

Exhibit No. ___ T (JYR-1T)
Docket UT-121994
Witness: Jing Y. Roth

**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 80.36.320**

DOCKET NO. UT-121994

TESTIMONY OF

JING Y. ROTH

**STAFF OF
WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION**

Effective Competition for Retail Business Exchange Services

April 25, 2013

EXHIBITS

- Exhibit No. ____ (JYR-2) Qualifications
- Exhibit No. ____ (JYR-3) List of ICAs, Staff Data Request Nos. 17 and 126 to Frontier Communications and Frontier's Responses
- Exhibit No. ____ (JYR-4C) Staff Data Request No. 12 to Frontier Communications and Frontier's Response
- Exhibit No. ____ (JYR-5) Staff Data Request No. 11 to Frontier Communications and Frontier's Response
- Exhibit No. ____ (JYR-6HC) Staff Data Request Nos. 124 and 146 to Frontier Communications and Frontier's Response
- Exhibit No. ____ (JYR-7HC) Responses and Attachments of CLECs to Staff Data Request No. 2; Integra's Response to Staff Data Request No. 1 and Attachment

1 **Q. Please state your name and business address.**

2 A. My name is Jing Y. Roth. My business address is 1300 South Evergreen Park Drive
3 Southwest, Olympia, Washington 98504-7250. My business e-mail address is
4 jroth@utc.wa.gov.

5
6 **Q. By whom are you employed and in what capacity?**

7 A. I am employed by the Washington Utilities and Transportation Commission
8 (Commission) as an industry expert. My focus is on the telecommunications
9 industry. My participation in this case is on behalf of the Commission's Staff
10 (Staff).

11

12 **Q. Have you prepared a statement of your qualifications?**

13 A. Yes. A summary of my education and experience is provided as Exhibit No. ____
14 (JYR-2).

15

16 **Q. What is the purpose of your testimony in this case?**

17 A. Staff's fundamental position, presented by Staff policy witness William Weinman, is
18 that Frontier Communications Northwest, Inc. (Frontier) has not presented sufficient
19 evidence to carry its burden pursuant to RCW 80.36.320 to show that its retail
20 services face effective competition. Staff recognizes, however, that the Commission
21 could competitively classify certain retail services of Frontier under RCW 80.36.330.
22 Therefore, I review the limited evidence presented by Frontier and make specific

1 recommendation(s) regarding competitive classification of Frontier's network
2 business service under RCW 80.36.330.

3 My recommendation focuses specifically on the local retail business services
4 that Frontier currently provides. Frontier offers these services in its Tariff WN U-17,
5 General and Local Exchange Tariff.

6 My conclusions are based on careful analysis of whether each business
7 service Frontier offers is subject to effective competition as demonstrated by the
8 evidence. My analysis shows that Frontier's network business exchange services are
9 subject to effective competition, with one *important exception*. The evidence
10 Frontier presents does not support competitive classification for the service that the
11 Company identifies in its tariff as "one party stand-alone business line." Based on
12 the available evidence, it is clear that small business customers do not have readily
13 available alternatives for the stand-alone business line that Frontier currently offers
14 at a flat rate of \$33.60 per month.

15
16 **Q. Please explain your understanding of the steps involved in competitively**
17 **classifying a service.**

18 A. A request for competitive classification of services must be reviewed specifically in
19 light of the competitive classification standards set forth in RCW 80.36.330.

20 RCW 80.36.330 authorizes the Commission to "classify a
21 telecommunications service provided by a telecommunications company as a
22 competitive telecommunications service" if it finds that the service is "subject to

1 effective competition.”¹ The statute defines “effective competition” to mean “that
2 customers of the service have reasonably available alternatives and that the service is
3 not provided to a significant captive customer base.” RCW 80.36.330(1) enumerates
4 four factors that the Commission “shall consider” in determining whether it will
5 classify a telecommunications service as “competitive:”

- 6 (a) The number and size of alternative providers of services;
- 7
- 8 (b) The extent to which services are available from alternative providers
9 in the relevant market;
- 10
- 11 (c) The ability of alternative providers to make functionally equivalent or
12 substitute services readily available at competitive rates, terms and
13 conditions; and
- 14
- 15 (d) Other indicators of market power, which may include market share,
16 growth in market share, ease of entry and the affiliation of providers
17 of services.
- 18

19 My role is straightforward in this case: to evaluate the evidence, look for
20 effective competition, and to make an appropriate recommendation based on the
21 presence or absence of effective competition. If, and only if, there is effective
22 competition can I recommend that the Commission grant pricing flexibility under
23 RCW 80.36.330 or RCW 80.36.320.

