**BEFORE THE**

**WASHINGTON UTLITIES AND TRANSPORTATION COMMISSION**

In the Matter of Frontier Communications )
Northwest Inc.’s Petition to be Regulated )
as a Competitive Telecommunications ) Docket No. UT-121994
Company Pursuant to RCW 80.26.320 )

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**TESTIMONY OF JACK D. PHILLIPS**

**IN SUPPORT OF SETTLEMENT AGREEMENT BETWEEN**

**FRONTIER COMMUNICATIONS NORTHWEST INC.**

**AND**

**CBEYOND COMMUNICATIONS LLC,**

**INTEGRA TELECOM OF WASHINGTON, INC.,**

**TW TELECOM OF WASHINGTON, LLC,**

**LEVEL 3 COMMUNICATIONS, LLC, AND**

**CHARTER FIBERLINK WA-CCVII, LLC**

**APRIL 25, 2013**

**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is Jack D. Phillips. My business address is 14450 Burnhaven Drive, Burnsville, Minnesota 55306.

**Q. ON WHAT COMPANY’S BEHALF IS THIS TESTIMONY SUBMITTED?**

A. This testimony is submitted on behalf of Frontier Communications Northwest Inc. (“Frontier”).

**Q. ARE YOU THE SAME JACK D. PHILLIPS THAT FILED DIRECT TESTIMONY IN THIS PROCEEDING?**

A. Yes.

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

A. My testimony describes and supports the settlement agreement between Frontier Northwest Inc. (“Frontier”) and Cbeyond Communications LLC, Integra Telecom of Washington, Inc., tw telecom of washington, llc, Level 3 Communications, LLC and Charter Fiberlink WA-CCVII, LLC (collectively “CLEC Intervenors”). My testimony provides an overview of the settlement agreement and describes why the settlement satisfies the Parties’ interests, will not cause any harm and is consistent with the public interest.

**Q. PLEASE BRIEFLY DESCRIBE THE HISTORY OF THIS PROCEEDING.**

A. On December 21, 2012 Frontier filed a petition (“the Petition”) with the Washington Utilities and Transportation Commission (“Commission) to be classified as a competitive provider pursuant to RCW 80.36.320. On January 23, 2013, Frontier filed an amended petition in the proceeding. On February 6, 2013, Level 3 Communications filed a petition to intervene in the proceeding. On February 7, 2013, Integra Telecom of Washington, Inc. and Cbeyond Communications LLC filed petitions to intervene. On February 8, 2013, tw telecom of washington and Charter Fiberlink WA-CCVII, LLC filed petitions to intervene. Collectively, these intervenors are referred to in the settlement agreement and my testimony as “CLEC Intervenors”. Frontier and the CLEC Intervenors engaged in settlement discussions to determine if issues of concern to the CLEC Intervenors could be resolved. Agreement was reached and a Settlement of CLEC Issues (“Settlement”) between Frontier and the CLEC Intervenors was executed by Frontier and CLEC Intervenors on April 16, 2013. On April 17, 2013, Frontier and CLEC Intervenors filed a Joint Motion of Frontier and CLEC Intervenors for Leave to File Narrative and Testimony in Support of Settlement Agreement. On April 22, 2013, the Commission granted the Motion for Leave.

**Q. PLEASE DESCRIBE THE REGULATORY RELIEF FRONTIER IS REQUESTING FROM THE COMMISSION WITH RESPECT TO WHOLESALE SERVICES.**

A. The essence of Frontier’s proposal is that it be regulated as a competitively classified company. In accordance with RCW 80.36.320, among other items, Frontier is seeking waiver of the tariffing requirements in RCW 80.36.100 (Tariff schedules to be filed and open to public) and RCW 80.36.110 (Tariff changes -- Statutory notice -- Exception) for the wholesale services it provides in Washington.

**Q. PLEASE PROVIDE A GENERAL OVERVIEW OF FRONTIER’S PROPOSAL TO DETARIFF WHOLESALE SERVICES.**

A. In this proceeding and specifically in my testimony and the testimony of Billy Jack Gregg that was filed on behalf of Frontier in this proceeding, Frontier has proposed to detariff and move to price catalogues both Interconnection Agreement services (“ICA Wholesale Services”), which are those services subject to the Telecommunications Act of 1996 [*See* 47 U.S.C. §§ 251-252]; and wholesale services contained in Frontier’s WN U-16 Facilities for Intrastate Access tariff and WN U-23 Advanced Data Services tariff (collectively “Non-ICA Wholesale Services”).

