] **END CONFIDENTIAL\*\*\*** These differences are not  
17 accounted for in the statewide "relevant market" proposed by Frontier.

18 **Q. WHAT GEOGRAPHIC MARKET SHOULD THE COMMISSION USE IN**  
19 **EVALUATING WHETHER "EFFECTIVE COMPETITION" EXISTS FOR**  
20 **FRONTIER?**

1 A. From DoD/FEA's perspective, each customer location may serve as the best geographic  
2 location because it is impossible for DoD/FEA customers at military installations and  
3 federal office buildings to move in response to a small, but significant and nontransitory  
4 increase in the price of Frontier's service. Therefore, the only products available for  
5 DoD/FEA are those offered at each particular DoD/FEA customer location.

6 If the Commission chooses to aggregate customers for administrative convenience, the  
7 exchange may be selected as the next best geographic market given that customers in an  
8 exchange oftentimes face similar competitive choices. However, even a geographic  
9 market at the exchange level would likely overestimate the competitive options available  
10 for DoD/FEA.

11 **Q. CAN YOU PROVIDE AN EXAMPLE OF HOW AN OVERLY BROAD**  
12 **GEOGRAPHIC MARKET DEFINITION COULD OVERESTIMATE THE**  
13 **COMPETITIVE OPTIONS AVAILABLE TO DoD/FEA?**

14 A. Yes. Frontier has provided lists of alternative providers (*e.g.*, wireless providers, CLECs  
15 and cable telephony providers) by Frontier exchange.<sup>37</sup> This data shows: **\*\*\*BEGIN**  
16 **CONFIDENTIAL** [REDACTED]  
17 **END CONFIDENTIAL\*\*\***. However, none  
18 of these providers currently serves DoD/FEA local services in competition with Frontier  
19 and have not expressed an interest in doing so. So, even if the geographic market is  
20 established at the exchange level, that would still overestimate the level of competitive

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<sup>37</sup> Confidential Attachments to Frontier's response to Staff Data Request 13.

1 options for DoD/FEA because none of those alternative providers have expressed interest  
2 in providing local services at DoD/FEA's locations.

3 **Q. IS APPLYING THE TYPE OF GRANULAR ANALYSIS DESCRIBED ABOVE**  
4 **TOO COMPLEX OR IMPRACTICAL FOR THIS PROCEEDING?**

5 A. No. In essence, a market power analysis – much like Washington statute RCW 80.36.320  
6 – revolves around a relatively straightforward three-part question: **WHAT? WHERE? and**  
7 **BY WHOM?**

8 (1) **WHAT** are the services at issue?

9 (2) **WHERE** are they being offered?

10 (3) **BY WHOM** are alternatives offered?

11 These three questions are consistent with established economic principles and undergird  
12 the “effective competition” criteria of Washington statutes (RCW 80.36.320) as well as  
13 the DoJ/FTC’s market dominance analysis which focus on analyzing the product market  
14 (**WHAT**), geographic market (**WHERE**), and competitive alternatives (**BY WHOM**).

15 The answers to the “**WHAT**, **WHERE** and **BY WHOM**” questions as they apply to  
16 DoD/FEA reveal the obvious: competition is not “effective” for Frontier’s business local  
17 voice services in Washington.

1           **C.     Alternative Providers Identified by Frontier Do Not Provide “Effective**  
2           **Competition” for the Services Purchased by DoD/FEA**

3     **Q.     WHAT ALTERNATIVE PROVIDERS ARE IDENTIFIED BY FRONTIER IN**  
4           **RELATION TO ITS REQUEST FOR AN “EFFECTIVE COMPETITION”**  
5           **DETERMINATION?**

6     A.     Frontier identifies the following four categories of alternative retail providers: (1) mobile  
7           wireless providers, (2) cable providers, (3) CLECs, and (4) Voice over Internet Protocol  
8           (“VoIP”) providers.<sup>38</sup> Mr. Phillips states: “CLECs, cable companies and other providers  
9           and [*sic*] vigorously compete with Frontier to provide service to business customers in  
10          Frontier’s service territory.”<sup>39</sup> However, this is simply not true with respect to DoD/FEA  
11          customers. For instance, Frontier’s testimony discusses the presence of competitors in  
12          Frontier exchanges: cable telephony providers are in 91 of 102 wire centers (representing  
13          98% of Frontier’s access lines);<sup>40</sup> at least one wireless provider is present in every  
14          Frontier exchange;<sup>41</sup> and 97.5% of zip codes in Frontier territory have at least one CLEC  
15          or VoIP provider.<sup>42</sup> However, none of these alternative providers are serving or seeking  
16          to serve DoD/FEA customers in Washington for the local services purchased from  
17          Frontier. In addition, there is no evidence to suggest that the mere presence of these

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<sup>38</sup> Frontier Petition, p. 3, ¶ 7. See also, Phillips Direct, p. 6, lines 13-20.

<sup>39</sup> Phillips Direct, p. 40, lines 3-4.

<sup>40</sup> Frontier Petition, p. 8, ¶ 17. See also, Frontier Petition Exhibit 2; Phillips Direct, pp. 25-26 and pp. 32-33 and JP-5.

<sup>41</sup> Frontier Petition, p. 8, ¶ 18. See also, Frontier Petition Exhibits 3 and 4; Phillips Direct, pp. 26-27 and JP-6 and JP-7.

<sup>42</sup> Frontier Petition, pp. 10-11, ¶ 24. See also, Frontier Petition Exhibit 7; Phillips Direct, pp. 30-31 and JP-11.

1 competitors provide effective, price-constraining competition for the business local  
2 services purchased by DoD/FEA in Washington.