24

25 **Q. Is the analysis you have undertaken pursuant to RCW 80.36.330 any different**
26 **from an analysis under RCW 80.36.320?**

27 A. No. The standard, whether the services are subject to effective competition, the
28 definition of effective competition, and the factors the Commission must consider
29 are very similar between the two statutory provisions.

¹ See also WAC 480-121-061.

1 **Q. What network exchange services for retail business customers does Frontier**
2 **seek to have competitively classified?**

3 A. In its Petition to be Regulated as a Competitive Telecommunications Company
4 Pursuant to RCW 80.36.320 (Petition), Frontier asks the Commission to “classify the
5 company and its telecommunications services as a competitive telecommunications
6 company pursuant to RCW 80.36.320 and WAC 480-121-061.”² The geographic
7 area for which Frontier requests competitive classification includes all of its service
8 areas (102 wire centers) in the state of Washington. In other words, Frontier requests
9 that all of its network access services for all customers be classified as competitive
10 services. My focus is specifically limited to network exchange business services,
11 such as PBX, DID, and Public Access lines, including one-party business service,
12 which is offered on a month-to-month basis and for term commitments³.

13
14 **Q. In general, do Frontier’s retail business customers have reasonable**
15 **alternatives?**

16 A. Frontier’s large business customers have reasonable alternatives. Its small business
17 customers, those requiring three or fewer lines, do not. Frontier presented evidence
18 of alternative service providers in four categories: Competitive Local Exchange
19 Carriers (CLECs), cable companies, wireless carriers, and Voice over Internet
20 Protocol (VoIP) providers. These competitors, according to Frontier, offer a variety
21 of services that are “equivalent or substitute services that are comparable to

² Petition at p. 1.

³ Network Access Services for Business are listed in Frontier’s Washington Tariff WN U-17, Section 4.

1 Frontier's service offerings on the basis of product design, price and availability.⁴
2 Frontier's competitors can, and do, buy unbundled network elements (UNEs) from
3 Frontier by entering interconnection agreements (ICAs). Staff's analysis shows that
4 the majority of Frontier's business customers do indeed have alternatives for
5 business services such as packaged services, VoIP service, and high speed services.
6 Exhibit No. ____ (JYR-3) is an analysis by Staff based on Frontier's responses to
7 Staff Data Request Nos. 17 and 126, and Frontier's response regarding the ICAs
8 identified by Frontier in its Petition⁵ and in Exhibit 1 to the Petition. Staff's exhibit
9 shows that there are 50 alternative providers that have existing interconnection
10 agreements with Frontier⁶ and provide similar services or functionally equivalent
11 substitutes for these services.

12
13 **Q. Do you believe that Frontier faces effective competition for business exchange**
14 **services in the segment of the market that serves the needs of large business**
15 **customers?**

16 A. Yes. In addition to the ICAs discussed above, Frontier's responses to Staff Data
17 Request Nos. 11 and 12, attached to my testimony as Exhibit No. ____ (JYR-4C) and
18 Exhibit No. ____ (JYR-5), show that Frontier has entered multiple contracts for
19 Centrex, ISDN PRI, Ethernet, and other high capacity services such as DS1, that are

⁴ Petition at p. 3, ¶ 8.

⁵ Petition at p. 7, ¶ 16.

⁶ In Frontier's Petition, Frontier provided Exhibit 1, which is a list of the 101 CLECs. Staff issued Data Requests Nos. 17 and 126 asking for additional information regarding the ICAs. Frontier's response included the attachment "WA StaffSet1 FTR17 ICAs." Staff's analysis shows there are 50 providers that have existing interconnection agreements with Frontier. One company was listed twice, and 21 companies have ceased doing business in Washington, which leaves 79 viable ICAs. Of the 79 viable ICAs, 29 ICAs are with CLECs that have indicated on their annual report for 2011 that they do not provide local service.

1 tariffed today.⁷ Furthermore, there is evidence that Frontier has offered various
2 promotions for its bundled services in response to competition. The proactive use of
3 existing pricing flexibility tools such as Individual Base Contracts (ICBs) and
4 promotional offerings suggests that Frontier is facing effective competition in these
5 product markets.