**Q. PLEASE SUMMARIZE YOUR UNDERSTANDING OF THE CLEC INTERVENORS CONCERNS REGARDING FRONTIER’S PROPOSAL TO DETARIFF WHOLESALE SERVICES.**

A. My understanding of the CLEC Intervenor’s concerns regarding Frontier’s proposal to detariff its wholesale services is that Frontier will be able to unilaterally change the rates terms and conditions associated with the wholesale services if these services were no longer tariffed and subject to Commission oversight.

**Q. DOES THE SETTLEMENT BETWEEN FRONTIER AND THE CLEC INTERVENOR’S ADDRESS AND PROVIDE SAFEGUARDS TO THE CLEC INTERVENORS RELATED TO FRONTIER DETARIFFING WHOLESALE SERVICES?**

A. Yes. The Settlement would permit Frontier to detariff and move to price catalogues its ICA Wholesale Services and its Non-ICA Wholesale Services but would impose conditions which limit and restrict Frontier’s ability to revise the rates, terms and conditions contained in those catalogues.

Settlement Conditions ICA Wholesale Services

**Q. WHAT ICA WHOLESALE SERVICES WOULD FRONTIER MOVE TO PRICE CATELOGUES IF THE COMMISSION APPROVES THE SETTLEMENT AND PETITION?**

A. As proposed in the Petition and as described in the Settlement, Frontier would move the rates, terms and conditions of the following tariffs to respective ICA Wholesale Service catalogues:

 WN U-18 Network Interconnection Access Service

WN U-20 Collocation Service

 WN U-21 Unbundled Network Elements

 WN U-22 Resale Local Exchange Services.

**Q. WHAT ARE THE SETTLEMENT CONDITIONS THAT WOULD LIMIT FRONTIER’S ABILITY TO CHANGE ITS WHOLESALE RATES, TERMS AND SERVICE CONDITIONS AT THE TIME IT MOVES THESE SERVICES TO CATELOGUES?**

A. The Settlement prescribes the timing and a process for Frontier to detariff its ICA Wholesale Services and to establish service catalogues for these services. Under the Settlement, Frontier would be required to establish service catalogues that contain no substantive deviations in terms, rates and conditions than the tariffs. The Settlement sets forth a process for the CLEC Intervenors to review and challenge any changes they believe may believe to be substantive and violate the terms of the Settlement.

**Q. HOW DOES THE SETTLEMENT IMPACT FRONTIER’S INTERCONNECTION AGREEMENTS?**

A. In the Settlement, Frontier affirms that Commission approval of the Petition would not in any way impact any of its continuing obligations under §§ 251 and 252 of the Telecommunications Act, nor any federal or state regulations, orders, or rules.

Currently some interconnection agreements incorporate by reference rates, terms and conditions contained in the following ICA Wholesale Services tariffs identified above.

For any rate, term or condition for tariffed ICA Wholesale Services referenced in Frontier’s interconnection agreements, the Settlement requires Frontier to propose an amendment that incorporates, by reference, the respective newly created ICA Wholesale Services Catalogues.

**Q. IF ICA SERVICES ARE NO LONGER INCLUDED IN THE EXISTING TARIFFS, WILL FRONTIER BE ABLE TO UNILATERALLY CHANGE THE RATES, TERMS AND CONDITIONS ASSOCIATED WITH PROVIDING THESE SERVICES?**

A. No. Commission approval of Frontier’s Petition would not impact future rates, terms or conditions of ICA Wholesale Services. Federal law, specifically Sections 251 and 252 of the Act, requires Frontier to offer interconnection, UNEs, collocation and resale with rates, terms, and conditions that are "just, reasonable, and nondiscriminatory." Section 252(d) provides that state commissions will make the determination of whether rates for the interconnection of facilities, network elements and resale are just and reasonable.

