

BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Frontier Communications )  
Northwest Inc.'s Petition to be Regulated ) UT-121994  
as a Competitive Telecommunications )  
Company Pursuant to RCW 80.26.320 )

**TESTIMONY OF DON J. WOOD**

**ON BEHALF OF**

**CBEYOND COMMUNICATIONS, LLC;  
CHARTER FIBERLINK WA-CCVII, LLC;  
LEVEL 3 COMMUNICATIONS, LLC; AND  
TW TELECOM OF WASHINGTON, LLC,**

**IN SUPPORT OF**

**FRONTIER-CLEC SETTLEMENT AGREEMENT**

**April 25, 2013**

**TABLE OF CONTENTS**

I. Introduction and Qualifications..... 1

II. Purpose and Summary of Testimony ..... 2

III. The Importance of Wholesale Services to the Availability of End User  
Alternatives ..... 4

IV. The Importance of Individual Settlement Agreement Terms ..... 12

Generally Applicable Terms..... 13

Terms Related to Wholesale Services Provided Pursuant to an  
Interconnection Agreement..... 20

Terms Related to Wholesale Services Not Provided Pursuant to an  
Interconnection Agreement..... 25

1 **I. Introduction and Qualifications**

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. My name is Don J. Wood. I am a principal in the firm of Wood & Wood, an  
4 economic and financial consulting firm. My business address is 914 Stream  
5 Valley Trail, Alpharetta, Georgia 30022. I provide economic and regulatory  
6 analysis of telecommunications and related convergence industries with an  
7 emphasis on economic and regulatory policy, competitive market  
8 development, and cost-of-service issues.

9

10 Q. PLEASE DESCRIBE YOUR BACKGROUND AND EXPERIENCE.

11 A. I received a BBA in Finance with distinction from Emory University and an  
12 MBA with concentrations in Finance and Microeconomics from the College of  
13 William and Mary. My telecommunications experience includes employment  
14 at both a Regional Bell Operating Company and an Interexchange Carrier.

15 Specifically, I was employed in the local exchange industry by  
16 BellSouth Services, Inc., in its Pricing and Economics, Service Cost Division.  
17 My responsibilities included performing cost analyses of new and existing  
18 services, and preparing documentation for filings with state regulatory  
19 commissions and the Federal Communications Commission ("FCC").

20 I was employed in the interexchange industry by MCI  
21 Telecommunications Corporation, as Manager of Regulatory Analysis for the  
22 Southern Division. In this capacity I was responsible for the development and  
23 implementation of regulatory policy for operations in the southern U. S. I then

1 served as a Manager in MCI's Economic Analysis and Regulatory Affairs  
2 Organization, where I participated in the development of regulatory policy for  
3 national issues.

4

5 Q. HAVE YOU PREVIOUSLY PRESENTED TESTIMONY BEFORE STATE  
6 REGULATORS?

7 A. Yes. I have testified on telecommunications issues before the regulatory  
8 commissions of 43 states, Puerto Rico, and the District of Columbia. I have  
9 also presented testimony regarding telecommunications issues in state, federal,  
10 and overseas courts, before alternative dispute resolution tribunals, and at the  
11 FCC. A description of my qualifications and a list of my previous testimony  
12 are attached as Exhibit No. \_\_\_\_ (DJW-2).

13

14 **II. Purpose and Summary of Testimony**

15 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

16 A. I was initially asked by Cbeyond Communications, LLC ("Cbeyond"); Charter  
17 Fiberlink WA-CCVII, LLC ("Charter Fiberlink"); Level 3 Communications,  
18 LLC ("Level 3"), and tw telecom of washington, llc ("tw telecom")  
19 (collectively, "CLEC Intervenors") to provide testimony in support of their  
20 opposition to the Petition of Frontier Communications Northwest Inc.

1 (“Frontier”)<sup>1</sup> for classification as a competitive telecommunications company  
2 pursuant to RCW 80.36.320 and WAC 480-121-061.

3 The CLEC Intervenors and Frontier have subsequently entered into a  
4 settlement agreement that contains a number of safeguards intended to ensure  
5 that, in the event the Commission grants Frontier’s petition in this docket, such  
6 relief would not eliminate or substantially hamper the CLECs’ ability to make  
7 functionally equivalent or substitute services readily available in the relevant  
8 retail market at competitive rates, terms, and conditions. A copy of the  
9 Frontier-CLEC Settlement Agreement (“Settlement Agreement”) is attached as  
10 Exhibit No. \_\_\_ (DJW-3). My testimony addresses the purpose of the  
11 Settlement Agreement terms and explains why the adoption of these terms is  
12 important.

13  
14 Q. WHAT COMMISSION ACTION IS BEING SOUGHT BY THE PARTIES  
15 TO THE SETTLEMENT AGREEMENT?

16 A. Frontier and the CLEC Intervenors are asking the Commission to adopt the  
17 Settlement Agreement in its entirety and to incorporate the Settlement  
18 Agreement terms and conditions, including the wholesale conditions set forth  
19 in the Settlement Agreement, into any Commission Order issued in this docket.

20  
21 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

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<sup>1</sup> *Frontier Communications Northwest Inc. ’s Replacement Amended Petition for Approval of Minimal Regulation in Accordance with RCW 80.36.320*, dated January 23, 2013.

1 A. Frontier-provided wholesale services, at currently available rates, terms, and  
2 conditions, are an integral part of any retail service alternatives that are  
3 available today in the Frontier service area. My testimony does not address the  
4 question of whether Frontier's Petition should be granted, but instead focuses  
5 on the fundamental link between wholesale services and retail competitive  
6 alternatives. The existence of competitive retail services depends upon the  
7 continued availability of wholesale services at just, fair and reasonable rates,  
8 terms, and conditions.

