

**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 No. UT-121994

TESTIMONY

OF

AUGUST H. ANKUM, Ph.D.

**IN SUPPORT OF SETTLEMENT AGREEMENT BETWEEN
FRONTIER COMMUNICATIONS NORTHWEST INC.**

AND

THE U.S. DEPARTMENT OF DEFENSE

and

ALL OTHER FEDERAL EXECUTIVE AGENCIES

MAY 17, 2013

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EXHIBIT

Exhibit AHA-7: SETTLEMENT AGREEMENT RESOLVING DOD/FEA ISSUES

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

3 A. My name is August H. Ankum. I currently serve as Senior Vice President and Chief
4 Economist of QSI Consulting, Inc. My business address is 429 North 13th Street, Apt.
5 2D, Philadelphia, Pennsylvania 19123.

6 **Q. ARE YOU THE SAME AUGUST ANKUM WHO FILED RESPONSE**
7 **TESTIMONY IN THIS PROCEEDING ON APRIL 25, 2013?**

8 A. Yes.

9 **Q. ON WHOSE BEHALF ARE YOU FILING THIS TESTIMONY?**

10 A. I am appearing on behalf of the consumer interests of the U.S. Department of Defense
11 (“DoD”) and all other Federal Executive Agencies (“FEA”) in Washington.

12 **II. PURPOSE AND SUMMARY**

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

14 A. The purpose of this testimony is to: (1) describe the Settlement Agreement reached
15 between DoD/FEA and Frontier Communications Northwest, Inc. (hereafter “Frontier”)
16 in this docket and (2) explain why the Washington Utilities and Transportation
17 Commission (“WUTC” or “Commission”) specifically should approve and adopt this
18 Settlement Agreement. For purposes of this testimony, I will refer to the Settlement
19 Agreement reached between DoD/FEA and Frontier as the *Settlement of DoD/FEA*

1 *Issues*, and I have attached a copy as Exhibit AHA-7 to this testimony. This testimony is
2 being filed pursuant to WAC § 480-07-740(2)(b) and the Administrative Law Judge's
3 Notice Granting Request to File Testimony In Support of Settlement Agreement dated
4 May 14, 2013.

5 **Q. BESIDES YOUR TESTIMONY AND THE SETTLEMENT OF DOD/FEA ISSUES,**
6 **ARE THERE OTHER DOCUMENTS BEING FILED IN SUPPORT OF THE**
7 **SETTLEMENT REACHED BETWEEN FRONTIER AND DOD/FEA?**

8 A. Yes. Concurrent with my testimony, Frontier is also filing testimony pursuant to WAC §
9 480-07-740(2)(b) in support of the *Settlement of DoD/FEA Issues*. In addition, Frontier
10 and DoD/FEA are jointly filing a Joint Narrative Supporting the Settlement Agreement
11 under WAC § 480-07-740(2)(a). Additionally, on May 14, 2013, the Settlement was
12 filed with the Commission as an attachment to the Joint Motion of Frontier and
13 DoD/FEA For Leave to File Narrative and Testimony In Support Of Settlement
14 Agreement.

15 **Q. IN YOUR PRE-FILED RESPONSE TESTIMONY SUBMITTED ON APRIL 25,**
16 **2013, YOU RECOMMENDED THAT THE COMMISSION REJECT**
17 **FRONTIER'S PETITION FOR RECLASSIFYING THE COMPANY AS**
18 **COMPETITIVE UNDER RCW 80.36.320. IS THIS STILL YOUR**
19 **RECOMMENDATION?**

1 A. In my April 25, 2013, Response Testimony, I addressed Frontier’s Petition¹ by focusing
2 on the business local services purchased by DoD/FEA from Frontier in Washington. I
3 recommended that the Commission reject Frontier’s Petition because, in DoD/FEA’s
4 view, Frontier had not demonstrated “effective competition” for these business local
5 services.² I also stated that if the WUTC is inclined to approve Frontier’s Petition, the
6 Commission should at least make such approval conditional upon the existence of
7 safeguards for DoD/FEA much like those which were implemented between DoD/FEA
8 and CenturyLink QC in a recent “effective competition” proceeding in Arizona.³ Since
9 my pre-filed response testimony was submitted, DoD/FEA and Frontier have reached a
10 settlement agreement that would provide these safeguards. Therefore, my
11 recommendation has changed since my response testimony. I now recommend that the
12 WUTC specifically approve and adopt the *Settlement of DoD/FEA Issues*, and I take no
13 position on whether the Commission should approve or deny Frontier’s Petition.