6
7 **Q. What are the relevant product markets for retail local business customers in**
8 **Frontier's service territory?**

9 A. Defining relevant product markets is a critical step in analyzing whether effective
10 competition exists for local business exchange services. Because large business
11 customers require more, and different, telecommunications services (e.g., significant
12 numbers of lines, high capacity services, and packaged service with multiple
13 features) than do small business customers (i.e., those who subscribe to fewer basic
14 stand-alone business lines), it makes sense to define separate product markets for
15 business exchange service provided to these different types of customers.

⁷ Definitions:

- Centrex Service is a digital central office based switching system that provides premium, versatile and advanced communication features and service to multi-line business customers. It includes various features and the ability to establish groups of lines with common and/or unique characteristics. (Source: Frontier Tariff WN U-17, Section 18)
- ISDN (Integrated Services Digital Network Primary Rate Interface) – for a circuit-switched digital network that supports access to any type of service (voice, data and video) over a single integrated local loop from the customer premises to the network edge.
- Ethernet is a Local Area Network (LAN) standard used for connecting computers, printers, workstations, terminals, servers, etc., within the same building or campus operating over twisted wire and over coaxial cable at speeds beginning at 10 Mbps.
- High Capacity Service – generally refers to tariffed, digital data transmission service equal to, or in excess of T-1 data rates (1.544 Mbits). (Source: Newton's Telecom Dictionary)

1 **Q. Based on the Petition and the evidence presented so far, do you find effective**
2 **competition for all of Frontier’s retail business services?**

3 A. No. Although Frontier presents sufficient evidence to support its request for
4 competitive classification for business services that are attractive to its large
5 customers, there is no effective competition in the market for stand-alone local
6 business line service. There is intense competition in providing business service to a
7 group of large business customers, but competition is entirely nonexistent with
8 respect to a certain group of small business customers who subscribe to stand-alone
9 business line service. Small business customers have no alternatives at competitive
10 rates, terms, and conditions. This point is demonstrated by the same exhibits that I
11 discuss above in support of Frontier’s claim that the Company faces effective
12 competition for the majority of its business services. Nowhere in these exhibits is
13 Staff able to find any alternative providers for stand-alone business line service.
14 Furthermore, Frontier has not offered promotional offerings for its stand-alone
15 business line, which suggests that there is a lack of competitive pressure.

16
17 **Q. Do you believe that Frontier’s customers subscribing to stand-alone business**
18 **line service “have reasonably available alternatives” and that “the service is not**
19 **provided to a significant captive customer base?”⁸**

20 A. No. Based on the evidence provided by Frontier, Staff is firmly convinced that
21 Frontier’s small business customers who subscribe to stand-alone business line
22 service do not have reasonable alternatives and that they are captive customers of

⁸ RCW 80.36.320.

1 Frontier. Staff's Exhibit No. ___ (JYR-6HC) shows that *only* Frontier has stand-
2 alone business line subscribers in *all* of its wire centers. This exhibit is a
3 compilation of Frontier's responses to Staff Data Request Nos. 124 and 146. In Staff
4 Data Request No. 124, Staff asks that Frontier "provide a list showing the number of
5 small business customers (defined as three lines or fewer) by wire center in
6 Frontier's service territory." In Data Request No. 146, Staff asks Frontier to
7 "provide a list showing the total number of small business customers (defined as
8 three lines or fewer), *including those served by competitive providers* as well as
9 those served by Frontier, for each wire center in Frontier's service territory." It is
10 striking that Frontier's response⁹ to both data requests is the same.

11
12 **Q. Please explain why you find this significant.**

13 A. Frontier's responses to Staff's data requests show that Frontier is the *only* provider of
14 these services in all of its wire centers. Frontier identifies no competitors that
15 provide stand-alone business line service to small business customers in any wire
16 center served by Frontier. Staff finds no evidence that the companies Frontier
17 identifies as its competitors offer stand-alone business line service. To grant
18 competitive classification, the Commission must consider whether Frontier's
19 customers have any alternative available from other providers in the relevant market
20 for a product such as the stand-alone business line. The fact is that Frontier's small
21 business customers have none.

22

⁹ Frontier's response to Staff Data Request No. 146 states, "See response to Staff Data Request No. 124."