9 The Settlement Agreement entered into by Frontier and the CLEC  
10 Intervenors includes important wholesale service safeguards that the  
11 Commission should adopt in their entirety if it concludes that a competitive  
12 classification is appropriate. These safeguards will help to provide a smooth  
13 transition from tariffed wholesale services to the proposed service catalog, will  
14 provide for an important period of stability in the markets for wholesale  
15 services, and will help to control anticompetitive pricing. The adoption of  
16 these safeguards is essential in order to protect both competitive markets and  
17 end user retail customers in Frontier's service territory.

18

19 **III. The Importance of Wholesale Services to the Availability of End User**  
20 **Alternatives**

21 Q. WHAT IS FRONTIER SEEKING IN ITS PETITION?

22 A. Frontier is seeking competitive classification pursuant to RCW 80.36.320 and  
23 WAC 480-121-061. The request, as I understand the Petition, is quite broad:

1 Frontier is asking the Commission to conclude that effective competition exists  
2 for all of the services currently provided by Frontier, and that this effective  
3 competition exists throughout Frontier’s entire service area in Washington (the  
4 area covered by the 102 wire centers Frontier serves). As cited by Frontier at  
5 ¶4 of the Petition, RCW 80.36.320(1) defines “effective competition” to mean  
6 “that the company’s customers have reasonably available alternatives and that  
7 the company does not have a significant captive customer base.”

8

9 Q. DOES YOUR TESTIMONY ADDRESS THE QUESTIONS OF WHETHER  
10 FRONTIER HAS DEMONSTRATED THAT ITS CUSTOMERS HAVE  
11 “REASONABLY AVAILABLE ALTERNATIVES,” AND THAT IT DOES  
12 NOT HAVE A “SIGNIFICANT CAPTIVE CUSTOMER BASE,” FOR ALL  
13 SERVICES IN ALL SERVICE AREAS?

14 A. No. It is not my intention to address these issues in my testimony.

15 Instead, my testimony focuses on the importance of Frontier-provided  
16 wholesale services and the direct relationship between the current availability  
17 of these wholesale services at their current rates, terms, and conditions, and the  
18 level of retail competition in Frontier’s 102 wire centers. Any information  
19 provided by Frontier in this case regarding the current level of competition for  
20 retail services in a given geographic area — whether in support of a claim that  
21 “reasonably available alternatives” exist or a claim that no “significant captive  
22 customer base” exists in any of these areas — is tied directly to the existing  
23 level of availability for wholesale services. *If* the Commission were to

1 ultimately conclude that Frontier has demonstrated the existence of effective  
2 competition for all services in all of Frontier's 102 wire centers, it should reach  
3 such a conclusion *only* with full recognition that the availability of Frontier-  
4 provided wholesale services has a direct correlation to the existing level of  
5 competitive alternatives for retail services. If competitive market forces are to  
6 be relied upon to protect end user customers of retail telecommunications  
7 services, it is particularly important to adopt all necessary safeguards to ensure  
8 that competitive market forces will continue to operate. The wholesale  
9 conditions, agreed to by Frontier and CLEC Intervenors and set forth in the  
10 terms of the Settlement Agreement, represent such safeguards. While I am not  
11 taking a position regarding whether the Commission should or should not grant  
12 Frontier's Petition, I am urging the Commission to adopt the agreed-upon  
13 safeguards in its Order in this case in order to help ensure the viability of  
14 competitive markets and — if the requested relief is granted — in order to  
15 adequately protect the retail end user customers of telecommunications  
16 services in Frontier's service territory.

17

18 Q. DOES ANY METRIC REGARDING THE LEVEL OF COMPETITION IN A  
19 GIVEN RETAIL MARKET HAVE MEANING INDEPENDENT OF A  
20 CONSIDERATION OF THE AVAILABILITY OF WHOLESALE  
21 SERVICES AT CURRENT RATES, TERMS AND CONDITIONS?

22 A. No. In support of the Petition, Frontier provides a number of market share  
23 statistics and claims that it faces competition from a number of different types



1 of service providers. Setting aside the question of whether the information  
2 provided by Frontier is sufficient to justify the relief requested in the Petition,  
3 it is essential to recognize that each of the market power metrics relied upon by  
4 Frontier is inextricably intertwined with the existing availability of wholesale  
5 services in Frontier's service territory, and each would be a wholly unreliable  
6 measure of Frontier's market power if the availability of wholesale services  
7 changes.

8

9 Q. TO WHAT EXTENT DO PROVIDERS OF COMPETITIVE RETAIL  
10 SERVICE RELY ON FRONTIER-PROVIDED WHOLESALE SERVICES?

11 A. Different carriers may utilize different wholesale services: some rely on §251-  
12 related services<sup>2</sup>, including interconnection, unbundled network elements  
13 ("UNEs"), collocation, and resale; some rely on access services (switched and  
14 special access); some rely on services obtained through negotiated commercial  
15 agreements; and some rely on different combinations of these strategies in  
16 different geographic areas. I am not aware of any competitor for a Frontier  
17 retail service that does not currently rely on some wholesale service provided  
18 by Frontier. Even "full" facilities-based providers like the cable-based CLECs  
19 in Washington (which include Charter Fiberlink) rely upon Frontier for access  
20 to the public switched telephone network (i.e., interconnection pursuant to

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<sup>2</sup> See 47 U.S.C. § 251, *et seq.*

1 Section 251), and related 251 obligations, such as number porting, access to  
2 directories, listings and related databases.

3

4 Q. IS IT YOUR TESTIMONY THAT THE COMMISSION SHOULD NOT  
5 GRANT A PETITION FOR COMPETITIVE CLASSIFICATION WITHOUT  
6 ADOPTING SAFEGUARDS TO ENSURE THE CONTINUED  
7 AVAILABILITY OF WHOLESALE SERVICES?

