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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of)
Amending, Adopting, and)
Repealing Rules in WAC)
480-120, Telephone) Docket No. UT-160196
Companies, WAC 480-121,)
Registration and)
Competitive)
Classification of)
Telecommunications)
Companies, WAC 480-122,)
Washington Telephone)
Assistance Program, WAC)
480-123 Universal)
Service, WAC 480-140,)
Commission General -)
Budgets, and WAC)
480-143, Commission)
General - Transfers of)
Property Due to)
Competitive Changes)
within the)
Telecommunications)
Industry)

PROPOSED RULE ADOPTION HEARING
VOLUME I

Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SE
Olympia, Washington

DATE TAKEN: JULY 18, 2016
REPORTED BY: SARAH BINGHAM, CCR 3388

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1 OLYMPIA, WASHINGTON; JULY 18, 2016

2 9:35 A.M.

3 -o0o-

4 CHAIRMAN DANNER: All right. Good morning.
5 It is Monday, July 18th, 2016, and we are here to --
6 we're here with regard to Docket UT-160196. This is a
7 rulemaking to consider amending, adopting, and repealing
8 certain rules in Washington Administrative Code 480-120,
9 telephone companies.

10 I'm Dave Danner. I'm chair of the
11 commission. And with me today are Commissioners Phillip
12 Jones and Ann Rendahl. So let's get started.

13 I think we'll just turn to Mr. Cupp.
14 Mr. Cupp, do you have a presentation?

15 MR. CUPP: Thank you, sir. Good morning,
16 Chairman Danner, Commissioners Jones and Rendahl. I'm
17 John Cupp. I'm consumer protection staff, and, as you
18 mentioned, I'm here to -- to present a proposed
19 rulemaking in Docket UT-160196.

20 The commission filed a CR-101 on March 2nd
21 of this year, and on March 4th served a notice of
22 CR-101. And the commission received comments from
23 CenturyLink, Frontier Communications, and Washington
24 Independent Telecommunications Association.

25 The parties agreed with the changes to

1 remove or amend references to rules that were repealed
2 or -- or moved in a previous rulemaking under Docket
3 UT-140680. They also agreed with changes that removed
4 references to the Washington Telephone Assistance
5 Program and to the Washington Exchange Carrier
6 Association. Both CenturyLink and WITA recommended
7 changes which staff considered to be outside the scope
8 of this rulemaking, and those are discussed in a staff
9 memo.

10 All parties disagree with the proposal to
11 reinstate WAC 480-120-440. And I should point out that
12 if -- if reinstated, it would be under 481-120-441. The
13 CR-102 in this rulemaking was filed May 18th, and notice
14 was served on May 20th. The proposal was the same as it
15 had been in the CR-101. The deadline was extended. It
16 was originally -- gosh, I'm sorry, I don't remember the
17 date, but it was extended to -- the comment deadline was
18 extended to July 5th. This hearing was extended from
19 July 12th to today. And we -- the parties agreed to the
20 same rules related to the previous rulemaking and to the
21 changes related to the Washington Telephone Assistance
22 Plan and the Washington Exchange Carrier Association.

23 In addition to the changes mentioned in the
24 CR-102, WITA recommended a change to the definition of
25 "order date" in WAC 480-120-021. And that's described

1 in the memo. I can describe it to you now if you wish.

2 Also, there was another housecleaning rule
3 that was found that needed to be changed in
4 WAC 480-120-174 in the payment arrangements rule and
5 SETT. So SETT proposes those -- both of those changes.

6 CHAIRMAN DANNER: Okay. So --

7 MR. CUPP: Yes.

8 CHAIRMAN DANNER: -- why don't you just very
9 briefly explain the change of the definition of "order
10 date" of 021.

11 MR. CUPP: Originally the language in
12 480-120-021 that defined "order date" just said that
13 when action was required by the -- the applicant,
14 basically, to get service, that the order date became
15 the date on which the applicant completed the work that
16 needed to be done, and WITA recommended that the
17 language be changed to say that "Following completion of
18 the required actions, the order date became -- becomes
19 the date on which the company receives notice from the
20 applicant of such completion," because the company
21 wouldn't necessarily know when the work was completed
22 without notification from the customer.

23 CHAIRMAN DANNER: All right. Thank you.

24 MR. CUPP: You're welcome.

25 Where was I? So the -- the topic of

1 discussion I'm guessing today will be about staff's wish
2 to reinstate 480-120-440, which -- which describes
3 the -- the repair requirements for outages that are not
4 major outages. Since it's a repeal, staff has used
5 WAC 480-120-411(1)(c), which is a network maintenance
6 rule that says that outage conditions basically must be
7 repaired immediately -- or, excuse me, promptly, which
8 Webster defines as immediately or without delay. And
9 411 does not have any exclusions for major outages or
10 restore delays caused by force majeure, and it also
11 doesn't have exclusions for weekends and holidays. It
12 just says repair it promptly.

13 I developed some graphs showing -- they are
14 on the table. I think they sent copies to you --
15 showing -- showing the increase in violations and one
16 showing the increase in complaints over the last winter.
17 And -- excuse me. I don't remember what color is which.
18 It shows the Eastern Washington outages in blue and
19 Western in orange or red. It's hard to tell.

20 CHAIRMAN DANNER: I think it's orange. It's
21 orange to me.

22 COMMISSIONER JONES: It's orange.

23 MR. CUPP: And in addition, I put together a
24 spreadsheet that shows basically some -- some more
25 detail regarding the month of December and the outages

1 in that month. It shows the -- in the, what, fourth
2 column from the left, the date the outage was reported.
3 And the next column to the right is the date -- the
4 commitment date, when the company says is the day we'll
5 be out to restore. And the far right column is the --
6 the number of days -- I excluded the first two days,
7 basically, because the staff is given 48 hours for
8 restore.

9 So it shows -- and in blue you'll see a
10 statewide storm in which the -- the governor declared a
11 state of emergency due to severe storms. That
12 declaration showed -- or proclamation showed -- it
13 talked about utility infrastructure being affected. The
14 orange that you'll see at the bottom of the first page,
15 and then on the back, that outage affected six counties:
16 Chelan, King, Kittitas, Lewis, Snohomish, and Yakima
17 Counties. The counties that were affected I showed in
18 red just during the duration of that storm.

19 And I don't know the exact duration of that
20 storm. It was expected to last several days.
21 Apparently the proclamation was made during the storm,
22 so --

23 CHAIRMAN DANNER: This spreadsheet is just
24 CenturyLink?

25 MR. CUPP: Yes, sir. I think it's important

1 also to note that -- I mean, I understand that companies
2 believe this is a step backward in terms of competitive
3 neutrality, but I have a book here full of -- it's
4 Chapter 480-120, and I don't think any of these rules
5 are competitively neutral or -- or unimportant. I think
6 they are all very useful rules and they are very
7 important to our population who has landlines.

8 I think that's all have I right now, unless
9 you have questions.

10 CHAIRMAN DANNER: All right. Thank you.
11 Are there any questions for Mr. Cupp?

12 COMMISSIONER JONES: No.

13 COMMISSIONER RENDAHL: So, Mr. Cupp, this is
14 Commissioner Rendahl. Do you have similar data for any
15 of the WITA companies or for Frontier?

16 MR. CUPP: There are very -- well, I didn't
17 find any violations during these periods for any WITA
18 companies of 480-120 -- well, over the winter months
19 that I focused on, of WAC 480-120-411(1)(c). Frontier
20 numbers were a lot lower. I can give you rough numbers
21 based on the charts that I put together in the CR-102.

22 COMMISSIONER RENDAHL: Sure.

23 MR. CUPP: Sorry. Got to find that. During
24 the winter months, it looks like December 2015, roughly
25 37 violations of 480-120-411(1)(c) and six complaints.

1 So it jumped from basically zero in November up to six
2 in December, three in January, five in March.

3 COMMISSIONER RENDAHL: Okay. Thank you.

4 CHAIRMAN DANNER: Mr. Jones?

5 COMMISSIONER JONES: Let me see if this is
6 on. Is this on? Yes.

7 So if we go back without this rule, without
8 a 440 or 441, where, as you say, we have the network
9 maintenance rule, correct?

10 MR. CUPP: Yes, sir.

11 COMMISSIONER JONES: So these complaints,
12 how does staff monitor and enforce -- or when there's a
13 complaint under the 411 network maintenance rule -- I'm
14 reading it now. And, as you say, it has a four-part
15 test. In sub (1) it says (a), "Provide adequate
16 maintenance to ensure that all facilities are in safe
17 add serviceable condition." That's broad, right?

18 MR. CUPP: Right. And I don't see a lot of
19 violations of subsection (1)(a). The violations that --

20 COMMISSIONER JONES: Where do they come in?
21 That was my next --

22 MR. CUPP: Oh, (1)(c).

23 COMMISSIONER JONES: (1)(c), it says
24 "promptly."

25 MR. CUPP: "Promptly repair or replace

1 broken, damaged, or deteriorated equipment when found to
2 be no longer capable of providing adequate service."

3 COMMISSIONER JONES: So how does staff
4 interpret two words in sub (c), "promptly" and
5 "adequate"?

6 MR. CUPP: Well, staff has been using the
7 48-hour standard for -- in -- to define "promptly" in
8 this case --

9 COMMISSIONER JONES: Okay.

10 MR. CUPP: -- for outages. "Adequate"
11 basically means -- that basically means is it -- is the
12 line capable of providing a voice conversation.

13 COMMISSIONER JONES: So it is because this
14 is not wireless or VoIP or any IP-enabled service,
15 you're -- you are looking at voice communication --
16 industry standards on voice communications, like
17 latency --

18 MR. CUPP: Yes.

19 COMMISSIONER JONES: -- you know, time to
20 connect, and originating to a terminating call, things
21 like that?

22 MR. CUPP: Yes.

23 COMMISSIONER JONES: There's nothing in here
24 on 911, is there? So 911 centers, there's no enhanced
25 reporting for 911?

