

**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 JACK D. PHILLIPS  
IN SUPPORT OF SETTLEMENT AGREEMENT BETWEEN**

**FRONTIER COMMUNICATIONS NORTHWEST INC.**

**AND**

**STAFF OF WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
AND PUBLIC COUNSEL**

**MAY 23, 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, REPLY TESTIMONY, TESTIMONY IN SUPPORT OF THE**  
11 **CLEC SETTLEMENT, AND TESTIMONY IN SUPPORT OF THE**  
12 **SETTLEMENT WITH THE DEPARTMENT OF DEFENSE AND ALL OTHER**  
13 **FEDERAL EXECUTIVE AGENCIES IN THIS PROCEEDING?**

14 A. Yes.

15  
16 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

17 A. My testimony describes and supports the Settlement Agreement ("Agreement") between  
18 Frontier Northwest Inc. ("Frontier") and Staff of Washington Utilities and Transportation  
19 Commission ("Commission Staff") and Public Counsel.

20  
21 **Q. PLEASE BRIEFLY DESCRIBE THE HISTORY OF THIS PROCEEDING.**

1 A. On December 21, 2012 Frontier filed a petition with the Washington Utilities and  
2 Transportation Commission (“Commission) to be classified as a competitive provider  
3 pursuant to RCW 80.36.320. On January 23, 2013, Frontier filed an amended petition  
4 (“the Petition”) in the proceeding. On February 7, 2013, the Department of Defense and  
5 other Federal Executive Agencies (“DoD/FEA”) filed a petition to intervene in the  
6 proceeding. On February 28, Frontier filed direct testimony in this proceeding. On April  
7 17, CLEC Intervenors (Cbeyond Communications LLC, Integra Telecom of Washington,  
8 Inc.; tw telecom of Washington, llc; Level 3 Communications, LLC; and Charter  
9 Fiberlink WA-CCVII, LLC) and Frontier filed a “Settlement of CLEC Issues” (“CLEC  
10 Agreement”). On April 25, Frontier and CLEC Intervenors filed testimony in support of  
11 the settlement. Also on April 25, the Commission Staff, Public Counsel and DoD/FEA  
12 filed Response Testimony. On May 14, Frontier filed Rebuttal Testimony. An  
13 agreement (“DoD/FEA Agreement”) was reached between Frontier and DoD/FEA on  
14 May 14, 2013. Frontier and DoD/FEA filed a motion seeking leave to file testimony and  
15 a narrative in support of the settlement on May 14, which the Commission approved.  
16 Frontier and DOD/FEA filed testimony in support of that settlement on May 17. On May  
17 21, 2013, Frontier, Commission Staff, and Public Counsel notified the Commission that  
18 the parties had reached a full settlement in this proceeding. The parties jointly request  
19 that the remaining procedural schedule be suspended, with the exception of the public  
20 comment hearing set for May 23, 2013, and that the parties be allowed time to reduce  
21 their agreement to writing, and prepare a joint narrative and supporting testimony. The  
22 Commission granted the parties’ request and on May 22, 2013, the parties filed an  
23 executed copy of the Agreement with the Commission.

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**Q. DOES FRONTIER SUPPORT THE SETTLEMENT BETWEEN FRONTIER AND COMMISSION STAFF AND PUBLIC COUNSEL?**

A. Yes. The Agreement was structured to provide Frontier with certain pricing flexibility and relief from certain regulatory obligations while providing lifeline customers, basic stand-alone residential service customers, basic stand-alone small business (one to three lines) service customers, and intrastate special access customers with various protections. One of the key elements of the Agreement provides Frontier flexibility for stand-alone basic local residential and small business services and special access services, but uses rate bands and caps on the increases to limit the impact on customers of any price changes. In addition to Frontier’s obligations as a CoLR and ETC, the Agreement provides assurances that these services will remain available to customers throughout Frontier’s service area. Lifeline and WTAP services are also afforded additional protections by exempting lifeline service rates from price increases.

