

Exhibit No. ___ (WHW-1T)
Docket UT-121994
Witness: William H. Weinman

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**In the Matter of Frontier
Communications Northwest, Inc.'s
Petition to be Regulated as a Competitive
Telecommunications Company Pursuant
to RCW 80.26.320**

DOCKET UT-121994

TESTIMONY OF
WILLIAM H. WEINMAN
STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

April 25, 2013

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Exhibit No. ____ (WHW-2) Staff Recommendation on Waiver Provisions of WAC 480-121-063

1 I. INTRODUCTION

2

3 Q. Please state your name and business address.

4 A. My name is William H. Weinman. My business address is 1300 S. Evergreen Park
5 Drive S.W., P.O. Box 47250, Olympia, WA 98504.

6

7 Q. By whom are you employed and in what capacity?

8 A. I am employed by the Washington Utilities and Transportation Commission (UTC or
9 Commission) as the Assistant Director - Telecommunications.

10

11 Q. How long have you been employed by the Commission?

12 A. I have been employed with the UTC since June 2007. I was also employed by the
13 Commission in a regulatory analyst position from 1974 to 1978. I have been in the
14 acting assistant director or assistant director positions of the Telecommunications
15 Section since October 1, 2008. Between my prior and current employments with the
16 Commission, I was employed in the telecommunications industry with assignments
17 in both accounting and operations.

18

19 Q. Would you please state your educational and professional background?

20 A. I graduated from Washington State University in 1971 receiving a Bachelor of Arts
21 in business administration with a major in accounting. I am a member of the
22 American Institute of Certified Public Accountants.

1 My current responsibilities at the UTC generally consist of working on all
2 issues in the Telecommunications Section as well as directing the work of the
3 section; including, for example, assigning dockets to staff, analyzing financial and
4 accounting issues, reviewing interconnection contracts between carriers, ensuring
5 compliance with Commission orders, reviewing intrastate access matters, and
6 providing analysis in general rate proceedings. I provided testimony in the Embarq
7 Corporation and CenturyTel, Inc. petition to approve a transfer of control, Docket
8 UT-082119. I also provided testimony in the Verizon Communications Inc. and
9 Frontier Communications Corporation petition to approve an indirect transfer of
10 control, Docket UT-090842.

11 II. SCOPE AND SUMMARY OF TESTIMONY

12
13
14 **Q. Please describe the scope of your testimony.**

15 A. My testimony addresses the general policy foundation for Staff's position concerning
16 Frontier Communications Northwest Inc.'s (Frontier or Company) petition to be
17 regulated as a competitive telecommunications company pursuant to RCW 80.36.320
18 (Petition). It also provides context for the testimonies of Ms. Jing Roth and Ms. Jing
19 Liu concerning retail service issues in the Petition. In addition, I discuss Frontier's
20 showing with respect to special access services and also the impact of the filing on
21 switched access. Further, I discuss the Company's request that the Commission
22 waive particular laws and rules. Finally, I briefly address service quality reporting.

1 **Q. Please summarize your testimony.**

2 A. Staff has studied and analyzed the responses to over 150 data requests issued by
3 Staff along with responses to data requests issued by other parties in this proceeding.
4 Staff concludes that the Company has not met the burden of proof to be classified as
5 a competitive company pursuant to RCW 80.35.320 because effective competition is
6 absent in the business and residential markets for basic stand-alone local service and
7 because Frontier has made no showing with respect to competition in the provision
8 of special access service. Ms. Roth and Ms. Liu discuss in detail their evaluations of
9 competition in Frontier's service territory with respect to business and residential
10 services currently offered in Frontier's General and Local Exchange Tariff, WN U-
11 17.

12 Frontier proposes withdrawing its services from tariff and offering those
13 services to its customers in service catalogs. This proposal includes not only retail
14 services but wholesale services as well. While Staff concludes that the Company's
15 Petition for competitive classification should be denied under RCW 80.36.320 and
16 WAC 480-121-061, Staff supports de-tariffing most retail services under RCW
17 80.36.330, with the exception of basic stand-alone local business and residential
18 services and line extensions. Regarding services in "wholesale" tariffs, Staff
19 recommends that retail special access services remain tariffed because Frontier has
20 not demonstrated that there is effective competition in the market; and recommends
21 that switched access also remain tariffed because the UTC should not rely on the
22 Federal Communications Commission (FCC) to regulate Washington's intrastate
23 switched access.

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- 4. Carrier of Last Resort;
- 5. Interconnection and wholesale obligations under the 1996 Telecommunications Act (the Act), sections 251 and 252.

Staff has specific concerns related to Frontier’s status as an ETC and carrier of last resort, which Ms. Liu addresses in her testimony.