**Q. IS THE DETARIFFING OF INTERCONNECTION, UNES, RESALE AND COLLOCATION SERVICES IN THE PUBLIC INTEREST?**

A. Yes. There is no requirement under federal law that the terms, conditions and prices of interconnection, UNEs, resale, collocation or other wholesale services be maintained in tariffs on file with state commissions. In a vast majority of the states in which Frontier operates, the Company does not have the administrative burden and expense of filing and maintaining tariffs at the state utility commission for ICA Services. The Settlement and the use of service catalogs showing the ICA Services rates, terms and conditions, creates a less burdensome and less expensive mechanism for Frontier Allowing Frontier to avoid this additional burden and expense is in the public interest.

**Q. DOES COMMISSION APPROVAL OF THE SETTLEMENT AND ITS PETITION IN THIS DOCKET IMPACT ANY OF ITS EXISTING ICAS OR ITS OBLIGATIONS UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT?**

A. Frontier’s petition stated and, in Settlement, Frontier affirms that it will not seek to avoid any of its obligations under existing ICAs or any of its continuing obligations under §§ 251 and 252 of the Telecommunications Act as a result of being granted relief requested in its Petition. The only impact Commission approval of the Petition and the Settlement would have on interconnection agreements or interconnection obligations is that Frontier would be required, as described above, to establish an interconnection agreement amendment to incorporate, by reference, the ICA Wholesale Services Catalogues.

**Q. HOW ARE THE SETTLEMENT CONDITIONS FOR ICA WHOLESALE SERVICES IN THE PUBLIC INTEREST?**

A. The ICA Wholesale Service conditions in the settlement are in the public interest and “do no harm” in that these conditions provide a process for an orderly transition of ICA Wholesale Services from tariffs to ICA Wholesale Services catalogues. Further, the Settlement establishes a process for CLEC Intervenors to contest the result of the transfer from tariffs to catalogues. Perhaps more importantly, the Settlement affirms that Commission approval of the Petition would not in any way diminish Frontier’s competitors’ ability to access wholesale services that some carriers use in the provision of competing retail services.

 Settlement Conditions Specific to Non-ICA Wholesale Services

**Q. WHAT NON-ICA WHOLESALE SERVICES WOULD FRONTIER MOVE TO SERVICE CATALOGUES IF THE COMMISSION APPROVES THE SETTLEMENT AND PETITION?**

A. As proposed in the Petition and as described in the Settlement, Frontier would move the rates, terms and conditions of the following tariffs to respective Non-ICA Wholesale Service catalogues:

WN U-16 Facilities for Intrastate Access

 WN U-23 Advanced Data Services

**Q. WHAT ARE THE SETTLEMENT CONDITIONS THAT WOULD LIMIT FRONTIER’S ABILITY TO CHANGE ITS WHOLESALE RATES, TERMS AND SERVICE CONDITIONS FOR NON-ICA SERVICES AT THE TIME IT MOVES THESE SERVICES TO CATALOGUES?**

A. Consistent with the Settlement conditions described above for transfer of ICA Wholesale services from tariffs to service catalogues, the Settlement provides for the timing and a process for Frontier would to move the Non-ICA Wholesale Services to respective service catalogues. Purchase of service from the Non-ICA Wholesale Service catalogues would be limited to only certified long distance carriers and CLECs certified as telecommunications carriers. Consistent with the transfer of ICA Wholesale Services to service catalogues, the Settlement requires that Frontier establish service catalogues that contain no substantive deviations in terms, rates and conditions than the tariffs and also provides for a process for CLEC Intervenors to review and challenge any changes they believe may believe to be substantive. Additionally, the Settlement agreement prevents Frontier from discontinuing or terminating a service unless first approved by the Commission pursuant to a petition filed by Frontier in this docket. However, the Settlement agreement permits discontinuance, termination or modification of a Non-ICA Wholesale Service to a CLEC by mutual agreement with that CLEC.

**Q. WHAT ONGOING PROTECTIONS DOES THE SETTLEMENT AGREEMENT PROVIDE TO CLECS FOR NON-ICA WHOLESALE SERVICES?**

A. Frontier would be required to offer to competitive carriers any and all Non-ICA Wholesale services at the same rates, terms and conditions that were offered when Frontier filed it Petition. Frontier agrees under the Settlement to honor any existing contracts for Non-ICA Services on an individualized term pricing plan arrangement for the duration of the contracted term. However, Frontier would be permitted to unilaterally lower rates without Commission approval.

