

**BEFORE THE
WASHINGTON UTILITIES 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)
_____)

**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

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

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

4

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

6 A. This testimony is submitted on behalf of Frontier Communications Northwest Inc.
7 ("Frontier").

8

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

11 A. Yes.

12

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

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

21

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

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

17
18 **Q. PLEASE DESCRIBE THE REGULATORY RELIEF FRONTIER IS**
19 **REQUESTING FROM THE COMMISSION WITH RESPECT TO WHOLESALE**
20 **SERVICES.**

21 A. The essence of Frontier’s proposal is that it be regulated as a competitively classified
22 company. In accordance with RCW 80.36.320, among other items, Frontier is seeking
23 waiver of the tariffing requirements in RCW 80.36.100 (Tariff schedules to be filed and

1 open to public) and RCW 80.36.110 (Tariff changes -- Statutory notice -- Exception) for
2 the wholesale services it provides in Washington.

3
4 **Q. PLEASE PROVIDE A GENERAL OVERVIEW OF FRONTIER'S PROPOSAL**
5 **TO DETARIFF WHOLESALE SERVICES.**

6 A. In this proceeding and specifically in my testimony and the testimony of Billy Jack Gregg
7 that was filed on behalf of Frontier in this proceeding, Frontier has proposed to detariff
8 and move to price catalogues both Interconnection Agreement services ("ICA Wholesale
9 Services"), which are those services subject to the Telecommunications Act of 1996 [*See*
10 47 U.S.C. §§ 251-252]; and wholesale services contained in Frontier's WN U-16
11 Facilities for Intrastate Access tariff and WN U-23 Advanced Data Services tariff
12 (collectively "Non-ICA Wholesale Services").

13
14 **Q. PLEASE SUMMARIZE YOUR UNDERSTANDING OF THE CLEC**
15 **INTERVENORS CONCERNS REGARDING FRONTIER'S PROPOSAL TO**
16 **DETARIFF WHOLESALE SERVICES.**

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

21
22 **Q. DOES THE SETTLEMENT BETWEEN FRONTIER AND THE CLEC**
23 **INTERVENOR'S ADDRESS AND PROVIDE SAFEGUARDS TO THE CLEC**

1 **INTERVENORS RELATED TO FRONTIER DETARIFFING WHOLESALE**
2 **SERVICES?**

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

7
8 Settlement Conditions ICA Wholesale Services

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

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

15 WN U-18 Network Interconnection Access Service

16 WN U-20 Collocation Service

17 WN U-21 Unbundled Network Elements

18 WN U-22 Resale Local Exchange Services.

19
20 **Q. WHAT ARE THE SETTLEMENT CONDITIONS THAT WOULD LIMIT**
21 **FRONTIER'S ABILITY TO CHANGE ITS WHOLESALE RATES, TERMS AND**
22 **SERVICE CONDITIONS AT THE TIME IT MOVES THESE SERVICES TO**
23 **CATELOGUES?**

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

7

8 **Q. HOW DOES THE SETTLEMENT IMPACT FRONTIER'S**
9 **INTERCONNECTION AGREEMENTS?**

10 A. In the Settlement, Frontier affirms that Commission approval of the Petition would not in
11 any way impact any of its continuing obligations under §§ 251 and 252 of the
12 Telecommunications Act, nor any federal or state regulations, orders, or rules.
13 Currently some interconnection agreements incorporate by reference rates, terms and
14 conditions contained in the following ICA Wholesale Services tariffs identified above.
15 For any rate, term or condition for tariffed ICA Wholesale Services referenced in
16 Frontier's interconnection agreements, the Settlement requires Frontier to propose an
17 amendment that incorporates, by reference, the respective newly created ICA Wholesale
18 Services Catalogues.

19

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

1 A. No. Commission approval of Frontier's Petition would not impact future rates, terms or
2 conditions of ICA Wholesale Services. Federal law, specifically Sections 251 and 252 of
3 the Act, requires Frontier to offer interconnection, UNEs, collocation and resale with
4 rates, terms, and conditions that are "just, reasonable, and nondiscriminatory." Section
5 252(d) provides that state commissions will make the determination of whether rates for
6 the interconnection of facilities, network elements and resale are just and reasonable.
7

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

10 A. Yes. There is no requirement under federal law that the terms, conditions and prices of
11 interconnection, UNEs, resale, collocation or other wholesale services be maintained in
12 tariffs on file with state commissions. In a vast majority of the states in which Frontier
13 operates, the Company does not have the administrative burden and expense of filing and
14 maintaining tariffs at the state utility commission for ICA Services. The Settlement and
15 the use of service catalogs showing the ICA Services rates, terms and conditions, creates
16 a less burdensome and less expensive mechanism for Frontier. Allowing Frontier to
17 avoid this additional burden and expense is in the public interest.
18