1 MR. CUPP: No. No, well, not that staff
2 takes into consideration when entering a complaint or
3 noting violations.

4 COMMISSIONER JONES: Okay. All right.
5 Okay. Thanks.

6 CHAIRMAN DANNER: So if you find a
7 violation -- so if you find that there is a -- using the
8 network maintenance rule, if you're finding that an
9 outage has not been responded to in 48 hours, do you
10 find that you -- you log that as a violation?

11 MR. CUPP: Our complaint staff logs it as a
12 violation if, from the time the outage is reported to
13 the time the outage is restored, it exceeds 48 hours,
14 for every day exceeding 48 hours.

15 CHAIRMAN DANNER: Okay. And you feel -- or
16 staff feels secure that that is a reasonable rule, even
17 though 48 hours is not -- I mean, the -- "promptly" is
18 not defined?

19 MR. CUPP: Well, yes, because 480-120-440
20 was in effect for so long and that's just the standard
21 that was set, and SETT felt it was reasonable to
22 continue with that -- with that standard.

23 CHAIRMAN DANNER: Okay. And it hasn't been
24 suggested that because that standard was repealed that
25 it is no longer in place and -- and something else would

1 be determined to be our intent?

2 MR. CUPP: It possibly has come up. I don't
3 handle complaints, so I haven't really discussed these
4 violations --

5 CHAIRMAN DANNER: Right.

6 MR. CUPP: -- with the company's complaint
7 handling staff, so...

8 CHAIRMAN DANNER: Okay.

9 MR. CUPP: I -- I know that these -- had
10 these violations been withdrawn, had the company
11 convinced our staff that no, there shouldn't be a
12 violation here, staff would have withdrawn it, and it
13 wouldn't have shown up in these charts and tables.

14 CHAIRMAN DANNER: Okay. Thank you very
15 much. Any other questions for Mr. Cupp before we move
16 on?

17 All right. Thank you.

18 MR. CUPP: Thank you.

19 CHAIRMAN DANNER: Don't go anywhere.

20 MR. CUPP: Okay.

21 CHAIRMAN DANNER: All right. Next, let's go
22 to Ms. Anderl. Good morning.

23 MS. ANDERL: Good morning, Commissioner,
24 Commissioners, Chairman Danner. Lisa Anderl
25 representing CenturyLink.

1 We have quite a bit of information to share
2 with you today to kind of expand upon the two sets of
3 comments that we filed originally. And if it's all
4 right with you, Mr. Grate and I are going to kind of
5 tag-team it. He's got some information specific to the
6 force majeure events that prompted the outage. I've
7 got, maybe not surprisingly, some more legal arguments
8 for you.

9 So I think I want to just kind of start at
10 the beginning and emphasize to you that it is, I think,
11 the industry's belief, definitely CenturyLink's belief,
12 on firm conviction that this rule, 480-120-440, was not
13 inadvertently repealed. It was absolutely an
14 intentional and correct repealer of the rule in a docket
15 that was opened specifically to consider bringing your
16 rules toward competitive neutrality and recognizing the
17 effect of competition on the telecommunications industry
18 specifically.

19 I think it was a follow-on from the
20 recognition in RA4 and in Frontier's competitive
21 classification proceeding that there is pervasive
22 competition in the state of Washington, that that
23 competition serves to control and drive behaviors in a
24 way that formerly was the role of a regulator, but the
25 regulators wisely step back when there is sufficient

1 competition to -- to drive behaviors and a free market
2 to make sure that companies reap the rewards or pay the
3 penalties in the free market of their behaviors, not
4 based on violations of rules, but based on whether we
5 have the ability to keep customers, win new ones, and
6 keep the ones that we have happy.

7 In the light of the kind of deep and pervasive
8 competition that has developed in this state, and many
9 others, since the Telecom Act, and we've had a couple of
10 A4s for the company -- and I think that you
11 commissioners have correctly recognized the evolution of
12 competition from CLEC to recognizing in the most recent
13 A4 that VoIP and wireless services are substitutable, do
14 provide a competitive alternative to many customers in
15 the state, if -- if not -- if not virtually all of them,
16 and for that reason, this rule and many, many others
17 were either amended or repealed during the last
18 rulemaking.

19 CHAIRMAN DANNER: So could we -- could we --
20 I'd like to separate out the -- the policy questions
21 that you raise, I think, are all ones that we have to
22 consider. But the question of whether we did something
23 deliberately or inadvertently, is that material to
24 where -- to the decision we're making today?

25 MS. ANDERL: Well, it -- it may be because

1 the statement of purpose in the CR-101 and 102 was to
2 correct an error, an inadvertent error. If that was
3 indeed the case, that it was just a scrivener's error or
4 a typo or some, you know, overly enthusiastic redlining
5 that nobody caught, I think we might -- it'd be a
6 different story from where we -- where I think we really
7 are, which is what the rule -- the rulemaking didn't
8 technically notice, which is adoption of a service
9 quality standard, kind of de novo.

10 CHAIRMAN DANNER: So is there -- is there
11 anything in the record that suggests that we took that
12 step deliberately as opposed to inadvertently?

13 MS. ANDERL: Oh, yes, tons.

14 CHAIRMAN DANNER: In our transcripts? I
15 mean, this is -- I mean, I'm not talking about things
16 that the company's filed. I'm talking about things
17 where commissioners talked or commissioners wrote in an
18 order.

19 MS. ANDERL: Yes, there -- the rule adoption
20 order specifically indicates this is a rule to be
21 repealed during the work -- the 480-120-440 specifically
22 indicated in the order signed by the commission as a
23 rule that was being repealed. It is a rule that was
24 redlined by staff or the workshop to be eliminated. It
25 was a rule that public counsel opposed the elimination

1 of. So there was discussion on the -- you know, in the
2 record. I -- I don't think we had transcripts in that
3 rulemaking. I think we just had a workshop. And it was
4 maybe recorded, but I don't recall there being a court
5 reporter.

6 There was a matrix prepared by staff at the
7 time of that rulemaking that showed the action to be
8 taken for each of the 480-120 subsections that was under
9 consideration, and it very clearly says "repeal." The
10 competitive market will drive behaviors on this.
11 There's no need for a rule. So yeah, I think it's -- I
12 think it's crystal -- crystal clear.

13 CHAIRMAN DANNER: Okay. And then, once
14 again, the materiality of it, I mean, is -- is -- if we
15 were to determine that it was inadvertent, it's your
16 argument that we would need go back and amend the
17 rulemaking, the 101, and start over?

18 MS. ANDERL: Yeah, but I think potentially
19 you have that issue before you in terms of whether there
20 was adequate notice.

21 COMMISSIONER RENDAHL: So even if it was --
22 if it was not inadvertent, if documented issues, which I
23 think is what staff is bringing forward, show that there
24 may be an issue with the repeal of that rule, the
25 commission can still go forward and look at that,

1 whether or not it was based on inadvertent or not.

2 MS. ANDERL: Sure. The commission can still
3 go forward and look at it. I'm not going to -- I
4 wouldn't dispute that. We're going to get in a minute
5 to why the spike, as alleged, does not support
6 reinstatement of a rule, but not quite there yet.

7 I do have a couple of handouts that are just
8 illustrative at this point. I think you're all well
9 aware of the state of competition, but these are kind of
10 a good reminder, really, of where we are in terms of the
11 ILEC market share, if I may approach.

12 CHAIRMAN DANNER: You may.

13 COMMISSIONER RENDAHL: Thank you.

14 CHAIRMAN DANNER: Thank you.

15 COMMISSIONER JONES: Thank you.

16 MR. CUPP: Thanks.

17 MS. ANDERL: George, you want one?

18 MR. THOMSON: Thank you.

19 MS. ANDERL: Court reporter?

20 THE REPORTER: Thank you.

21 MS. ANDERL: So these are just graphic
22 representations of data per the FCC's competition
23 report. We did just check, and, unfortunately, we were
24 not able to get year-end 2015 data. I don't know why
25 it's not available in the middle of 2016, but it's not.

1 But it's a -- the first page shows in the
2 pie chart the difference between the market share in the
3 15 years since competition really took hold, and you can
4 see that the ILEC has -- market share has declined
5 pretty dramatically in face of the -- the non-ILEC,
6 which includes CLEC and VoIP and wireless competition.

7 The second page just -- and these are
8 total -- total Washington, so it includes CenturyLink
9 and Frontier and those companies. We didn't break it
10 out. The second page is just bar graphs showing the --
11 the data similar to the pie chart. And then the second
12 one is -- just shows the ILEC market share decline. So
13 you have competitive restraint on behavior here. We do
14 not need a service quality rule to govern it.

15 And, honestly, as we get more into the
16 discussion today, I think you'll see pretty clearly that
17 whether this rule was in place or not would have
18 materially affected any behaviors in terms of restoral
19 during the storm. Because some of -- much of this
20 spike, and I'm using air quotes there, was -- much, if
21 not all of it, was due to force majeure issues that
22 Mr. Grate's going to give more detail about. A rule
23 simply cannot cause telephone poles that are snapped off
24 and lying in the street to be replaced in 48 hours and
25 wires strung on them. A -- a rule mandating 48-hour

1 restoral cannot make the flooded rivers go down. It
2 will not restore roads that have washed out and taken
3 conduit with them.

4 So -- and it -- and it really shouldn't, in
5 a competitive market, drive companies to overstaff for
6 unpredictable act-of-God-type events when staffing in
7 that way. Even if it were possible to do so, could
8 result in driving costs into the business to pay
9 technicians who don't have anything to do during the
10 non-force majeure 320 days of the year.

11 So what I'm saying at the beginning is in
12 the 2014 rulemaking, you got it right. You recognized
13 that there was competition. You recognized that there
14 were a lot of rules that were no longer competitively
15 neutral. Many of those hadn't been addressed in either
16 the competitive classification waiver or in the A4. You
17 undertook a -- a thoughtful, deliberate, fairly
18 time-consuming rulemaking, with a lot of record and a
19 lot of comments and a lot of discussion, and you
20 repealed this rule along with others and amended others
21 to better reflect 2015. And I think that's where we
22 should stay.