**Q. HOW DOES THE AGREEMENT BETWEEN FRONTIER AND COMMISSION STAFF AND PUBLIC COUNSEL INTERACT WITH THE CLEC AGREEMENT AND DOD/FEA AGREEMENTS?**

A. The Agreement complements and supplements the terms and conditions contained in the CLEC Agreement and the DoD/FEA Agreement- agreements that were previously filed with the Commission and supported by my testimony and that of the settling parties. The three agreements do not conflict or invalidate the terms or conditions of the others.

1 Collectively, the three agreements satisfactorily address the concerns and interests of  
2 Commission Staff, Public Counsel, CLEC Intevenors, DoD/FEA and Frontier.

3  
4 **Q. DO THE PRIOR SETTLEMENT AGREEMENTS FILED WITH THE**  
5 **COMMISSION REQUIRE ANY AMENDMENTS AS A RESULT OF THE**  
6 **SETTLEMENT BETWEEN FRONTIER, COMMISSION STAFF AND PUBLIC**  
7 **COUNSEL?**

8 A. No changes are required in the DoD/FEA settlement. However, the settlement with the  
9 CLEC Intervenors must be modified slightly. The Frontier/Commission Staff/Public  
10 Counsel settlement Agreement contemplated a resolution of certain issues in a manner  
11 that could be interpreted to be inconsistent with the language contained in paragraph 14  
12 of the CLEC Agreement. Paragraph 14 of the CLEC Agreement states that that  
13 settlement will not take effect in the event the Commission issues an order denying  
14 Frontier's Petition or Frontier otherwise elects not to be classified as a competitive  
15 carrier. Paragraph 23 of the Agreement between Frontier/Commission Staff and Public  
16 Counsel expressly calls for the filing by Frontier and CLEC Intervenors of an amendment  
17 to the CLEC Agreement that preserves the CLEC Agreement if the Commission approves  
18 the Agreement. The amendment to the CLEC agreement preserves the CLEC Agreement  
19 if the Commission approves the Agreement filed with the Commission on May 22, 2013.

20  
21 **Q. HAS FRONTIER ENTERED INTO AN AMENDMENT TO THE CLEC**  
22 **AGREEMENT TO PRESERVE THE CONDITIONS CONTAINED IN THAT**  
23 **AGREEMENT?**

1 A. Yes. Attached as Exhibit No. \_\_\_(JP-45) is Amendment 1 to Settlement of CLEC Issues.  
2 Frontier has executed the Amendment, as have three of the CLEC Intervenors. Given the  
3 logistical complexities of getting signatures, Amendment 1 had not been executed by two  
4 of the CLEC Intervenors as the time this testimony was filed. Frontier expects all of the  
5 CLEC Intervenors to have signed the Amendment 1 by the time of the hearing and will  
6 supplement the record when all signatures have been obtained.  
7

8 **Q. WHAT ARE THE KEY AREAS ADDRESSED BY THE AGREEMENT WITH**  
9 **COMMISSION STAFF AND PUBLIC COUNSEL?**

10 A. Frontier has seven tariffs on file with the Commission, each of which are addressed in the  
11 Agreement with Commission Staff and Public Counsel:

- 12 • WN U-16 Facilities for Intrastate Access (“Intrastate Access Tariff”) which contains  
13 intrastate switched access charges and special access rates;
- 14 • WN U-17 General and Local Exchange Tariff (“Local Exchange Tariff”) which  
15 contains local residential and business services;
- 16 • WU U-18 Network Interconnection Access Service;
- 17 • WN U-20 Collocation Service;
- 18 • WN U-21 Unbundled Network Elements;
- 19 • WN U-22 Resale Local Exchange Services; and
- 20 • WN U-23 Advanced Data Services (“ADS Tariff”).

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**Intrastate Access**

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2 **Q. WHAT ARE THE KEY TERMS AND CONDITIONS OF THE AGREEMENT**  
3 **FOR INTRASTATE ACCESS AND HOW ARE THESE CONDITIONS IN THE**  
4 **PUBLIC INTEREST?**

5 A. The Agreement provides different terms and conditions for intrastate switched access and  
6 for the special access services contained in Frontier’s tariff, WN U-16 Facilities for  
7 Intrastate Access (“Intrastate Access Tariff”).