**Q. DOES THE SETTLEMENT PROVIDE ANY CARRIER PROTECTIONS SPECIFIC TO INTRASTATE SWITCHED ACCESS SERVICES?**

A. Yes. Under the Settlement, Frontier commits to cap and continue to maintain the existing service rates for intrastate originating switched access, and transition terminating switched access services as provided in the ICC Transformation Order. Consistent with an FCC order or if a court allows companies to restructure or increase certain intrastate switched access rate elements, the Settlement would not impact or limit Frontier’s ability to restructure intrastate access rates consistent with that order or court decision. If a court overturns the ICC Transformation Order, Frontier agrees not to increase the aggregate intrastate switched access rates beyond the aggregate rates in effect on December 29, 2011, without first petitioning and obtaining approval from the Commission.

**Q. DOES THE SETTLEMENT PROVIDE CARRIER PROTECTIONS FOR OTHER NON-ICA WHOLESALE SERVICES?**

A. Yes. If Frontier wants to increase the price or change any term or condition of any Wholesale Service offered to competitive carriers as of the date Frontier filed the Petition, Frontier must file a petition in this docket seeking a modification of the Settlement term or condition and demonstrate that the requested change is in the public interest; provided however, that Frontier agrees not to seek such change prior to July 1, 2017.

**Q.** **HOW ARE THE SETTLEMENT CONTITIONS FOR NON-ICA WHOLESALE SERVICES IN THE PUBLIC INTEREST?**

A. As with the Settlement conditions for ICA Wholesale Services, the conditions for Non-ICA Wholesale Services are in the public interest and “do no harm” in that these conditions also provide a process for an orderly transition of Non-ICA Wholesale Services from tariffs to ICA Wholesale Service catalogues, including establishment of a process for CLEC Intervenors to contest the result of the transfer from tariffs to catalogues. The Settlement conditions for Non-ICA Wholesale Services go beyond existing regulatory protections and require not only Commission approval for rate increases or changes in terms and conditions but also impose a cap on Non-ICA Wholesale Service rates through at least July 1, 2017. These conditions not only affirm Commission authority over these service rates, terms and conditions but provide rate caps that would not otherwise exist absent the Settlement. This, therefore, not only does not diminish Frontier’s retail competitors’ ability to access wholesale services that some carriers use in the provision of competing retail services but provides protections through at least July 1, 2017 that would not otherwise exist.

 Generally Applicable Terms and Conditions

**Q. PLEASE GENERALLY DESCRIBE THE GENERALLY APPLICABLE TERMS AND CONDITIONS OF THE SETTLEMENT.**

A. The Settlement contains several additional generally applicable conditions that further the public interest and provide safeguards to ensure that competitive providers purchasing wholesale services can effectively compete. The Settlement includes terms and conditions that provide additional protections to assure competitive providers have access to reasonable rates, terms and conditions for wholesale services that they use in the provision of competing retail service offerings in Frontier’s service territory. This includes provisions that not only are rates, terms and conditions for services provided by Frontier to CLECs required to be “fair, just and reasonable” but that services are to be provided timely and that Frontier must maintain facilities in good and safe condition.

 The Settlement contains a provision assuring non-discrimination for pricing, access to, regulations and practices for both ICA Wholesale Services and Non-ICA Wholesale services. The Settlement affirms the Commission’s primary jurisdiction over complaints as to this provision.

 Frontier affirms in the Settlement that CLEC Intervenors or any other aggrieved entity may file a complaint pursuant to RCW 80.04.110 alleging violation of the terms of the Settlement and that Frontier will not argue that the Commission lacks jurisdiction to consider such a complaint.

 Frontier affirms that, if the Commission determines that a rate, term or condition is ambiguous, there is a rebuttable presumption that the ambiguity will be construed in favor of the CLEC.

**Q. WHAT RECOMMENDATION DOES FRONTIER HAVE FOR THE COMMISSION WITH RESPECT TO THE SETTLEMENT?**

A. The Settlement satisfies the interests of the CLEC Intervenor’s and Frontier in the context of granting Frontier’s request for competitive classification. Commission approval of the settlement will cause no harm and is consistent with the public interest. Frontier recommends the Commission approve the Settlement in conjunction with approval of its request for competitive classification.

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

A. Yes, it does.