3 **Q. MR. PHILLIPS STATES THAT “FRONTIER GENERAL MANAGERS AND**  
4 **SALES TEAMS IN WASHINGTON HAVE EXPLAINED THAT THEY**  
5 **REGULARLY CONFRONT COMPETITIVE CHALLENGES IN RESPONDING**  
6 **TO CUSTOMER REQUESTS FOR NEW SERVICES, AT THE TIME**  
7 **CUSTOMERS ARE LOOKING TO RENEW EXISTING SERVICES AND EVEN**  
8 **WHEN CUSTOMERS HAVE BEEN PURCHASING SPECIFIC SERVICES**  
9 **FROM FRONTIER FOR YEARS.”<sup>43</sup> WOULD YOU LIKE TO RESPOND?**

10 A. Yes. This statement piqued my interest because, on the surface, it seems to be based on  
11 an effort to gather facts about the extent to which Frontier is facing competition for its  
12 business services, yet Mr. Phillips did not provide a cite to support the statement.  
13 Therefore, DoD/FEA asked Frontier in discovery to describe the basis for this statement  
14 and provide all supporting documentation. Frontier responded that the statement “is  
15 based on conversations and on-going interactions with local Frontier operations  
16 management and members of the sales team.”<sup>44</sup> Frontier provided no documentation to  
17 support the statement. Because Frontier did not provide any details or context or  
18 supporting documentation about the “conversations and on-going interactions”, I was  
19 unable to verify Frontier’s claim. However, Frontier’s claim is not consistent with  
20 DoD/FEA’s experience.

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<sup>43</sup> Phillips Direct, p. 40, lines 4-8.

<sup>44</sup> Frontier response to data request DoD/FEA-FTR I.12.

1 **Q. MR. PHILLIPS ALSO CLAIMS THAT “THE BREADTH OF COMPETITIVE**  
2 **SERVICE OFFERINGS [FOR BUSINESS CUSTOMERS] IS STAGGERING AND**  
3 **EXPANDING AS EVIDENCED BY EVEN A CURSORY REVIEW OF**  
4 **INFORMATION PUBLICLY AVAILABLE ON COMPETITIVE PROVIDER**  
5 **WEBSITES.”<sup>45</sup> WHAT INFORMATION DOES HE PROVIDE TO SUPPORT**  
6 **THIS CLAIM?**

7 A. Mr. Phillips references just two business offerings<sup>46</sup> – one offered by World  
8 Communications, Inc. (“WCI”) and one offered by Integra Telecom.<sup>47</sup> He provides a  
9 press release about the Integra service and a website page describing WCI’s product. I  
10 disagree with Mr. Phillips that these two examples can be legitimately described as  
11 evidence of a “staggering and expanding” breadth of competitive business offerings.  
12 Moreover, Mr. Phillips does not attempt to analyze these two examples in relation to the  
13 competitive factors of RCW 80.36.320(1), such as: the extent to which these two services  
14 are available from WCI and Integra Telecom in the relevant market, and the ability of  
15 WCI and Integra Telecom to make these services readily available at competitive rates,  
16 terms and conditions.

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<sup>45</sup> Phillips Direct, p. 40, lines 8-10.

<sup>46</sup> Mr. Phillips discusses a number of other alternative providers and offerings at pages 41-48 of his testimony and provides Exhibits JP-20 through JP-27. However, these offerings are for residential – not business – customers. Residential service offerings are not substitutes or functional equivalents to the business services purchased by DoD/FEA in Washington. Likewise, Exhibit JP-23 is a summary of offerings by Comcast, Charter and Wave Broadband that Frontier states are residential and small business service offerings. These products are stand-alone VoIP as well as triple-play bundles of voice with high-speed Internet and video. These products are not substitutes or functional equivalents for DoD/FEA.

<sup>47</sup> Phillips Direct, p. 40, lines 10-17. See also, Frontier Petition, p. 14, ¶ 35 and Frontier Petition Exhibit 10.

1 **Q. DID DoD/FEA ATTEMPT TO GATHER AS MUCH INFORMATION AS**  
2 **POSSIBLE FROM FRONTIER ABOUT ALTERNATIVES TO THE BUSINESS**  
3 **SERVICES DoD/FEA PURCHASES?**

4 A. Yes. DoD/FEA asked Frontier in data request I.11 whether Frontier had compiled a list  
5 of alternative services for medium and/or large business customers, and if so, to provide  
6 the results. In response, Frontier provided screen shots from websites of LocalTel,  
7 Comcast, Charter, Wave, and Integra describing business services for large business  
8 customers. However, this information does not provide the necessary information to  
9 answer the What? Where? and by Whom? questions that are central to evaluating  
10 competition under RCW 80.36.320.

11 **Q. PLEASE ELABORATE.**

12 A. These website screen shots do not generally answer the Where? question because it does  
13 not indicate for Comcast and other CLECs whether the services are available in:  
14 Washington, Frontier's Washington service territory, or at DoD/FEA locations in the  
15 Frontier Washington territory.

16 This information also does not answer the What? question because Frontier does not tie  
17 the services described in the screen shots to the Frontier business services affected by  
18 Frontier's petition (despite DoD/FEA asking Frontier to do so<sup>48</sup>). And in fact, some of  
19 the services described in these screen shots – *e.g.*, dedicated internet access, webhosting,

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<sup>48</sup> DoD/FEA data request I.19(d) to Frontier.



1           etc. – are not functional equivalents/substitutes for Frontier’s business local services and  
2           are, therefore, irrelevant.

3   **Q.    DOES THE WEBSITE SCREEN SHOT INFORMATION PROVIDED BY**  
4   **FRONTIER ANSWER THE “BY WHOM?” QUESTION?**

5   A.    No. The information does not answer the By Whom? question for DoD/FEA. Although  
6           the screen shots show advertisements for large business services of a handful of CLECs,  
7           this has not translated to effective competition for the business services purchased by  
8           DoD/FEA. A good example of this is the information provided in Frontier’s response to  
9           DoD/FEA data request I.11, showing Charter and Integra screen shots advertising  
10          services to government customers, including federal government customers. The  
11          information from Charter’s website discusses “Solutions for Government” as follows:

12                   Charter Business understands that while technology is important, many  
13                   government organizations have budgetary constraints that limit what they  
14                   can implement. That’s why we’ll work with you to customize a solution  
15                   that fits both your needs and your budget...We also understand that  
16                   Homeland Security regulations can present new challenges for network  
17                   security. We’ll work with you to create a system that complies with these  
18                   new regulations and meets your security and privacy needs.