8 *Switched Access*

9 With respect to switched access services, the Federal Communications Commission  
10 (“FCC”)’s Inter-Carrier Compensation (“ICC”) Transformation Order is currently  
11 pending in the Tenth Circuit of the U.S. Court of Appeals under cause no. 11-9900. In  
12 light of some level of uncertainty on the outcome of that appeal, Frontier commits to  
13 retain the switched access services contained in its Intrastate Access Tariff until the  
14 appeal is resolved and further appeals are exhausted. Within 60 days after the review of  
15 the ICC transformation order is resolved, Frontier will file with the Commission a  
16 proposal concerning its intrastate switched access charges that is consistent with  
17 resolution of the review of the ICC transformation order.

18 This provision of the Agreement is in the public interest in that it provides assurances that  
19 the Commission will retain authority over switched access rates in the event that the court  
20 appeal overturns the FCC’s preemption of intrastate switched access rates.

21 *Special Access*

22 Intrastate special access services are separately addressed in each of the settlement  
23 agreements with Commission Staff and Public Counsel, the CLEC Intervenors, and the

1 DoD/FEA. The three agreements address interests of the respective parties to those  
2 agreements and while there is some overlap, they do not conflict.

3 The Agreement requires Frontier to continue to offer intrastate special access services in  
4 the Intrastate Access Tariff. Both retail and wholesale carriers would be permitted to  
5 order services from this tariff. Frontier is permitted to revise the Intrastate Access Tariff  
6 to establish banded rates under RCW 80.36.340. The minimum band of the rates is 10  
7 percent below Frontier's existing tariffed rates, and any filing proposing to decrease rates  
8 below the rates in effect as of the date of the agreement must be supported by a TSLRIC  
9 study demonstrating the proposed rates are above cost. The maximum band for the  
10 intrastate access rates will be the interstate special access rate for the same service.

11 Frontier would be permitted to implement rate changes within the rate bands upon ten  
12 days' notice to the Commission and subscribers. Wholesale customers would be  
13 permitted to avail themselves of themselves of the prices from the special access tariff,  
14 but would not be required to do so, as they would also have access to pricing from the  
15 Wholesale Special Access Price Catalog agreed to in the CLEC Agreement.

16 The special access provision of the Agreement is in the public interest in that it provides  
17 Frontier with some limited retail pricing flexibility to better respond to market conditions  
18 but provides an upper and lower bound on rate changes and allows wholesale customers  
19 to purchase from the tariff in the event Frontier lowers the tariffed prices. These provide  
20 protections to both Frontier's customers and competitors.

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Local Exchange Service

1  
2 **Q. WHAT ARE THE KEY TERMS AND CONDITIONS OF THE AGREEMENT**  
3 **FOR LOCAL EXCHANGE SERVICES AND HOW ARE THESE CONDITIONS**  
4 **IN THE PUBLIC INTEREST?**

5 A. The Agreement is intended to respond to concerns of Commission Staff and Public  
6 Counsel that sufficient competition may not exist in all markets for stand-alone basic  
7 local services, stand-alone residential service; basic stand-alone business service for  
8 customers subscribing to one to three lines (“small business service”); and certain other  
9 services currently contained in Frontier WN U-17 General and Local Exchange Tariff  
10 (“Local Exchange Tariff”).

11 Frontier’s basic stand-alone services would be subject to rate bands as allowed pursuant  
12 to WAC 480-80-112. In its rate band filing, Frontier would provide a statement  
13 supporting the use of a banded rate tariff. Additionally, Frontier would include  
14 information in its rate band filing detailing the potential revenue effect on revenue of the  
15 proposed banded rate tariff range, as well as the effect on revenue of the current or  
16 proposed rate. If Frontier were to reduce its rates below the current tariff rates, Frontier  
17 would file cost of service studies to demonstrate that the rate exceeded the cost of service.

