

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application of U S WEST, INC. and)	
QWEST COMMUNICATIONS)	
INTERNATIONAL INC.)	DOCKET NO. UT-991358
)	
for an Order Disclaiming Jurisdiction, or in)	COMMISSION STAFF'S
the Alternative, Approving the U S WEST,)	LEGAL MEMORANDUM ON
INC. -- QWEST COMMUNICATIONS)	JURISDICTIONAL ISSUES
INTERNATIONAL INC. Merger)	
.....)	

I. INTRODUCTION

This memorandum is submitted on behalf of Commission Staff in opposition to U S West, Inc.'s and Qwest Communications International Inc.'s (collectively, the "Joint Applicants") request for an order of the Commission disclaiming jurisdiction over the proposed merger of the two companies. The Commission should assert jurisdiction over the merger. The jurisdictional question posed here was decided by the Commission in its Decision and Order Regarding Jurisdiction over the proposed acquisition of PacifiCorp by Scottish Power PLC.¹ There, the Commission declared "its mission to protect the public interest whenever the control of a plainly jurisdictional public utility changes through a corporate transaction for the transfer of

¹*In the Matter of the Application of PacifiCorp and Scottish Power PLC for an Order (1) Disclaiming Jurisdiction or, in the Alternative, Authorizing the Acquisition of Control of PacifiCorp by Scottish Power and (2) Affirming Compliance with RCW 80.08.040 for PacifiCorp's Issuance of Stock in Connection with the Transaction, Second Supp. Order, Docket No. UE-981627, 192 PUR4th 143 (March 1999) ("Scottish Power Order").*

the whole or a controlling interest in the company.” *Id.* at 9.

II. ARGUMENT

A. The Commission Has Jurisdiction Over the Proposed Merger of U S West, Inc. and Qwest Communications International Inc.

1. Description of the Transaction

U S West Communications, Inc.² (“USWC”) currently is a wholly owned subsidiary of U S West, Inc.³ According to the Agreement and Plan of Merger dated July 18, 1999, USWC would become a wholly owned subsidiary of Qwest Communications International, Inc. (“Qwest”). This would occur in the following manner: U S West, Inc. would merge into Qwest. The separate corporate existence of U S West, Inc. would cease. Qwest would be the surviving parent corporation. The proposed \$65 billion merger is expected to result in net synergies of approximately \$10.5 billion to \$11.0 billion over the period 2000 through 2005. *See* Securities and Exchange Commission Form S-4 at II-16.

Qwest plans to issue shares of its common stock having a value of \$69 for each share of U S West, Inc. common stock, subject to a collar on Qwest’s average stock price between \$28.26 and \$39.90 per share. The number of Qwest shares to be exchanged for each U S West, Inc. share would be determined by dividing \$69.00 by a 15-day weighted average of trading prices for Qwest common stock over a 30-day measurement period ending three days prior to closing, but

²USWC provides telecommunications services to more than 2.2 million access lines (business and residential) in Washington. Its 1998 Washington revenues totaled \$1.5 billion.

³U S West, Inc.’s 1998 Washington revenues totaled \$10.7 billion. U S West, Inc. is valued at \$21 billion.

will not be fewer than 1.73 shares or more than 2.4 shares. The obligation under the collar may be satisfied in whole or in part with cash if Qwest's average stock price is below \$38.70 per share. Merger Application at 5-6; *see also* Prefiled Direct Testimony of Carl Inouye at 2-3.

The new Board of Directors of Qwest would consist of a total of 14 members including Philip F. Anschutz (Qwest), Joseph P. Nacchio (Qwest), and Solomon D. Trujillo (U S West, Inc.). The new Board would be made up of an equal number of members to be designated by each of pre-merger Qwest and U S West, Inc. Additionally, on consummation of the merger, Qwest would establish an Office of the Chairman which "will act by majority vote and will have exclusive power and final authority with respect to decisions relating to enumerated corporate actions, including, among others, material acquisitions and dispositions, the allocation of capital resources, termination of certain senior executive officers and the setting of general corporate strategy." Merger Application at 6. The Office of the Chairman will be comprised of Messrs. Anschutz, Nacchio, and Trujillo. *Id.*

The proposed change in ownership and control occurs at the holding company level by virtue of a stock transaction. The question is whether this change in control of the parent holding company results in a change in control of the plainly jurisdictional subsidiary operating company, USWC. The Commission should find that it does.