19          However, Charter’s responses to DoD/FEA discovery state that Charter has not bid on  
20          any DoD/FEA customer contracts for local services in Frontier’s Washington territory in  
21          the past 10 years and Charter does not currently provide any local exchange services to  
22          DoD/FEA in the state of Washington.

23          Integra Telecom’s website information discusses “Solutions for Federal Government” as  
24          follows:

1 Integra is committed to supporting the mission of federal agencies and  
2 departments. Our experienced Government Sales Specialists understand  
3 federal telecommunications needs and can help you do more with less.

4 \*\*\*

5 We offer a full range of telecommunications services available for  
6 purchased under the GSA IT Schedule 70 contract which includes Data  
7 Networking and Internet Services, Managed and Cloud Services, and  
8 Voice Communications. With over fifteen years of experience with  
9 government agencies, we understand your challenges and procurement  
10 processes. Our dedicated Government Sales Specialists are always ready  
11 to help you.

12 Integra Telecom's responses to DoD/FEA discovery state that **\*\*\*BEGIN HIGHLY**

13 **CONFIDENTIAL** [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED] **END HIGHLY CONFIDENTIAL\*\*\*** What this

17 information shows is that examining "effective competition" for the business services  
18 purchased by DoD/FEA requires more than just reviewing websites. It also raises serious  
19 doubts about whether the factors under RCW 80.36.320(1)(b) ("the extent to which  
20 services are available from alternative providers in the relevant market") and RCW  
21 80.36.320(1)(c) ("the ability of alternative providers to make functionally equivalent or  
22 substitute services readily available at competitive rates, terms, and conditions") have  
23 been satisfied for the business services purchased by DoD/FEA.

24 **Q. DO YOU HAVE ANY OTHER COMMENTS ABOUT MR. PHILLIPS' CLAIMS**  
25 **ABOUT THE EXTENT TO WHICH FRONTIER'S BUSINESS SERVICES FACE**  
26 **"EFFECTIVE COMPETITION"?**

1 A. Yes. Mr. Phillips states that the Integra service identified in his testimony “competes  
2 directly with Frontier’s traditionally-regulated Centrex (Versaline) and PBX services.”<sup>49</sup>  
3 However, as discussed above, Frontier is enjoying **\*\*\*BEGIN HIGHLY**  
4 **CONFIDENTIAL** [REDACTED] **END HIGHLY**  
5 **CONFIDENTIAL\*\*\*** in relation to its Centrex (Versaline) service-- which is not  
6 indicative of Frontier’s Centrex service facing effective, price-constraining competition  
7 throughout its Washington service territory.

8 **Q. DID DoD/FEA ATTEMPT TO GATHER EVEN MORE INFORMATION ABOUT**  
9 **POTENTIAL SUBSTITUTES/FUNCTIONAL EQUIVALENTS FOR**  
10 **FRONTIER’S BUSINESS SERVICES?**

11 A. Yes. DoD/FEA data request number I.19 to Frontier asked Frontier to describe “all  
12 functionally equivalent or substitute services for each business service” and “the  
13 provider(s) of those services”. Frontier responded:

14           Functionally equivalent or substitute services are available from CLECs,  
15           cable providers, VoIP providers and wireless providers for each of the end  
16           user business services offered by Frontier in Washington.

17 Frontier’s vague “response”<sup>50</sup> does not provide any more detail than what it provided in  
18 testimony, and does not provide the specificity needed to perform a meaningful analysis  
19 under RCW 80.36.320. And more importantly, as discussed below, Frontier’s “response”  
20 does not hold true when it comes to the business services purchased by DoD/FEA.

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<sup>49</sup> Phillips Direct, p. 40, lines 14-16.

<sup>50</sup> Quotation marks are used here because Frontier did not actually respond to the question asked, which was to describe the functional equivalents/substitutes for each business service and the providers of those services.

1                   **1.    MOBILE WIRELESS PROVIDERS Do Not Provide Reasonably**  
2                   **Available Alternatives for DoD/FEA**

3    **Q.    ARE MOBILE WIRELESS SERVICES FUNCTIONALLY EQUIVALENT OR**  
4           **SUBSTITUTE SERVICES FOR THE BUSINESS SERVICES PURCHASED BY**  
5           **DoD/FEA?**

6    A.    No. DoD/FEA, like most other medium to large business customers, need wireline  
7           services. For instance, the functionalities provided by ISDN-PRI services are not  
8           reasonably available from mobile wireless providers and services. And business  
9           customers oftentimes need more basic services like basic local service (*i.e.*, a POTS line  
10          and local calling) over a wireline due to business reasons (*e.g.*, the ability to transfer  
11          calls, put calls on hold, etc.)

12   **Q.    ARE YOU SAYING THAT DoD/FEA CUSTOMERS DO NOT USE MOBILE**  
13          **WIRELESS SERVICES AT ALL?**

14   A.    No. However, DoD/FEA customers do not use mobile wireless services as a substitute  
15          for or functional equivalent to Frontier's local services; rather, DoD/FEA customers use  
16          mobile wireless service as a complement. Given that DoD/FEA would not (and indeed,  
17          could not) migrate to mobile wireless services in response to an increase in price or  
18          decrease in service quality of Frontier's local exchange services, mobile wireless does not  
19          provide price-constraining effective competition for Frontier, at least with respect to  
20          DoD/FEA's business local services.