18  
19 *Protections for Basic Stand-Alone Residential Service*

20 The Agreement would establish a basic stand-alone residential service rate band in the  
21 Local Exchange Tariff at \$2 above and \$4 below the existing rates of \$16.90 for flat-rated  
22 service and \$11.15 for basic measured service. Beginning October 1, 2013, Frontier can  
23 increase these rates no more than \$1 in any 12-month period, except that no increase shall

1 exceed the rate band maximum. Lifeline and WTAP customers would not be affected by  
2 any basic residential service rate increases.

3 *Protections for Basic Stand-Alone Small Business Service (One to Three Lines)*

4 As with residential service rates, rate bands would be established for basic stand-alone  
5 small business service. Rate bands would be set at \$3 above and \$5 below the existing  
6 rates of \$33.60 for flat-rated service and \$21.60 for basic measured service. Beginning  
7 October 1, 2013, Frontier can increase these rates no more than \$2 in any 12-month  
8 period, except no increase can exceed the rate band maximum.

9 To provide Frontier greater pricing flexibility to respond to competition, it would be  
10 permitted to withdraw all other services from its Local Exchange Tariff and to maintain  
11 those services on its website in its Local Exchange Service Catalog.

12 *Protections for Services Moved to Local Exchange Service Catalog*

13 The Agreement would require Frontier to offer each service it moves from its Local  
14 Exchange Tariff to the Local Exchange Service Catalog on a stand-alone basis. If  
15 Frontier seeks to discontinue stand-alone services offered in its Local Exchange Service  
16 Catalog to existing customers, it must first seek and be granted Commission approval.  
17 This would give Frontier the ability to change its bundled service offerings to meet  
18 market conditions but provide customers with protections as to the availability of stand-  
19 alone services in the Local Exchange Service Catalog. Additionally customers would be  
20 protected by Frontier's commitment not to price bundled services above the sum of the  
21 stand-alone rates for those services.

1 *Additional Customer and Competitor Protections*

2 Additional customer protections include a commitment by Frontier that it will continue to  
3 serve as a carrier of last resort with respect to services moved from the Local Exchange  
4 Service Tariff into the Local Exchange Service Catalog. Frontier also commits, with  
5 respect to basic stand-alone and basic small business services, to continue to apply a  
6 statewide rate with no wire center deaveraging, including a commitment that extends to  
7 calling features. Competitors are protected from Frontier pricing services below cost by a  
8 commitment that Frontier will file a TSLRIC cost study for any rate reductions to  
9 demonstrate that its proposed rates are above cost.

10  
11 **Wholesale Services**

12  
13 *Interconnection Agreement Services*

14 **Q. WHAT ARE THE GENERAL PROVISIONS OF THE AGREEMENT FOR**  
15 **WHOLESALE SERVICES PROVIDED UNDER THE**  
16 **TELECOMMUNICATIONS ACT OF 1996 (“THE ACT”) AND HOW ARE THE**  
17 **PROVISIONS OF THE AGREEMENT IN THE PUBLIC INTEREST?**

18 A. The Agreement permits Frontier to withdraw the following interconnection-related  
19 wholesale tariffs and offer the services in price catalogs or price lists posted on Frontier’s  
20 website:

- 21 • WN U-18 Network Interconnection Access Service
- 22 • WN U-20 Collocation Service
- 23 • WN U-21 Unbundled Network Elements

- WN-U-22 Resale Local Exchange Services

The Agreement does not impact Frontier's wholesale obligations under the Telecommunications Act of 1996 ("the Act"). As a condition of the Agreement, Frontier reaffirms its wholesale obligations under the Act.

*Non-Interconnection Wholesale Services*

**Q. WHAT ARE THE GENERAL PROVISIONS OF THE AGREEMENT FOR SERVICES CONTAINED IN WN U-23 ADVANCED DATA SERVICES TARIFF?**

A. Consistent with the CLEC Agreement, the Agreement permits Frontier to move services contained in the Advanced Data Services Tariff to an Advanced Data Services Catalog that will be maintained on Frontier's website. Frontier agrees to continue to offer these services to existing customers at rates in effect on the date of the Agreement, May 21, 2013, for the duration of the Agreement. If Frontier seeks to discontinue any of these services moved from the tariff to the catalog to existing customers subscribing to the services, it will file a petition for Commission approval.