23 Now, the question then arises to
24 Commissioner Randal's question is, well, what if things
25 really have gone downhill since the repeal of the rule?

1 What if we think data shows that the rule is really
2 necessary? We're here to tell you that the data does
3 not show that. The spike that staff alleges supports
4 the reinstatement of the rule really doesn't exist, on
5 multiple levels.

6 And the -- the first one I want to talk about
7 is, I hope, not hard to follow, but staff -- the spike
8 only exists really because the rule was repealed, but
9 not because any behaviors changed; in other words, staff
10 only included complaints where violations were found.
11 After 480-120-440 was repealed, staff started assessing
12 violations under 411 and holding the company to a much
13 stricter standard. 440 has force majeure exceptions.
14 440 had access exceptions where we couldn't reach the
15 customer premises, locked gates, bad dogs, whatever.
16 440 had weekend and holiday exceptions.

17 Staff has determined to carry the 48-hour
18 requirement over into its interpretation of subsection
19 411, but it did not carry over any of the exceptions
20 that were going to be overruled. So, honestly, if you
21 look at the spike, if the force majeure exemptions were
22 in place, those wouldn't be violations and, therefore,
23 those complaints would not be included in the graph.
24 And the only thing that follows from that is you
25 wouldn't have a spike. But we wouldn't have repaired

1 things more quickly. We wouldn't have necessarily had
2 different staffing or shorter intervals.

3 CHAIRMAN DANNER: So do you accept that the
4 interpretation in 411 is that -- is "promptly" meaning
5 48 hours? Do you think that's a reasonable
6 interpretation?

7 MS. ANDERL: Absolutely not. I think it's
8 completely arbitrary, and I think that "promptly" means
9 depending on the circumstances. You know, I mean,
10 "promptly" cannot mean 48 hours when you don't have a
11 pole in the ground to string your wire on. "Promptly"
12 cannot mean 48 hours when you don't even own the pole
13 that's laying in the street and have no authority to
14 replace it. "Promptly" cannot mean 48 hours when Avista
15 has 100,000 people out of power and we have to wait
16 until power is restored before we can string our
17 telephone lines. "Promptly" can't mean 48 hours under
18 any of those circumstances.

19 CHAIRMAN DANNER: So on the spreadsheet now,
20 we've got the blue, which is state of emergency; is that
21 correct, Mr. Cupp?

22 MR. CUPP: Yes, that is.

23 MR. GRATE: Okay. And the -- the -- and one
24 again, the -- the orange is a different state of
25 emergency in which --

1 CHAIRMAN DANNER: That's another state of
2 emergency.

3 MR. CUPP: In which the -- that one focused
4 on transportation infrastructure, the one in orange.

5 CHAIRMAN DANNER: Okay. And the blocks that
6 are in white in the middle and at the end are outside --

7 MR. CUPP: Outside the storm that was
8 defined in those proclamations, yes.

9 MS. ANDERL: But I don't think we agree with
10 that, Your Honor.

11 MR. GRATE: No, not at all.

12 MS. ANDERL: Mr. -- Mr. Grate has all the
13 data about the force majeure events, and we'll go
14 through what our belief is on the timing of the force
15 majeures and the states of emergency.

16 CHAIRMAN DANNER: Okay. Do you want to do
17 that later?

18 MS. ANDERL: We can break to him now if
19 it -- if it flows better for you. I'd be happy to --

20 CHAIRMAN DANNER: Well, it flows better --
21 I'm sorry, I'm just -- you know, my mind is not
22 necessarily linear.

23 MS. ANDERL: Okay.

24 CHAIRMAN DANNER: So I'll let you -- I'll
25 let you go through your presentation.

1 MS. ANDERL: I'm pretty linear.

2 CHAIRMAN DANNER: That's a good thing, I
3 think.

4 MS. ANDERL: I was going to say, I don't
5 have to be.

6 In any event, I think -- I think what's
7 going to be cleared up is that all of these -- all of
8 these outages on staff's December 2015 storm and
9 restoral commitment detail were impacted one way or
10 another. And that is because, even if we have an outage
11 that -- or a -- a state of emergency that ends by the
12 governor's proclamation, that doesn't mean we're done.
13 We may have a lot of additional access issues. In fact,
14 it's often not until the force majeure event is over and
15 declared terminated that we can start rolling trucks.
16 So to say that the governor declared this state of
17 emergency and that you only get a pass during these
18 periods of time in these counties is simply too
19 restrictive.

20 Furthermore, when we have a state of
21 emergency, we may well take crews and equipment from the
22 nonimpacted counties or areas and move them into the
23 impacted areas, which may, in fact, cause service
24 restoral delays in non-force majeure counties. But I
25 think, in the overall scheme of things, that's how you

1 would want us to manage our business, is to say look,
2 you've got a wet cable here, you're going to have to
3 wait 72 hours instead of 48 because we've got --
4 80 percent of our crew that normally serves your area is
5 up there stringing wire in Spokane or Seattle.

6 If you start managing your business to a
7 rigid 48-hour standard and you say hey, you know, we --
8 we can't move -- we can't move techs out of here because
9 we have a 48-hour restoral standard and it's
10 100 percent, that drives bad business decisions. And
11 I'm not saying that we would do that, but if you put us
12 in a position of either driving a bad business decision
13 or intentionally violating your rule -- and I don't
14 think that -- knowing all of you for as many years as
15 I've known you, and the reasoned decisions that you have
16 made over those years, I don't think you want to create
17 a rule that has that as an inadvertent outcome.

18 So anyway, force majeure, more for -- from
19 Mr. Grate to come. In addition to --

20 COMMISSIONER JONES: Ms. Anderl?

21 MS. ANDERL: Yes.

22 COMMISSIONER JONES: Commissioner Jones on
23 that point. So the -- for -- the network maintenance
24 rule, though, does not have a force majeure exemption in
25 it, correct?

1 MS. ANDERL: That's correct.

2 COMMISSIONER JONES: But 440 did?

3 MS. ANDERL: It did.

4 COMMISSIONER JONES: So doesn't that work to
5 the advantage of the company, to have a force majeure
6 exemption? Because we've all dealt with force majeure
7 over the years. I think we know what it is.

8 MS. ANDERL: Well, it did and it didn't. As
9 I said, part of -- part of our being able to use that
10 force majeure exemption is having the trouble tickets
11 coded appropriately to force majeure. As you're going
12 to hear from me in a minute, we have over 700
13 technicians in the state of Washington. And I think
14 expecting a 100 percent accuracy force majeure recording
15 the cause of the outage is probably not -- probably not
16 realistic.

17 Furthermore, as I was just discussing, there
18 may be situations where we have moved staff out of
19 nonimpacted areas into the force majeure areas. And so
20 say perhaps Yakima dodged the storm, Yakima may have
21 delays because half their crews are gone helping the
22 damaged areas. The Yakima crews aren't going to know to
23 code their delays to force majeure because they don't
24 have flooded roads.

25 So the force majeure exemption -- exemption is

1 helpful, yes, but it still -- kind of still doesn't get
2 up there, and especially when the rule is otherwise a,
3 you know, 100 percent in 48 unless you get an exemption.
4 Okay?

5 Interestingly, that we -- our research, kind of
6 belatedly, not until our second round of comments,
7 disclosed that there is no similar rule or restoration of
8 power and natural gas outages in the state of
9 Washington. And I'm not sure why that's the case.
10 Believe me, to my friends at PSE and Avista, I am not
11 advocating for such a rule because I don't think it's
12 any more attainable for them than it would be for us.
13 But it's hard to imagine why a market that is as
14 competitive as telecom would need a standard like that
15 when -- when other essential utilities that -- where
16 customers, who clearly have less of a choice of a
17 provider, do not have that kind of a mandate.

18 And we don't have a 100 percent in 48 hours in
19 any other state. I mean, other states do have, per
20 Mr. Cupp's memo, 80 percent in 48, or 85 percent in 24.
21 We don't think you need that sort of a standard at all.
22 Given the -- like I said, the very, very, very tiny
23 number of complaints -- I mean, we have almost 800,000
24 access lines in the state of Washington. You look at
25 these complaints numbers, and sure, there's a spike, but

1 it's because the top line of the graph is 50. If you
2 put the top line of the graph at 800,000 and looked at
3 number of complaints per access line, you wouldn't even
4 see a bump. So I think -- I think we are, like I said,
5 still talking about very, very, very small numbers under
6 very, very, very extreme weather conditions.

7 Finally, I want to answer the question that
8 the -- the commissioners asked during their briefing
9 with staff last week, and that is for staffing numbers
10 of technicians on our payroll who are qualified for
11 service restoral. And I'm not sure exactly what the
12 intent of the question was, but I surmised that the
13 question was, you know, did we immediately adjust
14 staffing levels after the rule was repealed to somehow
15 save money, diminish service quality or something,
16 because we no longer had to manage to this standard.

17 That is not the case, and I will -- I'll tell
18 you about our staffing numbers. We weren't able to
19 validate them until an 8:30 conference call in the car
20 this morning, and so I don't have a handout for you, but
21 we can file these if you wish. I can just read them off
22 for you, though.

23 CHAIRMAN DANNER: That would be -- as long
24 as we can get it into the record, that will be all
25 right.

1 MS. ANDERL: We've got quarterly numbers
2 from the end of the fourth quarter of 2014, so 4Q 2014.
3 We had 644 techs in the state of Washington qualified to
4 work on service restoral issues. 1Q '15, 635; 2Q '15,
5 671; 3Q '15, 679; 4Q '15, 692; 1Q '16, 754; 2Q '16, 777.
6 So -- and the rule was repealed in the middle of the
7 second quarter of 2015.