Q. What policies should the Commission consider when it evaluates the Petition?

A. At the same time that the legislature enacted the competitive classification statutes that Frontier has petitioned under, the legislature adopted a policy declaration, which is codified at RCW 80.36.300. The declaration enunciates the following policies:

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

All of these policies are relevant to Frontier’s Petition. In his direct testimony, Company witness Mr. Phillips quotes item numbers five and six of the policy declaration and then discusses the magnitude of Frontier’s investment in facilities and infrastructure in Washington between July 1, 2010¹ and December,

¹ July 1, 2010, is the date Verizon Northwest, Inc. came under the control of Frontier.

1 2012.² Mr. Phillips implies that the policies numbered five and six are the only
2 policies relevant to the Petition, and he contends that they support granting it.

3 Policies one, two, and three, preserving universal telecommunications
4 service, maintaining and advancing the efficiency and availability of
5 telecommunications service, and ensuring customers pay a reasonable price for
6 service, also are directly relevant to the question of whether there is effective
7 competition. Where there is effective competition, regulation may be loosened and
8 these policies still will be supported. Where there is an unregulated monopoly, end-
9 users require the protection of regulation, and there is no assurance that these
10 policies will be advanced. Policy four, ensuring that rates for noncompetitive
11 services do not subsidize competitive services, remains relevant in this case because
12 Frontier has not met its burden to show that the services it offers should be
13 competitively classified.

14 With regard to policy five, promoting diversity in the supply of
15 telecommunications services and products in telecommunications markets
16 throughout the state, the Company's request for flexible pricing of its services
17 provides no indication that granting the Petition will further the goals of policy five.
18 The Commission has several means of advancing policy six, permitting flexible
19 regulation of competitive telecommunications companies and services, other than
20 granting the Company competitive status under RCW 80.36.320. Under Staff's
21 analysis, other means, such as classifying individual services as competitive under
22 RCW 80.36.330, offer an alternative given Staff's conclusion that Frontier has not
23 met its burden under RCW 80.36.320.

² Phillips, Exhibit No. ___ (JP-1T) 51:15-52:3.

1 With regard to the policy of maintaining and advancing the efficiency and
2 availability of telecommunications service, it is important also to acknowledge
3 Frontier's responsibility for ensuring its own viability. In connection with Frontier's
4 acquisition of Verizon Northwest, Inc. (Verizon), Frontier committed to investing in
5 the expansion of broadband service in Washington and planned to convert Verizon's
6 IT systems to Frontier's operating systems. Frontier understood that Verizon had
7 been losing both business and residential customers since the year 2000, and the
8 Company also understood there would be substantial capital requirements to convert
9 Verizon's operating systems to Frontier's systems. Company personnel stood before
10 the Commission during the acquisition proceedings assuring the Commissioners it
11 would succeed as an ILEC despite the line loss issues Verizon was experiencing. In
12 its final order, the Commission invited Frontier to file a plan for alternative form of
13 regulation.³ At the time, it was contemplated that reducing regulation in some areas
14 might be appropriate. None of this history, however, demonstrates that
15 competitively classifying the Company would help it regain or preserve its market
16 share or result in greater customer choice of reasonably priced, ubiquitously
17 available and efficient telecommunications services.

18

19 **Q. What are the requirements for Frontier to obtain competitive classification**
20 **under RCW 80.36.320?**

21 A. The statute allows the Commission to "classify a company as competitive" if it meets
22 the following criteria:

³ *In the Matter of the Joint Application of Verizon Communications, Inc., and Frontier Communications Corporation for an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Northwest, Inc.*, Docket UT-090842, Order 06 (April 16, 2010), ¶ 213, p. 88.

1 (1) The commission shall classify a telecommunications company as a
2 competitive telecommunications company if the services it offers are subject
3 to effective competition. *Effective competition means that the company's*
4 *customers have reasonably available alternatives and that the company does*
5 *not have a significant captive customer base.*⁴ In determining whether a
6 company is competitive, factors the commission shall consider include but
7 are not limited to:

8 (a) The number and sizes of alternative providers of service;

9 (b) The extent to which services are available from alternative providers in
10 the relevant market;

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 (d) Other indicators of market power which may include market share,
15 growth in market share, ease of entry, and the affiliation of providers of
16 services.

17 Furthermore, under the Commission's rule, WAC 480-121-061, the
18 telecommunications company has the burden of demonstrating that the company or
19 specific service is subject to effective competition.

