

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of)	DOCKET UT-121994
)	
FRONTIER COMMUNICATIONS)	
NORTHWEST INC.,)	ORDER 06
)	
To be Regulated as a Competitive)	FINAL ORDER APPROVING
Telecommunications Company)	SETTLEMENT AGREEMENTS WITH
Pursuant to RCW 80.36.320)	CONDITIONS AND CLASSIFYING
)	SERVICES AS COMPETITIVE
.....)	

Synopsis: The Commission approves, with additional conditions, the three settlement agreements that Frontier Communications Northwest Inc. executed with the other parties in this proceeding. Under those agreements, most of the Company’s services, rather than the Company itself, would be classified as competitive, and Frontier would be required to preserve competitors’ ability to continue to obtain wholesale services and to allow the federal government to obtain the services it needs. The Commission finds that Frontier’s basic residential and small business local exchange services are subject to effective competition and should be included among the competitively classified services. In addition, the Company should not be subject to a price floor for its special access services, be permitted to discontinue any local exchange service without Commission approval, or be restricted from seeking additional competitive classification if market conditions warrant such relief. With those conditions, the Commission agrees that the parties’ agreements resolving the issues presented are supported by adequate record evidence and are consistent with the public interest.

INTRODUCTION

1 In 1984, the Washington Legislature examined the evolving state of the telecommunications industry in this state following the break-up of AT&T by establishing a Joint Select Committee on Telecommunications.¹ In early 1985, the Joint Committee recommended legislation that became the model for the Regulatory

¹ See *Final Report of the Joint Select Committee on Telecommunications*, Washington State Legislature 1-2 (1985) (“Joint Committee Report”)

Flexibility Act in the 1985 legislative session.² The Regulatory Flexibility Act reflects the legislature’s policy goals of promoting “diversity in the supply of telecommunications services and products in telecommunications markets throughout the state” and permitting “flexible regulation of competitive telecommunications companies and services.”³ The legislation implemented these policy goals with provisions that provide the Washington Utilities and Transportation Commission (Commission) with broad authority to tailor regulation of telecommunications companies to the realities of the marketplace.

2 Almost thirty years later, that marketplace is very different than the historic monopoly environment that existed throughout most of the 20th Century. Consumers have far greater service options, most of which are available from companies using technologies that did not exist when the legislature enacted the Regulatory Flexibility Act. That legislation, however, continues to provide the Commission with the tools it needs to ensure that regulation enhances, rather than hinders, Washington consumers’ access to telecommunications services at rates, terms, and conditions that are fair, just, and reasonable.

3 We use those tools to examine the services Frontier Communications Northwest Inc. (Frontier or Company) offers within its service territory in Washington and the regulation the Commission has historically applied to those services. All parties to this proceeding agree that Frontier faces strong competition for the majority of those services throughout most of that geographic area. We agree and find that this docket affords the Commission the opportunity to acknowledge the realities of the 21st Century marketplace by reducing unnecessary regulation and bolstering the ability of Frontier and its competitors to provide effective competitive telecommunications services to the ultimate benefit of this state’s consumers.

BACKGROUND

4 On January 24, 2013, Frontier filed with the Commission a Replacement Amended Petition for Approval of Minimal Regulation in Accordance with RCW 80.36.320 (Petition), seeking classification as a competitive telecommunications company throughout its current service territory. The Commission suspended the filing and set the matter for hearing.

² Laws of 1984, ch. 450.

³ RCW 80.36.300(5) & (6).

- 5 The Commission conducted a prehearing conference on February 13, 2013. The Commission granted intervention to several competitive local exchange companies (CLECs)⁴ and to the United States Department of Defense and all other federal executive agencies (DoD/FEA) and established a procedural schedule.
- 6 Frontier filed testimony and exhibits in support of the Petition on February 28, 2013.
- 7 On March 7, 2013, the CLEC intervenors filed a motion to dismiss the Petition, contending that Frontier had failed to assert any facts to prove that the wholesale services the Company provides are subject to effective competition and thus Frontier could not demonstrate that it could be classified as a competitive telecommunications company under RCW 80.36.320. The other parties responded on March 14, and parties filed replies on March 21. On March 29, 2013, the Commission entered Order 04 denying the motion and on April 22, 2013, entered Order 05 denying Commission regulatory Staff's (Staff)⁵ request for clarification of Order 04.
- 8 On April 25, 2013, Staff, the Public Counsel Section of the Washington Attorney General's Office (Public Counsel), and DoD/FEA filed testimony and exhibits in response to Frontier's direct testimony and exhibits, opposing the Petition on various grounds.
- 9 Also on April 25, 2013, Frontier and the CLEC intervenors filed a settlement agreement between those parties (CLEC Settlement) along with a joint narrative and testimony supporting that agreement.
- 10 On May 14, 2013, Frontier filed rebuttal testimony and exhibits replying to the response testimony filed by other parties.
- 11 On May 17, 2013, Frontier and DoD/FEA filed a settlement agreement between those parties (DoD/FEA Settlement) along with a joint narrative and testimony supporting that agreement.

⁴ The CLEC intervenors include Integra Telecom of Washington, Inc. (Integra), tw telecom of washington, llc (tw telecom), Charter Fiberlink WA-CCVII, LLC (Charter Fiberlink), Level 3 Communications, LLC (Level 3), and Cbeyond Communications LLC (Cbeyond) (collectively CLEC intervenors).

⁵ In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

- 12 On May 22, 2013, Frontier, Staff and Public Counsel filed a settlement agreement resolving the disputed issues between them (Staff/PC Settlement). These parties filed a Joint Narrative and testimony in support of their agreement on May 23, 2013.
- 13 On May 29, 2013, the Commission conducted an evidentiary hearing to consider the settlement agreements between Frontier and the other parties.
- 14 On June 3, 2013, the Commission issued a Notice of Tentative Rejection of Settlement Agreement setting forth concerns with the terms of the Staff/PC Settlement. The Commission required the parties to that agreement to file position statements stating whether they would waive cross-examination on the prefiled testimony that had previously been stipulated into the record and if they objected to the Commission considering the provisions of the Staff/PC Agreement and supporting testimony and exhibits in making the Commission's final determination.
- 15 Frontier, Staff, and Public Counsel filed position statements on June 13, 2013. All of these parties waived cross-examination, and none of them objected to the Commission's consideration of the Staff/PC Settlement and supporting testimony and exhibits.
- 16 Timothy J. O'Connell, Seattle, Washington, represents Frontier. Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents Staff. Simon J. ffitich and Lisa W. Gafken, Assistant Attorney's General, Seattle, Washington, represent Public Counsel. Douglas Denney, Portland, Oregon, represents Integra, Mark P. Trinchero, Portland, Oregon, represents tw telecom and Charter Fiberlink. Gregory T. Diamond, Seattle, Washington, represents Level 3. Arthur A. Butler, Ater Wynne LLP, Seattle, Washington, represents Cbeyond. Kyle J. Smith and Stephen S. Melnikoff, General Attorneys, Arlington, Virginia, represent DoD/FEA.