8 As I'm sure you're aware, demand for
9 broadband has increased. CenturyLink has rolled out
10 Prism television service in the state. We're busier
11 than we've been. And in the overall, we have increased
12 staffing levels to respond to customer demands. These
13 staffing levels did not increase or decrease based on
14 the repeal of the rule. It did not increase or decrease
15 based on the threatened reinstatement of the rule. I
16 think what we see here is our own internal metrics tell
17 us when we need to hire people when we have unacceptable
18 load-to-force issues or unacceptable installation or
19 repair delays. And I think it's -- I think it's working
20 the way it should be.

21 COMMISSIONER JONES: Ms. Anderl, I'm
22 Commissioner Jones. On that point, just a point of
23 clarification. So are these techs -- and I take your
24 point on the increasing numbers after 3Q 2015. But
25 because of the Triple Play offering that I'm bombarded

1 with every month from CenturyLink, and I get all your
2 advertisements, are these techs qualified to do service
3 restoration on broadband, Prism TV, and Legacy Voice,
4 the TDM network? Because, as you know, they are
5 different networks, very different networks.

6 MS. ANDERL: Yes, we asked that specific
7 question. Every single one of the numbers I gave you is
8 qualified to restor pods. Not all of them are qualified
9 to work on broadband or television. So I think that's
10 kind of what you care about, and that's why we asked
11 that question.

12 COMMISSIONER JONES: Okay.

13 MS. ANDERL: Now, I did, in our comments --
14 and I want to make this clarification. I did indicate
15 that we had hired new techs and that we had a total of
16 515 as of the date we filed the comments. I -- I'll
17 take the hit on that. I think I didn't ask the question
18 right, and what I got -- when I got that 515 number, it
19 was a Western Washington number because I was talking to
20 somebody who is based in Seattle. So when we -- when we
21 re-asked and we -- we did get the full state count data,
22 that's why you see these numbers as higher than that 515
23 than I put in our comments.

24 COMMISSIONER JONES: Okay.

25 MS. ANDERL: So if you don't have any other

1 questions for me, I think that's -- pretty much
2 concludes my portion of the presentation. Mr. Grate
3 does have more interesting pictures of the storm and
4 some good discussion about the force majeure events that
5 we experienced in November, December, and January.

6 COMMISSIONER JONES: Just --
7 Commissioner Jones. One more question. So I did --
8 with Judge Compta's help, I did pull the orders, so I'm
9 looking at it. I don't see any description of the
10 repeal of 440 in the narrative. I just see, you know,
11 of all the rules we have like -- this was a pretty
12 extensive repeal and amend rulemaking, wasn't it? And
13 there are like 30 or 40 or 50 line items.

14 And you're right. It just says repeal,
15 WAC 440-120-440 describes it. But there's nothing --
16 there's nothing in the narrative, Ms. Anderl. We have
17 narrative on damage reporting requirements, narrative on
18 annual certifications where we agree and disagree with
19 not just you but with AT&T and others. But is there
20 anything in this order that can you point me to for
21 narrative?

22 MS. ANDERL: I don't recall seeing anything
23 in the order.

24 COMMISSIONER JONES: Okay.

25 MS. ANDERL: Like I said, I did read all of

1 the comments in that rulemaking. And I know that public
2 counsel specifically opposed the repeal of that rule,
3 and I know that it was very clearly laid out in the
4 staff matrix.

5 COMMISSIONER JONES: Okay. Thank you.

6 MS. ANDERL: My microphone's a little wonky.
7 It just keeps cutting out. Sorry about that.

8 COMMISSIONER RENDAHL: They are acting up
9 lately.

10 CHAIRMAN DANNER: Yeah, as soon as we get an
11 infusion of cash here, we'll -- so...

12 MS. ANDERL: I could maybe get one of our
13 techs to look at it.

14 CHAIRMAN DANNER: We can't wait that long.
15 That was a joke, just for the record.

16 COMMISSIONER JONES: Can you strike that
17 from the record, please?

18 MS. ANDERL: You guys are a tough crowd.

19 COMMISSIONER DANNER: I couldn't resist.
20 Mr. Grate?

21 MR. GRATE: May I approach the bench?

22 CHAIRMAN DANNER: You may approach.

23 MR. GRATE: Thank you. Handouts. This is
24 a matrix.

25 COMMISSIONER RENDAHL: Okay.

1 CHAIRMAN DANNER: Thank you.

2 COMMISSIONER JONES: Thank you.

3 MS. ANDERL: Thank you. Did you give one to
4 John?

5 MR. GRATE: I did.

6 MR. CUPP: You didn't give me pictures.

7 MR. GRATE: You didn't get the pictures?

8 MS. ANDERL: He did now. I gave him my
9 pictures.

10 MR. CUPP: There you go.

11 MS. ANDERL: I think they are the same.

12 MR. THOMSON: Thank you.

13 MS. ANDERL: I think it's on.

14 MR. GRATE: We're on now. Good morning.

15 I'm Phil Grate. I'm director of regulatory affairs for
16 CenturyLink in Washington and Oregon, and my purpose is
17 to talk specifically about the force majeure events that
18 occurred in late 2015 and into 2016.

19 I have -- I have two handouts for you. One
20 has a set of photographs at the front end of it, and
21 these are photographs that I pulled down from the
22 Seattle Times website. I believe these were taken on
23 December 9th and published on December 10th, and they
24 just illustrate the extent of the storm damage that
25 occurred in the Puget Sound area. I think the -- one in

1 the upper left-hand corner and the lower -- yeah, upper
2 left and lower right are both from Issaquah. I don't
3 know the locations of the two flooding photos. But --

4 MS. ANDERL: I think one of them was Monroe.

5 MR. GRATE: Might have been Monroe.

6 Looks -- looks a little like Monroe. But, in any event,
7 this just -- and there are many, many, many more
8 pictures like this on -- on the Times website.

9 I also have handed out a two-page matrix.
10 And that matrix is something that I -- I developed by
11 reviewing the monthly reports coming from the state
12 Emergency Operations Center monthly reports. They have
13 a warning center monthly report set. It's -- covers the
14 period from January 2015 through June 2016. And what it
15 shows is the activation level that occurred at the
16 Emergency Operations Center during that 18-month period.

17 I only showed phase two and phrase three.
18 Phase one is normal operations. Phase two is a
19 heightened level of operations for events like flooding.
20 Phase three is fairly rare and is used in the case of
21 forest fires and -- and extreme emergencies.

22 And the -- the point I want to make with
23 this, if you look at the matrix, starting about one,
24 two, three, four, five, six down on the left, the date
25 November 11 through November 17, the operations center

1 was at phase two for a period of seven days. And then
2 on November 18th, it jumps to phase three. And
3 there's -- on the -- the right side, then, is all the
4 weather events that were occurring during this period of
5 time that caused the -- the operations center to be
6 activated.

7 Then on the next page, the operations center
8 goes back to phase two and remains in phase through --
9 two through December 8th to support recovery efforts
10 relating to the previous month's flooding and
11 weather-related events. Jumps back up to phase three on
12 December 9th and is there for a couple of days. And
13 then at the bottom of the page, on December 11th, it
14 goes back to phase two and remained there through
15 January 15th, for a total of 36 days and, again, because
16 they were in support of recovery efforts relating to the
17 previous month's flooding and weather-related events.

18 So there was a long period of time in -- in
19 that -- those winter months when the operations center
20 was activated to support emergency conditions and
21 recovery. I --

22 CHAIRMAN DANNER: Mr. -- excuse me for
23 interrupting.

24 MR. GRATE: Sure.

25 CHAIRMAN DANNER: Now, on this -- this

1 sheet, is the reasons given, is that your language? Is
2 that your language or is that the --

3 MR. GRATE: No, I copied that.

4 CHAIRMAN DANNER: That's their language?

5 MR. GRATE: I copied their language.

6 CHAIRMAN DANNER: Okay.

7 MR. GRATE: Okay. So the other handout,
8 then, behind the four pictures, these are items from the
9 governor's office. And, effectively, what there are are
10 two requests for federal emergency relief. One was made
11 on January 8th; the other was made on January 25th.

12 And the reason I have these is because they
13 provide a fairly succinct explanation of what was going
14 on in terms of the force majeure events that occurred
15 during that period. And I -- I will not walk you
16 through all these in their entirety, but I think it's
17 important to understand some of the high points here.

18 If you look at the first item, it says,
19 "Governor Inslee requests federal disaster systems for
20 rainfall and windstorm." I've highlighted --
21 highlighted the key points here, and the -- the main
22 point is that Washington State, from November 12th
23 through the 21st, had a system of rain pulses that
24 produced a powerful windstorm on November 17th. It most
25 strongly affected Spokane County and --

1 Am I still on?

2 MS. ANDERL: No.

3 CHAIRMAN DANNER: No, you went off.

4 MR. GRATE: Okay. And Snohomish County. At
5 least 200 -- or, 522 utility customers in Washington
6 State lost power during that --

7 MS. ANDERL: Thousand.

8 MR. GRATE: Thousand, excuse me, 522,000.

9 Moving on to the governor's actual request
10 for federal relief, dated January 8th, I've -- I've
11 highlighted on the left-hand side the key points, I
12 think. And the most important point is to understand
13 that there was a winter -- a series of winter storms,
14 not just one, but pulses of winter storms, from
15 November 12th to the 25th that created very high winds,
16 flooding, landslides, and mudslides.

17 If you skip to the second page of that, at
18 the bottom there, it says, "High winds struck across the
19 state on November 17th with the strongest winds recorded
20 in the mountains," and it talks about the high winds
21 that were experienced.

22 On the third page, under "State and Local
23 Impacts," it points out that, "The Washington State
24 Emergency Operations Center activated to full phase
25 three on November 18th after reports of major damages to

1 almost half the counties and many tribes in Washington
2 State." So the damage was very widespread.

3 And on page 4, I've highlighted a section
4 there. The lower portion of that talks about, "On
5 Tuesday, November 17, 2015, Avista Corporation in
6 Spokane County experienced the largest outage in the
7 company's 126-year history, with damage to an estimated
8 700 miles of overhead power lines resulting in 180,000
9 Spokane County customers without power."