2. Relevant Statutes

a. RCW 80.01.040

Under RCW 80.01.040, the Commission has a duty to:

Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the

business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to, . . . telecommunications companies. . . .

Id. at (3).

b. RCW 80.12.020

Under RCW 80.12.020, the Commission must authorize transfers of property. That statute provides:

No public service company shall sell, lease, assign or *otherwise dispose of* the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public. . . .

(Emphasis added.)

c. RCW 80.12.010

RCW 80.12.010 defines the term “public service company” to mean:

every company now or hereafter engaged in business in this state as a public utility and subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title.

3. The Commission Has Broad Regulatory Authority Over Corporate Transactions Involving Public Service Companies

In an effort to resuscitate the failed arguments raised by the Joint Applicants in *Scottish Power*, the Joint Applicants here argue that the Commission, in *Scottish Power*, improperly relied on “its general power and duties under RCW 80.01.040 to assert jurisdiction over that transaction.” Memorandum at 12. While the Commission certainly looked to RCW 80.01.040 to inform its interpretation of RCW 80.12.020 (the statute under which it ultimately found jurisdiction over the transaction), it is incorrect to say that the Commission relied on RCW 80.01.040 to assert jurisdiction over the transaction.

As the Commission correctly observed in *Scottish Power*, the Legislature has granted the Commission broad regulatory authority over public service companies, including USWC. RCW 80.01.040; chapter 80.12 RCW; *Scottish Power Order* at 9. The state Supreme Court reaffirmed this broad grant of authority in *Tanner Elec. Coop. v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 911 P.2d 1301 (1996). There, the Court stated that the Commission “is charged with administering pervasive regulatory schemes that affect almost every phase of activity of the businesses under its authority.”⁴ *Id.* at 682. Here, the Commission should find that its authority extends to corporate transactions involving regulated public service companies.

The Commission already has determined that, in its view, the Legislature could not have intended to allow mergers of this magnitude to evade Commission scrutiny. In the *Scottish Power Order* the Commission stated:

We do not believe that the Legislature meant under RCW 80.12.020 to allow companies to avoid scrutiny of transfers of control over their jurisdictional enterprises by the simple expedient of using stock rather than cash as consideration. Such a rigid and mechanistic reading of the statute, as Public Counsel observes, ‘is counter-intuitive in this context and would subvert the

⁴In *Tanner*, the Commission was roundly criticized by the State Supreme Court for concluding that it lacked jurisdiction to interpret or enforce an electric service territory agreement. There, the Court held that:

The WUTC has jurisdiction not only to approve or disapprove service area agreements but also to apply and interpret relevant statutes where a dispute arises pursuant to such an agreement and to issue appropriate orders. The following discussion shows why the WUTC’s failure to fully exercise such authority rendered it necessary for this Court to review the resulting issues.

Tanner, 128 Wn.2d at 665. The Commission should accept the *Tanner* Court’s invitation to apply and interpret relevant statutes and issue an appropriate order asserting jurisdiction over the proposed U S West, Inc./Qwest merger pursuant to RCW 80.12.020.

purposes underlying the Commission's delegated powers.'

Scottish Power Order at 10.

As in *Scottish Power*, the Joint Applicants' argument in the instant case would lead to what the Commission called the "grossly illogical" conclusion that the public service company's sale of a single piece of machinery "for cash is a jurisdictional disposition under RCW 80.12.020, yet, on the other hand, a proposed disposition of the entire company is not jurisdictional." Scottish Power Order at 10-11. The courts of this state will "not give a hypertechnical reading of a statute so as to yield an absurd result." *Pudmaroff v. Allen*, 138 Wn.2d 55, 65 (1999); *General Telephone v. Utilities and Transp. Comm'n*, 104 Wn.2d 460, 471 (1985); *Marine Power & Equip. Co., Inc. v. Dept. of Transportation*, 102 Wn.2d 457, 461 (1984).

4. The Disposition Clause⁵

The Joint Applicants assert that the U S West, Inc./Qwest merger does not require Commission approval because: (1) neither U S West, Inc. nor Qwest Communications International Inc. is a "public service company" as that term is defined in RCW 80.12.010, and (2) the public service companies subject to the Commission's jurisdiction — USWC and the

⁵Commission Staff agrees with Joint Applicants that the "Consolidation Clause" of RCW 80.12.020 and the "Acquisition Clause" of RCW 80.12.040 are inapplicable to the merger transaction because, while USWC is a public service company, it is undisputed that neither U S West, Inc. nor Qwest Communications International Inc. is a public service company. *See* Scottish Power Order at 5. However, this fact is irrelevant to the application of the first clause of RCW 80.12.020.