14 **III. SETTLEMENT OF DOD/FEA ISSUES**

15 **Q. PLEASE BRIEFLY DESCRIBE THE *SETTLEMENT OF DOD/FEA ISSUES*.**

16 A. The Settlement Agreement covers four areas: (1) administrative provisions; (2) service
17 availability; (3) rates, terms and conditions; and (4) general provisions. The substantive

¹ Frontier Communications Northwest Inc.’s Replacement Amended Petition for Approval of Minimal Regulation in Accordance with RCW 80.36.320, Docket No. UT-121994 (1/23/13) (“Frontier Petition”).

² Ankum Response Testimony, p. 67, lines 1-12 (4/25/13).

³ Ankum Response Testimony, pp. 67-68 (4/25/13) and Exhibit AHA-4.

1 conditions related to service availability, rates, terms and conditions, and general
2 provisions are contained within Attachment 1 to the Settlement Agreement.

3 **Q. PLEASE SUMMARIZE THE ADMINISTRATIVE PROVISIONS.**

4 A. After a section on background on the Settlement Agreement, there are fourteen sections
5 in the *Settlement of DoD/FEA Issues* addressing administrative provisions. These
6 administrative provisions (i) define the *Settlement of DoD/FEA Issues* as a “Multiparty
7 Settlement” under § WAC 480-07-730(3); (ii) clarifies that neither Party⁴ accepts the
8 other Party’s legal or factual assertions or arguments; (iii) establishes a proposed
9 effective date and a five (5) year duration; (iv) describes the procedure for filing the
10 *Settlement of DoD/FEA Issues* with the Commission and the actions required of the
11 Parties to support its approval; (v) establishes guidelines regarding any announcements or
12 press releases; (vi) describes the procedures available to the Parties if the Commission
13 rejects the *Settlement of DoD/FEA Issues* or approves it subject to modifications not
14 proposed by either Party; (vii) describes the procedures for executing the *Settlement of*
15 *DoD/FEA Issues*; and (viii) memorializes the Parties’ agreement that the *Settlement of*
16 *DoD/FEA Issues* is in the public interest, resolves all outstanding contested issues as
17 between Frontier and DoD/FEA and should be approved by the Commission with no
18 material changes.

⁴ The term “Party” in this testimony refers to either DoD/FEA or Frontier. The term “Parties” refers to DoD/FEA and Frontier collectively.

1 **Q. DESCRIBE THE SUBSTANTIVE SAFEGUARDS IN THE SETTLEMENT OF**
2 **DOD/FEA ISSUES.**

3 A. As discussed above, the substantive safeguards in the *Settlement of DoD/FEA Issues* are
4 contained in Attachment 1 to the Settlement Agreement. The primary safeguards will be
5 provided within a Master Services Agreement (“MSA”) that will be executed by the
6 Parties immediately after the Commission issues a ruling on Frontier’s Petition. *See,*
7 Attachment 1, ¶ A. At a high level, the MSA will be a commercial individual case basis
8 (“ICB”) - type arrangement requiring Frontier to provide certain business services to
9 DoD/FEA at rates, terms and conditions no higher or less advantageous than now existing
10 for at least five (5) years, provided that DoD/FEA satisfies a revenue volume threshold
11 commitment. The MSA will be executed and take effect on July 1, 2013, with a five (5)
12 year term, and will automatically renew for another one (1) year term unless either Party
13 provides written notice of intent to terminate the MSA no less than 90 days prior to the
14 expiration date of the then current term. *See,* Attachment 1, ¶ A(5).

15 **Q. DESCRIBE THE SERVICE AVAILABILITY PROVISIONS OF THE MSA.**

16 A. The services covered by the MSA are “intrastate WUTC regulated business services
17 purchased by DoD/FEA as of July 1, 2013” and the MSA includes a sample list of those
18 services. For services covered by the MSA, DoD/FEA entities will be permitted to
19 maintain those services as well as move, change, terminate or add to those services
20 (subject to applicable charges) during the duration of the *Settlement of DoD/FEA Issues.*
21 *See,* Attachment 1, ¶¶ A(1) and A(2). The service availability provisions of the MSA

1 will ensure that the business services DoD/FEA currently purchases from Frontier or will
2 need to purchase from Frontier will be available for the foreseeable future if the
3 Commission approves Frontier's Petition.