10 And I think I'll stop there. There's
11 certainly more there to read.

12 Oh, you want me to talk about -- okay.
13 Let's go --

14 MS. ANDERL: It's page 5.

15 MR. GRATE: -- to page 5. And there's a
16 picture in the lower right corner of a broken-off power
17 pole there. And if you look just above there, it says,
18 "A reported 817 trees were down in the city of Spokane
19 street right of way, and there were 62 city
20 intersections without power."

21 So the wind -- the devastation from this
22 storm in terms of wind was extreme. And they -- the
23 effect of that, then, although the windstorm subsided,
24 the effects lingered for weeks in order to be able to
25 restore service. And so the company was dealing with

1 that situation.

2 And then -- and I'm going to now move on to the
3 next statement from the -- the press release from the
4 governor. We get another storm, or system of storms.
5 It hit Washington State from December 1 through
6 December 4 and --

7 MS. ANDERL: Fourteen.

8 MR. GRATE: -- or 14, excuse me. Thank you,
9 14, and was very, very widespread, very heavy rainfall,
10 and covering many of the counties in the state, but
11 especially the Puget Sound area.

12 So then moving on to the governor's request
13 for emergency assistance, this is highlighted -- the
14 highlights are in pink. The request is for -- the
15 declaration of a major disaster for Washington as a
16 result of damages from a winter storm on December 1
17 through 14, a two-week-long storm, including
18 straight-line winds, flooding, landslides, mudslides,
19 and a tornado.

20 The section below describes the -- the weather
21 event and how much rain was experienced. You saw the
22 pictures there. If you go to page 2, given the vast
23 amount of rain that Washington experienced through the
24 first half of this incident period on December 9, the
25 Washington State Department of Natural Resources

1 released a slan -- landslide hazard information
2 indicating the precipitation-induced shallow landslide
3 hazard in Washington State was at an extreme level for
4 the majority of the state. So the state was complete --
5 was waterlogged.

6 There were also high winds reported at many
7 places, especially in the Puget Sound area and the
8 San Juan islands. The winds blew down dozens of trees
9 and knocked power out for up to 100,000 people. The
10 final wind event occurred on December 10 and tapered off
11 through December 11. Puget Sound Energy reported a peak
12 of nearly 200,000 people without power.

13 On page 3 the Washington State Emergency
14 Operations Center activated on December 9th -- 9 in
15 support of local state and tribal jurisdictions. This
16 was their phase three activation to -- to deal with the
17 devastating effects of this storm. And they stayed at
18 phase three for a couple of days and then went back down
19 to phase two for -- for the 36 days I mentioned earlier.

20 And if you just take a moment to leaf through
21 the pages, there's several photographs here of the kind
22 of damage that was caused, particularly the -- the
23 landslides, a lot of roads that were washed out, local
24 flooding, fallen trees. On page 7 there's the path of
25 the tornado.

1 So the point being that this -- these were not
2 just short-term emergencies. These were huge, major,
3 long-term weather events that caused widespread and --
4 and severe damage. So the force majeure event, I think,
5 is -- is fairly described as lasting from early November
6 pretty much straight through at least till the middle of
7 January, if not later, as -- as evidenced by the
8 governor's request for federal assistance.

9 CHAIRMAN DANNER: All right. Are there any
10 questions from --

11 Oh. Go ahead, Mr. Grate.

12 MR. GRATE: Oh, I -- Ms. Anderl just asked
13 me to ask if there were any questions.

14 CHAIRMAN DANNER: Commissioners, are there
15 any questions?

16 COMMISSIONER JONES: No questions.

17 CHAIRMAN DANNER: All right. Thank you very
18 much.

19 One question I have for you, Ms. Anderl, you
20 have 800,000 access lines in the state, or thereabouts?

21 MS. ANDERL: Give or take.

22 CHAIRMAN DANNER: And for people who are
23 suffering outages, do you know how many of those people
24 are landline-only or have no other options when they
25 have an outage?

1 MS. ANDERL: I know that the availability of
2 cellular is somewhat geographic, and we, I think, are
3 all familiar with complaints from the San Juan Islands,
4 that cell service is spotty in some locations there.
5 There may be people in those areas, may be people in
6 areas in Southeast Washington, such as Garfield, when we
7 heard about the -- from the 911 folks when we were
8 talking about the operator-interrupt services, that
9 there were more heavily dependent landline people. I
10 don't know if that is a cultural and demographic
11 phenomenon because they're rural and elderly or it's
12 because they really don't -- which is what the 911
13 people said, or because there simply isn't sufficient
14 cell phone penetration.

15 I know that on a customer-by-customer basis,
16 you may find ones who do not have a competitive
17 alternative, but I know the commission's finding has
18 been that telephones service in the state of Washington
19 in general is subject to effective competition. And so
20 it's, I think, few and far between, people who do not
21 have alternatives. In fact, some of the people whose
22 complaints I read during this period of time reacted to
23 the extended service commitments by leaving us and going
24 to another company.

25 CHAIRMAN DANNER: So I know as -- as a

1 general matter, we can make those kinds of averages.
2 Because, I mean, I know I live in Olympia, and if I want
3 to, I can switch back and forth from landline to
4 cellular or one of the other or both or neither.

5 MS. ANDERL: Or Comcast, probably.

6 CHAIRMAN DANNER: But -- but I'm not sure
7 that -- I mean, I think that this commission has
8 acknowledged that there are pockets in the state that do
9 not have those kinds of choices. In fact, when we
10 established competitive classification for Frontier, one
11 of the conditions was that we were going to make sure
12 that they averaged rates across the board to take
13 care -- you know, so that they would address those kinds
14 of pockets.

15 So I'm just -- I just want to note that --
16 that -- that when we have outages that continue for long
17 periods of time, it's not -- it's not a matter in every
18 case that a customer can simply make a competitive
19 choice because the competitive market is not necessarily
20 extending to all communities.

21 MS. ANDERL: I understand what you're
22 saying, Your Honor, and I will tell that you our systems
23 do not distinguish between customers who have
24 competitive alternatives and customers who do not. And
25 our service restoral priority is not dependent on that.

1 So we certainly don't leave people out of service longer
2 because they have a competitive alternative, nor do we
3 leave them out of service longer because they don't. We
4 get -- we roll trucks and we send technicians and we get
5 service restored as soon as the infrastructure and
6 resources and roads allow us to do that.

7 CHAIRMAN DANNER: Right. And I'm not -- I'm
8 not arguing about that point. It's just that there are
9 people for whom an outage is -- is an outage, and
10 sometimes it is because there are no other services
11 available. Sometimes it is demographic for elderly or
12 rural people.

13 MS. ANDERL: Right, and I think the number
14 of complaints that you see, that this commission fields,
15 for service outages outside of force majeure events
16 should give you a high degree of confidence that that's
17 not a problem.

18 CHAIRMAN DANNER: All right. Thank you.
19 Any other questions for either Mr. Grate or
20 Ms. Anderl?

21 COMMISSIONER RENDAHL: No.

22 COMMISSIONER JONES: I do.

23 CHAIRMAN DANNER: Yeah.

24 COMMISSIONER JONES: Yeah. I appreciate
25 Mr. Grate go -- going through in some detail the

1 governor's Stafford Act or the declarations of natural
2 disasters and such. We had a very detailed briefing
3 from Avista on storm restoration priorities, I think it
4 was in about the March time frame. Were you able to
5 attend that one?

6 MR. GRATE: I'm afraid I -- I wasn't,
7 Commissioner Jones.

8 COMMISSIONER JONES: So the reason why -- is
9 there any specific reason why you're raising these force
10 majeure-type events? Because under 440, if we were to
11 reinstate it, there would be an exclusion. Is there
12 anything specifically with SEOC or with Avista or
13 SnoPUD, one of the electric power companies, where you
14 feel that you're not able to get to the node or the site
15 where you can restore service in a prompt and timely
16 way, let's say 48 hours?

17 MS. ANDERL: Do you want me to answer it?

18 MR. GRATE: Please do.

19 MS. ANDERL: Your Honor, if I may address
20 that, I think that there is no problem that I would
21 identify with power companies providing access. It is
22 simply that 48 hours is sometimes impossible.

23 I mean, we -- we heard from Avista that
24 there were hundreds of thousands of people out after
25 five days because they had 800 trees down in Spokane,

1 and each one of those had to be chopped into little tiny
2 pieces and moved away before a pole could even be
3 restored and wires strung, and then the power wires have
4 to be strung before the telephone wires can be strung.

5 So I would not levy any criticism at any of
6 the power companies. I think they brought crews in from
7 everywhere as well and worked as hard and fast as they
8 could. The reason that we're raising the force majeure
9 issues is to illustrate to you that the spike in
10 complaints is not really a spike. Spike is kind of -- I
11 don't want to say manufactured, but it's -- it is what
12 will happen when there is a force majeure event, whether
13 there is a rule or not. And the rule cannot make a
14 power company restore service faster, or the rule cannot
15 make, in a force majeure event, the company -- the
16 telephone company restore service faster.

17 COMMISSIONER JONES: Just one follow-up, and
18 I think Commissioner Rendahl has a question.

19 The electric power companies have a mutual
20 aid sharing agreement, as you may know. So they bring
21 in crews, under a formal agreement, electric power
22 companies all throughout the Western region, to help
23 competitors, all -- all step in, all -- all manner of
24 companies. There's nothing like that for the -- for the
25 telecommunications or the communications industry,

1 right?

2 MS. ANDERL: Nothing formal. I'm told that
3 there are informal arrangements. And, of courses,
4 because of the breadth of our footprint in the state of
5 Washington, we often can, you know, provide mutual aid,
6 as it were, for ourselves because we just move people
7 out of the unaffected area.

8 CHAIRMAN DANNER: And do you move crews in
9 from out of state?

10 MS. ANDERL: We have in the past. I -- I
11 don't know if we did in -- in these cases. I think we
12 did -- may have moved some folks up from Oregon, but I
13 think Oregon was kind of hammered too. So it's a -- a
14 question of how quickly can you get people in, how far
15 do they have to travel.