8 A. Yes. Granting competitive classification means that the Commission is turning  
9 over many consumer protections to competitive market forces. Before doing  
10 so, it would be prudent to take steps (including the adoption of the wholesale  
11 conditions contained in the settlement agreement) that will increase the  
12 likelihood that any competitive market forces assumed to exist today will  
13 continue to exist in the future. Otherwise, adequate consumer protection  
14 cannot be assured going forward.

15

16 Q. ARE YOU FAMILIAR WITH THE COMMISSION *ORDER 04* IN THIS  
17 PROCEEDING?

18 A. Yes. While I am not an attorney and it is not my intention to address legal  
19 issues, the recommendations in my testimony are consistent with my  
20 understanding of the Commission's conclusion that its analysis in this case  
21 should focus on competitive alternatives to Frontier's retail services.

22

23 At paragraph 12 of *Order 04*, the Commission quotes from the Surreply  
Brief of the CLEC Intervenors: "the focus of the captive customer base test for

1 effective competition is whether there are a sufficient number of alternative  
2 suppliers of retail, facilities-based, competitive services to the end user.” The  
3 Commission goes on to conclude in paragraph 14 of *Order 04* that it “must  
4 determine whether a company’s end user customers have reasonably available  
5 alternatives to the company’s services, regardless of the extent to which the  
6 company also provides services to other carriers.” The salient question is not  
7 an isolated one of whether Frontier provides services to other carriers, but  
8 whether the identified “reasonably available alternatives” to end users –  
9 particularly if the availability of those alternatives forms the basis for a  
10 decision to grant competitive classification and to surrender many consumer  
11 protections to market forces – depend on Frontier’s continued provisioning of  
12 wholesale services to other carriers at current rates, terms, and conditions. To  
13 date, no evidence has been presented to support a conclusion that any of the  
14 “reasonably available alternatives” identified by Frontier is being provided  
15 completely independent of Frontier-provided wholesale services, and there is  
16 no evidence that any alternative retail service would continue to be reasonably  
17 available if adequate wholesale safeguards are not adopted.

18 In summary, the Commission’s decision to focus its analysis on the  
19 availability of reasonably available alternatives to end user customers (rather  
20 than to carrier customers) does not diminish the importance of the continued  
21 availability of Frontier’s wholesale services. To the contrary, a decision to  
22 relax regulatory oversight and to rely on competitive market forces to provide  
23 consumer protections should only be made after first considering all necessary

1 steps to ensure that competitive market forces exist now *and will continue to*  
2 *exist* in the future. The wholesale conditions agreed to by both Frontier and the  
3 CLEC Intervenors represent such necessary steps.

4  
5 Q. IT HAS BEEN SUGGESTED THAT EXISTING FEDERAL LAW  
6 PROVIDES ADEQUATE ASSURANCE THAT WHOLESALE SERVICES  
7 WILL CONTINUE TO BE PROVIDED AT THE RATES, TERMS, AND  
8 CONDITIONS NECESSARY TO ENSURE THE CONTINUED  
9 AVAILABILITY OF “REASONABLY AVAILABLE ALTERNATIVES.”  
10 DO YOU AGREE?

11 A. No. While existing federal requirements are important, they are not sufficient.  
12 As I explain in the next section of my testimony, the Settlement Agreement  
13 addresses a number of issues that are not fully addressed in the Act or FCC  
14 rules regarding interconnection agreement terms and conditions. In addition,  
15 carriers who rely on Frontier-provided access services are not fully protected  
16 by federal requirements.

17 It is also important to note that if wholesale safeguards are not  
18 addressed in an order granting competitive classification, Frontier could use  
19 the language of the order to obtain regulatory relief from the FCC, even though  
20 the competitive classification may have been granted based on an assumption  
21 that federal requirements would continue to apply. An order finding that all  
22 Frontier customers have reasonably available alternatives and that Frontier  
23 does not have, in any location, a significant captive customer base could be

1 used by Frontier to support a petition to the FCC for a finding of non-  
2 impairment in a given wire center. Such an order could also be used by  
3 Frontier to seek regulatory forbearance from the FCC. Either scenario would  
4 result in fewer wholesale alternatives being made available to carriers, and  
5 would directly impact the availability of retail competitive alternatives to end  
6 users.

7

8 Q. YOU STATED THAT CLEC INTERVENORS ALSO RELY ON SPECIAL  
9 ACCESS SERVICES PROVIDED BY FRONTIER IN ORDER TO  
10 PROVIDE SERVICES TO END USERS. WHY IS SPECIAL ACCESS  
11 SERVICE IMPORTANT?

12 A. The rates, terms, and conditions associated with Frontier-provided special  
13 access service are important for a number of reasons.

14 Carriers rely on the transport and local loop functionality of special  
15 access service to provide services to customer premises locations. If UNEs are  
16 not available in a given geographic area, special access often represents a  
17 carrier's only means of reaching these customers. Special access services may  
18 become even more important if copper loop retirement continues to reduce the  
19 addressable broadband market of UNEs.

20 Special access also represents an important means of serving customers  
21 near wire centers where collocation is unavailable. Even in wire centers where  
22 collocation is potentially available, timing can be an issue. A CLEC may have  
23 a short window in which to initiate service in order to win a customer, and

1 special access often represents the only wholesale service with a provisioning  
2 interval that will allow the customer's needs to be met.

3 Special access also has service quality standards and billing options  
4 that are often not available with unbundled elements, making it an important  
5 wholesale alternative.

6 In addition, in some circumstances special access is used for  
7 interconnection purposes. For example, some of Frontier's interconnection  
8 agreements in Washington state that Frontier will provision an entrance facility  
9 (used to interconnect the CLEC network with the Frontier network) at rates,  
10 terms or conditions set forth in the Frontier intrastate special access tariff. In  
11 this way special access is also used for Section 251 interconnection facilities,  
12 which Frontier would otherwise be obliged to provide.