1 **Q. MR. PHILLIPS PRESENTS DATA SHOWING THAT THE ILEC SHARE OF**  
2 **WASHINGTON VOICE TELECOMMUNICATIONS CONNECTIONS IS NOW**  
3 **18% AS COMPARED TO 14% FOR NON-ILECS AND 68% FOR WIRELESS**  
4 **PROVIDERS.<sup>51</sup> WOULD YOU LIKE TO RESPOND?**

5 A. Yes. This is a good example of an erroneous, overly-broad market definition resulting in  
6 an exaggerated picture of competition (and meaningless market share statistic). Mr.  
7 Phillips sums: (a) ILEC end-user switched access lines and VoIP subscriptions, (b) non-  
8 ILEC end-user switched access lines and VoIP subscriptions, and (c) mobile telephone  
9 subscribers. The sum total of these numbers is what Mr. Phillips considers to be the total  
10 “market” from which the abovementioned market shares are calculated. Notwithstanding  
11 the fact that this market share data is not specific to Frontier in Washington, these market  
12 shares are meaningless because they are measurements about a flawed (and contrived)  
13 “market” that has no economic or policy foundation. This so-called “market” includes  
14 both business and residential customers and services, which is a flawed assumption  
15 because, for example, wireless services are not substitutes for the business services  
16 DoD/FEA or other medium and large businesses purchase. Market shares should be  
17 calculated separately for business and residential customers, and if Frontier would have  
18 actually done this, it would have likely shown that wireless makes up a very small  
19 percentage of business market share. By way of example, the public market share data  
20 provided by CenturyLink QC in New Mexico shows that wireless (in combination with

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<sup>51</sup> Phillips Direct, p. 21, Chart 2.

1 over-the-top VoIP, dial up and satellite<sup>52</sup>) made up only 2.7% of the market share for  
2 medium business customers in CenturyLink QC's New Mexico service territory,<sup>53</sup>  
3 compared to 35.7% of the market share in the residential market.<sup>54</sup>

4 **Q. YOU MENTIONED ABOVE THAT YOU RECENTLY PARTICIPATED IN AN**  
5 **“EFFECTIVE COMPETITION” CASE IN NEW MEXICO IN WHICH**  
6 **CENTURYLINK QC WAS SEEKING TO RECLASSIFY ITS RETAIL**  
7 **TELECOMMUNICATIONS SERVICES AS COMPETITIVE. DID THE ISSUE**  
8 **OF WIRELESS AS A SUBSTITUTE FOR BUSINESS SERVICES ARISE IN**  
9 **THAT CASE?**

10 **A.** Yes. The Recommended Decision in that case (issued on February 25, 2013) found as  
11 follows:

12 CenturyLink QC has not shown that mobile wireless service is  
13 functionally equivalent to, or a substitute for, *business* local exchange  
14 service...Part of a basic service for a business customer may be routing or  
15 transferring calls. Mr. Brigham [CenturyLink's witness] acknowledged  
16 that currently mobile wireless service is not cable of routing or  
17 transferring calls within a business. He further stated that “if I'm a store,  
18 you know, and I want people calling me, I'm probably going to have a  
19 wireline phone to answer the calls coming in.” Also, mid-size and large  
20 business customers purchase not only basic service, but also more  
21 advanced services like ISDN. Unlike residential customers, mid-size and  
22 large business customers generally continue to need wireline services even  
23 though they may also purchase mobile wireless services. (Brigham stating  
24 that “clearly large businesses are much more likely to need wireline  
25 service. They may have some wireless service too. But they need to have  
26 wireline generally.”). Dr. Ankum testified that no mobile wireless carriers

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<sup>52</sup> CenturyLink QC explained that the “All Other Type” category in its market share data includes: wireless, over-the-top VoIP, dial-up and satellite.

<sup>53</sup> Exhibit AHA-5.

<sup>54</sup> Exhibit AHA-5.

1 provide services pursuant to the five contracts under which the U.S. Air  
2 Force and U.S. Army purchase local telecommunications services in New  
3 Mexico. Indeed, he stated that local services typically purchased under  
4 these contracts, such as ISDN-PRI, must be provisioned over wireline  
5 networks. He explained, “Most business customers need to have landline  
6 architecture.” He further stated that, for security and functional reasons, a  
7 bid from a mobile wireless provider would not meet the specifications of  
8 the RFPs. Mr. Brigham agreed that “ISDN-PRI is a traditional business  
9 service that wireline providers offer,” and that mobile wireless service is  
10 not a substitute for ISDN-PRI. He added, “there's no question that ... the  
11 enterprise business tends to be more wireline centric”...All of  
12 CenturyLink QC's evidence of cord-cutting is in the residential market.  
13 CenturyLink QC Exh. 6, Wireless Substitution Report (reporting on  
14 ‘households’). CenturyLink QC has failed to demonstrate that mobile  
15 wireless service is functionally equivalent to, or a substitute for, its  
16 business local exchange services.<sup>55</sup>

17 In addition to the actual DoD/FEA experience in Washington, the Washington  
18 Commission should look to this recommended decision as additional guidance when  
19 evaluating whether mobile wireless serves as a functional equivalent or substitute for  
20 Frontier’s business services.

21 **Q. SETTING ASIDE FOR THE MOMENT YOUR CONTENTION THAT**  
22 **WIRELESS IS TYPICALLY NOT A SUBSTITUTE OR FUNCTIONAL**  
23 **EQUIVALENT FOR BUSINESS SERVICES, HAS FRONTIER EVEN**  
24 **SUBSTANTIATED THAT WIRELESS IS A CLOSE SUBSTITUTE OR**  
25 **FUNCTIONALLY EQUIVALENT FOR ANY WIRELINE SERVICE?**

26 A. No. Frontier simply assumes that wireless and wireline are close substitutes and  
27 functional equivalents because of the increasing popularity of wireless services and

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<sup>55</sup> New Mexico Recommended Decision, pp. 78-79, emphasis in original, footnotes omitted.

1 decreasing wireline demand. But, as the FCC has found in the past, this approach misses  
2 the point.

3 **Q. PLEASE ELABORATE.**

4 A. The FCC examined this issue in the Phoenix Forbearance case in which Qwest was  
5 seeking forbearance from dominant carrier regulation. The FCC said:

6 The fundamental question in a traditional product market definition  
7 exercise is whether mobile wireless access service constrains the price of  
8 wireline access service. These two services should be in the same relevant  
9 market only if the prospect of buyer substitution to mobile wireless access  
10 constrains the price of wireline access.<sup>56</sup>

11 When it comes to the business services purchased by DoD/FEA or similar business  
12 entities, there is little to no prospect of buyer substitution to mobile wireless service;  
13 therefore, the two should not be in the same product market (or, in other words, the two  
14 are not substitutes). However, Frontier has not demonstrated buyer substitution between  
15 wireless and any wireline service – meaning that it has not substantiated its assumption to  
16 include wireline and wireless services in the same product market.