SETTLEMENT AGREEMENTS

CLEC Settlement

- 17 The CLEC Settlement contains safeguards the parties have agreed would ensure that classification of Frontier or its services as competitive would not impede CLECs' ability to offer competing telecommunications services at competitive rates, terms, and conditions. As part of its Petition, Frontier proposed to detariff and move to price catalogs its intrastate tariffs for (1) Interconnection Agreement services (ICA Wholesale Services), which are the services the federal Telecommunications Act of

1996 requires incumbent local telephone companies to offer their competitors; and (2) wholesale services contained in Frontier's tariffs WN U-16 Facilities for Intrastate Access tariff and WN U-23 Advanced Data Services tariff (collectively Non-ICA Wholesale Services). The CLEC intervenors were concerned that the move to price catalogs would allow Frontier unilaterally to change the rates, terms, and conditions associated with wholesale services if those services were no longer tariffed and subject to Commission oversight.

- 18 The CLEC Settlement would permit Frontier to detariff and move to price catalogs the Company's ICA Wholesale Services and its Non-ICA Wholesale Services but would impose conditions that limit Frontier's ability to revise the rates, terms, and conditions contained in those catalogs. Specifically, Frontier would be allowed to move the services from the following tariffs to catalogs:

ICA Wholesale Services:

WN U-18 (Network Interconnection Access Service)

WN U-20 (Collocation Service)

WN U-21 (Unbundled Network Elements)

WN U-22 (Resale Local Exchange Services)

Non-ICA Wholesale Service:

WN U-16 (Facilities for Intrastate Access)

WN U-23 (Advanced Data Services)

The resulting Frontier wholesale service catalogs would not deviate substantively from the existing rates, terms, and conditions in the respective tariffs.

- 19 The CLEC Settlement would provide a process for the CLEC intervenors to review and challenge any changes to wholesale service catalogs that the CLECs believe may violate the terms of the Settlement. Because some Washington interconnection agreements incorporate by reference rates, terms, and conditions in the ICA Wholesale Services tariffs, the CLEC Settlement would require Frontier to propose an amendment that incorporates by reference the newly created ICA Wholesale Services catalogs. Additionally, the agreement would prevent Frontier from discontinuing or terminating a service without Commission approval. An individual CLEC, however, would remain free to agree with Frontier to discontinue, terminate, or modify a Non-ICA Wholesale Service provided to that CLEC. Frontier also would be obligated to offer to competitive carriers all Non-ICA Wholesale services at the same rates, terms,

and conditions that were offered when Frontier filed its Petition. The Company further agrees to honor any existing contracts for Non-ICA Services on an individualized term pricing plan arrangement for the duration of the contracted term, but Frontier could lower rates without Commission approval.

- 20 The CLEC Settlement also addresses Frontier's existing and continuing obligations under sections 251 and 252 of the federal Telecommunications Act of 1996 and any federal or state regulations, orders, or rules promulgated pursuant to that statute (collectively Sections 251-52). The agreement confirms that Frontier would not seek to avoid any of its obligations under existing interconnection agreements or any of its continuing obligations under Sections 251-52 as a result of being granted relief requested in its Petition. The only impact Commission approval of the Petition and the CLEC Settlement would have on interconnection agreements or obligations is that Frontier would be required to prepare amendments to existing interconnection agreements to move the ICA Wholesale Services from tariff to catalogs.
- 21 With respect to intrastate switched access service, the CLEC Settlement would require Frontier to maintain existing service rates for intrastate originating switched access and to transition terminating switched access services as provided in the Federal Communications Commission's (FCC) Intercarrier Compensation (ICC) Transformation Order.⁶ To the extent a future FCC order or court allows companies to restructure or increase certain intrastate switched access rate elements, the CLEC Settlement would allow Frontier to restructure intrastate access rates consistent with that order or court decision. If a court overturns the ICC Transformation Order, Frontier agrees not to increase the aggregate intrastate switched access rates beyond the aggregate rates in effect on December 29, 2011, without obtaining approval from the Commission.
- 22 Finally, if Frontier wants to increase the price or change any term or condition of any ICA or Non-ICA Wholesale Service offered to competitive carriers as of the date Frontier filed the Petition, Frontier would be required to petition the Commission to modify that term or condition and demonstrate that the requested change is in the public interest. Frontier agrees not to seek any such changes prior to July 1, 2017.

⁶ *In re Connect America Fund*, FCC 11-161, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking (Nov. 18, 2011).

DoD/FEA Settlement

23 DoD/FEA is a large customer of Frontier with several locations within Frontier's Washington service area. In its initial testimony, DoD/FEA expressed strong concerns about the potential adverse effect of granting Frontier's petition on its ability to continue to purchase business services in an efficient manner, at reasonable cost, and with the highest service quality and performance.

24 Under the DoD/FEA Settlement, the parties have agreed to execute a Master Service Arrangement (MSA) under which Frontier would provide certain telecommunications services in its Washington operating territory to the DoD/FEA for five years following approval of Frontier's Petition at rates, terms, and conditions that are to be no higher than existing rates and that would be capped for the duration of the MSA. Substantively, the agreement allows or specifies that:

- All of DoD/FEA's entities receiving services in Washington from Frontier would be permitted to maintain or order services covered by the MSA.
- The MSA would include intrastate regulated business services purchased by DoD/FEA as of July 1, 2013 and DoD/FEA would be permitted to continue to move, change, terminate, or add services covered by the MSA.
- The initial rates applicable under the MSA would be capped at the rates contained in Frontier's tariff as of January 1, 2013, or the rates billed to DoD/FEA as of July 1, 2013, whichever is lower.
- The rates, terms, and conditions of services provided under the MSA would remain in effect for the five year duration of the Agreement if total annual billings are at least 85% of the retail service billings by Frontier for the year preceding the effective date of the MSA. After notice by Frontier that the annual purchase commitment has not been satisfied, if it remains below the 85% level for one hundred eighty (180) days, Frontier would be authorized to terminate the MSA or negotiate different rates, terms, or conditions for MSA services.
- The MSA would be for a five-year term beginning July 1, 2013, and would automatically renew unless either party provides written notice no less than 90 days prior to expiration.
- If the Commission does not grant Frontier's Petition to be classified as a competitive telecommunications carrier or declines to classify any of the services covered by the MSA, or if Frontier is required to continue to comply with the individual case basis (ICB) filing requirements in the Commission rules, Frontier would be required to file the MSA with the

Commission as an ICB contract with a proposed effective date of July 1, 2013.