16 COMMISSIONER JONES: Okay.

17 MS. ANDERL: We certainly do it when it --
18 when it makes sense to do it.

19 CHAIRMAN DANNER: Okay. Mr. Finnigan, you
20 were going to -- you were -- you were moving towards the
21 microphone when we were talking about mutual aid.

22 MR. FINNIGAN: Yes. Rick Finnigan on behalf
23 of the Washington Independent Telecommunications
24 Association.

25 As a result of an e-mail that I received

1 from John Cupp, which was sparked by a commissioner
2 question, I did talk to some of the members to confirm
3 my understanding of what -- what the practice has been.
4 And the practice is that if a company, a WITA member, is
5 unable to do the work themselves, they just get on the
6 phone and start calling other WITA members, and anybody
7 who's got a crew available will dispatch it. It's not a
8 formal written agreement, but it's just a matter of, you
9 know, it's going to be your turn one day so you're going
10 to help your neighbors when you can.

11 And, if requested, we dispatch -- our
12 members have dispatched people to aid CenturyLink if --
13 if they call and -- and request help. So there's a
14 pretty good cooperative network. It actually exists
15 mostly at the tech level. But the -- at the WITA level,
16 the managers are all aware of and encourage it. And so
17 there is a cooperative effort that goes on.

18 MS. ANDERL: And sometimes it's, you know,
19 just to kind of -- point of clarification, sometimes
20 it's not a lack of crews or staffing. Sometimes it's
21 that the bridge is washed out and you can't get there
22 and that causes the delay, or the road is washed out or
23 it's closed because it's flooded.

24 One of the -- I think the second letter to
25 the president, the emergency declaration, has a chart in

1 it showing the road closures and a narrative description
2 of how many roads in King County were closed. So we may
3 have had people in the garage ready to go, maybe we
4 dispatched them someplace else, but maybe there was a
5 known outage that we would have liked to repair but we
6 had to wait until we could access the area.

7 CHAIRMAN DANNER: All right. Thank you.

8 COMMISSIONER RENDAHL: So that was the
9 question I was going to ask. It was about mutual aid.
10 So I appreciate all the information, but it spurred
11 another question for me, which is: You mentioned
12 earlier in your presentation -- or you did, Mr. Grate?
13 Okay -- that sometimes it's somebody else's pole. So
14 would that be the power company's pole, or could it be
15 another telecommunication's company pole, or is it
16 usually the power company?

17 MS. ANDERL: Usually it's either, you know,
18 Avista, PSE, or a PUD pole that we're on, or Seattle
19 City Light. Maybe it's a jointly owned pole.

20 COMMISSIONER RENDAHL: Okay. Thanks.

21 CHAIRMAN DANNER: All right. Are there any
22 other questions for Mr. Grate or Ms. Anderl?

23 COMMISSIONER JONES: No.

24 CHAIRMAN DANNER: Okay. Thank you. So,
25 Mr. Thomson, we're going to turn to you. Any comments

1 this morning?

2 MR. THOMSON: Thank you, Mr. Chairman. Yes,
3 I have a few comments. Commissioners, ladies and
4 gentlemen, my name is George Thomson. I represent
5 Frontier Communications. And today I'd like to share
6 Frontier's thoughts on the staff proposal to reimpose
7 the service quality measure that this commission
8 consciously addressed and repealed only a little over a
9 year ago.

10 Ultimately, to put our bottom line up front,
11 this proposed rule is a misguided attempt to solve a
12 problem that really doesn't exist. Let's talk a little
13 bit about the commission's philosophy and policy on
14 competition. You'll probably hear in the future, as you
15 have heard in the past, quite a bit of discussion,
16 particularly from the ILEC community, about a level
17 playing field in the state of Washington. And this
18 commission, in a variety of dockets over the past ten
19 years, has expressed its support, generally, of
20 competitive neutrality in the telecommunications
21 industry.

22 So a question that arises out of that
23 particular policy that the commission is following is:
24 How does passing a rule that affects, at best,
25 30 percent of an industry that's highly competitive

1 promote the competitive neutrality that the commission
2 has been seeking over this period of time? And that,
3 furthermore, asks the question: What problem are we
4 trying to solve here, in actuality? What evidence is
5 present in the record here today, in this rulemaking,
6 that there's a chronic problem with all or any of the
7 ILECs meeting repair or impairment standards? And what
8 evidence is there present in the record that there's
9 been any change at all to Frontier specifically meeting
10 these repair standard or impairment standards since the
11 formal rule was repealed in early 2015?

12 I think the state prides itself generally on
13 being somebody -- being a -- a community that's
14 progressive as opposed to regressive. And I think that
15 the reimposition of this kind of a service quality rule
16 is really a step back toward rate-of-return regulation
17 at its root.

18 This is a rate-of-return-type metric. I mean, I
19 think no one would argue that this metric was developed
20 at a time when consumers had no competitive
21 alternatives. We were in a monopoly environment. This
22 rule and others like it that address service quality
23 were really focused on the fact that consumers,
24 rate-payers, had no alternative. They were stuck with
25 one provider, and then there had to be a governor on

1 that provider. But that governor isn't really necessary
2 in a highly competitive environment. So this proposed
3 rule is really a -- a remnant of monopoly regulation.
4 And we don't have a monopoly situation in this industry.

5 I think the commission made a conscious choice
6 to repeal this sort of regulation in order to further
7 its own off-stated goal of competitive neutrality. And
8 so one of the hallmarks of that particular policy choice
9 on the part of the commission was the grant to Frontier
10 of a competitive classification back in 2013.

11 You know, after all, this commission made a very
12 deliberate, well-researched,
13 extensively-covered-in-the-record decision to allow
14 Frontier a competitive classification as opposed to a
15 rate-of-return classification over three years ago. And
16 I think that was a -- a reflection of an extensive
17 record that there was a vibrant and competitive
18 intermodal market for telecommunication services in the
19 state.

20 And that finding, in turn, triggers the
21 legislature's mandate that competitive
22 telecommunications companies, like Frontier, should be
23 subject to minimal regulation. And reinstating this
24 proposed rule seems to run contrary to that express
25 direction of the legislature.

1 And I won't try to beat the horse more than it's
2 already been beaten here, so -- I do want to address,
3 though, that the -- the standard of perfection; in other
4 words, that there's no percentage that's been applied to
5 this proposed rule of the number of outages or
6 impairments that have to be fixed in a particular period
7 of time. Perfection is really not an achievable
8 standard. And so the only conclusion we can draw from
9 that is that this is a -- a rule that might be designed
10 to drive violations, or guarantee violations.

11 So Frontier asked the commission specifically to
12 consider the fact that there's an inherent inability for
13 any human endeavor to be perfect. I -- I hope we
14 wouldn't have any sort of argument on that particular
15 point. We all live every day with human frailty,
16 mistakes, misguided -- although well-intended -- actions
17 that don't turn out quite right. And we're all familiar
18 with that.

19 So we would submit that just the -- the prospect
20 of the loss of our customers in a highly competitive
21 environment is a sufficient measure to incent us to
22 address customer issues promptly, of any sort, not just
23 out of service or service impairment. Because if we
24 don't, customers are going to vote with their feet, and
25 they can vote with their feet in Washington.

1 These --

2 COMMISSIONER RENDAHL: So, Mr. Thomson --

3 MR. THOMSON: I'm sorry.

4 Commissioner Rendahl?

5 COMMISSIONER RENDAHL: So if this rule isn't
6 reinstated and staffed and the commission is the only
7 service quality rule we have for customers who are
8 landline-based, which I admit is diminishing, how do we
9 interpret "promptly"?

10 MR. THOMSON: An excellent question,
11 Commissioner. And I think that is one of the sources of
12 the issue here today. The commission itself has never
13 interpreted "promptly" to mean 48 hours or 72 hours or a
14 week or a month. This is a staff interpretation,
15 admitted by Mr. Cupp, and based on nothing more than a
16 dictionary definition. And the unfortunate piece of --

17 COMMISSIONER RENDAHL: Well, isn't that an
18 appropriate place to look when you just have a word?

19 MR. THOMSON: It might be the appropriate
20 place to start, Commissioner, but it may not be all of
21 the analysis that's needed for complex as -- as complex,
22 with as many moving parts, as an industry that may be
23 affected by force majeure events, an industry that may
24 be affected by competition, an industry that may be
25 affected by the inability to control the facility that

1 our cables are on.

2 You know, Mr. Grate and Ms. Anderl went
3 through a rather detailed exposition of the fact that in
4 many cases, and in Frontier's case as well, we don't own
5 these poles. They are owned by the PUD, they are owned
6 by PSE, or we own them jointly with the PUD. And
7 frankly, their first priority for restoral will be
8 electricity. And, you know, rightly so, in many cases.
9 Electricity is the dangerous piece on the pole.

10 And so the -- the action of going out and
11 repairing, obviously, is going to be focused on an
12 electric line that's dangerous to the public. But that
13 doesn't necessarily allow Frontier, as Ms. Anderl talked
14 about in CenturyLink's case, to roll a truck until the
15 power company is finished with what it's doing on that
16 pole.

17 CHAIRMAN DANNER: Mr. Jones?

18 COMMISSIONER JONES: When you talked about
19 perfection, were you referring to -- I think you heard
20 my questions on the coding issue for -- or, what
21 Ms. Anderl talked about, coding force majeure events on
22 a trouble ticket. Is that what you're referring to,
23 that your techs will not be perfect in coding force
24 majeure events?

25 MR. THOMSON: Well, I think that's certainly

1 true, Commissioner, but that wasn't what I was referring
2 to.

3 COMMISSIONER JONES: What were you referring
4 to?

5 MR. THOMSON: I was referring to the fact
6 that the standard doesn't allow for any deviation from
7 48 hours under this proposed rule.