13 Finally, special access pricing is important because the service is  
14 provided on both a wholesale and a retail basis. Retail pricing flexibility  
15 without competitive safeguards would create the opportunity for Frontier to  
16 engage in a price squeeze strategy that would limit the availability of  
17 competitive alternatives.

18

19 **IV. The Importance of Individual Settlement Agreement Terms**

20 Q. HAVE YOU REVIEWED THE DETAILS OF THE FRONTIER-CLEC  
21 SETTLEMENT AGREEMENT?

22 A. Yes. In this section of my testimony, I will identify important terms of the  
23 Settlement Agreement and explain why these safeguards are important. I have

1 grouped the Settlement Agreement terms into three broad categories: those that  
2 are generally applicable (this includes terms set forth in the initial paragraphs  
3 of the Settlement Agreement and those in Section IV), those that apply  
4 specifically to wholesale services provided pursuant to Interconnection  
5 Agreements (set forth in Section II of the Settlement Agreement), and those  
6 that apply to wholesale services provided outside of Interconnection  
7 Agreements (set forth in Section III of the Settlement Agreement and referred  
8 to in the agreement as Non-ICA Wholesale Services).

9

10 *Generally Applicable Terms*

11 Q. WHAT TYPES OF GENERALLY APPLICABLE TERMS ARE INCLUDED  
12 IN THE SETTLEMENT AGREEMENT?

13 A. Generally applicable terms (contained in the initial paragraphs and in Section  
14 IV) address the enforcement of the agreement, help to create stability in the  
15 markets of Frontier-provided wholesale services, and reduce the potential for  
16 Frontier to engage in anticompetitive pricing of wholesale services that would  
17 impact the availability of retail service alternatives to end user customers.

18

19 Q. PLEASE DESCRIBE THE TERMS THAT ADDRESS ENFORCEMENT OF  
20 THE SETTLEMENT AGREEMENT, AND EXPLAIN WHY THEY ARE  
21 IMPORTANT.

1 A. The Settlement Agreement contains a number of terms intended to ensure that  
2 the safeguards will be properly applied and to reduce the likelihood of conflicts  
3 going forward.

4 Paragraph III contains the following language:

5 The parties agree that a breach by Frontier of any of the  
6 Settlement terms and conditions or any of the Wholesale  
7 Conditions would constitute a violation of the  
8 Commission Order.  
9

10 This term (and the related terms described below) is important because  
11 it recognizes the essential link between end user alternatives and the continued  
12 availability of the Frontier-provided wholesale services that make those retail  
13 alternatives possible. Because of the interrelationship between wholesale  
14 safeguards and the availability of service alternatives for end users, it is  
15 important that Frontier and the CLECs affirm and acknowledge that the  
16 Commission will retain the authority and ability to enforce the terms of the  
17 Settlement Agreement in this docket. Such enforcement is necessary in order  
18 to protect both competitors and end user customers.

19 Paragraph IV contains the following language:

20 The parties agree that CLEC Intervenors, Frontier or any  
21 other aggrieved party, may file a complaint with the  
22 Commission, pursuant to applicable authority including,  
23 but not limited to RCW 80.04.110, alleging one or more  
24 violations of the Settlement terms and conditions or any  
25 of the Wholesale Conditions,  
26

27 and Paragraph 12 contains the following related language:



1 Frontier agrees that any of the CLEC Intervenors, or any  
2 other aggrieved entity, may file a complaint with the  
3 Commission, pursuant to RCW 80.04.110, alleging one  
4 or more violations of any term or condition of the  
5 Settlement Agreement or any of the Wholesale  
6 Conditions. Frontier agrees that it will not argue in this  
7 docket or any future proceeding that the Commission  
8 lacks jurisdiction to consider such a complaint. Frontier  
9 further agrees that the provisions of RCW  
10 80.04.110(1)(b) do not apply to any such complaint and  
11 agrees not to argue that the provisions of RCW  
12 80.04.110(1)(b) apply to any such complaint. Frontier  
13 further agrees that nothing in the Settlement Agreement,  
14 the Wholesale Conditions or the Commission Order in  
15 any way negates the right of the CLEC Intervenors, or  
16 any other aggrieved entity, to file a complaint pursuant  
17 to RCW 80.04.110(1)(c).  
18

19 In order for the wholesale safeguards set forth in the Settlement  
20 Agreement to be effective, it is important that CLEC Intervenors (or other  
21 purchasers of Frontier-provided wholesale services) have the opportunity to  
22 bring any alleged violation of these safeguards to the Commission's attention  
23 through the complaint process, and for the Commission to have the ability to  
24 enforce the terms of the agreement through this process pursuant to existing  
25 statutory authority and procedures. A violation of a term of the Settlement  
26 Agreement could have an immediate adverse impact on the ability of CLECs  
27 and other providers to make retail service alternatives available to end users,  
28 and an effective enforcement mechanism is needed to ensure that the  
29 safeguards operate as intended.

30 Paragraph V contains the following language:

31 The parties agree that the Commission has the authority  
32 to resolve any such complaint and grant any and all

1 appropriate relief, including but not limited to the  
2 imposition of penalties pursuant to RCW 80.04.380  
3 through 80.04.405.  
4

5 This language seeks to avoid any future dispute regarding the  
6 Commission's authority to enforce the terms of the agreement through the  
7 complaint process.

8 Collectively, the above terms create a straightforward enforcement  
9 mechanism for the safeguards contained in the Settlement Agreement. As  
10 noted in paragraph 14, the terms of the Settlement Agreement will not take  
11 effect if the Commission denies Frontier's Petition for competitive  
12 classification. But in the event the Commission grants Frontier's petition in  
13 this docket, effective enforcement of the Settlement Agreement wholesale  
14 safeguards would help to ensure that the relief requested by Frontier would  
15 not eliminate or substantially hamper the CLECs' ability to make functionally  
16 equivalent or substitute services readily available in the relevant retail market  
17 at competitive rates, terms, and conditions.