- 25 Frontier and DoD/FEA contend the primary benefit of their agreement is that it would allow Frontier to detariff its business services while providing assurance to DoD/FEA that any telecommunications services it purchases from Frontier would continue to be provided under reasonable rates, terms, and conditions.

Staff/PC Settlement

- 26 The Staff/PC Settlement provides that Staff and Public Counsel agree to support competitive classification of many Frontier services in exchange for Frontier 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 incorporated into the agreement. The parties agree that Frontier would have pricing flexibility for stand-alone basic residential and small business local exchange services and intrastate special access services, subject to certain rate bands and caps on pricing increases and potential decreases. Additionally, the agreement maintains Frontier's obligations as a carrier of last resort and eligible telecommunications carrier, thereby providing assurance that these services would remain available to customers throughout Frontier's service area. Lifeline and WTAP services would be protected by exempting beneficiaries from any price increases the Company initiates as a result of the pricing flexibility the Commission grants. Each material element of the Staff/PC Settlement is discussed in more detail below.

a. Intrastate Switched Access Rates

- 27 Because the FCC's ICC Transformation Order has been appealed, the parties have agreed to a condition that would maintain Frontier's intrastate switched access rates in the tariff until the appeals are resolved. Specifically, pending the outcome of the litigation, Frontier commits to retain the switched access services contained in its Intrastate Access Tariff. The Staff/PC Settlement specifies that within 60 days after all appeals are exhausted, Frontier would file with the Commission a proposal concerning its intrastate switched access charges that is consistent with resolution of the final judicial determination. The parties state that this provision of the Staff/PC Settlement is in the public interest because it would provide assurances that the Commission would retain authority over switched access rates in the event that the court overturns the FCC's preemption of intrastate switched access rates.

b. Intrastate Special Access Services

28 The Staff/PC Settlement would require Frontier to continue to offer intrastate special access services in its Intrastate Access Tariff. Frontier would be permitted to revise the Intrastate Access Tariff to establish banded rates under RCW 80.36.340 with a rate floor for the band being set at 10 percent below Frontier's existing tariffed rates. The agreement also would require that any filing proposing to decrease rates below the rates in effect as of the date of the agreement would have to be supported by a total service long-run incremental cost (TSLRIC) study demonstrating the proposed rates are above cost. The maximum banded rate for intrastate access would be the corresponding interstate special access rates for the same service or rate element. As to flexibility in pricing, Frontier would be permitted to implement rate changes within the rate bands upon ten days' notice to the Commission and to customers of the affected service. Wholesale customers would be permitted to continue to order intrastate special access services from the Intrastate Access Tariff, but would not be required to do so, because they would also have access to all of the services now available in the newly created Wholesale Special Access Price Catalog that has been agreed to in the CLEC Settlement.

c. Local Exchange Service

29 The parties have agreed to set of limitations on pricing of certain basic local exchange services consistent with Staff and Public Counsel's concerns that sufficient competition does not presently exist in all geographic areas for those services. Stand-alone residential service, basic stand-alone business service, and certain other services currently contained in Frontier's WN U-17 General and Local Exchange Tariff (as delineated in Appendix A to the Staff/PC Settlement) would not be classified as competitive, as originally requested by Frontier. Rather, the parties have agreed that these services would be subject to rate bands as allowed pursuant to WAC 480-80-112. Prices would be free to move up or down within the rate bands on 10 days' notice to the Commission and affected customers, subject to a prohibition on any rate increase for residential or small business services before October 1, 2013. If Frontier seeks to reduce its rates below the current tariff rates, the Company would be required to file TSLRIC studies to demonstrate that the rate exceeds the cost of service. Parameters for the rate bands would be as follows:

i. Basic Stand-Alone Residential Service

30 The Staff/PC Settlement would establish the rate band for basic stand-alone residential service at \$2 above and \$4 below the existing rates of \$16.90 for flat-rated service and \$11.15 for basic measured service. Beginning October 1, 2013, Frontier would be able to increase these rates no more than \$1 in any 12-month period, subject to the ceiling of the rate band for the service and a carve-out for Lifeline and WTAP customers so they would not be affected by any basic residential service rate increases.

ii. Basic Stand-Alone Small Business Service (1-3 Lines)

31 Rate bands would be established for basic stand-alone small business service at \$3 above and \$5 below the existing rates of \$33.60 for flat-rated service and \$21.60 for basic measured service. Beginning October 1, 2013, Frontier would be allowed to increase these rates no more than \$2 in any 12-month period, subject to the rate band maximum of \$5 above existing rates.

iii. Services to be Moved to the Local Exchange Service Catalog

32 To provide Frontier greater pricing flexibility to respond to competition, the Staff/PC Settlement would allow Frontier to withdraw other services the parties have identified from the Company's Local Exchange Tariff and to maintain those services on Frontier's website in its Local Exchange Service Catalog. There would be no pricing limitations applied to the services, but Frontier would still be required to offer each of the services it moves from its Local Exchange Tariff to the Local Exchange Service Catalog on a stand-alone basis. Should Frontier wish to discontinue any or all of the stand-alone services offered in its Local Exchange Service Catalog to existing customers, the Company would be required to obtain Commission approval. This condition would give Frontier the ability to change its bundled service offerings to meet market conditions but would provide customers with protections as to the availability of stand-alone services in the Local Exchange Service Catalog. Additionally, customers would be protected by Frontier's commitment not to price bundled services above the sum of the stand-alone rates for those services.

d. Continued Carrier of Last Resort Obligation, Statewide Rate Averaging, and a Prohibition on Below-Cost Pricing

33 Frontier commits in the Staff/PC Settlement to continue to serve as a carrier of last resort with respect to all of the services being moved from its Local Exchange Service Tariff into the Local Exchange Service Catalog. Additionally, for basic stand-alone and basic small business services, Frontier would be required to continue to provide such services at statewide rates with no wire center de-averaging, a requirement that would also apply to calling features. Frontier would be required to file a TSLRIC cost study for any rate reductions to demonstrate that its proposed rates are above cost, a provision the parties contend is necessary to prevent harm to competition.

e. Wholesale Services

34 The Staff/PC Settlement would permit Frontier to withdraw the following interconnection-related wholesale tariffs and offer the services in price catalogs or price lists posted on Frontier's website:

- WN U-18 Network Interconnection Access Service
- WN U-20 Collocation Service
- WN U-21 Unbundled Network Elements
- WN U-22 Resale Local Exchange Services

The settling parties intend that none of these changes (from tariff to catalogs) should be construed to impact Frontier's continuing wholesale service obligations under the federal Telecommunications Act of 1996.