17 **Q. FRONTIER HAS PRODUCED INFORMATION SHOWING DEMAND FOR**  
18 **WIRELINES – INCLUDING BUSINESS WIRELINES – DECREASING AT THE**  
19 **SAME TIME DEMAND FOR WIRELESS SERVICE IS INCREASING.<sup>57</sup> DOES**  
20 **THIS SUPPORT INCLUDING WIRELESS IN THE SAME PRODUCT MARKET**  
21 **AS BUSINESS SERVICES?**

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<sup>56</sup> *FCC Phoenix Forbearance Order*, ¶ 56.

<sup>57</sup> Phillips Direct, pp. 20-23.



1 A. No. Frontier has provided no evidence showing that the decrease in access lines  
2 (business or otherwise) is attributable to the explosion in popularity of mobile wireless  
3 services. The FCC in the Phoenix Forbearance order was not persuaded by a similar  
4 showing made by Qwest:

5           neither Qwest nor any other commenter has submitted evidence that would  
6           support a conclusion that mobile wireless service constrains the price of  
7           wireline service. For example, Qwest has produced no econometric  
8           analyses that estimate the cross-elasticity of demand between mobile  
9           wireless and wireline access services. Nor has it produced any evidence  
10          that it has reduced prices for its wireline services or otherwise adjusted its  
11          marketing for wireline service in response to changes in the price of  
12          mobile wireless service. Nor has it produced any marketing studies that  
13          show the extent to which consumers view wireless and wireline access  
14          services as close substitutes.<sup>58</sup>

15          Like Qwest before it, Frontier has not produced in this case any econometric analyses  
16          that estimate cross-elasticity of demand, or any evidence that it has reduced prices for its  
17          wireline services or otherwise adjusted its marketing for wireline service in response to  
18          mobile wireless service, or any marketing studies that show the extent to which  
19          consumers view wireless and wireline as close substitutes. Frontier certainly has not  
20          provided any of this information related to its business services.

21 **Q. FRONTIER PROVIDED DATA SHOWING THAT 34% OF AMERICAN**  
22 **HOMES HAVE “CUT THE CORD” ENTIRELY AND THAT OTHER HOMES**  
23 **WHO STILL HAVE WIRELINE SERVICE MAKE MOST CALLS ON A**

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<sup>58</sup> *FCC Phoenix Forbearance Order*, ¶ 58.

1           **WIRELESS DEVICE.<sup>59</sup> DOES THIS SHOW THAT WIRELESS SERVICES ARE**  
2           **CLOSE SUBSTITUTES FOR FRONTIER’S BUSINESS LOCAL SERVICES?**

3    A.    No. The key word is “homes” (often referred to as “households”). This refers to  
4           residential customers. There have been a number of studies like the one Mr. Phillips cites  
5           to in his direct testimony<sup>60</sup> about the number of households that have “cut the cord”.  
6           While arguments can be made about the extent to which these studies speak to the  
7           substitutability of wireless and wireless services for residential customers living in  
8           households, it says nothing about whether wireless is a substitute for business local  
9           exchange services (because business customers are not represented in the “household”  
10          data contained in the studies). By not clearly distinguishing between residential and  
11          business product markets, Frontier’s analysis glosses over this critical point.

12          Furthermore, the FCC has found that: “Knowing the percentage of households that rely  
13          exclusively upon mobile wireless is insufficient to determine whether mobile wireless  
14          services have a price-constraining effect on wireline access services.”<sup>61</sup> The FCC also  
15          stated that “Qwest’s observation that the number of wireless access lines exceeds the  
16          number of wireline access lines is not probative of the issue of the substitutability  
17          between wireline and wireless services for residential households.”<sup>62</sup> Again, the focus  
18          was on “residential households” and did not pertain to business customers. The United

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<sup>59</sup> Frontier Petition, p. 12, ¶ 28. See also, Phillips Direct, pp. 33-34.

<sup>60</sup> Phillips Direct, p. 33, footnote 14.

<sup>61</sup> *FCC Phoenix Forbearance Order*, ¶ 59.

<sup>62</sup> *FCC Phoenix Forbearance Order*, footnote 173.

1 States Court of Appeals for the Tenth Circuit, which recently affirmed the *FCC Phoenix*  
2 *Forbearance Order*, explained the FCC’s finding about wireless substitution as follows:

3 Further, the product-market analysis required more than a facile reliance  
4 on cut-the-cord percentages. Rather, under the market-power rubric, the  
5 relevant question was the degree to which the cut-the-cord phenomenon  
6 materially constrained the prices that a wireline carrier like Qwest could  
7 charge its existing customers. That in turn required an inquiry, not simply  
8 into the number of wireless-only customers, but into the cross-elasticity of  
9 demand between wireline and wireless services – that is, roughly  
10 speaking, the likelihood that customers can and will switch between the  
11 two forms of service in response to price changes. As to that inquiry, the  
12 Commission found that Qwest had offered no evidence.<sup>63</sup>

13 Since Frontier has provided nothing more in this proceeding than what Qwest provided to  
14 the FCC in the Phoenix Forbearance proceeding, there is no reason for the Washington  
15 Commission to deviate from the FCC’s prior conclusions (particularly with respect to  
16 business local services). DoD/FEA’s actual experience confirms this as well.