20

21 **Q. Does the standard encompass wholesale as well as retail services?**

22 A. Generally, no. On March 29, 2013, the Commission issued Order 04, Order Denying
23 CLEC Intervenor Motion to Dismiss Petition, in which the Commission decided that
24 RCW 80.36.320 generally applies only to those services Frontier provides to end
25 users.⁵

26

⁴ Italics added for emphasis.

⁵ Order 04, at ¶ 14, pp. 4-5.

1 **Q. Has Frontier met the standard?**

2 A. No, it has not. A telecommunications company will be competitively classified “if
3 the services it offers are subject to effective competition.” As I understand the
4 standard, Frontier must demonstrate that the services it wishes to transfer to market
5 pricing are subject to effective competition. The Company has not shown that there
6 is effective competition with respect to all of these services and therefore has not
7 demonstrated that Frontier can be competitively classified as a company. Ms. Roth
8 concludes that effective competition is not present in Frontier’s service territory for
9 the stand-alone basic business line. Ms. Liu discusses competition in the market for
10 basic residential service and determines that reasonable alternatives to Frontier do
11 not exist in all areas of the Company’s service territory.

12 Although Frontier has not met the competitive classification standard as a
13 company, Staff’s analysis indicates that many of Frontier’s *services* do meet the
14 criteria for competitive classification. Staff recommends that the Commission deny
15 Frontier’s Petition under RCW 80.36.320, but recognizes that the Commission could
16 grant an amended Petition that requested competitive classification of particular
17 services under RCW 80.36.330. Therefore, Staff has analyzed effective competition
18 for particular services under RCW 80.36.330, which contains language that is nearly
19 identical to the standard in RCW 80.36.320.

20

1 IV. INTRASTATE ACCESS TARIFF

2
3 **Q. Does Frontier have any wholesale tariffs that should be considered in the**
4 **Commission's evaluation of the Company's Petition?**

5 A. Yes. One of the six Frontier tariffs from which wholesale customers can order
6 services⁶ raises particular issues: WN U-16, Facilities for Intrastate Access
7 (Intrastate Access Tariff). The Intrastate Access Tariff includes special access and
8 switched access services, and Frontier addresses each of them individually in its
9 direct testimony.⁷ Company witness Mr. Gregg testifies that Frontier is seeking
10 pricing flexibility for special access services.⁸ Retail customers as well as wholesale
11 customers can order special access services out of the Intrastate Access Tariff.

12
13 **Q. What would happen to Frontier's Intrastate Access Tariff if the Commission**
14 **granted competitive classification to the Company?**

15 A. Classifying the Company as competitive under RCW 80.36.320 would allow
16 Frontier to eliminate tariffs offering wholesale services and offer those services
17 through a service catalog. The service catalog essentially would become a non-
18 regulated price list available to CLECs and other customers. The Company would
19 no longer need to seek UTC approval to change its special access rates or intrastate
20 access rates.

21

⁶ WN U-16 Facilities for Intrastate Access; WN U-18 Network Interconnection Access Service; WN U-20 Collocation Service; WN U-21 Unbundled Networks Elements; WN U-22 Resale Local Exchange Services; WN U-23 Advanced Data Services.

⁷ Exhibit No. ____ (BJG-2T) 6:1-8:19.

⁸ Exhibit No. ____ (BJG-2T) 8:1-11:8.

1 **Q. Does Frontier have to show that the services offered in its Intrastate Access**
2 **Tariff meet the standards of RCW 80.36.320?**

3 A. With respect to services offered to end users, yes. Accordingly, Frontier must show
4 that its special access services are subject to effective competition in the retail
5 market.

6
7 **Q. Has Frontier demonstrated in its testimony that the Company meets the**
8 **standard of RCW 80.36.320 with respect to special access services?**

9 A. No. Company witness Mr. Gregg states,

10 "Frontier can only offer special access services to its retail customers at its
11 tariffed rates. It does not have the ability to offer different rates to different
12 customers to respond to competition. In other words, Frontier has no ability
13 to change special access rates without going through the tariff change
14 process. . . ."⁹

15
16 This paragraph implies that the Company wants to have special access
17 service competitively classified, but Frontier has made no effort to demonstrate that
18 that there is effective competition in the special access market.

19 Furthermore, Frontier does not offer any evidence that special access
20 customers have reasonably available alternatives or that the Company does not have
21 a significant captive customer base. The Company seeks permission in its Petition to
22 withdrawal of its wholesale tariffs, including WN U-16, on a statewide basis but
23 does not demonstrate that effective competition exists in its exchanges or any other
24 type of relevant market. Instead, it looks at competition on a statewide basis through
25 FCC data and assumes its operating characteristics replicate the FCC statewide data.
26 Frontier serves urban, suburban and rural markets throughout the state. There is no

⁹ Exhibit No. ___ (BJG-2T) 8:9-12.