35 As in the CLEC Settlement, the Staff/PC Settlement would permit Frontier to move services from the Advanced Data Services Tariff to an Advanced Data Services Catalog that would 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 Staff/PC Settlement. If Frontier seeks to discontinue any of these services moved from the tariff to the catalog to existing customers subscribing to the services, the Company would be required to file a petition for Commission approval.

36 The Staff/PC Settlement would require Frontier to establish Non-ICA Wholesale Service Catalogs that 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 carriers certified as long distance carriers or CLECs would be permitted to purchase services from these two newly established service catalogs. However, certified carriers would have the option of purchasing services from the Intrastate Access Tariff or Advanced Data Services Tariff if, for example, Frontier were to reduce rates to a lower level within the bands of the Intrastate Access Tariff.

f. Stand-Alone DSL

37 Frontier currently offers stand-alone DSL service in its service areas where DSL is available. Under the Staff/PC Settlement, the Company would continue to offer stand-alone DSL or another comparable broadband service to residential and small business end user customers wherever DSL is currently provided. Frontier would be permitted to petition the Commission to terminate this condition on or after December 31, 2015. However, if Frontier does not petition to end this condition or the Commission has not acted on such a petition, the commitment to offer stand-alone DSL expires on December 31, 2016.

g. Waivers

38 Pursuant to RCW 80.36.330, the settling parties have agreed that the Commission should waive the following legacy regulatory requirements for Frontier as contained in Appendix B to the Staff/PC Settlement:

- RCW 80.04.300 (Budgets to be filed by companies-Supplementary budgets),
- RCW 80.04.310 (Commission's control over expenditures),
- RCW 80.04.320 (Budget rules),
- RCW 80.04.330 (Effect of unauthorized expenditure-emergencies),
- RCW 80.04.520 (Approval of lease of utility facilities),
- Chapter 80.16 RCW (affiliated interests),
- Chapter 480-140 WAC (Commission general-budgets),
- WAC 480-120-344 (Expenditures for political or legislative activities),
- WAC 480-120-369 (Transferring cash or assuming obligation),
- WAC 480-120-375 (Affiliated interests- contracts or arrangements),

- WAC 480-120-365 (Issuing Securities),
- WAC 480-120-389 (Securities report),
- WAC480-120-395 (Affiliated interest and subsidiary transaction reports),
- WAC 480-120-399 (Access charge and universal service reporting),
- RCW 80.04.360 (Earnings in excess of reasonable rate-consideration in fixing rates),
- RCW 80.04.460 (Investigation of accidents),
- Chapter 80.08 RCW (Securities), and
- Chapter 80.12 RCW (Transfers of property).

39 The comprehensive effect of waiving these statutes and regulations would be that Frontier's rates for competitively classified services would no longer be subject to traditional economic (*i.e.*, rate-of-return) regulation. As a result, Commission oversight of the Company's budgets, expenditures, leases, transactions with affiliates, and financing arrangements would not be necessary for rate setting or protecting consumer interests. The settling parties agree that waiver of these requirements would eliminate unnecessary regulatory and administrative burdens, permitting Frontier to focus its resources on providing competitive telecommunications services in Washington.

h. Relationship to the Other Settlement Agreements

40 The Staff/PC Settlement complements and supplements certain terms and conditions contained in the CLEC Settlement and the DoD/FEA Settlement discussed above. The parties indicate that as a result of the Staff/PC Settlement, paragraph 14 of the CLEC Settlement would have to be modified slightly to ensure that agreement would be effective if the Commission approves the Staff/PC Settlement, but the parties to the CLEC Settlement subsequently made that modification. Accordingly, there are no conflicts between the provisions of any of the three settlement agreements.

DISCUSSION

The Changing Telecommunications Landscape

41 The telecommunications marketplace in the United States has changed significantly over the past several decades as a result of certain structural and technological developments that have transformed how our society interacts and communicates. These developments have accelerated in the past ten years. The single-provider monopoly era has given way to an environment in which a broad range of providers

of telecommunications services utilize an array of technologies to provide services that enable consumers to work, play, and learn in ways hardly imagined just a few years ago. Traditional landline telephone service is increasingly being supplanted by mobile wireless telephony. The total number of cellphone users in Washington already far surpasses the number of traditional wireline telecommunications consumers.⁷

- 42 The analog technology of legacy telephone networks is also becoming antiquated as network signaling has gone digital. Copper wires are increasingly making way for fiber optic technology that enables infinitely greater capacities and speeds for telecommunications and broadband services. Regardless of provider or technology, access to reliable and ultra-fast networks now enables consumers and businesses to seamlessly connect computers, smartphones, tablets, global positioning satellite (GPS), and other digital devices to reach a myriad of Internet, video, voice, and data services and applications. These developments reflect a convergence toward an all-Internet protocol (IP) world in which voice service is increasingly viewed as yet another application that rides atop any broadband connection regardless of the underlying technology. The IP transition has become the underlying foundation for the availability of 21st Century digital services and applications for Washington's residents and businesses. In short, we are in the midst of dramatic changes in the technologies employed by the communications industry, and the rapid evolution of data-driven services has transformed society in profound ways.
- 43 Convergence of technologies, providers, and competition is making historic government regulation outdated, as voice, video, and data are quickly becoming just packets of information carried on the same networks. These changes offer the promise of large consumer benefits as well as important economic advantages such as increased jobs, investment, and national productivity. However, these benefits increasingly hinge on the ability of telecommunication providers to meet the demands of consumers without unnecessary or outdated intervention by regulation. Indeed, other state regulators, including this Commission, have recognized that telecommunications markets are best served by public policies that are, to the maximum extent possible, technology and industry-neutral and that allow market forces to operate freely without unnecessary regulatory interference and that focus on

⁷ See Phillips, Exh. JP-29HCT 25-26 (according to FCC data, there were 6,259,000 wireless subscribers in Washington in 2011 compared to 2,878,000 lines served by incumbent and competitive local exchange companies).

core functions such as protecting consumers and promoting competition among diverse providers of communication services.⁸

44 It is against this backdrop that we consider the merits of Frontier's Petition and the various settlement agreements that have been presented to us for approval. While no one can dispute the consumer benefits and efficiencies that accrue from an increasingly diverse and competitive telecommunications marketplace, it is also true, and we accept, that these developments have implications for traditional telecommunications providers like Frontier. The long-established condition of imposing regulations, including full economic regulation, on the Company and the legacy voice services it provides, may no longer be reasonable or necessary given its smaller scope and scale in Washington's telecommunications marketplace.