18

19 Q. YOU STATED THAT THE AGREEMENT INCLUDES TERMS  
20 INTENDED TO CREATE STABILITY IN THE MARKETS FOR  
21 FRONTIER-PROVIDED WHOLESALE SERVICES. PLEASE DESCRIBE  
22 THESE TERMS AND EXPLAIN WHY THEY ARE IMPORTANT.

23 A. Paragraph VI contains the following language:

24 The parties agree that, should Frontier desire to amend  
25 any of the Settlement terms and conditions or any of the  
26 Wholesale Conditions, Frontier would be required to file

1 a petition in this docket seeking modification to the  
2 particular Settlement term or condition or Wholesale  
3 Condition; [...]  
4

5 and Paragraph VI also contains the following related language:

6 The parties further agree that, in the event Frontier seeks  
7 to be relieved of any of the conditions in this Settlement  
8 Agreement, Frontier shall have the burden of  
9 demonstrating that relief from such condition is in the  
10 public interest. The parties agree that the Commission  
11 has the authority to consider any such petition and to  
12 grant any and all appropriate relief consistent with RCW  
13 80.04.210 and WAC 480-07-875.  
14

15 This language creates stability by limiting Frontier’s opportunity to  
16 make changes to, or to obtain relief from, the safeguards contained in the  
17 agreement. Before changing or eliminating a safeguard, Frontier would be  
18 required to demonstrate to the Commission that such a change is in the public  
19 interest. This process would give the Commission the opportunity to assess  
20 how Frontier’s proposal to restrict or eliminate safeguards would impact the  
21 ability of other service providers to continue to provide alternatives to end user  
22 customers.

23 Paragraph VI also contains the following language:

24 Frontier agrees that it will not seek to implement any  
25 price increase or change of any term or condition of any  
26 “ICA Wholesale Service” or “Non-ICA Wholesale  
27 Service”, as those terms are defined in the Wholesale  
28 Conditions, or seek to implement relief of any of the  
29 conditions of this Settlement Agreement, until at least  
30 July 1, 2017. The parties further agree that, except as  
31 otherwise required by federal law, Frontier shall have  
32 the burden of demonstrating that any proposed changes  
33 to rates, terms or conditions of any “ICA Wholesale  
34 Services” or “Non-ICA Wholesale Services” will be  
35 fair, just and reasonable.

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This language will allow two important objectives to be met. First, it creates a period of stability in which Frontier-provided wholesale services will continue to be available at existing rates, terms, and conditions. CLECs and other service providers will be able to continue to invest in their Washington networks and expand their retail service offerings during this period of stability. Second, before any attempt to increase the rates or change the terms or conditions for a wholesale service, Frontier would be required to demonstrate that the proposed change is fair, just, and reasonable. This process will allow the Commission to ensure that any proposed wholesale rate increase or change of terms or conditions will not adversely impact the availability of service alternatives to end user customers.

Q. PLEASE DESCRIBE THE TERMS THAT HELP TO AVOID ANTICOMPETITIVE PRICING OF WHOLESale SERVICES, AND EXPLAIN WHY THEY ARE IMPORTANT.

A. Paragraph 9 contains the following language:

Except as otherwise allowed under federal or Washington law, all rates, tolls, contracts and charges, rules and regulations of Frontier for services rendered and equipment and facilities supplied to CLECs shall be fair, just, reasonable and sufficient, and the service so to be rendered any CLEC by Frontier shall be rendered and performed in a prompt, expeditious and efficient manner and the facilities, instrumentalities and equipment furnished by Frontier shall be safe, kept in good condition and repair, and its appliances, instrumentalities and service shall be modern, adequate, sufficient and efficient.

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This language creates an important safeguard to ensure that the rates for Frontier-provided wholesale services remain fair, just, and reasonable, and to ensure that Frontier does not provide a wholesale service in a way that will limit the ability of a CLEC to use the Frontier wholesale service to provide a high quality retail service to end users.

Paragraphs 10 and 11 contain the following language:

10. Except as otherwise required under federal law, including but not limited to 47 U.S.C. Sections 251 and 252, Frontier shall not make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Frontier agrees that the Commission shall have primary jurisdiction to determine whether any of its rates, regulations, or practices violates this condition.

11. As to the pricing of or access to Wholesale Services, except as otherwise required under federal law, including but not limited to 47 U.S.C. Sections 251 and 252, Frontier shall not make or grant any undue or unreasonable preference or advantage to itself or to any other person providing telecommunications service, nor subject any telecommunications company to any undue or unreasonable prejudice or competitive disadvantage. Frontier agrees that the Commission shall have primary jurisdiction to determine whether any of its rates, regulations, or practices violates this condition.

This language recognizes the dual role of Frontier as both a provider of retail services to end user customers and as a provider of wholesale services to retail service competitors. In order for retail service alternatives to be

1 available, it is essential that Frontier not engage in any discriminatory behavior  
2 that creates an artificial competitive advantage for its own retail services,  
3 including but not limited to a price squeeze. This language also creates  
4 safeguards intended to prevent such discriminatory behavior and clarifies that  
5 the Commission has primary jurisdiction to determine whether any Frontier  
6 rates, regulations, or practices violate this condition.