4 **Q. DESCRIBE THE RATE PROVISIONS OF THE MSA.**

5 A. Rates for services covered by the MSA will be, for the duration of the MSA, capped at
6 the rates in Frontier's intrastate tariffs effective as of January 1, 2013, or the actual rates
7 applicable and billed to DoD/FEA as of July 1, 2013, whichever is lower. In addition, if,
8 during the MSA's duration, DoD/FEA identifies rates for MSA services that are higher
9 than those listed in Frontier's Tariffs, Service Catalogs, or Price Lists, then the rates for
10 MSA services will be adjusted to the applicable lower rates going forward. *See*,
11 Attachment 1, ¶ (A)(3).

12 **Q. DESCRIBE THE TERMS AND CONDITIONS PROVISIONS OF THE MSA.**

13 A. Terms and conditions for services covered by the MSA will, for the duration of the MSA,
14 be those in Frontier's tariff effective as of January 1, 2013, or those applicable to the
15 present service offerings provided by Frontier to DoD/FEA as of July 1, 2013. In
16 addition, if, during the MSA's duration, DoD/FEA identifies terms or conditions for
17 MSA services that are less advantageous than those listed in Frontier's Tariffs, Service
18 Catalogs, or Price Lists, then the terms or conditions for MSA services will be adjusted to
19 the more advantageous terms and conditions going forward. *See*, Attachment 1, ¶ (A)(3).

20 **Q. DESCRIBE THE VOLUME COMMITMENT OF THE MSA.**

1 A. The MSA contains a volume commitment under which DoD/FEA entities agree to
2 collectively maintain Washington total annual direct retail service billings by Frontier
3 that are at least 85% of such annual purchases of retail services in the year preceding the
4 MSA's effective date. The Parties have estimated such annual billings to be between
5 \$1.5 million and \$2.0 million, and the MSA states that the Parties will calculate a more
6 precise annual amount once the MSA is executed. So long as DoD/FEA satisfies this
7 volume commitment, the MSA rates, terms and conditions will apply for the MSA's
8 duration. *See*, Attachment 1, ¶ (A)(4).

9 **Q. WHAT IF DOD/FEA'S RETAIL BILLINGS FROM FRONTIER FALL BELOW**
10 **THE 85% VOLUME THRESHOLD?**

11 A. The MSA contains a process by which Frontier may determine on an annual basis
12 whether the volume commitment has been satisfied. If Frontier determines that the
13 volume commitment has not been satisfied, it may notify DoD/FEA in writing. If, after
14 notice, DoD/FEA's Washington total annual direct retail service billings from Frontier
15 remain below the 85% threshold for 180 days, then Frontier may (at its option) either
16 terminate the MSA or negotiate different rates, terms and conditions for MSA services.
17 *See*, Attachment 1, ¶ (A)(4).

18 **Q. DESCRIBE THE GENERAL PROVISIONS IN THE SETTLEMENT OF**
19 **DOD/FEA ISSUES.**

20 A. Paragraphs B, C, D and E of Attachment 1 contain general provisions not directly related
21 to the MSA safeguards. Paragraph B states that if Frontier withdraws tariffs for business

1 services, then Frontier will retain copies of the tariffs it had on file immediately prior to
2 detariffing and make those tariff documents available electronically to DoD/FEA upon
3 request. Paragraph C specifies the DoD/FEA contact(s) that must be provided any notice
4 required by the Settlement Agreement. Paragraph D clarifies that nothing in the
5 Settlement Agreement is intended to prevent Frontier or potential alternative providers
6 from competing for the business services DoD/FEA purchases in Washington. Paragraph
7 E states that the *Settlement of DoD/FEA Issues* is not impacted by, and is independent of,
8 any other settlement(s) between Frontier and other entities.

9 **Q. DOES THE SETTLEMENT OF DOD/FEA ISSUES ADDRESS SERVICE**
10 **QUALITY?**

11 A. It does not specifically. There is nothing in the Settlement Agreement which would
12 impact the Commission's current service quality requirements or obligations, nor does it
13 impact any changes that the Commission may make in the course of this proceeding or in
14 the future. It is my belief that any future Commission service quality requirements would
15 apply to MSA services taken by DoD/FEA under the Settlement Agreement, unless
16 expressly exempted by the Commission.