Qwest operating subsidiaries⁶ — have done nothing to effect the transaction. However, central to the Commission’s determination of the jurisdictional issue in *Scottish Power* was “the expansive language the Legislature chose for the first clause of RCW 80.12.020.” *Scottish Power Order* at 9. The Commission’s analysis of the jurisdictional issue in the *Scottish Power* merger case applies with equal force to the jurisdictional issue raised here.

Consistent with its decision in *Scottish Power*, the Commission should find that a change in control of the parent holding company necessarily results in a change in control of the subsidiary operating company, here USWC. Or, stated in the terms used in RCW 80.12.020, the Commission should find that a transfer of control of a corporate parent (U S West, Inc.) constitutes a disposition of the subsidiary operating company’s (USWC’s) “franchises, properties or facilities.”

5. U S West Communications, Inc. Is A Public Service Company

Ignoring the fact that USWC is a public service company, Joint Applicants prefer instead to dwell on the fact that neither parent holding company, U S West, Inc. or Qwest Communications International Inc., is a public service company. Therefore, Joint Applicants argue, the Commission lacks jurisdiction over the proposed merger. In their memorandum, Joint Applicants attempt to distinguish the transaction in *Scottish Power* from that in the present application. Memorandum at 15-17. While the transaction *is* different, the difference is one of form, not substance for purposes of RCW 80.12.020.

⁶Qwest subsidiaries in Washington include Qwest Communications Corporation, LCI International Telecom Corp. (d/b/a Qwest Communications Services), USLD Communications, Inc., and Phoenix Network, Inc. *See* Exhibit A to Merger Application.

As stated above, one difference the Applicants highlight is the fact that in *Scottish Power*, one of the merging companies — PacifiCorp — was a public service company. The case before the Commission here involves a merger of holding companies, neither of which is a public service company, *but both of which own public service company subsidiaries*.

The argument raised by Applicants here was made by merger applicants in a recent Federal Energy Regulatory Commission (“FERC”) decision, *Enova Corporation and Pacific Enterprises*, 1997 WL 215074 (F.E.R.C.) (April 30, 1997). The decision is important because, as noted by the Commission in its *Scottish Power* decision, FERC’s statutory authority regarding approval of company reorganizations involving public utilities is quite similar to the Commission’s authority over dispositions and mergers involving public service companies under RCW 80.12.020.⁷ *See* *Scottish Power Order* at 15-16.

In *Enova*, FERC considered whether its approval was required for the reorganization of two holding companies, neither of which were public utility companies, but one of which owned public utility company subsidiaries, into a newly-formed holding company. The holding companies were Enova and Pacific. Enova was the parent company of the two public utility

⁷*Enova* supports the assertion of jurisdiction over changes in control that affect jurisdictional utilities. The *Enova* decision provides the definitive framework used by FERC to analyze “whether a proposed corporate realignment involves a disposition and/or direct or indirect merger of jurisdictional facilities.” *Id.* at *15. In *Enova*, FERC declined to elevate form over substance, concluding instead that “for purposes of Section 203 [of the Federal Power Act], Enova and its public utility subsidiaries act as one company and are effectively disposing of jurisdictional facilities via a transfer of control over those facilities to NewCo.” *Id.* at *13. This FERC decision elaborates on the seminal FERC decision interpreting the “disposition” clause of Section 203(a). That decision is *Central Vermont Public Service Corporation*, 39 F.E.R.C. ¶ 61,295 (1987), quoted with approval by this Commission in its *Scottish Power Order* at page 15. *See Enova* at *10. As with *Central Vermont*, the *Enova* case, too, is instructive.

company subsidiaries.

The merger of Enova and Pacific was to be achieved by combining Enova and Pacific under a newly created holding company, NewCo, that would own all of the stock of Enova and Pacific and, in turn, would be owned by Enova and Pacific's stockholders. On consummation of the merger, Enova and Pacific would become wholly owned subsidiaries of NewCo. The Board of Directors and the highest level officer positions of NewCo initially would be divided evenly between designees of Pacific and Enova. Enova and Pacific and the two public utility company subsidiaries of Enova would continue to operate under their existing names.