45 Although Frontier's presence in the market remains significant, consumers are switching to alternative providers and platforms for their communications requirements, leaving the Company with the prospect of a diminished customer base and declining or stagnant revenue streams. Frontier's historic business – on which regulators have relied to achieve certain public policy objectives such as the widespread availability of residential and business telephone services at affordable rates throughout the Company's service area – is in jeopardy as a result of competition and technological change.

46 Accordingly, as this marketplace and technological transformation occurs, we recognize that the traditional role of incumbent telecommunications providers such as Frontier, and the regulatory construct that is applied to them, should be re-examined, and where appropriate, regulation should give way to the discipline of the competitive marketplace. Incumbent telephone companies are increasingly subject to a vigorous level of inter- and intra-modal competition from CLECs, cable companies, wireless companies, and Voice over Internet Protocol (VoIP) providers that serve both business and residential consumers. These providers are not subject to the same regulatory requirements that apply to Frontier, and to that degree, they have a distinct competitive advantage.

⁸ See, e.g., Phillips, Exh. JP-1T 53-54; *In re Petition of Qwest Corp. for Competitive Classification of Basic Business Exchange Services*, Docket UT-030614, Order No. 17, Order Granting Competitive Classification (Dec. 22, 2003).

47 Frontier, citing robust competitive circumstances throughout the vast majority of its operating territory in Washington, seeks a fundamental change to the degree of regulation the Commission currently applies to the Company. Frontier proposes that the Company be subject to the same reduced regulatory obligations that apply to CLECs, rather than the full scope of legacy economic and service-related requirements that derive from the single provider monopoly era. The Company claims that easing traditional regulation in favor of the market discipline faced by Frontier's competitors would result in a more equitable and effective competitive environment to the ultimate benefit of consumers.

Competitive Classification Statutes

48 Washington statutes provide the Commission with broad authority to tailor regulation of telecommunications companies to the realities of the marketplace. Frontier's Petition requests regulatory freedom to the greatest extent possible under existing law by seeking classification of the Company as competitive under RCW 80.36.320. Subsection (1) of that statutory provision requires:

The commission shall classify a telecommunications company as a competitive telecommunications company if the services it offers are subject to effective competition. Effective competition means that the company's customers have reasonably available alternatives and that the company does not have a significant captive customer base. In determining whether a company is competitive, factors the commission shall consider include but are not limited to:

- (a) The number and sizes of alternative providers of service;
- (b) The extent to which services are available from alternative providers in the relevant market;
- (c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and
- (d) Other indicators of market power which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

49 The Staff/PC Settlement, on the other hand, would result in most of Frontier's services, rather than the Company itself, being classified as competitive under RCW 80.36.330. Subsection (1) of that provision states:

The commission may classify a telecommunications service provided by a telecommunications company as a competitive telecommunications service if the service is subject to effective competition. Effective competition means that the customers of the service have reasonably available alternatives and that the service is not provided to a significant captive customer base. In determining whether a service is competitive, factors the commission shall consider include but are not limited to:

- (a) The number and size of alternative providers of service, including those not subject to commission jurisdiction;
- (b) The extent to which services are available from alternative providers in the relevant market;
- (c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and
- (d) Other indicators of market power which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

50 Both RCW 80.36.320 and RCW 80.36.330 condition competitive classification of companies and services, respectively, on the existence of effective competition, which the legislature has defined as consumers having reasonably available alternatives in the relevant market and the lack of a “significant captive customer base.” Accordingly, we must determine whether either Frontier as a company or certain services the Company provides are subject to effective competition.

51 In addition, Frontier has entered into settlement agreements with all of the other parties. The Commission has discretion whether to consider proposed settlement agreements and “will approve settlements when doing so is lawful, when the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.”⁹

52 We exercise our discretion to consider the settlement agreements and focus our discussion and analysis on them. As an initial matter, we construe Frontier’s agreement with Staff and Public Counsel effectively to amend the Company’s

⁹ WAC 480-07-750(1).

Petition to seek competitive classification of specified Frontier services under RCW 80.36.330, rather than of the Company as a whole pursuant to RCW 80.36.320. We accept that amendment and make our determinations accordingly. We also carefully scrutinize the provisions of the settlement agreements to ensure that they are factually supported and consistent with the public interest in light of not only the record evidence but the telecommunications marketplace in Washington as it exists today.

Staff/PC Settlement

- 53 The Staff/PC Settlement essentially covers three different types of services or conditions: (1) local exchange services, including basic residential and small business services; (2) access and wholesale services; and (3) miscellaneous conditions. We examine the provisions governing each of these areas and find that approval of those provisions requires additional conditions.

Local Exchange Services

- 54 Frontier, Staff, and Public Counsel have agreed that the Company will continue to tariff stand-alone residential service and small business service (one to three lines) but may adjust rates for these services within defined bands with 10 days' notice, subject to certain conditions. We find that these provisions of the Staff/PC Settlement are inconsistent with the record evidence and the public interest.
- 55 The statute requires the Commission to consider two interrelated elements when determining the existence of effective competition on which the Commission bases competitive classification: (1) the relevant service market; and (2) whether the company provides the service to a significant captive customer base in that market. Frontier provided testimony that the market for its basic residential and business local exchange services is voice service in its entire service territory in Washington and that the Company competes with providers of alternative services throughout virtually all of that market.¹⁰ Witnesses for Staff and Public Counsel, on the other hand, testified that services equivalent to Frontier's stand-alone residential and business services are not readily available from other providers at comparable rates and that customers in portions of Frontier's service territory have no alternatives at all to the Company's basic local exchange service.¹¹ The Staff/PC Settlement largely

¹⁰ *E.g.*, Phillips, Exh. JP-29HCT 51-54.

¹¹ *E.g.*, Roycroft, Exh. TRR-1HCT 5-7; Liu, Exh. JL-1CT 20:9-20; Roth, Exh. JYR-1T 7-8.

incorporates Staff and Public Counsel’s position on these elements. We come to a different conclusion.