8 COMMISSIONER JONES: Okay.

9 MR. THOMSON: So that there will be cases --
10 I mean, as I said, we're all human. There will be cases
11 where we cannot get to a -- a pole or an underground
12 conduit that's been washed away by a mudslide --

13 MR. JONES: Okay.

14 MR. THOMSON: -- or something like that
15 until other people have been there prior to us and have
16 done work that was instrumental in -- in getting that
17 site ready for the telephone company to come and make
18 their repairs.

19 COMMISSIONER JONES: I'm reading the
20 language of the proposed rule now, and 480-120-441, it
21 says, "The company must repair all out-of-service
22 interruptions within 48 hours unless it is a force
23 majeure event, in which case the repair must be made as
24 soon as practicable."

25 So "practicable" to me -- we can refer to

1 the dictionary, I don't have it with me -- but I think
2 that gives the company quite a bit of leeway in terms
3 of, you know, coordinating with the electric power
4 company and the -- the county officials.

5 And then it basically says, "The 48-hour
6 requirement does not apply to out-of-service
7 interruptions that are part of a major outage." So do
8 you have any problems with our major outage rule in
9 48 -- in 412, in the definition there, or are you
10 comfortable with that?

11 MR. THOMSON: It's not something I've
12 thought about at length, Commissioner, I mean --

13 COMMISSIONER JONES: Okay.

14 MR. THOMSON: -- simply because it's not a
15 subject for this particular rulemaking.

16 COMMISSIONER JONES: Well, let's talk about
17 Oso a little bit. I think your company, from all I can
18 tell, from both FCC officials and my own observations,
19 you did a commendable job in restoring service working
20 with Peace Haps during Oso.

21 So was Oso covered under this rule, the
22 previous rule, or the current rule? Just kind of
23 refresh my memory on that. When did that occur?

24 MR. THOMSON: Well, the rule wasn't in place
25 at the time of the tragedy.

1 COMMISSIONER JONES: So --

2 MR. THOMSON: So that --

3 COMMISSIONER JONES: So the old rule applied
4 under 440, so you had a force majeure exception?

5 MR. THOMSON: That would have been our --
6 our argument had staff found violations of the
7 out-of-service rule. But I think that's a perfect
8 example of a circumstance of force majeure, something
9 beyond a company's capability to affect up front, and
10 something that the company had to take extraordinary
11 measures to get repaired, even after 48 hours had
12 expired. I mean, I don't think that people were allowed
13 on site in the first 48 hours. And frankly, quite a way
14 beyond that, probably the next 10 to 14 days, as the
15 recovery effort went on for folks and -- and remains
16 that happened to be under that mud.

17 The company certainly would have claimed a force
18 majeure in that event. But there were other events that
19 may or may not fall into a force majeure event that
20 aren't accounted for under the proposed rule. For
21 instance, if a customer has called in a trouble ticket
22 and a tech is dispatched within the 48-hour window to
23 that -- that person's residence and the person, for
24 whatever reason, doesn't happen to be present and
25 there's a large dog in the backyard chained to something

1 and within hailing distance of the power pole, or the
2 utility pole that's in that backyard, sometimes our
3 techs are unwilling to go in the backyard and do their
4 thing --

5 COMMISSIONER JONES: Right.

6 MR. THOMSON: -- when the owner isn't
7 present.

8 So there are those sorts of issues that
9 would be a potential violation under the rule, which, in
10 this case, I wouldn't ascribe that to any fault on the
11 part of the telephone company.

12 COMMISSIONER JONES: I see. Mr. Cupp --

13 CHAIRMAN DANNER: But that would fall under
14 an exception of "as soon as practicable." I mean,
15 obviously, if, you know, there's no one home, you can't
16 get onto the premises, or there's a large dog in the
17 way, that might go to the definition of "practicable."

18 MR. THOMSON: It may, Mr. Chairman, but then
19 again, we're not sure how staff's going to interpret
20 that. And I don't think that that's been discussed at
21 length within the context of this room.

22 CHAIRMAN DANNER: Okay.

23 MS. ANDERL: If I could just interject. May
24 I?

25 COMMISSIONER JONES: Yes, you may, and then

1 I just want to go to Mr. Cupp.

2 MS. ANDERL: I mean, again, those types of
3 exceptions depend on detailed technician account notes
4 that would have to be painstakingly researched hand by
5 hand, and making sure they're accurate. Maybe the
6 technician just wrote "no access"; maybe they wrote
7 "dog." We may not be able, if violations are assessed,
8 to defend ourselves against the alleged violation based
9 on the -- the type of recordkeeping that would be
10 required. And is that type of manual effort really
11 justified by their alleged problem? And I would just
12 say no.

13 COMMISSIONER JONES: Okay. Mr. Cupp, Oso.
14 I referred to the Oso landline --

15 MR. CUPP: Yes, sir.

16 COMMISSIONER JONES: -- landslide. I know
17 it's not a subject of today's hearing, but -- but did
18 staff receive complaints and -- on -- during the time of
19 that terrible tragedy?

20 MR. CUPP: I'm sorry, I really don't know.
21 I didn't look at that.

22 COMMISSIONER JONES: Okay.

23 MR. CUPP: I -- I don't remember the exact
24 date of that. Does anyone?

25 COMMISSIONER JONES: What was the exact

1 date? Does anybody know? Do you know, Mr. Thomson?

2 MR. THOMSON: Wasn't it the fall of 2014?

3 COMMISSIONER RENDAHL: I believe it was in
4 April of --

5 CHAIRMAN DANNER: 2014.

6 COMMISSIONER RENDAHL: -- 2014.

7 COMMISSIONER JONES: 2014. All right. So
8 the old -- the old rule before it was repealed --

9 MR. CUPP: Correct.

10 COMMISSIONER JONES: -- would have applied.

11 MR. CUPP: Yes, sir.

12 COMMISSIONER JONES: But you don't happen
13 know if we --

14 MR. CUPP: I don't.

15 COMMISSIONER JONES: -- if we received any
16 complaints from Frontier customers?

17 Anyway, you might want to provide that
18 information for the record.

19 MR. CUPP: I show -- excuse me. I show --
20 the chart that I made for the CR-102 --

21 COMMISSIONER JONES: Right.

22 MR. CUPP: -- I show one violation in March
23 2014.

24 COMMISSIONER JONES: Okay.

25 MR. CUPP: But I -- sorry, I don't have any

1 detail on the location of that complaint.

2 COMMISSIONER JONES: All right. That's all
3 I have.

4 CHAIRMAN DANNER: All right. Are there any
5 other questions for Mr. Thomson?

6 All right. Then, Mr. Finnigan, do you have
7 anything you'd like to share with us this morning?

8 MR. FINNIGAN: Just very briefly
9 Commissioner Danner and Commissioners -- Chairman Danner
10 and Commissioners.

11 We filed some very brief comments, and I
12 just want to highlight a couple of things. For WITA
13 members, fortunately in the past, and I hope in the
14 future, this sort of issue has been more philosophical
15 than -- than practical. From a -- and there's a --
16 there's some reasons for that. Our members tend to have
17 a higher percentage of buried plant than aerial, and
18 have been fortunate in terms of being able to restore
19 outages where -- where they've occurred.

20 But from a philosophical standpoint, our
21 members feel like they are facing more and more
22 competition every day. And as we said in our comments,
23 if you don't take care of your customers, you're going
24 to lose them. And our members serve populations that
25 tend to be more elderly than the statewide average and

1 in more rural areas than the statewide average. So it's
2 a practical problem that they face on a -- on a -- on a
3 daily basis. So from a philosophical standpoint,
4 we'd -- would oppose reinstatement of the rule.

5 Now, there's been a lot of talk about, well,
6 we got the force majeure exemption and we got other
7 things that we can put into a rule, but that sort of
8 begs the question of the point of whether you actually
9 need a rule or not. And from the presentations that
10 have been made here today, I think it's pretty clear
11 that we -- an unusual event occurred and it caused
12 outages and service restoral issues.

13 But enacting a rule for day-to-day business
14 standards based on an unusual event shouldn't be the
15 driving force for consideration of putting a rule into
16 effect. It should be what is occurring on a normal
17 business standpoint: Is there a problem in restoring
18 service? Have they cut -- have the telecommunications
19 companies in Washington cut their staff back so -- so
20 much they can't meet normal demand? That should be the
21 question that's being asked, not how do we -- how do we
22 address a very unusual problem.

23 So from the standpoint of what should be
24 used to adopt a -- a rule, I don't think there's enough
25 here that says that the rule should be reinstated. So

1 those are the two points I just want to emphasize.

2 CHAIRMAN DANNER: And can you say whether
3 your companies did, in fact, cut staff or not cut staff
4 after this rule was repealed?

5 MR. FINNIGAN: They haven't cut staff after
6 this rule. They don't have staff to cut.

7 CHAIRMAN DANNER: And Frontier, can you make
8 the same statement?

9 MR. THOMSON: Mr. Chairman, we can state
10 that we've had no more than a 3 percent fluctuation in
11 our staffing levels for techs from the fourth quarter of
12 2014 through second quarter 2016.

13 CHAIRMAN DANNER: Thank you. All right.
14 Are there any questions for Mr. Finnigan?

15 COMMISSIONER RENDAHL: No.

16 COMMISSIONER JONES: No.

17 CHAIRMAN DANNER: Okay. Are there any
18 questions you want to turn back to staff at this point?

19 Okay. In that case, is there anyone else in
20 the room or on the bridge line who wishes to participate
21 in the hearing this morning?

22 Mr. Cupp, you look like you wanted to say
23 something.

24 MR. CUPP: Is it all right for me to -- to
25 respond to --

1 CHAIRMAN DANNER: This is --

2 COMMISSIONER JONES: Absolutely no problem.

3 MR. CUPP: Thank you. First of all, I
4 didn't mean in any way in my memo, or any of my
5 correspondence with the companies, to discount or deny
6 that there were storm events over the last winter. I
7 know they were very bad.