17 **Q. COULD OTHER FACTORS EXPLAIN THE “CUTTING THE CORD”**  
18 **PHENOMENON BESIDES WIRELESS BEING A PRICE-CONSTRAINING**  
19 **SUBSTITUTE FOR WIRELINE SERVICES?**

20 A. Yes. The FCC discussed some of these other factors in the *Phoenix Forbearance Order*.  
21 For instance, the FCC said:

22 Moreover, while we acknowledge that the number of customers that rely  
23 solely on mobile wireless service has been growing steadily, we find that  
24 other reasons may explain the growth in the number of wireless-only  
25 customers, besides an increasing cross-elasticity of demand between  
26 mobile wireless and wireline services. For example, nationwide statistics  
27 published by the CDC suggest that the choice to rely exclusively upon  
28 mobile wireless services could be driven more by differences in

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<sup>63</sup> *Qwest Corp. v FCC*, United States Court of Appeals Tenth Circuit, No. 10-9543, August 6, 2012, pp. 35-36.

1 consumers' age, household structure, and underlying preferences than by  
2 relative price differentials.<sup>64</sup>

3 Just as the FCC found that demographics such as consumers' age are important when  
4 examining the "cutting the cord" phenomenon, differences in customer classes are also  
5 important, and likely more so. While age differences of residential consumers impact the  
6 extent to which residential consumers are willing to rely exclusively on wireless service,  
7 customer class distinctions – like those that distinguish business customers from  
8 residential customers – impact whether a consumer is able to rely exclusively on wireless  
9 service. The FCC recognized this fact by acknowledging that there are certain customer  
10 classes that are unlikely to "cut the cord" in response to a significant price increase for  
11 wireline services, or which view wireless and wireline as complements instead of  
12 substitutes.<sup>65</sup> For these customer classes, which include business customers like  
13 DoD/FEA, wireless does not serve as a substitute for Frontier's wireline services.

14 **Q. ARE THERE OTHER PROBLEMS WITH FRONTIER'S ASSUMPTION THAT**  
15 **MOBILE WIRELESS SERVICES SERVE AS EFFECTIVE COMPETITION FOR**  
16 **FRONTIER'S WIRELINE BUSINESS SERVICES?**

17 A. Yes. Frontier does not identify the specific business services that would be price-  
18 constrained by mobile wireless services. There can be no question that mobile wireless  
19 services are not a substitute for all of the services that would be reclassified if Frontier's  
20 Petition is approved. For example, the following services are currently found in

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<sup>64</sup> *FCC Phoenix Forbearance Order*, ¶ 59.

<sup>65</sup> *FCC Phoenix Forbearance Order*, ¶ 59.

1 Frontier's Washington local exchange tariff, and would therefore, be reclassified as  
2 competitive and detariffed if Frontier's Petition is approved: E911 service, ISDN-PRI,  
3 Digital Data Service, Foreign Exchange Service, Telecommunications Service Priority  
4 System, etc. The proliferation of mobile wireless services would not constrain the prices  
5 for these services because mobile wireless is not functionally equivalent to or a substitute  
6 for these other services.

7 **Q. IS MOBILE WIRELESS SERVICE FUNCTIONALLY EQUIVALENT TO OR A**  
8 **SUBSTITUTE FOR THE BUSINESS SERVICES PURCHASED BY DoD/FEA**  
9 **CUSTOMERS FROM FRONTIER?**

10 A. No. None of the contracts under which the Navy and Air Force are served local voice  
11 services in Washington are served by mobile wireless providers, and to my knowledge,  
12 wireless service providers have never bid on those contracts. Indeed, mobile wireless  
13 services do not provide reasonable substitutes for the local services typically purchased  
14 under these contracts, which must be provisioned over wireline networks. The same is  
15 true for the local services obtained under Frontier's tariffs by the GSA.

16 **2. CABLE PROVIDERS Do Not Provide Reasonably Available**  
17 **Alternatives for DoD/FEA**

18 **Q. FRONTIER IDENTIFIES SEVERAL CABLE TELEPHONY PROVIDERS THAT**  
19 **IT CLAIMS PROVIDES DIRECT SUBSTITUTES FOR FRONTIER'S LOCAL**  
20 **SERVICES.<sup>66</sup> PLEASE RESPOND.**

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<sup>66</sup> Phillips Direct, p. 25, line 19 – p. 26, line 5.

1 A. The extent to which cable telephony providers present a price-constraining substitute to  
2 Frontier's local services depends on the services, locations and customer classes at issue.  
3 The problem is that Frontier does not identify the particular Frontier services for which  
4 cable providers provide substitutes, nor does Frontier demonstrate whether or to what  
5 extent the cable providers' presence disciplines the prices for Frontier's local services.

6 **Q. ARE CABLE TELEPHONY PROVIDERS A REASONABLY AVAILABLE**  
7 **SUBSTITUTE FOR DoD/FEA CUSTOMERS?**

8 A. No. None of the contracts under which the Navy and Air Force are served local voice  
9 services in Washington are served by cable telephony providers, and to my knowledge,  
10 cable telephony providers have never bid on those contracts. The same is true for the  
11 local services obtained under Frontier's tariffs by the GSA.

12 **3. COMPETITIVE LOCAL EXCHANGE CARRIERS Do Not Provide**  
13 **Reasonably Available Alternatives for DoD/FEA**

14 **Q. FRONTIER REFERENCES 181 REGISTERED CLECS IN WASHINGTON AND**  
15 **101 CLECS HAVING ICAS WITH FRONTIER.<sup>67</sup> DOESN'T THE SHEER**  
16 **NUMBER OF COMPETITORS STRONGLY SUPPORT A FINDING OF**  
17 **"EFFECTIVE COMPETITION"?**

18 A. No. CLECs typically rely on Frontier's wholesale services and network – such as  
19 unbundled loops, local service platforms, collocation and special access – in order to

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<sup>67</sup> Phillips Direct, p. 25, lines 7-13.

1 provide their own retail services.<sup>68</sup> The importance of Frontier’s wholesale services to  
2 CLECs is evidenced by the significant CLEC interest in this case related to wholesale  
3 services. The CLECs’ reliance on Frontier’s wholesale services and network is a key  
4 point because Frontier can leverage its control over the wholesale inputs in order to wield  
5 significant influence in the retail market – or, in other words, exert market power.