- 56 An appropriate market is defined both by the nature of the service and the geographic scope in which that service is offered. Staff and Public Counsel focus too narrowly on both aspects of the market definition for Frontier’s basic local exchange services. With respect to the services themselves, RCW 80.36.330 requires the existence of “reasonably available alternatives,” and more specifically, “functionally equivalent or substitute services.” A competitor’s service need not be exactly the same as a Frontier service to be considered an alternative, functionally equivalent, or substitute service.
- 57 Staff and Public Counsel contend that only Frontier provides stand-alone, landline basic residential and small business local exchange service at the rates in the Company’s tariff, and that a substantial number of customers want such service, rather than wireless or bundled service options. However, that argument is too confining in its description of the market. Wireless, VoIP, and bundled service options to basic single-line service place competitive pressures on providers of such basic service. Even if Frontier were the only provider of single line basic service, should Frontier seek to raise its rates for such service customers could opt for one of these other service options – in fact, that is what has been happening. While we understand Staff and Public Counsel’s strong desire to define services narrowly to protect the interests of those consumers with the fewest competitive alternatives, we do not believe the legislature intended the Commission to adopt such a rigorously constricted approach in assessing competitive conditions. Indeed, the narrow market definition Staff and Public Counsel propose would undermine legislative intent by virtually ensuring that Frontier could never demonstrate the existence of effective competition for these services.
- 58 To the extent possible, *consumers*, not the Commission, should determine whether other providers’ services are viable alternatives to the incumbent telephone company’s services. The record evidence overwhelmingly demonstrates that most consumers consider wireless, VoIP, and CLEC services, individually and in bundles, to be alternatives to Frontier’s basic residential or small business services. Frontier currently serves 64 percent fewer access lines – 66 percent fewer residential lines and 53 percent fewer business lines – than it served in 2000.¹² The Company suffered a 10 percent reduction in access lines in calendar year 2012 alone.¹³ Consumers

¹² Phillips, Exh. JP-29HCT 51:11-12.

¹³ *Id.* 51:14-15.

obviously have concluded that alternatives to Frontier's services exist because the majority of the Company's historic customers have switched to those alternatives, even though they differ by the technology, scope, and price of the service. We would be ignoring reality if we were to accept Staff and Public Counsel's definition of the relevant market as limited to stand-alone, single landline residential and small business services provided at Frontier's tariff rates.

59 Nor are we willing to create geographic submarkets that do not currently exist based solely on the presence or absence of competitors. Frontier offers its local exchange services at the same rates, terms, and conditions throughout its service territory. CLECs, wireless service companies, and VoIP providers similarly provide their services on a statewide or even national basis. Staff and Public Counsel witnesses nevertheless testified that there are Frontier customers who live in rural exchanges in which no competitive alternatives exist, and those exchanges should be considered separately from more densely populated areas.¹⁴ Staff and Public Counsel, however, provide insufficient evidence that these areas have any other characteristics of a separate market. The record evidence simply does not support treating isolated pockets of local exchange service as a unique market for purposes of determining whether Frontier's local exchange services are subject to effective competition.

60 The remaining element for determining the existence of effective competition is whether Frontier customers who do not have readily available alternatives comprise a "significant captive customer base" in the statewide market for local exchange and equivalent services. The statute does not define "significant captive customer base," but for purposes of our analysis, we consider the term to mean a group of customers without service alternatives that is sufficiently large to enable the service provider to raise prices without losing market share.¹⁵

61 Frontier contends that it does not have a significant captive customer base. The Company provided testimony and supporting evidence that "[e]xchanges serving 95.8% of Frontier's access lines have a cable voice provider," and "[a]t a minimum,

¹⁴ *E.g.*, Roycroft, Exh. TRR-1HCT 27:13-20; Liu, Exh. JL-1CT 20:9-20.

¹⁵ The legislative history of the Regulatory Flexibility Act is instructive. As initially proposed by the Joint Select Committee on Telecommunications, the law would have allowed competitive classification of only if "the company does not have a captive customer base." Joint Committee Report, App. H, at 10. The Joint Committee considered a customer "captive" if he or she had "no choice of service providers." Joint Committee Report at 31. The statutes the legislature enacted, however, relaxed the requirement to one of no "*significant* captive customer base." RCW 80.36.320(1) (emphasis added); 80.36.330(1) (emphasis added).

exchanges serving 99.3% of Frontier's access lines have at least AT&T or T-Mobile voice service."¹⁶ Staff and Public Counsel counter in their written testimony that "a substantial number of households do not have the same ability to choose from alternative providers as others who reside in high-density areas where cable voice services may be available and wireless signal strength is likely to be stronger."¹⁷ Public Counsel's witness, however, conceded during the hearing on the settlement agreements that while Frontier has some captive customers, "I don't believe that my testimony states that, you know, Frontier has a significant captive customer base in light of the statutory criteria."¹⁸

62 The record demonstrates that the customers Frontier serves who do not have readily available alternatives to the Company's local exchange services do not comprise a "significant captive customer base." For basic residential service, the Company's least competitive local exchange service, Frontier's market share in its wire centers is as low as 17 percent, the median "is about 40 percent and the household-weighted average of market share is about 32 percent."¹⁹ We do not believe that, in this environment, Frontier could raise its local exchange rates substantially without accelerating the line loss the Company is already experiencing.²⁰

63 The provisions in the Staff/PC Settlement requiring Frontier to continue to tariff its basic residential and small business services and to subject those services to regulatory price constraints are not consistent with the record evidence or the public interest. We find that those services are subject to effective competition and conclude that the Company should be authorized to move them from the tariff to the local

¹⁶ Phillips, Exh. JP-29HCT 51:19-21.

¹⁷ Roycroft, Exh. TRR-1HCT 27:16-19; *accord, e.g.*, Liu, Exh. JL-1CT 13:4-10.

¹⁸ Roycroft, TR. 79:16-19.

¹⁹ Roycroft, Exh. TRR-1HCT 34:14-20.

²⁰ Our conclusion is necessarily based on our predictive judgment in light of the circumstances that exist in the marketplace today. Should this judgment prove incorrect and Frontier substantially raises its local exchange service rates or other indications arise to demonstrate a lack of sufficient market discipline over Frontier's behavior, the Commission, either on its own motion or in response to an appropriate petition, will not hesitate to avail itself of the statutory option of reversing some or all of the competitive classification we grant in this Order. *See* RCW 80.36.330(7). We note, however, that in the ten years since we classified Qwest Corporation's (now CenturyLink's) basic business exchange services as competitive, neither the Commission nor any interested party has sought to reclassify those services.

exchange services catalog. We approve the Staff/PC Settlement on the condition that these provisions are removed from the agreement.²¹

64 We also conclude, however, that both the record and the public interest support almost all of the other provisions in the Staff/PC Settlement related to local exchange services,²² including but not limited to Frontier's agreement to continue statewide average pricing for basic residential and small business services and to retain its carrier of last resort obligations for all local exchange services moved to the catalog. Frontier has maintained these conditions in the other states where the Company is subject to reduced regulation, and we find that they are important safeguards to ensure that customers can continue to obtain these services without price discrimination.