7

8 *Terms Related to Wholesale Services Provided Pursuant to an Interconnection*  
9 *Agreement*

10 Q. WHAT TYPES OF INTERCONNECTION AGREEMENT-RELATED  
11 TERMS ARE INCLUDED IN THE SETTLEMENT AGREEMENT?

12 A. Section II of the Settlement Agreement includes several important safeguards  
13 related to wholesale services provided pursuant to an Interconnection  
14 Agreement between Frontier and a CLEC. In its Petition, Frontier proposes to  
15 de-tariff its wholesale service offerings and to move the rates, terms, and  
16 conditions for these services to a “Service Catalogue.” Because the  
17 Interconnection Agreements currently in place typically incorporate by  
18 reference certain rates, terms and conditions of Frontier’s existing tariffs,<sup>3</sup>  
19 safeguards are needed to manage the de-tariffing process and to ensure that  
20 CLECs continue to receive services pursuant to the terms of their respective  
21 Interconnection Agreements (including terms incorporated from Frontier’s

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<sup>3</sup> 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 are tariffs typically referenced in Interconnection Agreements.

1 existing tariffs). This section also adopts safeguards that limit Frontier's  
2 ability to change the rates, terms, and conditions of services that are currently  
3 tariffed but that would be de-tariffed if the relief sought in the Petition is  
4 granted. In addition, this section also reaffirms that approval of Frontier's  
5 Petition shall not impact its continuing obligations under Sections 251 and 252  
6 of the Telecommunications Act of 1996 ("Act"), clarifies that Frontier will not  
7 introduce any new rates or charges for services or functions already provided  
8 under existing interconnection agreements, and affirms that Frontier will not  
9 attempt to seek classification as a rural provider pursuant to Sections 251(f)(1)  
10 or (f)(2) of the Act.

11  
12 Q. HOW DOES THE SETTLEMENT AGREEMENT HELP TO MANAGE THE  
13 TRANSITION FROM TARIFFS TO THE PROPOSED SERVICE  
14 CATALOGUE?

15 A. Paragraph 1 contains the following language:

16 Within thirty (30) days of the Commission Order in this  
17 docket adopting the Settlement Agreement and these  
18 Wholesale Conditions, Frontier will provide the  
19 proposed Service Catalogue to the CLEC Intervenors for  
20 review and comment. The CLEC Intervenors will have  
21 thirty (30) days to identify and notify Frontier in writing  
22 of any substantive deviation between the terms,  
23 conditions or rates in the former tariff and the Service  
24 Catalogue. Within ten days of receiving written notice  
25 of an identified discrepancy Frontier shall either: i)  
26 revise the Service Catalogue to correct the identified  
27 discrepancy or ii) advise the CLECs that it will seek  
28 resolution of the identified discrepancy with the  
29 Commission, during which time the identified term,

1 condition or rate shall not go into effect in the Service  
2 Catalogue.  
3

4 This provision will give CLECs the opportunity to review the language  
5 of the proposed "Service Catalogue" in order to ensure consistency with the  
6 language of existing tariffs. If a discrepancy is found, Frontier will either  
7 correct the language or seek resolution of the disputed language from the  
8 Commission. The disputed term, condition or rate will not go into effect until  
9 the dispute is resolved. This safeguard is important because it helps to ensure  
10 that the rates, terms, and conditions contained in existing tariffs are not  
11 changed during a transition to the proposed "Service Catalogue."

12 Paragraph 1 contains additional language to guide the administrative  
13 process of making the necessary modifications to Interconnection Agreement  
14 contracts:

15 for each and every interconnection agreement in  
16 Washington in effect at the time that expressly  
17 references services in the above-referenced Frontier  
18 Washington tariffs, or otherwise references any  
19 "applicable tariffs," Frontier shall propose an  
20 amendment that expressly incorporates by reference the  
21 rates, terms and conditions of the ICA Service  
22 Catalogues.  
23

24 This term will help to ensure a smooth transition. Interconnection  
25 Agreements typically refer to existing tariffs, and often incorporate specific  
26 tariff provisions. It will be necessary to amend this language so that the rates,  
27 terms and conditions set forth in existing effective Interconnection Agreements



1 are not modified or otherwise adversely affected by Frontier's proposed de-  
2 tariffing actions.

3

4 Q. HOW DOES THE SETTLEMENT AGREEMENT LIMIT FRONTIER'S  
5 ABILITY TO MAKE CHANGES TO IMPORTANT RATES, TERMS, AND  
6 CONDITIONS WHEN WHOLESALE SERVICES ARE DE-TARIFFED?

7 A. Paragraph 1 contains an important safeguard designed to ensure that the rates,  
8 terms, and conditions in the existing tariff remain in effect:

9 In the event there is a discrepancy between rates, terms  
10 or conditions contained in the Service Catalogue and a  
11 CLEC's Interconnection Agreement, the rates, terms and  
12 conditions in the Interconnection Agreement will  
13 control.

14 This language is important because the terms and conditions associated  
15 with §251 interconnection arrangements are as important as the rates  
16 themselves. These terms and conditions may have been adopted by the  
17 Commission and included in the existing tariff, or may have been part of the  
18 negotiated agreement between Frontier and a given CLEC. As noted above, it  
19 is important that these terms and conditions are not omitted or changed when  
20 the services are de-tariffed and moved to an unregulated service catalog. This  
21 safeguard helps to ensure that important terms and conditions are not  
22 unilaterally changed when the services are de-tariffed.

23 Paragraph 2 contains the following related language:

24 Frontier acknowledges and agrees that any changes to  
25 any rate, term or condition in any interconnection  
26 agreement, including any change to a rate, term or  
27

1 condition contained in an ICA Service Catalogue  
2 incorporated by reference in an interconnection  
3 agreement, must be effectuated pursuant to the terms of  
4 such interconnection agreement and subject to 47 U.S.C.  
5 §§ 251-252 and the approval of the Commission;  
6 provided, however, that Frontier may seek Commission  
7 approval of changes to any such rates in a generic cost  
8 docket.  
9

10 This safeguard seeks to ensure that the rates, terms, and conditions  
11 associated with wholesale services provided pursuant to an Interconnection  
12 Agreement are changed only in the manner currently permitted (through  
13 negotiation with a CLEC when an Interconnection Agreement is amended or  
14 renewed or through Commission approval in a generic cost docket), and that  
15 the de-tariffing of these wholesale services does not create an opportunity for  
16 Frontier to unilaterally make changes to such rates, terms, and conditions either  
17 at the time the unregulated catalog is created or through subsequent changes to  
18 the catalog.