Enova and Pacific argued that FERC lacked jurisdiction over the merger because there would be no merger of the subsidiaries themselves. *Enova* at *2. FERC did not dispute this. In fact, FERC did not dispute its lack of jurisdiction over the merger itself — instead it asserted jurisdiction over the disposition of the facilities of the public utility subsidiaries:

[W]e do not assert jurisdiction over the proposed merger of the holding companies themselves. Rather, we assert jurisdiction over the proposed transfer of control of public utility jurisdictional facilities to ensure that this transfer of control is consistent with the public interest.

Enova at *6.

The merging holding companies in *Enova* also argued that no “disposition of the facilities” would occur in the proposed transaction because the stock of the public utilities would not be transferred. To this, FERC responded:

Even though Enova will continue to own the public utilities' stock after the transfer, control over the public utilities (and their jurisdictional facilities) will be exercised by NewCo and its shareholders under a divergently different corporate form with economic goals which reflect the corporate purposes of the newly-created holding company. As such, there is indeed a disposition of

jurisdictional facilities of [the public utilities].

Enova at *14.

Throughout their memorandum, Joint Applicants argue that because the regulated subsidiaries will do nothing to effect the merger, that fact somehow deprives the Commission of jurisdiction over the merger. That USWC will do nothing to effect the transaction that confers control over it is irrelevant. USWC is controlled by its parent company U S West, Inc., which wholly owns it. It is an instrumentality of its parent. The Joint Applicants themselves admit that the effect of the proposed transaction “is to transfer control of U S WEST[C] from U S WEST, Inc. to Qwest Inc.”⁸ Memorandum at 9 (emphasis added). In sum, Applicants’ argument ascribes significance to the inaction of an entity (USWC) having no will of its own apart from that of its parent company. The fact that USWC will do nothing to effectuate the change in control demonstrates how completely the company is controlled by its parent and why it would be absurd to read into RCW 80.12.020 the distinction urged by Joint Applicants.

6. The Transfer of Control of U S West, Inc., The Corporate Parent, Constitutes A Disposition of USWC’S “Franchises, Properties Or Facilities Whatsoever” under RCW 80.12.020

As in *Scottish Power*, the form of the transaction here is a stock exchange. Qwest will acquire direct and actual (through wholly owned subsidiary business organizations), ownership and control of all U S West, Inc. and USWC voting capital stock. The issue of whether a stock

⁸This reference to a “transfer of control” is consistent with the definition of the term “holding company.” As defined in Black’s Law Dictionary, a “holding company” (such as U S West, Inc. or Qwest) is “[a] company formed to control other companies, usu. confining its role to owning stock and supervising management.” (Emphasis added). BLACK’S LAW DICTIONARY 275 (7th ed. 1999).

transfer constitutes a “disposition” within the meaning of RCW 80.12.020 was resolved by the Commission in *Scottish Power*. Ascribing its ordinary meaning to the phrase “dispose of,” the Commission found that “the statute requires Commission approval not just for some narrow class of transactions, but for any transfer of rights or control over anything necessary or useful to a public service company’s operations.”⁹ *Scottish Power Order* at 10.

To support its conclusion that an exchange of stock constitutes a transfer of control triggering Commission scrutiny, the Commission emphasized two facts. First, under the terms of the PacifiCorp/Scottish Power merger, Scottish Power shareholders would gain 64 percent of the combined companies, and PacifiCorp’s former shareholders would own the balance. *Scottish Power Order* at 3.¹⁰ Second, PacifiCorp’s pre-merger Board of Directors would be replaced by a new board comprised primarily of current Scottish Power Board members. According to the Commission, “the legal and practical results of the proposed transaction include transferring to Scottish Power ownership and control of PacifiCorp’s voting capital stock and PacifiCorp’s facilities and properties, including those facilities necessary and useful to PacifiCorp’s

⁹Evidently, Joint Applicants disagree with the Commission on this point. In their memorandum they argue that “[t]he existence of RCW 80.12.040 further confirms that RCW 80.12.020 cannot be read to cover an ‘indirect’ transfer of assets through a stock transaction . . . It would therefore be improper to infer coverage of stock transactions in RCW 80.12.020.” Memorandum at 10-11. The Joint Applicants overlook the Commission’s statement that “[b]road language such as ‘otherwise dispose’ *includes*, not excludes, specific means of ‘disposal,’ such as stock transfers.” *Scottish Power Order* at 14 (emphasis in original).