**Q. HOW DOES THE AGREEMENT INTERACT WITH THE CLEC AGREEMENT WITH RESPECT TO INTRASTATE SPECIAL ACCESS SERVICES AND TO DETARIFFING ADVANCED DATA SERVICES?**

A. The CLEC Intervenor Agreement requires Frontier to establish Non-ICA Wholesale Service Catalogs which would include intrastate access services and advanced data services. The Non-ICA Wholesale Service Catalogs would contain the same rates, terms and conditions as the Intrastate Access Tariff and Advanced Data Services Tariff. Only

1 carriers certified as long distance carriers or CLECs would be permitted to purchase  
2 services from these two newly established service catalogs. However, certified carriers  
3 would have the option of purchasing services from the Intrastate Access Tariff or  
4 Advanced Data Services Tariff if, for example, Frontier were to reduce rates to a lower  
5 level within the bands of the Intrastate Access Tariff.

6  
7 **DSL**

8 **Q. WHAT CONDITIONS DOES THE AGREEMENT IMPOSE ON FRONTIER**  
9 **WITH RESPECT TO OFFERING DSL SERVICE?**

10 A. Frontier currently offers stand-alone DSL service in its service areas where DSL is  
11 available. Frontier commits that it will continue to offer stand-alone DSL or another  
12 comparable broadband service to residential and small business end user customers  
13 where DSL is provided by Frontier. Frontier would be permitted to petition the  
14 Commission to terminate this condition on or after December 31, 2015. However, if  
15 Frontier does not petition to end this condition or the Commission has not acted on such a  
16 petition, the commitment to offer stand-alone DSL expires on December 31, 2016.

17  
18 **WAIVERS**

19 **Q. WHAT STATUTES DO THE PARTIES TO THE AGREEMENT RECOMMEND**  
20 **BE WAIVED?**

21 A. Pursuant to RCW 80.36.330, the Parties agree that it is appropriate for the Commission to  
22 waive certain regulatory requirements for Frontier. These recommended waivers are

1 contained as Appendix B, which was included as William Weinman's Exhibit  
2 No. \_\_\_(WHW-2).  
3

4 **Q. WHAT IS THE RATIONALE FOR THE COMMISSION TO WAIVE THESE**  
5 **REGULATORY REQUIREMENTS?**

6 A. There are at least two general reasons it is reasonable and appropriate for the Commission  
7 to waive these requirements. First, while there is not common agreement among the  
8 parties to this proceeding as to whether the level of competition Frontier faces in its  
9 Washington markets meets the statutory definition of "effective competition", there is  
10 general agreement that Frontier faces a significant level of competition. Frontier's  
11 competitors are not subject to the regulatory requirements for which the Parties  
12 recommend waiver. Granting these waivers would move Frontier closer to parity with its  
13 competitors with respect to the level of resources that are expended on regulatory  
14 compliance. Second, Frontier is in the business of providing telecommunications  
15 services to customers in its service areas. The waivers included in the Agreement are the  
16 legacy of a regulated monopoly environment and waiver of these regulatory burdens  
17 would permit Frontier to redirect resources to providing services to customers.

18  
19 The following regulatory requirements provide for Commission oversight of Frontier's  
20 budgets, expenditures, leases, transactions with affiliates, and financing arrangements:  
21 RCW 80.04.300 (Budgets to be filed by companies-Supplementary budgets), RCW  
22 80.04.310 (Commission's control over expenditures), RCW 80.04.320 (Budget rules),  
23 RCW 80.04.330 (Effect of unauthorized expenditure-emergencies), RCW 80.04.520