65 We make only one condition on our approval of these additional provisions. Paragraph 15 in the Staff/PC Agreement provides in relevant part, "If Frontier seeks to discontinue any of the services moved into the Local Exchange Service Catalog *to existing customers subscribing to the service* on a stand-alone basis, it will file a petition for approval with the Commission." (Emphasis added.) As written, this provision would permit the Company unilaterally to discontinue offering any service in the Local Exchange Service Catalog to new customers as long as it "grandfathered" that service for existing customers. Particularly because the Commission is authorizing Frontier to move basic residential and small business services into that catalog, we find that Frontier should not discontinue offering any local exchange service to new or existing customers without seeking Commission approval. This

²¹ We note that although the effect of this condition means that the company's residential and small business services will no longer be subject to traditional economic regulation, we retain full oversight over other aspects of Frontier's provision of these services to Washington consumers. In particular, nothing we do here disturbs our regulation of Frontier's retail and wholesale service quality or its responsibility to comply with our state law and our rules governing consumer protection. We intend to closely monitor the company's performance and compliance with all relevant statutes and rules for these services and all other services that are being competitively classified as a result of our order.

²² Appendix A to the Staff/PC Settlement includes all of the Frontier services those parties agree should be classified as competitive, and we classify those services as competitive. That appendix is a redline of the Company's current local exchange tariff. Because of its size, the document was not physically attached to the agreement, and we do not attach it to this Order. On June 10, 2013, however, Frontier listed the services the parties agreed should be classified as competitive in response to the Commission's Bench Request issued during the May 29, 2013, hearing. TR. 142-43. We admit the response into the record of this proceeding and rely on the list of services contained in that document as a summary of the services for which we grant competitive classification in addition to basic residential and small business local exchange services.

condition will enable the Commission to ensure that Frontier continues to fulfill its carrier of last resort obligations.

Access and Wholesale Services

66 The provisions of the Staff/PC Settlement governing access and wholesale services largely are consistent with the record evidence and the public interest. Frontier provides these services primarily, if not exclusively, to other telecommunications companies. As we explain in greater detail below in connection with the CLEC Settlement, all of these other companies obtain access and wholesale services from Frontier that enable them to offer competing services to end user customers. The public interest, including maintenance and further development of effective competition in telecommunications markets in Washington, require that Frontier as an incumbent local exchange company continue to provide access and wholesale services pursuant to reasonable rates, terms, and conditions consistent with federal and state regulatory requirements.

67 We condition our approval of the provisions in the Staff/PC Settlement governing access and wholesale services only on elimination of the restrictions in the agreement on the Company's ability to lower its rates for special access services consistent with existing Washington law. Price floors and requirements for cost study support for lowering rates are designed to ensure that a company cannot lower prices to uneconomic levels to drive competitors out of the market and increase its market share. We find insufficient basis in the record to support such a restriction and no reason to believe that Frontier could or would reduce its special access rates for such an anticompetitive purpose. On the other hand, we approve of giving Frontier more flexibility to adjust its prices, subject to capping the intrastate rates at interstate levels to ensure that the Company does not unreasonably inflate the price for services on which its competitors depend to provide alternative services to end users.

Miscellaneous

68 With one exception, the remainder of the Staff/PC Settlement is supported by the record and consistent with the public interest. Frontier's agreement to continue to provide stand-alone digital subscriber line (DSL) or comparable broadband service not only is consistent with the Company's prior commitments,²³ but it enhances VoIP

²³ *In re Joint Application of Verizon Communications, Inc., and Frontier Communications Corporation for an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Approving*

providers' ability to offer competitive voice services over those broadband connections. In addition, the list of waivers of statutes and rules to which the parties have agreed are consistent with the waivers the Commission has granted to other companies whose services have been classified as competitive.

69 We condition our approval of the remainder of the Staff/PC Settlement, however, on removal of the restriction in paragraph 30 that Frontier may not request any modification to the terms of the agreement that would be effective prior to December 31, 2015. The telecommunications market is evolving rapidly, and we do not believe it is in the public interest to preclude the Company from seeking additional regulatory freedom if market conditions warrant such relief within the next two and a half years.

70 The Commission, therefore, approves the Staff/PC Settlement with the conditions described in this Order.²⁴

C L E C Settlement

71 We find that the CLEC Settlement is supported by adequate record evidence and is consistent with the public interest. All of Frontier's competitors rely, in whole or in part, on interconnection and the other wholesale services the Company provides pursuant to state and federal law. Competition from CLECs, cable, wireless, and over the top VoIP companies is a crucial input to our evaluation of competitive conditions within Frontier's Washington service area. Effective competition cannot exist if Frontier could substantially undermine other providers' ability to offer the very telecommunications services on which the Company relies to support its request for competitive classification.

the Indirect Transfer of Control of Verizon Northwest, Inc., Docket UT-090842, Order 06, Final Order ¶¶ 193-207 (April 16, 2010).

²⁴ Attached as Appendix A is a redline of the Staff/PC Settlement that reflects the Commission's conditions for approval and which the Commission adopts as part of this Order. Pursuant to both paragraph 41 of the agreement and WAC 480-07-750(2)(b), a party may withdraw from the agreement if it rejects any of the Commission's conditions. Should that occur, the Commission relies on the provisions of the Staff/PC Settlement as part of the record evidence to support the Commission's findings and conclusions as an independent resolution of the issues presented and the relief granted in this Order. No party objected to the Commission considering the provisions of the Staff/PC Settlement and supporting testimony in rendering a final decision, and thus we adhere to our determinations regardless of whether any of the parties to the Staff/PC Settlement withdraw from that agreement.

- 72 The CLEC Settlement's conditions for moving ICA Wholesale Services and Non-ICA Wholesale Services from tariffs to catalogs are designed to minimize any harm to wholesale service delivery as a result of that process. The agreement also limits changes to pricing of wholesale services. For ICA Wholesale Services, Frontier may only modify rates according to the provisions of existing ICAs and subject to the provisions of Sections 251-52, or through a generic cost proceeding before the Commission. Similarly, for Non-ICA Wholesale Services, Frontier is required to obtain Commission approval for any rate increases or changes in terms and conditions and is subject to a cap on Non-ICA Wholesale Service rates through July 1, 2017. Together, these settlement conditions affirmatively sustain Commission authority over all wholesale service rates, terms, and conditions and provide rate caps on some wholesale services that would not otherwise exist.
- 73 The CLEC Settlement also contains several provisions that will assist competitive providers purchasing wholesale services to compete effectively. For example, the agreement includes an overarching provision that requires that all rates, terms, and conditions for the wholesale services Frontier provides to CLECs to be fair, just, and reasonable. The agreement also requires the Company to provide wholesale services in a timely manner and to maintain its facilities in a good and safe condition. The agreement's general provisions further include a condition under which Frontier specifically acknowledges that CLEC intervenors or any other entity can, if necessary, file a complaint pursuant to RCW 80.04.110 alleging violation of the terms of the CLEC Settlement and that Frontier will not argue that the Commission lacks jurisdiction to consider such a complaint.
- 74 We find that the CLEC Settlement provides important wholesale service safeguards that afford both continuity and stability in the markets for wholesale services, will help to prevent potential anticompetitive pricing, and preserve, if not enhance, competitors' ability to offer competing services. We agree with the settling parties that the adoption of these safeguards protects both competitive markets and end user retail customers in Frontier's service territory and is in the public interest. Accordingly, we approve the CLEC Settlement.²⁵

²⁵ A copy of the CLEC Settlement, including the subsequent amendment, is attached to this Order as Appendix B.