¹⁰That the proposed PacifiCorp/Scottish Power merger transaction was subsequently modified by the merging companies does not change the validity and applicability of the Commission’s Decision and Order Regarding Jurisdiction to the U S West, Inc./Qwest merger. *See* Third Supp. Order, Docket No. UE-981627.

performance of its duties as a public utility. . .”¹¹ Scottish Power Order at 3.

In this case, U S West, Inc.’s pre-merger Board of Directors would be eliminated under the proposed transaction and its function assumed by the Qwest Board. The Qwest Board would then be comprised of an equal number of members to be designated by each of pre-merger Qwest and U S West, Inc. That each former Board would have equal representation on the new Board, however, does not change USWC’s subordinate status as a wholly owned subsidiary of Qwest. Indeed, ultimate control of USWC will lie with Qwest. Qwest’s control over USWC is even more direct because USWC’s parent company, U S West, Inc., would cease to exist following the merger.

¹¹As FERC noted in *Enova*, discussed above: “In common usage, the phrase ‘dispose of’ means to ‘[t]o transfer to the control of someone else, as by selling; to alienate; part with; relinquish; bargain away.’” *Enova* at *8, n.24, quoting Webster’s New International Dictionary of the English Language, 752 (2d Ed. 1948). In *Enova*, FERC held that:

To the extent that utility revenues are used to finance non-utility operations, the cost of utility service may be increased. If the parent makes unwise investment decisions the reliability of service of jurisdictional facilities could be impaired. This aspect of the holding company/operation utility relationship was a concern to those who enacted [T]itle II of the Public Utility Act.

Enova at *11.

Thus, Congress clearly was concerned about corporate changes that ‘impede or tend to impede’ the coordination of jurisdictional facilities in the public interest. This concern could not reasonably be limited merely to nominal ownership of jurisdictional facilities or corporate form; rather, Congress was concerned with the substantive decisionmaking authority and control over jurisdictional facilities.

Enova at *9.

Here, there can be no question but that the proposed merger results in a disposition of USWC’s franchises, properties, or facilities.

The Joint Applicants cannot have it both ways. On the one hand, they argue that USWC will remain the owner of its assets following the merger and that “no assets of a public utility subject to the Commission’s regulation are being transferred in any way.” Memorandum at 7.

On the other hand, they claim in their Securities and Exchange Commission Form S-4 that:

By combining, we expect to bring together Qwest’s advanced network and broadband Internet service capability with U S WEST’s innovative local communications and broadband Internet access capability. Through this combination we will be able to offer customers in the United States and worldwide more choices and greater access to next generation telecommunications and broadband Internet based services including web hosting and value added web based applications.

We will also be able to share resources and capitalize on synergies that will speed our ability to compete effectively at the top tier of the telecommunications industry . . . [I]t is our expectation that the combination . . . will bring together our complementary assets, resources and expertise and the network infra-structure, applications, services and customer distribution channels of our companies and that the combination of our customer bases, assets, resources and expertise in a timely manner will permit each of us to compete more effectively in our rapidly consolidating industries.

Securities and Exchange Commission Form S-4 at I-17, 18.

Access to each others’ resources and markets is a critical aspect of the merger. Indeed, consistent with the theory that “bigger is better,” the Director of Regulatory Affairs for USWC-Washington testified that “[m]ega-mergers throughout the telecommunications industry have also created competitive pressures on U S WEST, Inc. and its subsidiaries . . . U S WEST understands that it could better serve its customers by becoming a national, and ultimately international, telecommunications provider.” See Prefiled Direct Testimony of Theresa Jensen at 9, ll. 10-11; 10, ll. 5-6.

Just as an outright sale of USWC’s assets for cash would be a jurisdictional disposition

under RCW 80.12.020, so, too, is this change in control of the parent holding company which, in turn, necessarily results in a change in control of the subsidiary operating company, USWC. Although there are structural differences between the PacifiCorp/Scottish Power merger and the U S West, Inc./Qwest merger, such structural differences should not lead to a different conclusion. The Commission should not abandon its regulatory responsibility to scrutinize the transfer of ownership of a plainly jurisdictional public service company simply because the transfer is being accomplished by and through its corporate parent.