1 (Approval of lease of utility facilities), Chapter 80.16 RCW (affiliated interests), Chapter  
2 480-140 WAC (Commission general-budgets), WAC 480-120-344 (Expenditures for  
3 political or legislative activities), WAC 480-120-369 (Transferring cash or assuming  
4 obligation), WAC 480-120-375 (Affiliated interests- contracts or arrangements), WAC  
5 480-120-389 (Securities report), and WAC480-120-395 (Affiliated interest and  
6 subsidiary transaction reports). Under the terms of the Agreement, Frontier's rates would  
7 no longer be set under the rate-of-return regulatory regime for rate setting which relies  
8 heavily upon a company's level of capital and expense expenditures. As a result, the  
9 need for Commission oversight of the company's budgets, expenditures, leases,  
10 transactions with affiliates, and financing arrangements would no longer be necessary for  
11 rate setting or protecting consumer interests. Waiver of these requirements would  
12 eliminate unnecessary regulatory and administrative burdens, permitting Frontier to focus  
13 its resources on providing competitive telecommunications services in Washington.

14  
15 RCW 80.04.360 (Earnings in excess of reasonable rate-consideration in fixing rates)  
16 provides for Commission investigation of excessive earnings. As a telecommunications  
17 company whose rates are no longer set under rate-of-return regulation, the rule would not  
18 provide any benefit and should not apply.

19  
20 RCW 80.04.460 (Investigation of accidents) provides for Commission investigation of  
21 accidents resulting in injury or death involving a public service company. The  
22 Washington Department of Labor and Industries (L&I), Division of Occupational Safety  
23 and Health (DOSH) and other agencies have oversight of accident and injury

1 investigation. Waiver of this rule would eliminate an unnecessary duplication of  
2 oversight.

3  
4 Chapter 80.08 RCW (Securities) relates to commission oversight of securities issued by  
5 public service companies. This regulatory obligation is unnecessary because Frontier's  
6 rates would no longer be set under the rate-of-return regulation regime and there would  
7 no longer be a link between its cost of capital and rate setting.

8  
9 The Parties agree to partial waiver of Chapter 80.12 RCW (Transfers of property). The  
10 Agreement would waive this regulatory obligation, except for sale of exchanges and/or  
11 merger to a non-affiliated third-party. As a company whose rates are no longer set under  
12 the legacy rate-of-return regime, there is a reduced need for Commission oversight as the  
13 financial implications of such transfers would not be used for ratemaking purposes.  
14 However, the Agreement would preserve Commission oversight of transfers that would  
15 be of greater potential customer impact, transfers of ownership of exchanges or mergers  
16 involving third-parties that would have public policy implications well beyond rate  
17 setting.

18  
19 **EFFECTIVE DATE AND PRESERVATION OF SETTLEMENT TERMS**

20 **Q. WHAT IS THE PROPOSED EFFECTIVE DATE AND WHAT ARE THE TERMS**  
21 **UNDER WHICH THE TERMS OF THE AGREEMENT WOULD BE**  
22 **MODIFIED?**



1 A. The Agreement would be effective upon Commission approval and would terminate  
2 when the Commission approves a modification or termination of the Agreement.  
3 Frontier commits that it will not request any modification of the terms of the Agreement  
4 that would take effect before December 31, 2015.

5  
6 **Q. IS THE SETTLEMENT BETWEEN FRONTIER AND COMMISSION STAFF**  
7 **AND PUBLIC COUNSEL IN THE PUBLIC INTEREST AND DOES IT ADDRESS**  
8 **THE INTERESTS OF THE PARTIES TO THE AGREEMENT?**

9 A. Yes. The Agreement is both in the public interest and addresses the interests of the  
10 Parties. It provides for certain price protections for residential customers, small business  
11 customers and wholesale service providers. It also provides assurances that services will  
12 remain available to these customers. For Frontier, it provides additional pricing  
13 flexibility and reduces regulatory burdens for which there is little benefit thereby  
14 permitting it to focus on the business it is in- providing telecommunications services to  
15 customers.

16  
17 **Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION REGARDING**  
18 **THIS AGREEMENT?**

19 A. Frontier joins with the Commission Staff and Public Counsel in recommending the  
20 Commission approve the conditions of the Agreement.

21  
22 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

23 A. Yes, it does.