19 The wholesale safeguards also ensure that Frontier cannot effectively  
20 change rates, terms, and conditions by introducing new rate elements or  
21 charges that are not currently applicable. Paragraph 3 contains the following  
22 language:

23 Nor will Frontier create any new rate elements or  
24 charges for services, facilities or functionalities that are  
25 currently already provided under existing rates, terms or  
26 conditions of existing ICAs or the rates terms and  
27 conditions contained in the following Washington  
28 Frontier tariffs as of the date Frontier filed its Petition in  
29 this docket: WN-U-18 Network Interconnection Access  
30 Service, WN-U-20 Collocation Service, WN-U-21-

1 Unbundled Network Elements, WN-U-22 Resale Local  
2 Exchange Services.  
3

4 This safeguard would prevent Frontier from effectively increasing  
5 wholesale rates or from making substantive changes to the terms and  
6 conditions associated with these wholesale services by unilaterally adding rate  
7 elements to its “Service Catalogue.”

8 Finally, language in Paragraph 4 provides that Frontier will not attempt  
9 to seek classification as a rural provider pursuant to Sections 251(f)(1) or (f)(2)  
10 of the Act. This is necessary to ensure that Frontier does not attempt to avoid  
11 or reduce its wholesale obligations under federal law by seeking designation as  
12 a rural provider that is exempt from certain duties under Section 251.

13

14 *Terms Related to Wholesale Services Not Provided Pursuant to an Interconnection*  
15 *Agreement*

16 Q. WHAT TYPES OF TERMS ARE INCLUDED IN THE SETTLEMENT  
17 AGREEMENT TO ADDRESS WHOLESALE SERVICES NOT PROVIDED  
18 PURSUANT TO AN INTERCONNECTION AGREEMENT?

19 A. As noted earlier in my testimony, a number of Non-ICA Wholesale Services  
20 represent an increasingly important means for providers to offer alternative  
21 services to retail end user customers.

22 Section III of the Settlement Agreement includes three important  
23 safeguards related to wholesale services that are not provided pursuant to an  
24 Interconnection Agreement between Frontier and a CLEC, but instead are

1 provided pursuant to either existing tariffs<sup>4</sup> or a term and volume contract. As  
2 was the case with wholesale services provided pursuant to an Interconnection  
3 Agreement, Frontier proposes to de-tariff other wholesale service offerings and  
4 to move the rates, terms, and conditions for these services to a “Service  
5 Catalogue.” Safeguards are needed to manage the de-tariffing process and to  
6 ensure that providers continue to receive services at rates, terms, and  
7 conditions consistent with either existing tariffs or contracts in effect at the  
8 time Frontier’s requested relief is granted. Like Section II, Section III of the  
9 Settlement Agreement adopts safeguards that limit Frontier’s ability to change  
10 the rates, terms, and conditions of services that are currently tariffed but that  
11 would be de-tariffed if the relief sought in the Petition is granted.

12  
13 Q. HOW DOES THIS SECTION OF THE SETTLEMENT AGREEMENT HELP  
14 TO MANAGE THE TRANSITION FROM TARIFFS TO AN  
15 UNREGULATED SERVICE CATALOG?

16 A. Paragraph 5 contains the following language:

17 Within thirty (30) days of the Commission Order in this  
18 docket adopting the Settlement Agreement and these  
19 Wholesale Conditions, Frontier will provide the  
20 proposed Service Catalogue to the CLEC Intervenors for  
21 review and comment. The CLEC Intervenors will have  
22 thirty (30) days to identify and notify Frontier in writing  
23 of any substantive deviation between the terms,  
24 conditions or rates in the former tariff and the Service  
25 Catalogue. Within ten days of receiving written notice

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<sup>4</sup> These tariffs include WN U-16 Facilities for Intrastate Access and WN U-23 Advanced Data Services.

1 of an identified discrepancy Frontier shall either: i)  
2 revise the Service Catalogue to correct the identified  
3 discrepancy or ii) advise the CLECs that it will seek  
4 resolution of the identified discrepancy with the  
5 Commission, during which time the identified term,  
6 condition or rate shall not go into effect in the Service  
7 Catalogue.  
8

9 Consistent with the language in Paragraph 1, this provision will give  
10 providers who utilize Non-ICA Wholesale Services the opportunity to review  
11 the language of the proposed "Service Catalogue" in order to ensure  
12 consistency with the language of existing tariffs. If a discrepancy is found,  
13 Frontier will either correct the language or seek resolution of the disputed  
14 language from the Commission. The disputed term, condition or rate will not  
15 go into effect until the dispute is resolved. This safeguard helps to ensure that  
16 the rates, terms, and conditions contained in existing tariffs are not changed  
17 during a transition to the proposed "Service Catalogue."  
18

19 Q. HOW DOES THE SETTLEMENT AGREEMENT LIMIT FRONTIER'S  
20 ABILITY TO MAKE CHANGES TO IMPORTANT RATES, TERMS AND  
21 CONDITIONS WHEN NON-ICA WHOLESAL SERVICE ARE DE-  
22 TARIFFED?