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

1 A. Frontier’s petition stated and, in Settlement, Frontier affirms that it will not seek to avoid
2 any of its obligations under existing ICAs or any of its continuing obligations under §§
3 251 and 252 of the Telecommunications Act as a result of being granted relief requested
4 in its Petition. The only impact Commission approval of the Petition and the Settlement
5 would have on interconnection agreements or interconnection obligations is that Frontier
6 would be required, as described above, to establish an interconnection agreement
7 amendment to incorporate, by reference, the ICA Wholesale Services Catalogues.
8

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

11 A. The ICA Wholesale Service conditions in the settlement are in the public interest and “do
12 no harm” in that these conditions provide a process for an orderly transition of ICA
13 Wholesale Services from tariffs to ICA Wholesale Services catalogues. Further, the
14 Settlement establishes a process for CLEC Intervenors to contest the result of the transfer
15 from tariffs to catalogues. Perhaps more importantly, the Settlement affirms that
16 Commission approval of the Petition would not in any way diminish Frontier’s
17 competitors’ ability to access wholesale services that some carriers use in the provision of
18 competing retail services.
19

20 Settlement Conditions Specific to Non-ICA Wholesale Services

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

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

4 WN U-16 Facilities for Intrastate Access

5 WN U-23 Advanced Data Services

6
7 **Q. WHAT ARE THE SETTLEMENT CONDITIONS THAT WOULD LIMIT**
8 **FRONTIER'S ABILITY TO CHANGE ITS WHOLESALE RATES, TERMS AND**
9 **SERVICE CONDITIONS FOR NON-ICA SERVICES AT THE TIME IT MOVES**
10 **THESE SERVICES TO CATALOGUES?**

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

1 Settlement agreement permits discontinuance, termination or modification of a Non-ICA
2 Wholesale Service to a CLEC by mutual agreement with that CLEC.

3
4 **Q. WHAT ONGOING PROTECTIONS DOES THE SETTLEMENT AGREEMENT**
5 **PROVIDE TO CLECS FOR NON-ICA WHOLESALE SERVICES?**

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

12
13 **Q. DOES THE SETTLEMENT PROVIDE ANY CARRIER PROTECTIONS**
14 **SPECIFIC TO INTRASTATE SWITCHED ACCESS SERVICES?**

15 A. Yes. Under the Settlement, Frontier commits to cap and continue to maintain the existing
16 service rates for intrastate originating switched access, and transition terminating
17 switched access services as provided in the ICC Transformation Order. Consistent with
18 an FCC order or if a court allows companies to restructure or increase certain intrastate
19 switched access rate elements, the Settlement would not impact or limit Frontier's ability
20 to restructure intrastate access rates consistent with that order or court decision. If a court
21 overturns the ICC Transformation Order, Frontier agrees not to increase the aggregate
22 intrastate switched access rates beyond the aggregate rates in effect on December 29,
23 2011, without first petitioning and obtaining approval from the Commission.

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

3 A. Yes. If Frontier wants to increase the price or change any term or condition of any
4 Wholesale Service offered to competitive carriers as of the date Frontier filed the
5 Petition, Frontier must file a petition in this docket seeking a modification of the
6 Settlement term or condition and demonstrate that the requested change is in the public
7 interest; provided however, that Frontier agrees not to seek such change prior to July 1,
8 2017.

9
10 **Q. HOW ARE THE SETTLEMENT CONTITIONS FOR NON-ICA WHOLESALE**
11 **SERVICES IN THE PUBLIC INTEREST?**

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

1 carriers use in the provision of competing retail services but provides protections through
2 at least July 1, 2017 that would not otherwise exist.

3
4 Generally Applicable Terms and Conditions

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

7 A. The Settlement contains several additional generally applicable conditions that further the
8 public interest and provide safeguards to ensure that competitive providers purchasing
9 wholesale services can effectively compete. The Settlement includes terms and
10 conditions that provide additional protections to assure competitive providers have access
11 to reasonable rates, terms and conditions for wholesale services that they use in the
12 provision of competing retail service offerings in Frontier's service territory. This
13 includes provisions that not only are rates, terms and conditions for services provided by
14 Frontier to CLECs required to be "fair, just and reasonable" but that services are to be
15 provided timely and that Frontier must maintain facilities in good and safe condition.
16 The Settlement contains a provision assuring non-discrimination for pricing, access to,
17 regulations and practices for both ICA Wholesale Services and Non-ICA Wholesale
18 services. The Settlement affirms the Commission's primary jurisdiction over complaints
19 as to this provision.

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

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

4
5 **Q. WHAT RECOMMENDATION DOES FRONTIER HAVE FOR THE**
6 **COMMISSION WITH RESPECT TO THE SETTLEMENT?**

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

12
13 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

14 A. Yes, it does.

15