8 I wanted to point out, though, that there
9 was -- there was a major storm -- excuse me. I'm not
10 sure if I am on. There was a major storm in 2012. I
11 know this commission -- I think we were closed for a
12 week. I know that I was out of power at home for a
13 week. I was out of telephone service for my landline
14 for a while. I didn't file a complaint. I knew there
15 was a major outage.

16 The -- so I'm well aware that there were
17 some severe storm issues, and so were our staff. And
18 over that -- the first six months of 2012, I found --
19 actually, I think I said in my memo that I found four
20 violations of WAC 480-120-440. I did -- there were five
21 total between CenturyLink and Frontier. And staff takes
22 into consideration that there is a storm, that these
23 aren't just the company just not getting to someone
24 or -- you know, they -- they understand force majeure.
25 They understand major outages.

1 Ms. Anderl mentioned violations and the
2 commission -- the commissioners would probably -- I
3 don't remember her exact words, but would likely be
4 reasonable if these violations were brought forward.
5 All the violations -- and I think I say this in the
6 memo -- all the violations mentioned in this data that I
7 used for the tables and graphs are based on informal
8 complaints, which means the violations are alleged if --
9 and, as such, they -- there are no penalties attached to
10 these violations. There's no potential for that in --
11 in an informal complaint.

12 So -- and I also believe that if these did
13 go formal and come before the commission, that each
14 violation would be looked at under -- you know, as --
15 whether or not it was reasonable, what were the
16 conditions. So I wanted to make that point.

17 I'm sorry, do I keep cutting out? It's hard to
18 tell if my mic's on or not.

19 COMMISSIONER JONES: No, we can hear you.

20 MR. CUPP: And I also want to point out that
21 it's true. The number of landline customers is
22 dwindling. I don't know about the number of landline
23 customers who have no access to other technologies.
24 I -- I don't believe geography is the only reason people
25 still have landlines. I know my mother lives here in

1 town, and she has access to a lot of different things
2 that she won't use. During the storm in 2012, she had
3 her neighbor call me because she -- she didn't know how
4 to use her own cell phone to call me. She didn't think
5 she could charge it since the power was out and she
6 didn't have a generator.

7 So, anyhow, I just wanted to really make
8 sure that I didn't make it sound like I didn't realize
9 that there were some severe storms last winter because
10 there were, and they -- they were quite serious. I do
11 feel like the staff would consider, as they did in 2012,
12 the nature of what's going on when they got calls from
13 customers about their phone not working. And had they
14 had a rule that excluded force majeure or major outages,
15 they would have acted accordingly. So these -- the
16 spike, or, you know -- would not -- would not exist. We
17 wouldn't be here talking about this.

18 CHAIRMAN DANNER: All right. So under --
19 under 411, basically you get an informal complaint, and
20 if it exceeds 48, you log it -- or 48 hours, you would
21 log it as a violation?

22 MR. CUPP: That is, I believe, how our --
23 our current staff is being trained to handle outages,
24 yes.

25 CHAIRMAN DANNER: And then if that informal

1 complaint were to go formal and come before us, then
2 that would be a -- that would be a matter to be
3 litigated?

4 MR. CUPP: Right.

5 CHAIRMAN DANNER: Okay.

6 MR. CUPP: And I also want to clarify that I
7 did not base staff's definition of "promptly" from the
8 dictionary, because the dictionary, basically "promptly"
9 means immediately. The staffed used, like I said,
10 the -- the 48-hour standard from the previous rule, 440.

11 CHAIRMAN DANNER: Okay. But it has --
12 because that rule has no exclusions for a major outage
13 or force majeure, you don't put that into your
14 definition of "promptly." You just -- you would count
15 that as a violation, even during force majeure events?

16 MR. CUPP: Correct.

17 CHAIRMAN DANNER: Okay. All right.

18 Mr. Jones?

19 COMMISSIONER JONES: Yeah, just one for
20 Mr. Cupp. I'm just rereading the rules. So the way
21 you've written it up in 441, the major -- one of the
22 major differences between 48 hours and 72 hours in terms
23 of what it covers is, is 48 hours for what we called
24 POTS, plain old telephone service --

25 MR. CUPP: That's -- I was looking at that

1 too. Forty-eight hours is the standard that's applied
2 to -- just to the ability to have a phone conversation,
3 to receive and make calls.

4 COMMISSIONER JONES: That's a voice call?

5 MR. CUPP: Yes, sir.

6 COMMISSIONER JONES: Okay. Using Legacy
7 networks, what we call Legacy TDM, time division
8 multiplexing-type networks. It's -- it's not a call
9 carried over an IP network.

10 MR. CUPP: Correct. Correct.

11 COMMISSIONER JONES: Okay. So -- and then
12 you get to 72 hours, a company must repair within 72.
13 That's because of the physical obstruction, meaning
14 Ms. Anderl and Mr. Thomson talk a lot about electric
15 power company needs to come in first, there could be
16 roads that are damaged, so that's what you mean --
17 that's the way you would interpret "obstructions"?

18 MR. CUPP: Well, the physical obstruction
19 still applies to the 48-hour standard.

20 COMMISSIONER JONES: Okay.

21 MR. CUPP: Seventy-two hours is other
22 regulate -- regulated services other than a voice
23 telephone call.

24 COMMISSIONER JONES: Such as?

25 MR. CUPP: That's a good question. I'm not

1 exactly sure off the top of my head what that would be.

2 MS. ANDERL: Your Honor, I recall that the
3 72 was service affecting, not necessarily service
4 outage. But I'm looking to see if that -- if that -- so
5 say, for example, if the complaint were static on the
6 line as opposed to no dial tone.

7 COMMISSIONER JONES: I see.

8 MR. CUPP: I believe static on the line
9 would go to 411.

10 COMMISSIONER JONES: Would go to the network
11 maintenance rule? Okay.

12 MR. CUPP: That's my -- that's my
13 interpretation. I don't handle complaints. I don't
14 know exactly what I would do in that situation.

15 COMMISSIONER JONES: Well, I was just
16 rereading the proposal.

17 Ms. Anderl, it says all other regulated
18 service interruptions. So if it's deregulated, if it's
19 competitively classified for Frontier or under the A4
20 for you, it would, quote, not be regulated, maybe. All
21 other regulated service. I'm just trying to get a
22 sense.

23 MR. CUPP: That could be -- what's left?

24 MS. ANDERL: If the rule doesn't apply to
25 competitively classified services, then I guess we're

1 done here because all of our services are competitively
2 classified. But I don't think that's what staff's
3 intent would be in having you readopt the rule.

4 CHAIRMAN DANNER: I -- I would hope so -- or
5 hope not.

6 Okay. Any other questions for Mr. Cupp?

7 MR. CUPP: May I say one more thing?

8 CHAIRMAN DANNER: Oh, yes, you may.

9 MR. CUPP: Regarding there not being a rule
10 for -- a rule of the nature of 440 in the electric or
11 gas industries, that is correct that there is not;
12 however, I believe they are required to do a lot of
13 reporting that basically for the telecom industry went
14 away in UT-140680 in that previous rulemaking.

15 COMMISSIONER JONES: Well, and I would -- I
16 would just submit for the record, and I don't want to
17 get into details, but PSE has had a -- what we call a
18 SAIDI and SAIFI, a frequency and duration of outage
19 reporting, including violations. PSE in particular has
20 had that on the books for a long time. And so there
21 are -- there are, at least for that company. Now we
22 recently amended that a bit, but we do have SAIDI and
23 SAIFI rules.

24 CHAIRMAN DANNER: All right. Thank you.

25 Mr. Finnigan?

1 MR. FINNIGAN: I'm sorry to interrupt --
2 interject, but all of a sudden that came into -- into
3 clarity when the proposed 441 sub (2) uses the words
4 "all other regulated service interruptions." That
5 certainly implies, if not means explicitly, that the --
6 that the interruptions covered under (1) are regulated
7 service operations. And if -- you just said Frontier
8 and CenturyLink are competitive classified, that means
9 the only rule this -- the only people this would apply
10 to would be WITA member companies, as written. Well, so
11 this applies to -- all right. Never mind. I won't get
12 into the debate. It just all of a sudden struck me at
13 this point, what does that "other" mean?

14 CHAIRMAN DANNER: All right. Well, we will
15 make a similar inquiry to our in-house experts. So
16 thank you for that.

17 Any other comments before we break today?

18 Okay. I guess the only thing I would like
19 to say is, you know, even in competitive industries
20 sometimes consumer protection is very important. That's
21 why we have consumer protection laws that apply to
22 competitive industries. And telecom, even though it is
23 a competitive industry, it's still an essential service.

24 And -- and so I think it is appropriate when
25 we see the effect of regulatory decisions -- or the

1 deregulatory or -- or more regulatory decisions, and
2 there are effects that we need to look into those, and I
3 think that's what the -- this proceeding is about.

4 I guess I would also say it's -- it is
5 appropriate when we have terms that are vague or
6 undefined or general that staff does interpret them
7 because they've got to do their jobs. And, again, the
8 formal proceedings are the way that the UTC, the
9 commissioners, can bring some clarity to those.

10 So I think that this has been a good
11 discussion this morning, some important discussion. I
12 do agree that sometimes perfection is not achievable,
13 but I would also argue that continuous improvement is --
14 is achievable. And even minimal regulation means some
15 regulation, if it's appropriate. I think that this has
16 been a great discussion this morning. I appreciate
17 everybody's participation.

18 I would like to take this under advisement,
19 and that's what we will do. So we will adjourn this
20 morning, and we will be making a decision at some point
21 in the future, and so stay tuned.

22 So if there's nothing else to come before
23 the commission this morning, we are adjourned.

24 (Proceedings concluded at 11:12 A.M.)

25 -o0o-

Witness - 07/18/2016

C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF KING

I, Sarah Bingham, a Certified Court Reporter in and for the State of Washington, do hereby certify that the foregoing transcript of the proceedings of PROPOSED RULE ADOPTION HEARING, on July 18, 2016, is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 25th day of July, 2016.

Sarah Bingham, CCR

My commission expires:

NOVEMBER 2016