23 A. The agreement includes four important safeguards that address this issue.

24 Paragraph 7 contains the following language:

25 Frontier will continue to offer to competitive carriers  
26 any and all Non-ICA Wholesale Services, as that term is  
27 defined herein, offered as of the date Frontier filed its  
28 Petition in this docket, under the same rates, terms and

1 conditions as they were offered on the date Frontier filed  
2 its Petition in this docket; provided, however, that  
3 Frontier will be permitted to lower the rates for any such  
4 services offered to competitive carriers without seeking  
5 prior approval from the Commission.  
6

7 This term will ensure that the rates, terms, and conditions for Non-ICA  
8 Wholesale Services that were effective at the time Frontier filed its Petition  
9 will remain in place if the requested relief is granted. This will prevent  
10 Frontier from unilaterally increasing the rates or making changes to terms and  
11 conditions of these services in its unregulated service catalog. Frontier will,  
12 however, have the flexibility to decrease rates should it so choose. This  
13 safeguard will help to ensure that competitors will not face prices, terms, and  
14 conditions for critical wholesale services that are worse than they are today.

15 As noted in the previous section, Frontier could also effectively change  
16 the rates, terms, or conditions for a service by introducing new rate elements  
17 that are not currently applicable when the service is purchased through an  
18 existing tariff. Paragraph 7 also contains the following language:

19 Nor will Frontier create any new rate elements or  
20 charges for facilities or functionalities that are currently  
21 already provided under existing rates, terms or  
22 conditions.  
23

24 This safeguard would prevent Frontier from effectively increasing the  
25 rates for Non-ICA Wholesale Services, or from making substantive changes to  
26 the terms and conditions associated with these services, by unilaterally adding  
27 rate elements to its “Service Catalogue.”

1 Paragraph 7 also contains a safeguard that would prevent Frontier from  
2 discontinuing any currently applicable term and volume discounts for Non-  
3 ICA Wholesale Services:

4 Frontier will continue to offer any currently offered  
5 Term and Volume Discount plans identified in WN U-  
6 16 Facilities for Intrastate Access, and WN U-23  
7 Advanced Data Services. Frontier will honor any  
8 existing contracts for Non-ICA Services on an  
9 individualized term pricing plan arrangement for the  
10 duration of the contracted term.  
11

12 As the rates, terms, and conditions for these services are transitioned  
13 into the proposed “Service Catalogue,” this language ensures that term and  
14 volume discounts are not unilaterally eliminated. These discounts currently  
15 exist in tariffs and in negotiated contracts. Pursuant to this safeguard, tariffed  
16 discount options would be included in the service catalog and contract terms  
17 would be continue to be in place for the duration of the contract term.

18 The Settlement Agreement also sets forth the conditions under which  
19 Frontier can request a change to rates, terms, and conditions for Non-ICA  
20 Wholesale Services:

21 If Frontier wishes to increase the price or change any  
22 term or condition of any Non-ICA Wholesale Service  
23 offered to competitive carriers as of the date Frontier  
24 filed its Petition in this docket, Frontier must file a  
25 petition in this docket seeking modification of the  
26 particular Settlement term or condition or Wholesale  
27 Condition and demonstrate that the requested change is  
28 in the public interest  
29

30 This language limits Frontier’s ability to unilaterally change the rates,  
31 terms, and conditions for Non-ICA Wholesale Services in its unregulated

1 catalog from those in effect in tariffs at the time the Petition was filed. In order  
2 to make such a change, Frontier would need to file a petition and demonstrate  
3 to the Commission that the requested change is in the public interest. This  
4 process will allow the Commission to evaluate how the proposed change could  
5 affect the ability for competing providers to provide retail services and if the  
6 proposed change would impact the availability of service alternatives to end  
7 users.

8 Paragraph 7 also contains the following language:

9 Frontier agrees that it will not seek to implement any  
10 price increase or change of any term or condition of any  
11 Non-ICA Wholesale Service, or seek to implement relief  
12 from any condition in this Settlement Agreement, until  
13 at least July 1, 2017.  
14

15 This safeguard will provide for a period of stability in which providers  
16 know that rates, terms, and conditions for important wholesale services will not  
17 be changed in a way that would limit their ability to provide competitively  
18 priced, high-quality retail services. CLECs and other service providers will be  
19 able to continue to invest in their Washington networks and expand their retail  
20 service offerings during this period of stability.

21

22 Q. DOES THE SETTLEMENT AGREEMENT ALSO ADDRESS SWITCHED  
23 ACCESS CHARGES?

24 A. Yes. While the FCC addresses both interstate and intrastate switched access  
25 rates in its *ICC Transformation Order*, this order is limited in scope and has



1           been appealed. Paragraph 7 of the settlement agreement contains the  
2           following language regarding intrastate switched access:

3                       Subject to and in accordance with the ICC  
4                       Transformation Order, Frontier will cap and continue to  
5                       maintain the existing service rates for intrastate  
6                       originating switched access, and transition terminating  
7                       switched access services as provided in the ICC  
8                       Transformation Order.  
9

10                    This language caps originating switched access rates at current levels,  
11                    and adopts the FCC's phase-down of terminating switched access rates.

12                    In order to reduce uncertainty regarding future rates for Frontier-  
13                    provided intrastate switched access service, Paragraph 7 addresses how rates  
14                    will be constrained if the FCC order is overturned:

15                       If a court by final order not thereafter appealable  
16                       overturns the ICC Transformation Order, Frontier agrees  
17                       to not increase the aggregate intrastate switched access  
18                       rates beyond the aggregate rates in effect on December  
19                       29, 2011, without first petitioning and obtaining  
20                       approval from the Commission to increase the intrastate  
21                       switched access rates.  
22

23                    This language provides stability and certainty by limiting rate increases  
24                    for switched access charges. In order to increase switched access rates above  
25                    the aggregate rate in effect on December 29, 2011, Frontier would be required  
26                    to first petition and obtain approval from the Commission.

27

28    Q.    DOES THIS CONCLUDE YOUR TESTIMONY?

29    A.    Yes.