17 **Q. DOES THE RECOMMENDED EFFECTIVE DATE OF THE SETTLEMENT OF**
18 **DOD/FEA ISSUES PROVIDE SUFFICIENT TIME FOR THE COMMISSION'S**
19 **CONSIDERATION?**

20 A. Yes, I believe there is sufficient time. The recommended effective date of the MSA in
21 the *Settlement of DoD/FEA Issues* is July 1, 2013. This provides approximately 44 days

1 between the filing of the Parties' Joint Narrative/Testimonies in Support of the Settlement
2 and the MSA's requested effective date, which is more than twice as long as the
3 minimum twenty-one (21) days required for less complex matters under WAC § 480-07-
4 740(1)(b).

5 **IV. THE SETTLEMENT OF DOD/FEA ISSUES RESOLVES DOD/FEA'S**
6 **CONCERNS WITH FRONTIER'S PETITION AND IS IN THE PUBLIC**
7 **INTEREST**

8 **Q. HOW DO THE SAFEGUARDS IN THE *SETTLEMENT OF DOD/FEA ISSUES***
9 **RESOLVE THE CONCERNS OF DOD/FEA YOU DESCRIBED IN YOUR**
10 **RESPONSE TESTIMONY SUBMITTED ON APRIL 25, 2013?**

11 A. My Response Testimony explained that DoD/FEA is a large business customer of
12 Frontier in Washington and argued there is not "effective competition," under RCW §
13 80.36.320, for the business local services DoD/FEA purchases from Frontier in
14 Washington. I also described DoD/FEA's concerns related to the Commission approving
15 Frontier's Petition in the absence of "effective competition": (1) there would be no
16 assurance that the business services DoD/FEA purchases from Frontier would be
17 available in the future; (2) assuming that services would remain available in the future,
18 there would be no indication the rates, terms and conditions for those services would
19 remain just and reasonable; and (3) there would be no "safety net" – such as that
20 currently provided by Frontier's tariffs – for DoD/FEA customers.⁵

⁵ Ankum Response Testimony, pp. 21-23 (4/25/13).

1 As described above in Section III of this testimony, each of these concerns would be
2 addressed by the *Settlement of DoD/FEA Issues* by ensuring for the duration of the MSA:
3 that the services purchased by DoD/FEA from Frontier remain available; that the rates,
4 terms and conditions of those services are no higher or less advantageous than they are
5 today; and that Frontier will provide copies of tariffs to DoD/FEA upon request for
6 services that are detariffed.

7 **Q. HOW ARE THE SAFEGUARDS IN THE SETTLEMENT OF DOD/FEA ISSUES**
8 **IN THE PUBLIC INTEREST?**

9 A. The Settlement Agreement is in the public interest because it fairly balances Frontier's
10 desire for additional regulatory flexibility with the need to protect DoD/FEA customers,
11 which still rely on Frontier's services in the State of Washington. The Settlement
12 Agreement also provides stability for DoD/FEA about what services will be available and
13 at what rates, terms and conditions, as well as stability for Frontier related to its local
14 exchange services revenues for planning, operational and investment purposes – while
15 not discouraging competition from potential alternative providers that may want to
16 provide business services to DoD/FEA in competition with Frontier in the future. In
17 addition, the Settlement Agreement avoids trial risks and conserves resources – time,
18 effort and costs of litigation – for the Parties as well as the Commission. Finally, it is my
19 understanding that Frontier will make the Settlement's MSA Volume and Term Plan
20 available to other customers similarly situated to DoD/FEA customer entities,
21 collectively.

1 **Q. PLEASE SUMMARIZE YOUR CONCLUSIONS AND RECOMMENDATIONS?**

2 A. The safeguards in the *Settlement of DoD/FEA Issues* are in the public interest and
3 satisfactorily address the DoD/FEA concerns detailed in my Response Testimony.
4 Therefore, I recommend that the Commission specifically approve and adopt the
5 *Settlement of DoD/FEA Issues* without any changes.

6 **Q. DOES THIS CONCLUDE YOUR TESTIMONY REGARDING THE**
7 ***SETTLEMENT OF DOD/FEA ISSUES?***

8 A. Yes.