As stated above, USWC cannot dispose of control on its own; it is dependent on its parent to accomplish that end. A parental transfer of control of its subsidiary does not remove the transaction from the purview of RCW 80.12.020. To accept the interpretation urged by Joint Applicants would result in the Commission's treating jurisdictional utilities differently depending on whether or not they have corporate parents. Such an interpretation is not warranted by RCW 80.12.020. That statute draws no distinction between parents and subsidiaries. Neither should the Commission.

In sum, Joint Applicants read into the statute an artificial distinction between stock dispositions involving parent holding companies and stock dispositions involving regulated wholly owned subsidiaries. As in *Scottish Power*, the Commission here should focus not on the form, but rather the substance of the corporate transaction. *Scottish Power Order* at 15. There, the Commission stated:

We perceive the legislative purpose in this connection to be that the Commission should carry out its mission to protect the public interest whenever the control of a plainly jurisdictional public utility changes through a corporate transaction for the transfer of the whole or a controlling interest in the company.

Scottish Power Order at 9.

Finally, Joint Applicants here make arguments similar to those of the Applicants in *Scottish Power* in an effort to distinguish FERC decisions interpreting the language of Section 203 of the Federal Power Act. Memorandum at 14-15. However, the Commission dismissed these same arguments in *Scottish Power*:

Applicants dwell on the addition of the word “control” in the concluding clause of Section 203(a). This focus is misplaced. What gives the FERC jurisdiction is not the concluding clause of Section 203(a) but the *beginning* clause: a public utility cannot “sell, lease, or otherwise dispose” without FERC approval. This clause is almost identical to the comparable clause in RCW 80.12.020 (i.e., “No public service company shall sell, lease, assign or otherwise dispose[,]”). The *concluding* clause of Section 203(a) provides the criteria by which FERC approves or disapproves the transaction. FERC must approve or disapprove the transaction if it finds that the “proposed disposition, consolidation, acquisition, or control will be consistent with the public interest.” The word “control,” stated in the alternative, describes a result that must be found to be in the public interest; it does not confer jurisdiction.

Scottish Power Order at 15-16 (emphasis in original).

The Commission again should reject the arguments of Joint Applicants regarding the relevance of the Federal Power Act.

7. The *Indiana Bell* Case Is Inapposite

Joint Applicants rely heavily on *Indiana Bell Telephone Co. v. Indiana Utility Regulatory Comm’n*, 1999 Ind. LEXIS 548 (“*Indiana Bell*”) to support their argument that the Commission lacks jurisdiction over the merger. Not only is the *Indiana Bell* case inapposite,¹² decisions of the

¹²Equally inapposite is Joint Applicants’ reliance on a 1949 Attorney General’s Opinion. That opinion addressed acts of individual shareholders disposing of their interest in a public service corporation, not the transfer of control of a public service company from one holding company to another holding company which may have different corporate objectives. *See*

Supreme Court of Indiana are not binding on this Commission. Nor are they precedential. In its Scottish Power Order, the Commission likewise reviewed and considered various other state statutes and cases cited by the parties. The Commission stated:

None of this, of course, controls our analysis. The state cases are only marginally pertinent, if at all, and they are not precedent on which we might rely to construe our statutes . . . We do, however, find instructive FERC's decisions construing a similar federal statute, and this matter we discuss at greater length, though we acknowledge again that these decisions are illustrative, not dispositive.

Scottish Power Order at 13.

In *Indiana Bell*, the Indiana Supreme Court adhered to its earlier decision in *Office of Utility Consumer Counselor v. Public Serv. Co. of Indiana, Inc.*, 608 N.E.2d 1362 (1993). See *Indiana Bell* at 11. In its Scottish Power Order, the Commission dismissed the Scottish Power Joint Applicants' reliance on this very case as misplaced, stating:

We find the Indiana statute at issue too different from our own to inform our decision. In particular, we note that the Indiana statute does not use the encompassing "otherwise dispose of" language found in RCW 80.12.020.¹³

Scottish Power Order at 13.

The Commission should find the *Indiana Bell* case inapposite.

III. CONCLUSION

For the above reasons, the Commission should assert jurisdiction over the proposed merger of Joint Applicants U S West, Inc. and Qwest Communications International Inc.

Scottish Power Order at 11.

¹³Joint Applicants here describe the Indiana statute as being "nearly identical" to RCW 80.12.020. Memorandum at 7.

pursuant to RCW 80.01.040 and 80.12.020.

Dated this 1st day of November, 1999.

Respectfully submitted,

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