1 **Q. Is there any other factor you considered in reaching the conclusion that**
2 **Frontier is not facing effective competition in the small business segment of the**
3 **market for stand-alone business service?**

4 A. Yes. This conclusion is also based on the fact that Frontier has not reduced its stand-
5 alone business service monthly rate of \$33.60, which was approved by the
6 Commission nearly a decade ago.¹⁰ It is hard to imagine that a firm facing effective
7 competition would not respond by lowering its prices. This is not the behavior of a
8 company that is facing effective competition. It is also important to note that
9 Frontier's evidence showing significant loss of *business lines* does not necessarily
10 demonstrate an equally significant loss of *business customers*. CLEC competitors
11 may have captured significant market share in terms of *business lines* statewide but
12 without providing stand-alone business lines to any *small business customers*. The
13 information contained in Exhibit No. ____ (JYR-7HC) is generated from data request
14 responses from five CLECs who intervened in this case. These CLECs are gaining
15 market share by purchasing UNEs and resale and presenting Frontier's large business
16 customers with competitive alternatives such as corporate network and data services.
17 These CLECs simply do not offer services that attract Frontier's stand-alone business
18 line customers.¹¹

19

¹⁰ *Washington Utilities and Transportation Commission v. Verizon Northwest, Inc.*, Docket UT-040788, Order No. 15 (April 12, 2005).

¹¹ Based on the responses from the five CLECs to Staff Data Request No. 2, Staff finds that three of the CLECs do not offer stand-alone basic business line services. Even though one of the three CLECs, Level 3, answered "yes," it only offers DID service (Staff's exhibit contains a printout from the link provided in Level 3's response to Staff Data Request No. 2). The other two CLECs offer stand-alone local telephone services, but one of them (tw) offers the service only in Qwest service territory, and the other (Integra) does not offer the basic stand-alone business line on a monthly basis; rather, it is only available through one, two, or three-year term commitments.

1 **Q. If Frontier, in fact, did face some level of competition in the stand-alone**
2 **business line market are there steps you would expect the Company to take in**
3 **response to such competition?**

4 A. Yes. Lowering prices is one response to competition for tariffed services. Frontier
5 can file a price decrease to take effect on 10-days' notice if the Company promises
6 not to seek an offsetting price increase from another customer. Frontier has not
7 lowered prices.

8
9 **Q. Are there other steps Frontier could take to address competition?**

10 A. Yes. Frontier has several additional tools at its disposal to meet competition from
11 other providers of local exchange services. Frontier can:

- 12 • File banded rate tariffs. A banded rate has a ceiling and floor, and price
13 changes within that range can be made on 10-days' notice without the
14 Commission's approval.
- 15
- 16 • Offer promotions such as waiver of initial charges for a service change or a
17 period of free service. These promotions can take effect on one day's notice.
- 18
- 19 • Offer win-back incentives such as a waiver of installation charges and two
20 months of free services to business customers who have switched to an
21 alternative provider.
- 22

23 **Q. Has Frontier availed itself of any of these tools in offering stand-alone business**
24 **line service to small business customers?**

25 A. No.

26
27

1 **Q. Is Frontier required to use these tools for tariffed services before it can file for**
2 **competitive classification of a service?**

3 A. No. The law does not state that a company has to use these tools before it can seek
4 competitive classification. However, from my perspective as an economist, and
5 from the perspective of a rational business person, it only makes sense that if true
6 competition existed for small business customers, Frontier would have used some or
7 all of the tools to meet such competition. It has not done so because, as shown by
8 the other evidence on which I rely in my testimony, the Company does not face
9 effective competition, or indeed, any competition in the stand-alone business line
10 market.

11
12 **Q. Is there any other point you would like to discuss?**

13
14 A. Yes. I would like to discuss the link between Frontier's Carrier of Last Resort
15 obligation and the tariffed stand-alone one party business line service that my
16 analysis shows should not be classified as competitive. Frontier has repeatedly
17 pledged in its Petition and its testimony that the Company's request will not impact
18 Frontier's obligation as carrier of last resort. As I demonstrate through my
19 testimony, Frontier's small business customers do not have any other provider to turn
20 to for stand-alone business line service at competitive rates, terms and conditions,
21 and effective competition in this segment of the market simply does not exist.
22 Frontier is the carrier of last resort for these customers and the Commission should
23 hold Frontier to its pledge by requiring the Company to continue to provide stand-
24 alone business line service at its current tariffed rates, terms, and conditions.

1 Q. Does this conclude your direct testimony?

2 A. Yes.

3

4