6 **Q. HAS THE FCC PREVIOUSLY RECOGNIZED THE IMPORTANCE OF ILEC**  
7 **WHOLESALE SERVICES TO THE SUCCESS OF RETAIL COMPETITION?**

8 A. Yes. In the Phoenix Forbearance order, after finding that CLECs rely on Qwest’s  
9 wholesale services to provide their own services, found as follows:

10 ...the Commission has long recognized that a vertically integrated firm  
11 with market power in one market – here upstream wholesale markets  
12 where, as discussed below, Qwest remains dominant – may have the  
13 incentive and ability to discriminate against rivals in downstream retail  
14 markets or raise rivals’ costs.<sup>69</sup>

15 There can be no question that CLECs rely heavily on Frontier’s network for providing  
16 their own retail services.<sup>70</sup> This brings into question the ability of CLECs to provide the  
17 type of price-constraining competition to Frontier that would warrant transforming  
18 Frontier into a CLEC.

19 **Q. DO CLECS PROVIDE REASONABLY AVAILABLE SUBSTITUTES FOR THE**  
20 **LOCAL SERVICES PURCHASED BY DoD/FEA?**

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<sup>68</sup> See, e.g., Frontier Petition, p. 13, ¶ 31 and p. 14, ¶ 34. See also, Phillips Direct, p. 35, lines 8-11. See also, Frontier’s response to DoD/FEA-FTR I.15 and associated attachment WA DoDSet1FTR15\_Special Access Circuits (redacted); Frontier’s response to DoD/FEA-FTR I.17 and associated attachment WA DoDSet1FTR17\_Collocations (redacted).

<sup>69</sup> *FCC Phoenix Forbearance Order*, ¶ 34

<sup>70</sup> See, e.g., Frontier response to Staff Data Request 37, WASTaffSet1 FTR37\_CLECLines.

1 A. No. None of the contracts under which the Navy and Air Force are served local voice  
2 services in Washington are served by CLECs, and to my knowledge, CLECs have never  
3 bid on those contracts. With one exception discussed above, the same is true for the local  
4 services obtained by GSA.

5 **4. VoIP PROVIDERS Do Not Provide Reasonably Available**  
6 **Alternatives for DoD/FEA**

7 **Q. ARE OVER-THE-TOP VOIP SERVICES A PRICE-CONSTRAINING**  
8 **SUBSTITUTE FOR THE LOCAL BUSINESS SERVICES PURCHASED BY**  
9 **DoD/FEA?**

10 A. No. None of the contracts under which the Navy and Air Force are served local voice  
11 services in Washington are served by VoIP providers, and to my knowledge, VoIP  
12 providers have never bid on those contracts. The same is true for the local services  
13 obtained under Frontier's tariffs by the GSA.

14 Furthermore, over-the-top VoIP is not well-suited to provide the types of business  
15 services purchased by DoD/FEA. First, a customer must have a broadband connection in  
16 order to receive over-the-top VoIP service because, as the label "over-the-top" indicates,  
17 the VoIP voice service is provided *over-the-top* of the broadband service. And unlike  
18 managed VoIP services provided by companies like Comcast and Charter, the over-the-  
19 top VoIP services provided by Vonage and Skype provide a lower level of service quality  
20 and network security because those services ride over the public Internet. While this may  
21 be acceptable to a residential customer who uses the service to keep in touch with



1 relatives, it is not acceptable for a business customer like DoD/FEA who uses local voice  
2 services for official business critical for military readiness and national security.

3 **VI. CONCLUSION: THERE IS NOT “EFFECTIVE COMPETITION” FOR THE**  
4 **BUSINESS SERVICES PURCHASED BY DoD/FEA FROM FRONTIER;**  
5 **DoD/FEA IS A CAPTIVE CUSTOMER**

6 **Q. YOU DESCRIBED IN SECTION III THAT RCW 80.36.320 REQUIRES THE**  
7 **COMMISSION TO CONSIDER AT A MINIMUM FOUR FACTORS WHEN**  
8 **EXAMINING WHETHER THERE IS “EFFECTIVE COMPETITION” FOR**  
9 **FRONTIER. PLEASE RESTATE THOSE FACTORS AND EXPLAIN HOW**  
10 **THEY APPLY TO THE BUSINESS SERVICES PURCHASED BY DoD/FEA.**

11 A. The first factor is: the number and sizes of alternative providers of service. This factor  
12 does not apply to DoD/FEA because there are virtually no alternative providers for the  
13 business services DoD/FEA purchases. As explained above, with one minor exception,  
14 DoD/FEA customers rely exclusively on Frontier’s business services, whether those  
15 services are purchased out of contracts or out of tariffs.

16 The second factor is the extent to which services are available from alternative providers  
17 in the relevant market. As far as DoD/FEA is concerned, services are not available from  
18 alternative providers in the relevant market. Again, DoD/FEA customers rely almost  
19 exclusively on Frontier’s business services, and alternative providers do not typically  
20 express interest in providing local services to DoD/FEA customers in Frontier’s  
21 Washington territory. DoD/FEA customers typically receive only a single offer from  
22 Frontier in Washington for local services, despite having an established “competitive

1 bidding process” in place. If alternative providers are not bidding on DoD/FEA’s local  
2 services contracts, then they are not making services available to DoD/FEA.<sup>71</sup>

3 The third factor is the ability of alternative providers to make functionally equivalent or  
4 substitute services readily available at competitive rates, terms, and conditions. Since  
5 Frontier’s analysis is devoid of information comparing its business services to products of  
6 alternative providers, there is no way to tell the extent to which alternative products are  
7 provided at competitive rates, terms and conditions. As explained above, however,  
8 products provided by wireless service providers and VoIP providers are not functionally  
9 equivalent to or substitutes for the DoD/FEA’s business services. So, they must be ruled  
10 out in the analysis of the third factor as it relates to DoD/FEA. The remaining alternative  
11 providers identified by Frontier – CLECs and cable telephony providers – are not making  
12 local services readily available to DoD/FEA customers.