1 basis or data in the Company's testimony that supports Frontier's tacit assumption
2 that its special access market is subject to effective competition.

3
4 **Q. Does the Company offer a rationale or explain why the UTC should allow
5 switched access rates to be removed from tariff?**

6 A. Frontier is defined by the FCC as a "Price Cap Carrier." In the FCC's Connect
7 America Fund (CAF) Order, released November 18, 2011, in FCC 11-161, the
8 agency initiated an Intercarrier Compensation reform transitioning all interstate and
9 intrastate access elements for both Price Cap Carriers and Rate of Return ILECs.
10 Price Cap Carriers' interstate *and intrastate* rates were capped for originating,
11 terminating and reciprocal compensation at the rates it was charging on December
12 29, 2011. The Company is essentially asking the Commission to rely on a regulatory
13 body (the FCC) that has jurisdiction over interstate telecommunications services to
14 ensure Frontier's proposed intrastate access service catalog will not cause harm to
15 CLECs competing with Frontier in Washington.

16
17 **Q. Does this create a problem?**

18 A. Yes. The CAF Order has been appealed to federal court.¹⁰ My understanding is that
19 the FCC's authority capping intrastate access rates is an issue. If the court
20 determines that the FCC does not have the authority to set intrastate access rates and
21 the UTC allows wholesale rates to be de-tariffed, a regulatory void may result,
22 leaving Frontier's intrastate access rates free of any regulatory scrutiny.

¹⁰ *In Re: FCC-161*, No. 11-9900, U.S. Court of Appeals for the Tenth Circuit.

1 V. WAIVER REQUESTS

2
3 **Q. The Company is requesting waiver of certain laws and rules. Does Staff**
4 **support any of the requested waivers?**

5 A. Frontier has requested waivers of most of the laws and rules waived for CLECS
6 under WAC 480-121-063. If the Commission classifies most of the Company's
7 services as competitive services under RCW 80.36.330, Staff supports most of the
8 waivers the Company is requesting but not all.

9 Commission Staff is sensitive to the changes within the telecommunications
10 markets and the need to relax reporting requirements as competition grows. The
11 companies competing with Frontier do not have the same Commission reporting
12 requirements as the ILECs. Staff believes that waiving for Frontier many of the laws
13 and rules waived for CLECs, with some exceptions, is in the public interest.

14 I have prepared Exhibit No. ____ (WHW-2) as a summary of Staff's
15 recommendations with respect to waiver provisions of WAC 480-121-063. This
16 exhibit categorizes the RCWs and WACs by the following major categories:

- 17 • Budgets: Staff agrees waivers should be granted for this category. WAC
18 480-140-040 requires telecommunications companies file major projects with
19 the Commission where the jurisdictional share of the project is greater than
20 one million dollars. This information does not provide any value to Staff.
- 21 • Affiliated Interest: Staff agrees waivers should be granted for this category.
22 Competition and the use of economic cost models have reduced the need to
23 review affiliated transactions in the current environment.

- 1 • Securities: Staff agrees waivers should be granted for this category.
2 Generally, the financing needs for Frontier are executed through the parent.
3 Cash needs for the operating company and the parent are recorded in
4 intercompany receivables and payables accounts.
- 5 • Other: Staff agrees waivers should be granted for this category. These are
6 miscellaneous items waived for the CLECs. Staff does not have any reason
7 Frontier should be bound by these items.
- 8 • Transfers of Property: Staff recommends there be a partial waiver of this
9 category. Staff believes the Company should file with the Commission
10 transfer of property request for sales of exchanges or nonaffiliated mergers.
- 11 • Tariffs: Staff recommends that waiver requests in this category be denied.
12 Staff proposes that the Company continue to offer a limited number of
13 services in tariff. If the Commission accepts Staff's recommendation, the
14 statutes and rules pertaining to tariffs will be necessary.

15 Under RCW 80.36.330, which governs classification of one or more
16 telecommunications services as competitive, the Commission may waive RCW
17 80.36.170 or 80.36.180 (unreasonable preference and rate discrimination
18 prohibitions) under subsection (8) if it finds that competition will serve the same
19 purpose and protect the public interest. Because Frontier has failed to show that
20 there is effective competition for certain services, Staff does not recommend waiving
21 any of the requirements of RCW 80.36.170 or RCW 80.36.180.

22
23

1 request competitive classification of services under RCW 80.36.330, Staff would
2 support classifying some services as competitive under RCW 80.36.330 and waiving
3 the application of a number of laws and rules.

4

5 **Q. Does this conclude your testimony?**

6 **A. Yes.**