DoD/FEA Settlement

- 75 DoD/FEA maintains a large presence in Washington and has been an active participant in past proceedings before the Commission on telecommunications matters. Although larger telecommunications consumers such as DoD/FEA have a variety of alternatives in procuring telecommunications services, those alternatives may not be optimal to the federal government's needs or represent reasonable substitutes for the preponderance of its existing service requirements in Washington. The DoD/FEA Settlement establishes a framework for a long term contract that would mitigate DoD/FEA's concerns that competitive classification of Frontier's services could limit the federal government's service options.
- 76 The Commission routinely permits larger, sophisticated consumers to enter into term and commitment contractual arrangements with providers that provide stability for the rates and conditions of service for an extended period of time. Here, DoD/FEA and Frontier have negotiated a term and commitment agreement that ensures that both parties will maintain or enhance their business relationship for a period of at least the next five years. The DoD/FEA Settlement is supported by adequate record evidence and is consistent with the public interest, and we approve it without condition.²⁶

CONCLUSION

- 77 Our assessment of the merits of Frontier's Petition for relief from traditional regulation is guided by the remarkable transformation in the telecommunications industry that continues to occur. Washington's competitive classification statute requires that we examine the conditions in the marketplace to determine the level of regulation necessary to ensure that consumers have access to telecommunications services at fair, just, and reasonable rates, terms, and conditions. If alternative providers of telecommunications services exist and the Company no longer serves a significant captive customer base, we will substantially reduce historic regulation, particularly economic regulation, in favor of the disciplines of an effectively competitive marketplace. In the world as it exists today, our traditional role must devolve to one increasingly focused on preserving and promoting conditions for competition.
- 78 Frontier has presented compelling evidence that a variety of alternative suppliers offer a wide range of comparable services throughout its service territory and that the

²⁶ A copy of the DoD/FEA Settlement is attached to this Order as Appendix C.

Company does not serve a significant captive customer base. This evidence supports our determination that basic residential and business local exchange services, as well as the services identified in the Staff/PC Settlement, should be classified as competitive. The degree of competition, however, varies in particular elements of Frontier's service area, and thus we agree with the conditions in the settlement agreements that are designed to protect the Company's customers from discrimination and to preserve competitors' ability to offer viable service alternatives to Washington consumers. Accordingly, we approve the settlement agreements, subject to the conditions we adopt in this order, and classify the vast majority of Frontier's services as competitive.

FINDINGS AND CONCLUSIONS

- 79 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including telecommunications companies.
- 80 (2) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 81 (3) The Settlement Agreement between Frontier Communications Northwest Inc. and Integra Telecom of Washington, Inc., tw telecom of washington, llc, Charter Fiberlink WA-CCVII, LLC, Level 3 Communications, LLC, and Cbeyond Communications LLC is supported by adequate record evidence, is consistent with the public interest, and should be approved.
- 82 (4) The Settlement Agreement between Frontier Communications Northwest Inc. and the United States Department of Defense and all other federal executive agencies is supported by adequate record evidence, is consistent with the public interest, and should be approved without condition.
- 83 (5) With the additional conditions adopted in this Order, the Settlement Agreement between Frontier Communications Northwest Inc., Commission Staff, and Public Counsel is supported by adequate record evidence, is consistent with the public interest, and should be approved.
- 84 (6) Frontier Communications Northwest Inc. provides basic residential exchange service in a single market for residential voice services throughout the Company's service territory in Washington.

- 85 (7) Frontier Communications Northwest Inc. provides basic small business (one to three lines) exchange service in a single market for small business voice services throughout the Company's service territory in Washington.
- 86 (8) Frontier Communications Northwest Inc. does not provide basic residential service in the relevant market to a significant captive customer base.
- 87 (9) Frontier Communications Northwest Inc. does not provide basic small business service in the relevant market to a significant captive customer base.
- 88 (10) Frontier Communications Northwest Inc.'s basic residential service is subject to effective competition in the relevant market and should be classified as competitive.
- 89 (11) Frontier Communications Northwest Inc.'s basic small business service is subject to effective competition in the relevant market and should be classified as competitive.
- 90 (12) Frontier Communications Northwest Inc. should not discontinue offering any local exchange service to existing or new customers without Commission approval.
- 91 (13) The record evidence does not support any restriction on the ability of Frontier Communications Northwest Inc. to lower its rates for special access services consistent with existing Washington law.
- 92 (14) A restriction on the ability of Frontier Communications Northwest Inc. to seek additional reduced regulation is not in the public interest if market conditions warrant such relief.

ORDER

THE COMMISSION ORDERS that

- 93 (1) The Settlement Agreement between Frontier Communications Northwest Inc. and Integra Telecom of Washington, Inc., tw telecom of washington, llc, Charter Fiberlink WA-CCVII, LLC, Level 3 Communications, LLC, and Cbeyond Communications LLC is approved and adopted as part of the final order of the Commission.

- 94 (2) The Settlement Agreement between Frontier Communications Northwest Inc. and the United States Department of Defense and all other federal executive agencies is approved and adopted as part of the final order of the Commission.
- 95 (3) The Settlement Agreement between Frontier Communications Northwest Inc., Commission Staff, and Public Counsel is approved with the conditions required by this Order and is adopted with those conditions as part of the final order of the Commission.
- 96 (4) The telecommunications services provided by Frontier Communications Northwest Inc. that are identified in this Order are classified as competitive, and the waivers of the statutes and rules listed in Appendix A are granted as described in that appendix.
- 97 (5) The Commission retains jurisdiction to enforce the terms of this Order.

Dated at Olympia, Washington, July 22, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

JEFFREY D. GOLTZ, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

Appendix A

Appendix B

Appendix C