13 The fourth factor is other indicators of market power which may include market share,  
14 growth in market share, ease of entry, and the affiliation of providers of services. I  
15 discussed above several problems with the market share data produced by Frontier;  
16 primary among them is the fact that Frontier produced no market share data specific to  
17 Frontier’s service area in Washington. In other words, there is no data on the record  
18 showing Frontier’s or its competitors’ actual market shares in Washington. I also

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<sup>71</sup> This same issue was addressed in the recent New Mexico “effective competition” case. In that case, CenturyLink QC’s witness acknowledged that: “Well, certainly, if they [alternative providers] didn’t bid, they would not have been available.” New Mexico Case No. 11-00340-UT, Hearing Transcript, p .267, lines 8-12 (Robert Brigham). CenturyLink QC’s witness also acknowledged that if only one service provider bids on a DoD/FEA local services contract, then DOD/FEA is limited to the local services of that single provider. New Mexico Case No. 11-00340-UT, Hearing Transcript, p. 273, line 19 – p. 274, line 5 (Robert Brigham).

1 explained that Frontier produced no information showing that its market power is actually  
2 constrained by competition – no price-to-cost comparisons, no demand elasticity studies,  
3 no data showing that Frontier has adjusted prices in response to competition, and no  
4 marketing studies showing Frontier competitive responses. The fact that Frontier has lost  
5 lines during a time when there has been an explosion in the popularity of wireless  
6 services does not prove that Frontier’s market power is constrained – and this is  
7 particularly true for Frontier’s business services purchased by DoD/FEA for which  
8 wireless services are not substitutes or functional equivalents.

9 **Q. ARE DoD/FEA CUSTOMERS CAPTIVE CUSTOMERS OF FRONTIER?**

10 A. Yes. A captive customer base consists of ratepayers who have no choice of service  
11 providers.<sup>72</sup> DoD/FEA customers in Washington – U.S. Navy, U.S. Air Force, U.S.  
12 Customs and Border Protection, U.S. Immigration and Customs Enforcement, and U.S.  
13 Citizenship and Immigration Services – have no choice of service providers because  
14 alternative providers are not making alternative services available. DoD/FEA customers  
15 who purchase local services from contracts typically receive a single bid for those  
16 contracts from Frontier. Since alternative providers do not bid on these contracts, these  
17 DoD/FEA customers have no choice of alternative providers. Likewise, DoD/FEA  
18 customers who purchase out of tariffs have no choice of service providers because  
19 alternative providers are not competing with Frontier for those services and, unlike

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<sup>72</sup> See, e.g., *US West Communications, Inc. v The Utilities and Transportation Commission* (6/16/97), 1997 Wash. App. LEXIS 944, \*\*\*12.

1 Frontier, do not have tariffs on file from which DoD/FEA customers could purchase  
2 generally available alternative products.

3 **Q. IS THERE “EFFECTIVE COMPETITION” FOR THE BUSINESS SERVICES**  
4 **PURCHASED BY DoD/FEA?**

5 A. No. “Effective competition”, according to RCW 80.36.320, means that the Company's  
6 customers have reasonably available alternatives and that the Company does not have a  
7 significant captive customer base. As far as DoD/FEA customers are concerned, they do  
8 not have reasonably available alternatives and they are a significant captive customer  
9 base.

10 **Q. IS THERE A RISK THAT THE STATE LEGISLATURE’S PUBLIC POLICY**  
11 **GOALS WOULD BE UNDERMINED IF FRONTIER’S PETITION IS**  
12 **APPROVED?**

13 A. Yes. One of the Legislature’s policy declarations is to “[m]aintain and advance the  
14 efficiency and availability of telecommunications service”. As discussed above, in the  
15 absence of tariffs or enforceable commitments to continue to offer its local services to all  
16 comers, DoD/FEA and other business customers could conceivably be faced with a  
17 situation where the wireline business services it needs are not available. Another policy  
18 declaration is to “[e]nsure that customers pay only reasonable charges for  
19 telecommunications service”. However, in the absence of price-constraining alternatives  
20 (and given Frontier’s plan to detariff), the potential exists that the prices for business  
21 services purchased by DoD/FEA may not remain reasonable in the future.

1 **Q. WHAT IS YOUR RECOMMENDATION ON FRONTIER'S PETITION?**

2 A. I recommend that the Commission reject Frontier's Petition. While I would normally  
3 recommend rejecting the Petition only as it pertains to the business serviced purchased by  
4 DoD/FEA, Frontier has chosen an "all-or-nothing" approach wherein all of its services  
5 would be reclassified as competitive and detariffed if its Petition is granted, or none of its  
6 services would be reclassified as competitive or detariffed if its Petition is denied. Since  
7 Frontier has not met its burden of proof (at least not with respect to the business services  
8 purchased by DoD/FEA and other similar business customers), Frontier's Petition should  
9 be denied. If there is a procedural vehicle under RCW 80.36.320 to reclassify some of  
10 Frontier's services but not others, then the Commission should ensure that the Petition is  
11 denied at least with respect to DoD/FEA's (and other similar business customers')  
12 business services.

13 **Q. IF THE COMMISSION IS INCLINED TO APPROVE FRONTIER'S PETITION,**  
14 **SHOULD IT REQUIRE PROTECTIONS FOR DoD/FEA AND SIMILAR**  
15 **BUSINESS CUSTOMERS?**

16 A. Yes. The Commission should ensure that if Frontier's Petition is approved based on the  
17 record evidence compiled in this case – which shows a lack of reasonably available  
18 alternatives for DoD/FEA – the Commission should make such approval conditional on  
19 consumer protections afforded to DoD/FEA and similar business customers. These  
20 protections should be similar to the rate protection, tariff availability, and service quality  
21 commitments that CenturyLink QC made to DoD/FEA in the recent Arizona "effective

1 competition” case. See, Exhibit AHA-4. This would be a reasonable compromise from  
2 DoD/FEA’s perspective by providing regulatory flexibility to Frontier while, at the same  
3 time, providing protections for DoD/FEA and similar business customers from a lack of  
4 competition for its local business services and upholding the Legislature’s public policy  
5 objectives.

6 **Q. DOES THIS CONCLUDE YOUR RESPONSE TESTIMONY?**

7 A. Yes.